

Testimony of Andy Lack
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before the Senate Finance Committee on
International Enforcement of Intellectual Property Rights
and American Competitiveness
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Good morning. My name is Andy Lack, and I am Chairman of SONY BMG Music Entertainment.

Thank you for the opportunity to address the Committee on the issue of intellectual property protection in global markets. I commend Chairman Baucus, Ranking Member Grassley, and the members of the Committee for recognizing that this issue is of great importance to the entire U.S. creative community, as well as to the U.S. economy and to U.S. society as a whole. This Committee has been a tremendous champion for strong and effective copyright protection in global markets, and I thank you for your leadership.

Sony BMG is a recorded music joint venture that operates in more than 40 markets around the world and employs approximately 2300 workers in the United States. Headquartered in New York, SONY BMG is one of the four major record companies in the music industry. I think it's worthwhile to highlight that, even though SONY BMG is a global company with integrated interests in all facets of the music business, ultimately our assets are thoroughly intangible because they are based in the creative work of the artists themselves. For this reason, economic survival in the music industry is reliant upon the adequate protection of intellectual property.

The stakes for our national economy are high. It has been reported, and the Administration has so testified before Congress, that roughly 40% of the U.S. economy is dependent upon IP protection in one way or another, and the core copyright industries are alone responsible for an estimated 6% of U.S. GDP. But the continued growth of this vital economic sector is seriously at risk. This Committee has highlighted the importance of the global fight against piracy, and we need your help now more than ever. My industry's story is but one, yet it is telling: While people listen to more music today than at any point in recorded history, paid consumption is sharply down, as piracy and the acquisition of music through illegal channels continues to skyrocket. Creating opportunities for business growth is critical to ensuring the survival of one of the world's most vital, diverse and competitive industries.

The record industry currently faces a piracy phenomenon on two fronts. One involves the physical marketplace, in which we confront increasingly organized and multinational criminal enterprises involved in massive production and trafficking of pirate CDs and other optical media. The second front of the piracy war exists in the online marketplace. Here, too, global criminal organizations are engaged in illegal distribution directed at generally law abiding citizens who, in the privacy of their own homes, are now actively involved in trading or sharing unauthorized recorded music files. It is necessary that any global IP protection regime address the piracy problem on both the physical and digital fronts.

Music companies are not alone in confronting the pernicious threat of counterfeit products and digital theft. A coalition spearheaded by the U.S. Chamber of Commerce and the National Association of Manufacturers, The Coalition Against Counterfeiting and Piracy (CACAP), has highlighted the broad scope of the threat that counterfeiting and digital theft poses to the U.S. across more than two dozen sectors of the U.S. economy. The Coalition has emphasized that the threat from counterfeiting and digital theft robs the U.S. economy of hundreds of billions of dollars of GDP and hundreds of thousands jobs, threatens health and safety in many sectors, and is driven by organized crime.

SONY BMG has employed a multi-pronged strategy to address these challenges. First, we are expanding legitimate avenues for digital distribution through creative new business models and experimental licensing arrangements. Second, we are educating the public and our industry partners about the risks involved with piracy and steps they can take to curb infringement. And, finally, we are taking enforcement actions against infringers, and against services that effectively encourage or induce infringement.

However, a company like SONY BMG, and copyright industry bodies like RIAA, cannot fight piracy on our own. Today's pirates often operate through multinational criminal syndicates simultaneously involved in replication, printing and distribution around the globe. They rely on traditional means of avoiding punishment such as bribery and other forms of corruption, but also have new tools in their arsenal that increase their stature -- force and other threats of violence, and the ability to rapidly change the location of the various components of their enterprises when confronted with governments prepared to tackle piracy issues. Pirates actively seek out jurisdictions in which either the law, lax enforcement of the law, or the general inefficiency and corruption of the judicial system, offer relative safety for their operations. Company representatives and counsel have in some countries already experienced threats on their lives or physical intimidation when their investigations began to make progress. In some cases, this has prevented any enforcement activity by the private sector.

We therefore look to the U.S. Government for leadership, at home and in bilateral and multilateral settings, to keep intellectual property protection at the top of the enforcement agenda and ensure that law enforcement agencies have the necessary tools and underlying legal framework to accomplish their goals. Adequate enforcement requires adequate resources, and to that end we believe that law enforcement must have dedicated personnel who are focused on seeking out and stopping illegal trafficking in pirated goods. The U.S. Government should encourage countries with existing organized crime laws and investigative procedures to bring them to bear against syndicate operations involved in piracy. And where such laws and procedures are not in place, the U.S. Government should encourage governments to adopt them and to include, among predicate offenses, intellectual property rights violations.

Aggressive and constant monitoring of the implementation of bi- and multilateral trade agreements by our trading partners to ensure compliance is of paramount importance, and we salute the work that USTR, working with other U.S. Government agencies, does in this

regard. We also applaud the U.S. Government for the actions it has taken to make China accountable for its piracy problem, specifically through the filing of actions at the WTO.

Congress can continue to play a role in helping to ensure that our trading partners meet their obligations to provide adequate and effective copyright protection by holding oversight hearings such as this, by ensuring that the Administration has adequate resources to safeguard this unique American asset, and by ensuring that all trade programs provide maximum leverage to require beneficiary countries to provide effective copyright protection. Unilaterally extended U.S. benefit programs crafted by Congress continue to play a key role in providing incentives to countries to meet their IPR obligations.

This Committee should also continue to pay close attention to Russia's accession to the World Trade Organization (WTO). The Russian government wishes to join the WTO; however, to date they appear unwilling to take sufficient actions against rampant copyright piracy as they are required to do by the bilateral IPR agreement concluded between Russia and the United States in November 2006. We strongly advocate that the U.S. Government not complete the WTO accession process with Russia until Russia takes actions that effectively address this critical problem. There have been some promising developments in Russia, but compliance with the bilateral agreement that has been called the "roadmap to WTO accession" has not yet been achieved. We are particularly concerned by the lack of government action against the individuals responsible for [allofmp3.com](#) and other similar online sites, and against the rogue licensing societies that purported to grant licenses for content that they did not control.

SONY BMG, in line with the industry as a whole, has been adapting our business to the dramatic changes brought about by the digital age. In the US, only five years after the music download business first emerged in a commercially meaningful way, 23 per cent of all recorded music sold is online or mobile. Record labels are becoming broad-based entertainment companies, developing new revenue streams. The consumer has better choice, availability and flexibility in enjoying music than ever before. Our digital revenues are growing and diversifying as our business model changes from one dominant format to hundreds of channels and products.

However, while broadband Internet access offers exciting prospects for the legitimate dissemination of copyrighted materials of all kinds, too often high-speed Internet connections are being used to distribute unauthorized copies of sound recordings, software, videogames, literary material, and motion pictures. The unprecedented growth of the Internet and increased availability of broadband connections, coupled with the absence of adequate copyright law and/or enforcement in the online environment in many countries, has provided pirates with a highly efficient distribution network to reach the global market. Pirates offering and distributing infringing product can now reach any part of the world with ease, regardless of where they are physically located. Consequently, the U.S. copyright industries face the daunting task of trying to enforce their legal rights in an online world where borders and distances have decreasing practical significance, and where anonymity is claimed.

What tools do we have to address this type of online piracy where legal action by the industry does not suffice? First, of course, we have the framework of international trade law discussed above. But industry and government must also work together to address the particular legal and technological challenges of the electronic marketplace.

The so-called WIPO Internet treaties adopted in 1996 set the stage for fair international digital distribution of music. These treaties represented significant and necessary improvements in the international legal structure. Of greatest importance, the treaties made it absolutely clear that copyright holders are permitted to control the electronic delivery of their works to individual members of the public. This both anticipated and responded to the realities of the electronic marketplace, where copyright owners rely increasingly on electronic delivery to meet consumer demand. This level of copyright protection, in conjunction with technical protections (also addressed in these treaties), is key to encouraging copyright owners to make their works available through these new media.

It is critical that the marketplace, with government support, continue to develop its own solutions. To that end, SONY BMG and other content companies have begun to engage in a dialogue with our industry partners to find new ways to cooperate in the fight against piracy. In particular, this past year has witnessed a virtual explosion of global public interest in developing structures in which Internet Service Providers (ISPs) can enhance their role in addressing the unauthorized transmission of copyright content. This is an important development, because until now ISPs have not adequately responded to the massive theft that is occurring through their networks.

Today, however, a shift is underway. The content community, governments, consumers, and ISPs themselves are beginning to respect the notion that the carriers of digital content must play a responsible role in curbing the systemic piracy that is threatening the future of all digital commerce. Industry has been hard at work on these critical issues, but we need the help of the U.S. and foreign governments to make the Internet safe for e-commerce in copyrighted material by encouraging marketplace solutions to take hold.

Furthermore, renewed emphasis on law enforcement training is vital to giving enforcement authorities the tools they need to quickly locate infringing Internet sites and pursue actions against the offenders who commit the most damage and/or refuse to remove the infringing content. Public education about the dangers of online infringement must be emphasized as well. As global boundaries continue to lose much of their practical relevance because of Internet growth, so must the usual lines separating the roles of industry and government in policy, enforcement and education. Close coordination will be the key to success in this challenging new environment.

Finally, I mentioned the broad-based CACP coalition earlier and I would urge the Committee to give positive consideration to proposals the CACP has endorsed with respect to the creation of high-level leadership positions in the Department of Homeland Security, Customs and Border Patrol and other agencies, as well as the deployment of dedicated agents with adequate legal tools to protect our borders against counterfeiting and digital theft.

CONCLUSION

Effectively addressing piracy in all of its variants is a key economic and cultural objective for the United States. Congress, the Administration and the private sector must work together to achieve this goal. Trade pressure and capacity-building through effective training continue to be primary mechanisms for encouraging foreign nations to address inadequacies in their legal and enforcement frameworks, and I urge the Committee to ensure that the Administration has all the possible tools at its disposal to exert such pressure and to provide necessary training. To this end, it is critical that the Administration be funded in such a way as to permit them to use their powers to the maximum extent, and I urge the Congress to appropriate sufficient funds to protect America's most creative, vibrant and profitable industries.

We can and must prevail in these initiatives. Once again, I thank you for inviting me here today, and I look forward to your questions.