

From: [REDACTED]
To: [FN-OMB-IntellectualProperty;](#)
Subject: Intellectual Property Law Enforcement
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Attachments: [NATIONAL WRITERS UNION.pdf](#)

Attached in response to your call for public comment on copyright and copyright enforcement issues is a National Writers Union, AFL-CIO, document created and published during the reign of Alberto Gonzales as Attorney General. The document calls for Justice Department enforcement of laws designed to protect the intellectual property rights of our nation's creative workers from domestic piracy which destroys our ability to make a living with our talent, education, and effort. It addresses the costs to the U.S. economy resulting from infringement, the devastating impact of infringement on maintenance of jobs, and advocates a strategic plan for dealing with intellectual property infringement.

Your concern for establishing a firm deterrent against piracy is particularly important today for four reasons:

First, a large and growing number of our citizens rely on copyright laws to protect their property and livelihoods: writers, artists, manufacturers, computer programmers, creators of games and educational programs, musicians and composers, photographers, small publishers, men and women in business who create unique marketing materials for their exclusive use, and the growing numbers of men and women who market their knowledge and creativity with desktop publishing;

Second, technology has made copyright infringement easier to do and harder to police;

Third, several Attorneys General have cited the growing importance of copyright protection as intellectual property constitutes an ever increasing share of our national economy;

Fourth, Justice Department failure to uphold the law has created a culture of infringement because predators who pirate creators' works know the Justice Department does not act on behalf of individual victims under criminal law and because predators know that most victims do not have financial resources to defend their registered copyrights.

As conditions now stand, Justice Department failure to enforce the law on

behalf of individual creators effectively nullifies the registered copyrights of creative workers and violates rights bestowed on creative workers by Article 1, Section 8, Clause 8 of the Constitution. The cost to creative workers and to the thousands of others whose jobs depend on the fruit of creative workers' efforts is incalculable. Who can afford to invest time and talent and treasure in creative endeavors which are subject to theft by predators who have no fear of consequences?

If you have any trouble opening the attached pdf or if you have additional questions, I can speak both as a former member of the National Writers Union team of contract advisors/grievance officers and as a victim of an \$8.1 million retail value copyright infringement myself.

Thank you,

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National Writers Union Takes The Lead In

Defending Writers' Rights

Chronic Justice Department discrimination against creative workers has denied them equal protection under the law despite Constitutional provisions mandating that protection and despite Congressional legislation designed to safeguard creative workers' rights and livelihoods.

Justice Department failure to enforce criminal copyright law on behalf of individual creators leaves most piracy victims with no affordable recourse under law, effectively stripping away their Constitutional rights in the same manner poll taxes stripped away minorities' voting rights in past decades.

Now the National Writers Union (NWU), a New York based UAW/AFL-CIO affiliate dedicated to defending the rights and economic interests of writers in all genres, is working to change that. Authors, journalists, and freelance writers voted overwhelmingly at the last National Writers Union Delegate Assembly in Baltimore for establishment of a Justice Department Task Force to enforce criminal copyright law on behalf of individual authors and other creative workers whose livelihoods are being destroyed by predators.

The Assembly includes representatives of NWU chapters from around the nation.



Federal prosecutors under Alberto Gonzales and his predecessors have encouraged piracy by failing to defend the Constitutional rights of creative workers and independent publishers.

National Writers Union

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Writers Cite Justice Department Dereliction And Provide 19 Reasons For Ending Discrimination

Resolution of National Writers Union
UAW/AFL-CIO Delegate Assembly
Baltimore, Maryland



1. Whereas the work of creative workers is recognized by our nation's founders as so essential to our national well being and prosperity that the United States Constitution, Article 1, Section 8, Clause 8 directs Congress "To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries," and

2. Whereas Congress has legislated criminal and civil copyright laws to implement their Constitutional mandate to protect the works and livelihoods of creative workers, and

3. Whereas a large and growing segment of the American work force, including authors, artists, men and women in business who create unique marketing materials for their own exclusive use, independent publishers, computer programmers, creators of games and educational programs, photographers, musicians and composers, and the ever growing numbers of men and women who market their knowledge and creativity with desktop publishing and through the Internet must and do rely on those criminal and civil copyright laws to protect their property and livelihoods, and

4. Whereas the Justice Department is charged with enforcing criminal copyright laws designed to protect the works and livelihoods of creative workers, and

5. Whereas Justice Department law enforcement officers who are paid to protect the property of authors and other creators are federal prosecutors who swear an oath to uphold the Constitution of the United States, including Article 1, Section 8, Clause 8, and

6. Whereas Justice Department enforcement of criminal copyright law on behalf of individual authors and other artists has been neglected for at least two and a half decades, and

7. Whereas federal prosecutors who fail to enforce criminal copyright law on behalf of individual authors and other artists are failing to fulfill their oath of office and do the job they are paid to do, and

8. Whereas the failure of federal prosecutors and the Justice Department to enforce criminal copyright law on behalf of individual creators effectively strips creative workers of their Constitutionally mandated and Congressionally legislated rights, and

9. Whereas failure to enforce the law encourages lawlessness, and

10. Whereas Justice Department failure to enforce criminal copyright law has created a climate of infringement in the nation that jeopardizes the livelihoods of all creative workers, and

11. Whereas technology is making copyright infringement easier to perpetrate and more difficult to police, and

12. Whereas copyright infringement deprives creative workers of just income derived from their talent, education, experience, and effort, and

13. Whereas copyright infringement discourages investment in creative workers' enterprises by destroying exclusive rights which justify and safeguard investors' resources, and

14. Whereas civil copyright law is dominated by insurance companies and lawyers who have contrived to place impossible burdens on victims that render civil law virtually useless as a reasonable recourse for individuals whose works are stolen, and

15. Whereas creative workers are often those least able to afford costly and protracted civil litigation to defend their rights and livelihoods under civil law, and

16. Whereas copyright protection mandated by the United States Constitution and implemented by acts of Congress is intended as a fundamental right and protection for all citizens, not as a special privilege for the rich, and

17. Whereas Justice Department failure to enforce criminal copyright law and contemporaneous obstructionistic civil law practices that make civil litigation unlikely if not impossible by individual victims foster a growing disregard for the rights and livelihoods of creative workers, and

18. Whereas failure of federal prosecutors and the Justice Department to enforce criminal copyright law and prosecute those who deliberately or with culpable negligence violate criminal copyright law deprives creative workers of equal protection under the law, and

19. Whereas vigorous enforcement of criminal copyright law is the only real and practical safeguard to prevent predators from stealing the works and destroying the livelihoods of creators,

Therefore be it resolved:

The Delegate Assembly of the National Writers Union petitions the Justice Department to fulfill its Constitutional and Congressional mandate to protect the rights and livelihoods of creative workers, and

The Delegate Assembly of the National Writers Union petitions individual federal prosecutors to fulfill their oath of office by strictly enforcing criminal copyright law and prosecuting those who deliberately or with culpable negligence violate criminal copyright law, and

The Delegate Assembly of the National Writers Union petitions the Attorney General of the United States to uphold the law by creating a Justice Department Task Force expressly designated to protect the rights of individual authors and creative entrepreneurs by vigorously enforcing criminal copyright law and prosecuting those who deliberately or with culpable negligence violate criminal copyright law.

Respect for the property and Constitutional rights of writers, graphic artists, and other creative entrepreneurs is at an all time low. The National Writers Union is working to restore those rights which safeguard the livelihoods of today's creative workers and of all who will follow in our footsteps. We invite you to join us.

On The Inside . . .

• **Copyright infringement is not a dispute to be negotiated under civil law. Copyright infringement is a crime to be prosecuted under criminal law. — Page 2**

"Without strong enforcement of criminal copyright law, writers and other creative workers are denied equal protection under the law and are left with no realistic recourse when their work is stolen."

• **"Good friend, I am building the bridge for him." — Page 3**

"The National Writers Union's fight to defend basic Constitutional rights of writers is not for today's writers and NWU members alone."

• **The National Writers Union has successfully confronted some of the biggest names in publishing on behalf of writers — Page 3**

"With the popularization of digital formats, large publication databases, and the use of the Internet as a broad distribution medium, writers have been subjected to large-scale electronic infringement of our rights."

• **National Wildlife Federation Piracy Exposes Need For Reforms — Page 4**

"What we have here is an outrageous case of government subsidized copyright infringement undermining civil and criminal copyright laws, abridging the Bill of Rights (Freedom of Speech and Freedom of the Press), and violating Article 1, Section 8, Clause 8 of the Constitution of the United States of America."

**Copyright infringement is not a dispute
to be negotiated under civil law.
Copyright infringement is a crime
to be prosecuted under criminal law.**

Copyright infringement is stealing the property and livelihood of creative workers. Justice Department failure to uphold criminal copyright law on behalf of individual creators and independent publishers forces victims to defend their rights under civil law, costing victims up to \$300,000 in legal fees and loss of income during litigation. Few can afford to defend their rights. As the chart below shows, individual writers and other creative workers need effective enforcement of criminal copyright law by the Justice Department. Without strong enforcement of criminal copyright law, writers and other creative workers are denied equal protection under the law and are left with no realistic recourse when their work is stolen. Justice Department action can restore fundamental Constitutional rights for writers and other creators of intellectual property.

How Criminal Copyright Law Works	How Civil Copyright Law Works
Criminal law governs behavior that is defined as a crime under city ordinances, state statutes, and/or federal law and provides punishment for offenders.	Civil law governs conflicts between citizens over issues such as contract disputes, injuries, etc., which may involve compensation but which may or may not involve any violation of criminal law.
Copyright infringement is a crime of theft under federal criminal law and is prosecuted in criminal court.	Because copyright infringement is both a crime and an injury to the copyright holder and to his or her property, victims also are entitled to file suit for compensation under civil law in civil court.
Criminal law prescribes specific consequences for lawbreakers, including fines, restitution to victims, and other provisions to create deterrents that discourage wrongdoing.	Civil law does not prescribe fines and restitution for wrongdoing.
Criminal copyright law is enforced by the FBI and federal prosecutors.	Civil copyright law is interpreted and construed in arguments between attorneys for infringers and their victims. The FBI and federal prosecutors are not involved.
Under criminal law, victims incur no costs for federal agents' investigations to confirm that copyright infringement has occurred or for the subsequent prosecution of those who violate criminal copyright law.	Under civil law, victims must pay for litigation to defend their copyrights. Standard up front costs are \$3,000 to \$20,000, followed by additional multi-thousand dollar payments. Delays add tens of thousands of dollars to costs for victims. Standard jury trial costs range from \$200,000 to \$300,000. Because those costs are prohibitive for most writers and other creative workers, few victims are able to defend their registered copyrights under civil law — which is heavily weighted in favor of infringers.
Under criminal copyright law, guilt determines consequences.	Under civil copyright law, guilt does not determine consequences.
Criminal copyright law provides that the guilty pay fines of up to \$250,000 for each count of copyright infringement and provides for restitution to victims in the amount of the full retail value of what was stolen.	Civil copyright law has no provision for fines and no determination of restitution beyond the arguments of attorneys, even for flagrant and egregious copyright infringements.
Criminal copyright law requires that four conditions be met for conviction: 1. That the copyright is registered. 2. That the copyrighted work was used without permission. 3. That the copyright infringement was willful, i.e. that the copyright infringement was done deliberately or with culpable negligence. 4. If the retail value of what was stolen is less than \$2,500, it is a misdemeanor; if the value is \$2,500 or more, it is a felony.	Civil copyright law requires the victim to prove that, "but for the infringement, those who received the stolen work would have purchased it" — a virtually impossible burden. This provision of the law abrogates the intrinsic value of creators' works. It reflects insurance company domination of civil copyright law and explains why so few victims are able to successfully defend their copyrights under civil law.
Criminal copyright law requires only that the victim produce the registered copyright and show the retail value of the stolen work.	Civil copyright law requires victims to produce mountains of records and documents going back many years, some of which it is unlikely anyone would retain.
Criminal copyright law encourages prompt justice for victims.	Civil copyright law encourages delaying tactics which drive up legal costs for victims, increase fees for attorneys, and enable large corporations and insurance companies to defeat their victims by driving them into bankruptcy.
Under criminal copyright law, the winners are the victims whose works are stolen. One-hundred percent of the restitution ordered for stolen works is paid to the victims.	Under civil copyright law, the winners are the attorneys. In a notorious recent case against Kinko's, eight publishers joined forces to secure compensation for copyright infringement. After two years of litigation, Kinko's paid \$2.2 million. Attorneys took \$1.7 million, more than 77%. The remainder was split among the eight publishers and their writers.
Effective criminal copyright law enforcement will safeguard the livelihoods of writers by providing a strong deterrent to copyright infringement.	Civil copyright law procedures undermine writers' copyright protection and encourage copyright infringement by protecting infringers and punishing victims.
Effective criminal copyright law enforcement discourages piracy.	Cumbersome and costly civil copyright law encourages piracy.

Whether to prosecute a criminal copyright infringement case is a political decision. Federal prosecutors have failed to properly enforce criminal copyright law on behalf of individual writers and other victims for three decades. The National Writers Union is calling upon the Justice Department to rectify that injustice and restore fundamental Constitutional rights for writers and other creative workers.

“Good friend, I am building the bridge for him.”

Outside a wildlife sanctuary a few miles north of Rockford, Illinois, is a roadside rest area inviting weary travelers to pause and be refreshed at the peaceful retreat. A boulder by benches overlooking the scenic view there bears a plaque in memory of Rockford construction czar Bill Howard. The plaque paraphrases a poem by eighteenth century writer Will Allen Dromgoole and tells the story of “an old man, going a lone highway,” who “came in the evening, cold and gray, to a chasm, vast and deep and wide.”

The poet wrote,

“The old man crossed in the twilight dim,
The sullen stream had no fears for him,
But he stopped when safe on the other side
And built a bridge to span the tide.”

A puzzled and somewhat cynical fellow traveler chides the old man for wasting his time:

“You never again will pass this way,
You’ve crossed the chasm, deep and wide,
Why build you this bridge at evening tide?”

The old man's answer renews the visitors' vision and spirit:

“The builder lifted his old gray head,
‘Good friend, in the path I have come,’ he said,
‘There follows after me today



A youth whose feet must pass this way.
This chasm which has been as naught to me
To that fair-haired youth might a pitfall be.
He, too, must cross in the twilight dim,
Good friend, I am building the bridge for him.”

The National Writers Union's fight to defend basic Constitutional rights of writers is not for today's writers and NWU members alone. We also are standing in solidarity to defend and safeguard those basic rights for all writers and other creative workers who will follow us.

Justice Department failure to enforce criminal copyright law on behalf of individual victims and independent publishers has created a culture of infringement and an epidemic of piracy. Even Alberto Gonzales has paid lip service to the crisis: “These crimes, as we all know, also have a direct impact on our economy, costing victims millions of dollars and, if left unchecked, diminishing entrepreneurship.” We know that. The law is clear. What we need is enforcement.

The National Writers Union has successfully confronted some of the biggest names in publishing on behalf of writers

The National Writers Union has been on the front lines in the battle to defend copyright protections for writers. With the popularization of digital formats, large publication databases, and the use of the Internet as a broad distribution medium, writers have been subjected to large-scale electronic infringement of our rights.

In confronting this electronic theft of our work, the NWU has confronted some of the biggest names in publishing: The New York Times, Time Warner, and the largest electronic database archives.

The union takes a number of approaches to defending copyright. Some are enumerated below. For fuller descriptions of union efforts, visit www.nwu.org. Type “copyright defense” into the search box. Click on the “copyright defense” link and other related links in the “More Info” panel on the left.

Know the law. The law is on our side — when it is properly enforced. We encourage and help writers to know the copyright law, register their works, and individually defend their rights.

Challenge Unfair Contracts. The contracts we confront daily often do not pass legal muster, and frequently violate established standards of fairness. The union trains writers to resist such contracts and offers contract advice, especially important in the area of electronic rights.

Legally Contest Copyright Violations. The union took on The New York Times and other companies that were violating copyright law in illegally profiting from sale of articles in electronic databases. The historic *Tasini v. New York Times* Supreme Court ruling confirmed writers' exclusive right to their works unless expressly transferred to publishers. The 2002 ruling resulted in a successful \$18 million class action lawsuit that was settled in 2005.



**National Writers Union President
Gerard “Jerry” Colby**

Work to Establish Industry Standards. The effort to establish industry standards regarding contracts has come in conflict with antitrust law. We, as individual freelance contractors, are subject to antitrust sanctions in organizing to improve our collective rights and working conditions. Several years ago the union launched a legislative initiative, the Freelance Writers and Artists Protection Act, to exempt writers and similar professions from antitrust law.

Mobilize Support for Copyright Protection. Experience has shown that the public “gets” the fundamental fairness issues we face in getting paid for what we write. The efforts of publishers to force “all-rights” contracts upon writers — contracts in which the publishers retain all rights to our work — undermines our livelihoods, threatening the viability of independent voices so necessary in a functioning democracy. The union has been involved in several efforts to combat all-rights contracts.

Other links to help you at www.nwu.org include, but are not limited to:

- Copyright Guide: A Copyright Primer
- Copyright Guide: Frequently Asked Questions
- Copyright Guide: Origins of Copyright
- Copyright Guide: Registering Your Copyright
- Copyright Links
- Copyright News and Issues

You will find many additional topics addressed at www.nwu.org, all designed to help you realize your full writing potential. Above and beyond those services and more, National Writers Union membership provides opportunities for you to associate with, draw upon, and benefit from writers with vast experience in every area of writing for publication. Visit www.nwu.org and/or call 212.254.0279 for membership information.

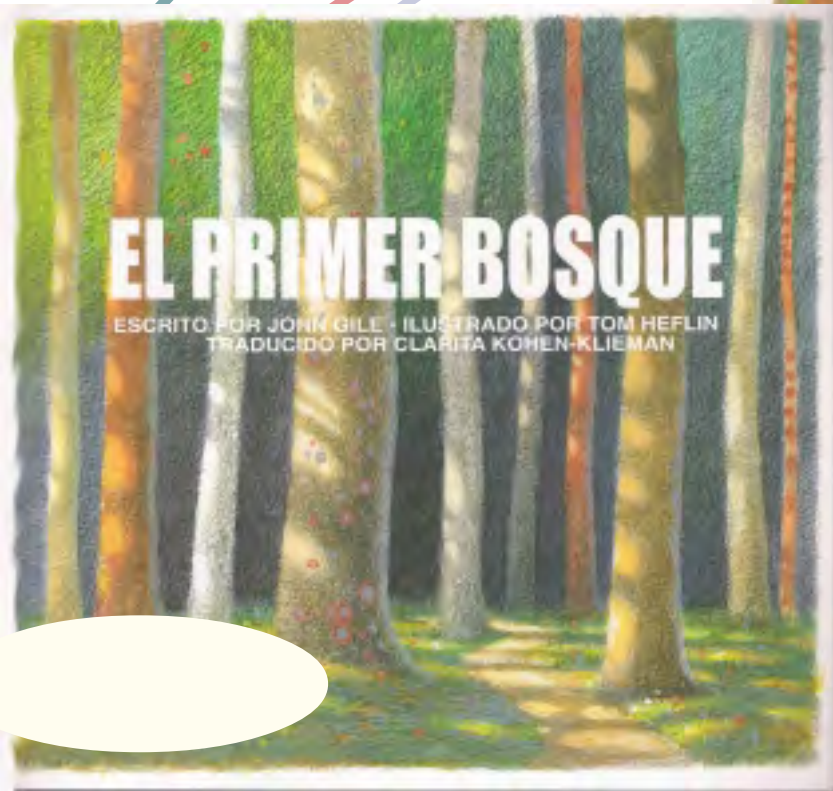
NWU Membership Benefits And Services

In keeping with its mission to defend writers' rights and economic conditions, the NWU works hard to improve the working and economic lives of freelance writers. The NWU, through the collective efforts of its members, is able to provide a host of resources, benefits, and services to those who join these efforts, including, but not limited to:

- Contract Advice:** The union's network of skilled, experienced contract advisers help you negotiate better contracts.
- Grievance Assistance:** Union grievance officers have recovered more than \$1.4 million for NWU members and have represented members in nonmonetary grievances as well.
- Advocacy:** The union engages in legislative action, legal action, and other kinds of organizing campaigns to defend contract rights and free expression, and to advocate for better working conditions for writers.
- Other Benefits:** member education; job hotline; a community of writers; American Writer subscription; writer resources and publications; insurance programs; Union Plus (AFL-CIO) consumer buying power of more than 13 million member AFL-CIO unions; freelance journalist press passes.

Visit www.nwu.org and/or call 212.254.0279.

Teaching Universal Themes of Peace, Love, Justice, Forgiveness, and Renewal At Home and Around the World



The First Forest by John Gile

“The book relays the value of both concern for each other and for the environment”Publishers Weekly

- Reading Coordinators’ Read *America!* Classic Selection
- Scholastic Canada Book Club Selection
- Has made and topped bestseller lists, including 4 consecutive holiday seasons on the Chicago Tribune bestseller list
- Used extensively by teachers and counselors in schools to address conflict resolution, environmental issues, civic responsibility, neighborliness, peace issues, and more . . .
- Available in English, Chinese, and now in Spanish

Be sure to read an authentic copy of The First Forest (ISBN: 0-910941-01-7) shown here, not the National Wildlife Federation’s pirated mutation.

National Wildlife Federation Piracy Exposes Need For Reforms

The First Forest has made and topped several bestseller lists, has won awards, has become a Scholastic Canada Book Club selection, and has been published in Chinese and, in 2006, Spanish language editions. In 2000, it was named to the national Reading Coordinators’ “Read, America! Collection” as a “Read, America! Classic,” a book at a level of storytelling with appeal “for generations of readers.” *The First Forest* is used extensively by teachers and counselors in schools to address environmental issues, civic responsibility, neighborliness, peace issues, and more. Publishers Weekly described *The First Forest* as a book that “relays concern for each other and for the environment.” Because of its classic qualities and popularity across America and abroad, *The First Forest* provided the foundation upon which a small, independent, family-owned publishing company — JGC/United Publishing — was established.

Unfortunately, the National Wildlife Federation liked *The First Forest* so much they stole it, undermining and virtually destroying the family’s work and financial resources risked in establishing JGC. The National Wildlife Federation unlawfully reproduced 96 percent of *The First Forest* in a publication they sold and distributed to 547,000 homes, professional offices, schools, and libraries. They reversed the meaning of the story. They ravaged the art. They even put the author’s name on their pirated version, as though he approved their unlawful and unethical action. And when caught in their \$8.1 million retail value rip off, they proceeded to make matters worse.

Author John Gile offered ways for National Wildlife Federation officers and board members to redeem themselves at no cost, but they rejected his appeal to conscience and chose a litigious response instead. They did not apologize. They did not try to help reduce the damage. On the contrary, they made matters worse by nearly driving

“I did not, would not, and could not write or publish a book with the message conveyed in the mutilated version of *The First Forest* which the National Wildlife Federation, a corporation using federal tax dollars and federal tax code privileges, unlawfully published under my name and without my permission.” — Author John Gile, National Writers Union, Chicago Chapter , 815.968.6601, www.jgcunited.com, www.johngile.com.

the author into bankruptcy with legal costs for defending his registered copyrights in federal court.

Because the Justice Department fails to enforce criminal copyright law on behalf of individual creators and independent publishers, Gile and his family were forced to endure three years of costly litigation under civil law. They ultimately were forced out of court when they were unable to come up with the additional \$200,000 to \$300,000 in legal fees needed to take their case to trial, but not before compelling the National Wildlife Federation to admit its illegal action and pay \$350,000 as partial restoration of the estimated \$740,000 in registered copyrights their piracy destroyed. No compensation for unpaid royalties was rendered during litigation, and National Wildlife Federation officers and board members still have failed to pay royalties for using the author’s work 547,000 times.

But something good may come from all this. The National Wildlife Federation’s piracy of *The First Forest* has revealed the need to close gaping holes in Constitutionally mandated civil and criminal laws designed to protect the rights and livelihoods of our nation’s creative workers. The FBI calls the National Wildlife Federation piracy of *The First Forest* “an open and shut case requiring virtually no investigation.”

Justice Department prosecutors’ failure to act on behalf of an individual victim exposes a double standard of law enforcement and evinces that corporations which are big enough and rich enough and powerful enough and politically-connected enough can get away with anything.

Today JGC is rebuilding and Gile is fighting to establish deterrents so other creators will not have to endure what he and his family endured at the hands of National Wildlife Federation for three years. The National Writers Union is calling upon the Justice Department to establish a task force to see that criminal copyright law is enforced for individual writers and small publishing companies victimized by big corporations like the National Wildlife Federation. Their piracy also has revealed the need for closer monitoring of corporations like the National Wildlife Federation which use federal tax privileges and direct grants of federal tax dollars. As one concerned citizen said of the National Wildlife Federation piracy, “What we have here is an outrageous case of government subsidized copyright infringement undermining civil and criminal copyright laws, abridging the Bill of Rights (Freedom of Speech and Freedom of the Press), and violating Article 1, Section 8, Clause 8 of the Constitution of the United States of America.”

Publishers Weekly is correct when it says *The First Forest* “relays concern for each other and for the environment.” It also conveys the message that actions have consequences. Maybe National Wildlife Federation officers, board members, and their lawyers should reread *The First Forest* — not their pirated version, but the author’s original work — until they grasp the “concern for each other” part cited by Publishers Weekly, a concern which precludes disregarding and violating basic Constitutional and civil rights of American artists and other creative workers. Justice Department prosecutors would do well to do the same.