

STATEMENT OF
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ON

THE COSTS OF INTERNET PIRACY FOR THE MUSIC AND SOFTWARE
INDUSTRIES

BEFORE THE

SUBCOMMITTEE ON ECONOMIC POLICY AND TRADE
COMMITTEE ON INTERNATIONAL RELATIONS

JULY 19, 2000

Madam Chairman, Members of the Subcommittee, it is a pleasure to be here today to discuss what the U.S. Patent and Trademark Office (USPTO) is doing to help protect American intellectual property here and abroad.

The Computer Industry Almanac predicts that worldwide Internet usage will grow to 349 million users by the end of this year, with more than 120 million users in the United States and Canada alone. This trend brings significant opportunities for expanding electronic commerce and for providing an ever wider variety of public and private information sources. Clearly, the impact of the Internet's growth on the U.S. economy and jobs will be immense. The intellectual property intensive information and entertainment industries are already large users of the Internet for electronic commerce. As their usage increases, they stand to reap significant benefits from worldwide commerce in their goods and services.

According to a 1999 report, prepared for the International Intellectual Property Alliance (IIPA), the core copyright industries accounted for \$348.4 billion in value added to the U.S. economy, or approximately 4.3% of the Gross Domestic Product (GDP) in 1997. The total copyright industries accounted in 1997 for \$529.3 billion in value added, or approximately 6.53% of GDP. Employment in the core copyright industries grew three times the rate of national employment growth between 1977 and 1997, and more than 6.9 million workers were employed by the total copyright industries, about 5.3% of the total U.S. work force. The core copyright industries generated an estimated \$66.85 billion in foreign sales and exports in 1997 and preliminary estimates for foreign sales and exports for 1998 is \$71.0 billion.

As the title of this hearing indicates, two of the U.S. copyright industries most intensely affected by piracy and the unauthorized use, reproduction and distribution of their works on the Internet are the software and music industries. For example, the Business Software Alliance and the Software and Information Industry Association estimate losses to the worldwide software industry of \$12 billion from all types of piracy, while the Recording Industry Association of America reports losses of \$4.1 billion. Overall, the IIPA estimates the U.S. copyright industries worldwide losses to piracy at \$22 billion. These losses mean lost income for creative Americans - authors and composers - as well as lost jobs, revenues and foreign royalties for American workers and industry.

These problems are not just going to wither away. The growth of the Internet and the use of intellectual property on many sites is continuing to increase. Moreover, this growth does not come without controversy. The matter of how U.S. copyright law applies to such uses, how fair use is to be determined in cyberspace, and other related questions are presently before the courts. Just last week, on July 11, the Senate Judiciary Committee convened a hearing to discuss the issue of the use of copyrighted sound recordings on the Internet through technologies like MP3, Napster and Gnutella. The sense of those hearings seemed to be that business models are still evolving and the market should have more time to develop licensing mechanisms to ensure that consumers would have easy access to music without imposing unreasonable burdens on the technology and still ensuring that the creative community continues to receive the incentive they need to continue to create new music.

Usage of the Internet is growing not only in the United States and Europe, but also increasingly in Latin America, Africa and Asia. For example, Newsbytes Asia estimates that internet users in Asia will increase by 422% over the next six years. The International Data Corporation estimates that Internet usage in Latin America will "skyrocket" to 29.6 million users by 2003, and SangoNet estimates that there are 1.72 million people on line in Africa.

Given these trends, the Administration has determined to challenge the pirates by working with Congress to equip American intellectual property owners and law enforcement authorities with better legal tools to address piracy here at home. For example, we have worked with Congress to ensure the passage of the Digital Millennium Copyright Act, which brings our copyright law into the 21st century, and the No Electronic Theft Act, which addresses a variety of illegal actions on the Internet.

Through our work with international organizations such as the World Intellectual Property Organization (WIPO) and the World Trade Organization (WTO) we are moving to provide similar legal norms at the international level. We cooperate with other agencies including the United States Trade Representative (USTR) and the Department of State to ensure that our trading partners implement these norms reflected in the recent WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) - known as the WIPO Internet Treaties - and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs Agreement). Each of the new WIPO Treaties requires 30 countries to ratify the treaty before it becomes effective. As of

today, including the United States, 19 countries have ratified the WCT and 16 countries have ratified the WPPT. Secretary Daley committed the Department of Commerce to working internationally to reach the 30 country threshold for each treaty, and the USPTO will continue that effort in coordination with the State Department and USTR.

Legal norms alone are not enough, however. Therefore, let me describe some of our efforts to ensure that our trading partners have the technical means and the political will to use these legal tools in practice.

International enforcement has become even more critical because, as of January 1, 2000, all developed and developing countries who are members of the WTO are required to have domestic laws and enforcement mechanisms that comply with the international standards set forth under the TRIPs Agreement. Consequently, we are receiving even more requests for technical assistance in reviewing intellectual property (IP) legislation and assisting countries in developing an integrated enforcement system -- consisting of civil, criminal and administrative procedures and remedies, and border measures.

The assistance provided by the USPTO includes training enforcement personnel and conducting workshops sponsored by international organizations. These workshops aid countries in meeting their obligations from both a structural point of view (by having the laws and procedures in place to conform with TRIPs requirements) and from an effective enforcement point of view (by having the experience and capability to enforce IP rights using the structural mechanisms established in compliance with TRIPs.)

In addition, because of the growing problem of Internet piracy, many of these countries are also seeking assistance in developing enforcement mechanisms to deal with technological advances in IP protection and enforcement, including IP protection in knowledge-based economies. These countries will also need assistance in understanding and implementing the WIPO Internet Treaties to establish the legal framework to combat these problems. Accordingly, the focus of our Internet-oriented efforts has been to assist countries in adapting the enforcement models appropriate for conventional hard goods (CDs, cassettes, floppy disks) to the realities of cyberspace transmission of copyrighted works.

To meet our technical assistance requirements under TRIPs and to continue to assist developing countries in establishing IP protection regimes, we have built on the strength of our activities discussed at the hearing you held on IP Protection last October and expanded those activities to meet the heightened need for technical training generated by the Year 2000 deadline for TRIPs compliance and other bilateral and multilateral treaties. We are also targeting our enforcement training efforts to focus on problems of Internet enforcement in other regions where the usage is rapidly expanding - Latin America, Asia and Africa. We are doing this by conducting the programs discussed below.

USPTO INTELLECTUAL PROPERTY ENFORCEMENT PROGRAMS

On May 22 – 26, 2000, the USPTO worked with WIPO to provide law enforcement and other government officials from a wide range of developing economies with a Washington-based, week-long program on developing a TRIPs compliant and effective enforcement regime. This program built on the highly successful similar program offered in 1999.

On July 24 - 27, 2000, we will partner with WIPO to provide law enforcement and other government officials from Africa with a week long program in Dakar, Senegal on developing a TRIPs compliant and effective enforcement regime. This program, like the Washington-based effort builds on a similar program offered last year in Mombassa, Kenya.

The goals of these programs are:

- To provide government officials with an in-depth review of the TRIPs standards for enforcing intellectual property rights.
- To assist government officials in developing effective IP enforcement systems based on an interdisciplinary approach in which civil, criminal, administrative and border measures work both together and separately; and
- To expose government officials to the challenges posed by enforcing intellectual property on the Internet and building the requisite legal framework in their domestic laws to meet the Internet challenge, including through implementation of WIPO Internet Treaties. This will include a heavy focus on practical applications in the digital universe.

On September 18-19, 2000, the USPTO in cooperation with WIPO will hold an Asian Pacific regional conference in Phuket, Thailand for officials from the judiciary, the public prosecutor's office, administrative offices charged with domestic enforcement, and private rights holders. This conference will explore the practical problems in developing and implementing effective intellectual property enforcement mechanisms in today's changing digital and technological environment. The goals of this program are:

- To strengthen regional and international cooperation for the improvement of the enforcement of intellectual property rights in order to meet international treaty obligations, including those under TRIPs;
- To provide Asia Pacific countries with a detailed review of the emerging intellectual property regimes of the digital age, emphasizing their use in protecting the products of a knowledge-based economy;
- To assist government officials from Asia Pacific countries in developing effective enforcement systems in which civil, criminal, administrative and customs measures will work together and separately to assist in protecting and growing a knowledge-based economy;
- To provide government officials with the opportunity to cooperate in exchanges of information, training and technical assistance regarding the

enforcement of intellectual property rights in a knowledge-based economy, in order to meet international treaty obligations;

- To discuss ways to improve the enforcement of intellectual property rights generally throughout the region; and
- To encourage strong industry participation in digital piracy and trademark/domain name infringement, including the development and implementation of investigatory techniques.

On September 11-12, 2000, the USPTO will convene the second Intellectual Property Symposium of the Americas here in Washington. This is a hemispheric conference for officials from the judiciary, the public prosecutor's office, administrative offices charged with domestic enforcement, and private rights holders. The conference will explore the practical problems in developing and implementing effective intellectual property enforcement mechanisms in today's changing digital and technological environment. This conference will also build on the highly successful similar conference offered in 1996. The goals of this conference are:

- To strengthen regional and international cooperation for the improvement of the enforcement of intellectual property rights in order to meet international treaty obligations, including those under TRIPs;
- To provide government officials from the Western Hemisphere with the opportunity to discuss the challenges posed in developing workable methods for protecting and growing a knowledge-based economy utilizing intellectual property laws as the keystone;
- To provide Western Hemisphere countries with a detailed review of the emerging intellectual property regimes of the Digital Age, emphasizing their use in protecting the products of a knowledge-based economy. Included among the topics are the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, database protection, pharmaceutical patents, business methods patents and "traditional knowledge;"
- To assist government officials from the Western Hemisphere in developing effective enforcement systems based on an interdisciplinary approach in which civil, criminal, administrative and border (customs) measure work together and separately to assist in protecting and growing a knowledge-based economy;
- To provide government officials from the Western Hemisphere with the opportunity to cooperate in exchanges of information, training and technical assistance regarding the enforcement of intellectual property rights in a knowledge-based economy, in order to meet international treaty obligations; and
- To discuss ways to improve the enforcement of intellectual property rights generally throughout the Hemisphere.

INTERAGENCY COOPERATION

While the USPTO and other Federal agencies regularly consult on intellectual property-related enforcement activities, the Treasury/Postal Appropriations bill (P.L. 106-58) establishes a formal inter-agency coordination effort. The law creates the National Intellectual Property Law Enforcement Coordination Council with the mandate of coordinating domestic and international intellectual property law enforcement among Federal and foreign entities.

The Council membership consists of USPTO and our colleagues at the Justice Department, State Department, USTR, Customs, and the Department of Commerce. The Council is directed to consult with the Register of Copyrights on copyright-related issues and must report annually on its activities to the President and the House and Senate Committees on Appropriations and the Judiciary.

We look forward to working with our colleagues on this important effort. We believe that, in the future, the Council will serve as a vehicle through which Federal agencies can coordinate their enforcement efforts and also partner with industry to develop effective strategies for addressing Internet piracy.

CONCLUSION

Thank you, Madam Chairman, for this opportunity to discuss how the USPTO is working to ensure the protection and enforcement of intellectual property and promote trade in products protected by intellectual property rights. I will be pleased to answer any questions that you or the Subcommittee may have.