



March 24, 2010

Honorable Victoria A. Espinel
U.S. Intellectual Property Enforcement Coordinator
Office of Management and Budget
1650 Pennsylvania Ave, NW
Washington, DC 20503

RE: Comments of The Songwriters Guild of America on
Coordination and Strategic Planning of the Federal Effort Against Intellectual
Property Infringement: 75 Fed. Reg. 8137 (Feb. 23, 2010)

Dear Ms. Espinel:

This provides the comments of The Songwriters Guild of America ("SGA") in the above-captioned proceeding.

SGA Background

SGA is the nation's oldest and largest organization run exclusively by and for songwriters, with approximately five thousand members nationwide and over seventy-five years of experience in advocacy for songwriters' rights. It is a voluntary association comprised of songwriters, composers and the estates of deceased members. SGA provides a variety of services to its members, including contract advice, copyright renewal and termination filings, and royalty collection and auditing to ensure that songwriters receive proper compensation for their creative efforts. SGA's efforts on behalf of all U.S. songwriters include advocacy before regulatory agencies and the U.S. Congress, and participating in litigation of significance to the creators of the American music.

Part 1: The Administration Must Enhance Efforts Against Online Piracy of Copyrighted Works.

The current Internet delivery system is not tenable for creators and copyright owners. Millions of copyrighted songs and movies are downloaded illegally each hour from the Internet. As a result, copyright owners are not compensated for these downloads, many of which displace sale opportunities. This illegal activity has serious financial consequences for all content owners. However, it has a disproportionately harmful effect on songwriters, who rely substantially on the sale of musical works and have limited sources of alternative income (as opposed to artists who can supplement their income through concert ticket sales and merchandise).

Digital piracy has almost completely destroyed the profession of songwriting, and is slowly destroying the music industry. For example:

- According to the International Federation of Phonographic Industries (IFPI), in 2000, global recorded music sales were \$30 billion. By 2008, these same global sales had fallen precipitously to \$18.4 billion.¹ This eight-year period coincides with the rapid expansion of unlawful file sharing.
- According to the Bureau of Labor Statistics, songwriter income dropped 32% between 2003 and 2006 alone (for the lucky few who still had jobs).
- Every major music publisher has laid off at least half, and sometimes all, of their professional songwriters in the ten years since piracy began to decimate the music industry.²

Critically, there is substantial evidence that peer-to-peer trafficking of stolen copyrighted works over broadband networks is a key culprit:

- 70% of the volume of traffic on broadband networks is Peer to Peer (P2P) file sharing generated by just 5% of the networks' users, and an astonishing 90% or more of such traffic represents unlawful stealing of copyrighted works.³

The unfortunate reality of the current digital world is that online piracy of music is rampant and undeniable. Such piracy has deeply and materially harmed the songwriter community, but it also threatens the overall U.S. economy; the economic fate of U.S. copyright industries is critical to U.S. economic success, both domestically and in the global marketplace. For example:

- The intellectual property (IP) generated by U.S. companies is critical to America's prosperity and leadership in the global economy. America's IP-intensive industries employ nearly 18 million workers, account for more than 50% of all U.S. exports, and represent 40% of the country's growth.⁴
- U.S. GDP in 2003 was \$11.0 trillion. By 2007, U.S. GDP (in current dollars) had risen to \$13.8 trillion. In the same year (2007), the "value-added" to U.S. GDP by the "core" copyright industries reached \$889.1 billion or 6.44% of the U.S. economy, and the value

¹ According to the Bureau of Labor Statistics, in the U.S. there has been a 25% inflation rate between 2000 and 2008, so not only are songwriters receiving approximately only 60% of the revenues they received in 2000, but those reduced dollars today purchase 25% less than they did in 2000, available at http://www.ifpi.org/content/section_statistics/index.html; www.bls.gov.

² Rick Carnes, *Appeasing Piracy: Net Neutrality Proposals Would Hinder Anti-Piracy Efforts* (Billboard, October 31, 2009).

³ See Comments of NBC Universal, Inc., *In the Matter of Broadband Industry Practices*, FCC WC Docket No. 07-52, Feb. 13, 2008 at 2 (citing various sources).

⁴ U.S. Chamber of Commerce. *Protecting Intellectual Property*, available at <http://www.uschamber.com/IP.htm>.

added to U.S. GDP by the “total” copyright industries rose to \$1.52 trillion (\$1,525.11 billion) or 11.05% of U.S. GDP.⁵

- Jobs in IP-intensive industries are expected to grow faster over the next decade than the national average⁶ In 2003, the total copyright industries employed 11,205,700 people, and these workers comprised 8.62% of total U.S. employment. By 2007, total copyright industry employment rose by 504,900 to 11,710,600 workers. In 2007, workers in the total copyright industries comprised 8.51% of all U.S. employees, down slightly from 8.62% in 2003.⁷
- The American motion picture industry carries a positive balance of trade around the world and a \$13.6 billion trade surplus.⁸
- Total digital and physical recording revenues in the U.S. in 2008 were \$10.3 billion.⁹

There is no issue today more critical to U.S. economic competitiveness than the successful deterrence of digital theft of U.S. intellectual property.

Part 2: Recommendations

SGA recommends taking three actions consistent with the Joint Strategic Plan to improve the disappointing efforts to date of the U.S. executive branch (under all recent Administrations) against digital copyright theft:

A. Criminal Enforcement

Criminal investigations under existing law should be opened by the FBI against the most egregious online copyright infringers. These investigations should be followed up by prosecution of those found to have clearly violated the criminal prohibitions at 17 U.S.C. § 506.

U.S. Attorney’s Offices do not currently view willful copyright infringement as a “serious” crime. Unfortunately, this misguided attitude allows domestic and foreign pirates to decimate an industry -- intellectual property -- where the United States enjoys a true global competitive advantage. Nothing could be more important to U.S. economic security and competitiveness than deterrence of rampant IP infringement. The Justice Department needs to make criminal enforcement of U.S. copyright law a priority, by instructing its U.S. Attorney’s Offices on the

⁵ Copyright Industries in the U.S. Economy: The 2003-2007 Report, by Stephen E. Siwek of Economists Incorporated, prepared for the International Intellectual Property Alliance (IIPA), June 2009, available at <http://www.iipa.com/pdf/IIPASiwekReport2003-07.pdf>.

⁶ Robert J. Shapiro and Nam D. Pham, Economic Effects of Intellectual Property-Intensive Manufacturing in the United States (World Growth, July 2007), 5–6.

⁷ Copyright Industries in the U.S. Economy: The 2003-2007 Report, by Stephen E. Siwek of Economists Incorporated, prepared for the International Intellectual Property Alliance (IIPA), June 2009, available at <http://www.iipa.com/pdf/IIPASiwekReport2003-07.pdf>.

⁸ Motion Picture Association of America: *The Economic Impact of the Motion Picture & Television Industry on the United States*, April 2009, available at <http://www.mpa.org/EconReportLo.pdf>.

⁹ Recording Industry Association: *2008 Year-End Shipment Statistics*, available at <http://76.74.24.142/D5664E44-B9F7-69E0-5ABD-B605F2EB6EF2.pdf>.

importance of investigating and prosecuting these crimes.

B. Civil Enforcement

The Administration should actively support legislation granting the Justice Department civil enforcement authority against willful copyright infringement. Such legislation has been considered but not adopted by past Congresses. Such a civil enforcement provision, however, would be an important tool against copyright infringement; it requires the active support of the Administration to ensure its enactment and implementation.

It is impossible for individual creators and authors – such as songwriters -- to sue thousands of infringers in the Federal Courts. Songwriters have insufficient resources, and therefore no effective method, to protect their rights. For this reason, the FBI, or similar law enforcement agency, should be given the authority to investigate copyright infringement cases and pursue civil fines and penalties. There are numerous economic crimes of much lesser magnitude (such as bank robbery) that are routinely and fully investigated, for which law enforcement agencies such as the FBI have significant resources. By contrast, online copyright piracy dwarfs bank robbery in causing economic losses, yet the FBI has limited criminal investigative interest and no civil mandate whatsoever to pursue this devastating economic harm. This inequity must change.

C. The FCC Should Delete Proposed Principle Number Five (Nondiscrimination) From Its Pending Net Neutrality Regulatory Proceeding.

The FCC's proposed Principle Number Five in its Net Neutrality regulatory proceeding¹⁰ does nothing to improve government enforcement efforts and will impair private enforcement initiatives by discouraging ISPs from investing in technologies and practices that will deter broadband copyright infringement.

The Internet as currently constructed has facilitated digital copyright piracy that has led to the ruination of the music industry. See statistics in Part 1. Just as certain technologies are now emerging that might fight this trend, however, the FCC proposes to regulate these new technologies out of existence through its misguided Principle Number Five in its Net Neutrality proceeding. The FCC's articulated concerns about "discrimination" against certain network users may be fully addressed under current antitrust law; there is no need for new regulation. Moreover, this proposed principle would have the unintended consequence of stifling private investment in new technologies that will control online copyright piracy without unduly burdening legitimate users of Internet-delivered content. For the reasons described at greater length in SGA's comments to the FCC (attached), the Administration should delete proposed Principle Number Five in the FCC's current regulatory proceeding on this topic.

¹⁰ *In re Preserving the Open Internet: Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, FCC 09-93 (Notice of Proposed Rulemaking) (rel. Oct. 22, 2009).

Respectfully submitted,

Rick Carnes/cwa

Rick Carnes

President

Songwriters Guild of America