

*Testimony of Gary Burr, Songwriter*

*On behalf of Himself and the Recording Industry Association of  
America*

*Before the*

*United States Senate*

*U.S. Senate Committee on Homeland Security and Government  
Affairs*

*Subcommittee on Federal Financial Management, Government  
Information and International Security*

**On**

**“Ensuring Protection of Intellectual Property Rights of  
American Goods and Services in China**

**November 21, 2005**

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America’s song writers, performing artists and recording companies have a long history of working with the Congress and the Administration to protect and defend this uniquely successful sector of the U.S. economy. As a participant in and representative of this industry, I very much appreciate the efforts of this Committee, the rest of the Congress and the dedicated officials within the various Executive Branch agencies who have worked closely with our industry.

**The importance of the U.S. recording industry, and intellectual property protection, to the U.S. economy**

A critically important aspect of our nation’s competitive strength lies in the creation of knowledge-intensive intellectual property-based goods and services. This is one of those economic activities that Americans do better than others. The “core” U.S. industries that rely on copyright protection account for more than six per cent of US GDP.<sup>1</sup> The foreign sales and exports of these industries are nearly \$90 billion, an amount greater than almost any other U.S. industry sector, including automobiles and auto parts, agriculture and aircraft.

International markets are vital to America’s creative talent and record companies. Exports and other foreign sales account for over fifty percent of the revenues of the US record industry. This strong export base sustains American jobs.

In this respect, the protection of our intellectual property rights abroad is essential to promoting America’s competitive advantages in world commerce. The sale of our recordings abroad makes a major contribution to America’s current account balances. Each and every sale of a pirated product abroad that substitutes for the sale of a legitimate American product increases our current account deficit. As our trade deficit has soared, Congress should consider more closely the relationship between our widening trade and current account deficits and copyright piracy and to take steps to enable us to more

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<sup>1</sup> These industries include recording, music, motion pictures, book and newspaper publishing, computer software (including business and entertainment software) and radio and television broadcasting.

effectively protect our intellectual property rights and to sell our products at home and abroad.

### **The Effect of Music Piracy**

Music is the world's universal form of communication. It touches every person of every culture on the globe to the tune of \$34 billion annually, and the U.S. recording industry accounts for more than one-third of that world market. America's record companies—small and large—create employment for thousands of people, including composers, singers, musicians, producers, sound engineers, record promoters and retail salespersons, to name only a few.

The intellectual property of the United States is like a warehouse full of ideas and creativity. For someone to walk in and steal them should be no more tolerable than theft of physical goods.

The piracy of music is almost as old as the music industry itself, but historically it was difficult for the criminal to reproduce copies as good as the real thing. Now with the advent of digital recordings, computers and high-speed internet access, criminals can reproduce perfect copies of any recording. There is massive manufacture and traffic of illegal CDs, both in the form of molded CDs that are produced in factories, and increasingly pirated CD-R's produced on blank optical discs by computer CD-R burners.

The illegal music trade is feeding the profits of international organized crime syndicates who are involved in drugs, money-laundering and other criminal activities. Music piracy is costing governments hundreds of millions of dollars in tax revenues.

The battle against intellectual property theft must be unrelenting. Digital technology and internet piracy have greatly exacerbated our problems. Our country must employ every tool at its disposal, including the critically important leverage provided by international trade agreements.

### **Our Problems in China**

America's creative industries are under attack, especially in China where high levels of piracy in conjunction with market access barriers plague our industry.

Last year, the record industry lost over \$200 million in China to pirate sales. Eighty-five percent of the sound recordings sold in China were pirated. This means an astounding 17 of every 20 sound recordings sold in China are sold by pirates.

Demand for American musical recordings in China is enormous, as evidenced by the massive piracy of our products across China. The result has been a colossal lost opportunity for American writers, performers and record producers to benefit from the fast growing Chinese society and economy. Here's why:

1. China is swamped with pirated recordings because the penalties imposed on pirates are simply ineffective. Chinese pirates also export pirated versions of American recordings all over the world. Chinese authorities might raid one of these manufacturing facilities, a warehouse or a retail store and seize the pirate product—and they seize millions—but the resulting penalty, if any, is almost always just a small fine. Pirates are entrepreneurs who see raids and seizures as a cost of doing business—a “slap on the wrist”—and the occasional interruptions are built into their business model. The penalties do not deter or punish or in any way incapacitate the thieves.
2. On top of the blatant piracy of our products, the record industry faces severe restrictions its ability to do business in China. Frankly speaking, it will be very difficult to ever significantly reduce piracy in China if the Chinese will not let our companies expand their ability to sell legitimate products to Chinese consumers. China must abolish these restrictions.
3. Internet piracy is growing rapidly in China. China has 100 million internet users and 600,000 websites, only 8,000 of which were legally registered. Many websites offer the unauthorized downloading of music files, some for a financial charge, others for free. Certain China-based ISPs have become online “warehouses” for international pirate syndicates. Many of the legal deficiencies that enable physical piracy to flourish in China plague the on-line environment as well.

### **China’s Commitments in the US-China Joint Commission on Commerce and Trade—the “JCCT”**

In meetings of the US-China Joint Commission on Commerce and Trade – the JCCT – in April 2004 and July 2005, China made a number of potentially important commitments to improve intellectual property enforcement for our industry, but they will actually be important only if they are vigorously implemented. .

Perhaps most importantly, China committed in April 2004 to “significantly reduce IPR infringement levels”. Under any measure, this has not happened. The legitimate market, while it has improved somewhat over the past year, remains under siege. Piracy of sound recordings remains at an astounding 85%.

One reason why piracy has remained so high for so long is that China almost never criminally prosecutes anyone for committing these acts, no matter how extensive the piracy or counterfeiting may be.

As part of the JCCT China agreed to mount a nationwide enforcement campaign to stop the production of pirate product and punish violators.

A campaign was launched last September that resulted in increases in the number of inspections and product seizures. However, the usual remedies are being still applied—

product is seized and modest administrative fines are sometimes levied. Not only is this campaign ineffective, it is set to expire at the end of this year. What then?

### **Our Recommendation**

China's current reliance on administrative inspections, seizures and modest fines does not work. China's criminal enforcement authorities must become actively involved in the fight against piracy in China. Unless this occurs, we foresee matters either staying the same or become even worse.

The US Government—our Executive Branch and the Congress—must increase pressure on China toward this end. This hearing helps in this regard. The U.S. music industry is calling upon our Executive Branch to confront China to fully implement the commitments it made in last year's JCCT—especially to significantly reduce piracy. Our industry is also working with the Office of the U.S. Trade Representative to prepare the necessary elements of a possible WTO legal complaint against China.

### **Russia: the Next China**

As serious as problems are in China, and they are serious indeed, the challenges we face in protecting our intellectual property in Russia are even more daunting. Lawlessness, physical danger, and corruption are part of the daily challenges we face in trying to protect our rights in Russia. These types of problems are even more prevalent in Russia than in China.

Russia is one of the largest producers and exporters of pirated CDs and other copyrighted products in the world. In fact, the statistics demonstrate a dramatic increase in music theft, certainly not a crackdown.

- There are now 42 optical disc replication plants in Russia, most of which are involved in piracy. Five plants would be sufficient to meet the needs of the legitimate Russian market. As a result of that excess capacity, Russia has become the world's largest exporter of pirated music.
- At least 9 of these production plants are located on so-called "Russian State Restricted Access Regime Enterprises" in which the Russian Government itself is the owner of the premises. Local law enforcement authorities are not permitted access to these facilities.
- Russia is now home to some of the world's only Internet-based pirate *pay* download services – including a particularly notorious one known as "allofmp3.com."

The case of allofmp3.com helps illustrate the music industry's frustration. Through its online services based in Russia, allofmp3.com sells music to anyone in the world willing to pay ten cents a song. But allofmp3.com has not secured the rights to do so – and doesn't bother to pay the people who wrote and own the songs being sold. There is no question about the law – at the very least allofmp3.com is violating the reproduction

rights afforded by Russian Copyright Law and Criminal Code, and the laws of the countries where the songs are being downloaded. But our industry's request for legal action against allofmp3.com have been routinely denied by Russian courts.

### **What Should Be Done?**

We need to change the political calculus so that failure to control piracy has clear ramifications for the Russian Government – ramifications that outweigh the costs associated with stopping piracy. Specifically:

**(1) USTR should reexamine Russia's eligibility to participate in the Generalized System of Preferences until it has satisfactorily protected intellectual property from theft.** It is wrong that U.S. taxpayers should, in effect, be helping to finance Russian exports to the U.S. while the interests of U.S. intellectual property owners are being systematically undermined. The United States needs to point out how failure to address copyright piracy will impede Russia's goals, whether such goals relate to attracting foreign investment, joining the WTO, or other matters.

**(2) We must learn from the China experience. Congress should insist upon demonstrated and sustainable reform before supporting Russia's accession to the WTO.** By every measure, the steps taken before China was admitted to WTO have failed America's inventors and creators. The U.S. should ensure that relevant legal and enforcement measures are in place and implemented before we accept Russia into the WTO. WTO accession is not a political prize -- it represents a commitment to abide by international rules. The WTO institution and global confidence in world trade rules is quickly undermined when WTO parties openly mock trade discipline.

Let's face it – today Congress has some bilateral leverage because Russia wants to enter WTO. Once they are in, the leverage diminishes significantly, as we have seen with China. One aspect of Russia's accession to the WTO, known as granting them "Permanent Normal Trade Relations" or "PNTR" must be approved by Congress. We urge Congress to inform our Executive Branch that it will not approve PNTR unless and until Russia acts to significantly clean up its copyright piracy mess.

### **Conclusion**

Sound recording piracy in China, and in Russia, remains rampant. Much more needs to be done by each of these countries. Our industry urges the United States—and the rest of the international trading community—to bring greater pressure on China and Russia to combat much more effectively the rampant piracy in their countries. This must not be allowed to continue. It has already gone on for far too long.