

**TESTIMONY
OF JOHN G. MALCOLM
SR. V.P & DIRECTOR
WORLDWIDE ANTI-PIRACY OPERATIONS
MOTION PICTURE ASSOCIATION OF AMERICA**

BEFORE THE
GOVERNMENT REFORM COMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

*“Intellectual Property Piracy: Are We Doing Enough To
Protect U.S. Innovation Abroad?”*

September 23, 2004

Mr. Chairman, Ranking Member, Members of the Committee:

I would like to thank you for inviting me to testify before you today on the important topic of international intellectual property theft, and I commend you for holding this hearing. As a former Deputy Assistant Attorney General who oversaw the Department of Justice's Computer Crime and Intellectual Property Section and as the current Director of the Motion Picture Association of America's worldwide anti-piracy program, I have, perhaps, a unique vantage-point from which to view this problem, and I am delighted to share my views with you.

Where are we now?

As I am sure you are all aware, the copyright industries employ 3.5 percent of the American workforce and have created jobs at a rate more than three times faster than the rest of the economy. They earn more money abroad than automobiles, airplanes, and agriculture. The movie industry has a surplus trade balance with every single country in the world, and no other American industry can make that claim. Ensuring the continued economic health of the film industry, and of other U.S. intellectual property rightsholders, is in our national interests and in the interest of ordinary Americans -- the costumers, the carpenters, the set painters, the sound technicians, the fire safety workers, whose jobs rely on the creation of filmed entertainment and other forms of copyrighted works.

Piracy, massive thievery really, threatens the continuing viability of this important economic engine. As I am sure you are aware, the Motion Picture Association of America (MPAA) and its international counterpart the Motion Picture Association (MPA) operate anti-piracy programs in over 60 countries. Last year, working in cooperation with local law enforcement officials, our investigators participated in nearly 32,000 raids and seized over 52 million pirated optical discs. I fully expect the number of raids and seizures to go up significantly this year. Despite the best, and often heroic, efforts of our investigators, and despite improvements in some markets, the worldwide piracy problem isn't getting better; it is getting worse.

With rare exceptions, the people procuring, producing, and distributing this pirated material are affiliated with large and dangerous international criminal syndicates and gangs. Camcorder copies of movies are reproduced on expensive replicators, costing well in excess of a million dollars, that operate 24 hours a day, seven days a week, cranking out thousands upon thousands of pirated discs. The discs are then distributed by "mules" and through courier services to pirate stores and street vendors. This is not being done by mom-and-pop operations. It is being done by business-minded thugs who fund this activity through money raised from other illicit activity such as drug dealing, gun running, and human trafficking (utilizing the same distribution networks), and who, in turn, fund these other activities through the money they raise from piracy. Pirated movie discs are readily available throughout the world, including in towns and cities throughout the United States, and the odds are high that every dollar,

pound, peso, euro or rupee spent on them is put into the pockets of bad people who will spend it in a way which is not consonant with our safety and security.

Let me be clear, the people heading these organizations have no qualms whatsoever about resorting to violence or bribery to conduct their operations, and they play for keeps. One of our investigators in Russia has been shot at; one of our investigators in Mexico had his wife kidnapped by pirates; one of our investigators in Malaysia, after being repeatedly threatened, had to move to a secure location after watching a pirate slash the face of her maid with a knife in a case of mistaken identity; and one of our investigators in Thailand had to escape from his car which had been forced off a bridge by pirates into a rushing river. I am proud to say that all of them continue to work for the MPA. They are dedicated and tough individuals, and I think about them every day when I go to work.

As I am sure you are aware, Ron Noble, the Secretary General of Interpol, has said on several occasions that the links between organized crime groups and intellectual property theft are well established and that there is increasing evidence that intellectual property crime is becoming the “preferred method” of funding for some terrorist groups. While alarming, this is hardly surprising given the fact that piracy is hugely profitable and, compared with other forms of illegal activity, far less risky. I do not believe that it is a coincidence that some of the largest exporting countries for pirate movie products are countries like Pakistan, Malaysia, and Indonesia, where terrorist organizations are

known to operate. Drying up the funds and stopping the illegal activities of international criminal syndicates and terrorist organizations are also, obviously, in our national interests.

There is also the exploding problem of movie piracy occurring on the Internet at online auction houses, pirate websites, over peer-to-peer networks, and through the sale of so-called ripper products that strip away encoded copyright protection from legitimate products. As you know, the Internet is seamless and borderless. Sophisticated international encoding groups, often referred to as warez groups, take a perverse pride in being the first to steal copyrighted material, stripping it of its protection, and then distributing it to their members, where it quickly finds its way onto peer-to-peer networks, often within 24 hours.

It was recently estimated that at any given moment, there are 8.3 million people trading copyrighted material over the Internet, taking what does not belong to them and depriving artists, and those who invest in them, of the opportunity to make a reasonable return on their creative endeavors. Earlier this month, it was reported that scientists at the California Institute of Technology, working with CERN (the European Organization for Nuclear Research) and others were able to send 859 gigabytes of information halfway around the world in less than 17 minutes. At that speed, somebody could download a full-length feature film in four seconds.

Still, despite the grim realities that we face, I choose to see the glass as half full, rather than half empty. We are grateful to the

Department of Justice and to the Attorney General for expanding the CHIP (Computer Hacking and Intellectual Property) program, and for establishing an Intellectual Property Task Force. We are also grateful for increased federal law enforcement efforts such as Operation Digital Gridlock, Operation Fastlink, and Operation Buccaneer, which help combat piracy, which shine a spotlight on this scourge, and which establish new contacts and strengthen old ones with law enforcement counterparts and other government officials overseas. We commend the Department of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE) for its role in an unprecedented joint operation labeled Operation Spring with the Chinese Ministry of Public Security that resulted in the recent arrests of six individuals, including a U.S. citizen, and the seizure and destruction of hundreds of thousands of pirated discs and the warehouses used to store them. We applaud all these efforts and pledge to do anything we can, anywhere, at any time to support these and future investigative endeavors.

Sad to say, despite these recent efforts, international piracy shows no signs of abating, and more needs to be done. We must continue to use every arrow in our quiver to combat this international crime problem, which threatens to cripple a vital part of economy and which imperils our national security.

Where should we go from here?

Law Enforcement

It is vital that federal law enforcement agencies continue the progress that they have begun to make in combating domestic and

international intellectual property theft, and that the U.S. government continue to send the strong message to other nations that it recognizes the importance of intellectual property and that it addresses the theft of intellectual property with the same rigor that it addresses other types of serious economic crime. Accordingly, the MPAA recommends that this Committee provide increased funding to the FBI's cyber division and to other law enforcement agencies involved in the fight against piracy so that those agencies can hire and train tech-savvy agents who should be dedicated to investigating IPR crimes.

In that regard, the Committee might consider the appointment of "operational" FBI agents tasked to work on criminal copyright matters in key US missions, notably Russia, Taiwan, Pakistan, Mexico, Paraguay, China, Thailand, Malaysia, and Brazil. Such work should be undertaken in close cooperation with FBI legal attaches to encourage sharing of investigative information and expansion of investigations into organizations' cross-border operations.

Similarly, this Committee should adequately fund the forensics labs utilized by law enforcement agencies that investigate IPR crimes so that they are equipped to examine in a timely manner computers that are seized that often contain terabytes or even petabytes of information, including valuable leads that should be pursued.

Trade Tools

Aggressive use of trade tools, which play a critical role in establishing legal norms and which provide the impetus for foreign

countries to take their legal obligations seriously, should remain an essential part of our strategy to protect American intellectual property abroad. The Special 301 process, including "out of cycle" reviews, has proven itself to be an effective vehicle for industry to communicate its priorities for combating intellectual property problems to the U.S. Government¹ and for the U.S. Government to convey its own priorities to other governments, prompting many of those governments to take much-needed action.

The Generalized System of Preferences (GSP) represents another trade tool provided by Congress that has proven to be effective in motivating other countries to take their intellectual property obligations seriously. We hope that the U.S. Government will continue to show resolve by suspending GSP benefits in those instances in which countries fail to make meaningful and sustained progress in honoring their IPR commitments. USG agencies will review Brazil's continued eligibility for GSP at the end of this month. We hope Brazil will take forceful enforcement actions in the short time before this review is concluded to demonstrate a commitment to effective intellectual property enforcement. Without such action it would be very difficult to conclude that Brazil meets the eligibility requirements for continuing to receive preferential access for its exports to the United States.

¹ For a full list of our concerns and priorities, I commend to you the 2004 Special 301 Report on Global Copyright Protection and Enforcement submitted by the International Intellectual Property Alliance on February 13, 2004, which is available electronically at http://www.iipa.com/special301_TOCs/2004_SPEC301_TOC.html.)

The conclusion of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights in May of 1994 established global standards for copyright protection that are supposed to be enforceable, although enforcement in many countries has proven to be spotty. We will continue to work with the USTR to find a good test for establishing effective TRIPS enforcement standards. Negotiations with countries that wish to join the WTO are another excellent tool for securing improved intellectual property. As Dan Glickman, MPAA's President and CEO, said yesterday at a public policy forum sponsored by Roll Call, "[Russia] need[s] to lower the incidence of copyright theft at home and stem the export of pirated goods before the United States should support Russia's accession to the WTO. This is the position that Bob Zoellick and his fine staff of trade negotiators have communicated to the Russian government, and it is a position supported by MPAA."

Over the past two years, USTR has negotiated a series of Free Trade Agreements that lift the international copyright standards to a new level, helping to ensure that our trading partners have the tools they need to help us address the ever-changing nature of the piracy problem. Collectively, the countries covered by the FTAs negotiated to date would constitute the eighth largest export market for our filmed entertainment, worth more than \$742 million.

As just one example of the benefits of Free Trade Agreements, Australia committed to adopt effective procedures to enable content providers and Internet Services Providers to work together constructively to tackle Internet piracy. Internet piracy is our fastest

growing problem in Australia today – and the FTA gives us the tools to address it.

We recognize that USTR’s resources have been stretched to the breaking point. We would urge this committee to enhance USTR’s ability to meet its enforcement mandate by raising the profile of the intellectual property function at USTR, increasing its staffing levels and resources, and dedicating some staff specifically to the enforcement function.



Technical Assistance

We recommend that this Committee ensure funding for the technical assistance program managed by the State Department to assist foreign countries in the fight against international piracy. The State Department heads an informal coordination process for technical assistance that was rightly commended by the GAO report as an example of informal, voluntary, and effective coordination.

The State Department has fully allocated the \$2.5 million earmarked in the 2004 budget. Each of the small projects receiving these funds is designed to address specific bottlenecks to effective enforcement; some of them will be managed directly by the U.S. embassies in key countries with serious IPR problems. For example, a regional program for Southeast Asia will fund Justice Department efforts to train prosecutors and judges on how to combat optical disc piracy, the biggest problem we face in that part of the world. The Senate Appropriations Committee included a five million dollar earmark in the Senate Foreign

Operations Appropriation for 2005, and we urge the House to accept the Senate earmark.

Traditional Diplomacy

Although necessary, the threat of trade sanctions is not sufficient to persuade recalcitrant governments to join us in the fight against international piracy. Not every problem is covered by a trade agreement or best addressed by the threat of sanctions. Oftentimes, the strategic deployment of high-level advocacy and diplomacy is the best way to get the job done.

The U.S. Commerce Department has demonstrated impressive leadership in ensuring that piracy remains at the top of our bilateral commercial agenda with key countries. The U.S. State Department, both through headquarters and the U.S. embassies, has also brought the weight of U.S. diplomacy to bear on international piracy problems. Both the Commerce Department and the State Department, working with the Justice Department, conduct training and capacity building in the area of intellectual property law and enforcement throughout the world. We encourage this Committee to do everything it can, including providing adequate funding, to see to it that both the Commerce Department and the State Department have what they need to continue providing leadership in promoting our economic interests and in protecting our national security.

Conclusion

Mr. Chairman, on behalf of the Motion Picture Association of America, as well as the thousands of law-abiding people who work in the movie industry and whose livelihoods are threatened by piracy, I want to thank you again for inviting me to testify today and for your support over the years. I would be happy to answer any questions you may have at this time.