

INTELLECTUAL PROPERTY RIGHTS: THE MUSIC
AND FILM INDUSTRY

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC
POLICY AND TRADE

OF THE

COMMITTEE ON
INTERNATIONAL RELATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

MAY 21, 1998

Printed for the use of the Committee on International Relations



U.S. GOVERNMENT PRINTING OFFICE

51-834 CC

WASHINGTON : 1998

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-057769-1

H461-17

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THURSDAY, MAY 21, 1998

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY
AND TRADE,
COMMITTEE ON INTERNATIONAL RELATIONS,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:20 p.m., in room 2172, Rayburn House Office Building, Hon. Ileana Ros-Lehtinen (chairman of the Subcommittee) presiding.

Ms. ROS-LEHTINEN. [presiding] The Subcommittee will come to order. Thank you so much for waiting for us. We have a vote going on right now that is momentarily going to end; and as soon as it does, the Members will come in, I'm sure, although we have a series of votes coming up in just a little bit.

Thank you for attending this hearing on such a timely and important topic. American ingenuity, creativity, and talent, throughout the centuries, has spiraled the United States into a position of global leadership. It has enabled us to adapt and build upon technological economic, political, and social changes to usher in a new era of growth and opportunity.

This is the reality of the world we live in today—a world where brainpower industries have redefined the economic landscape, both here in the United States as well as internationally. Intellectual property is a source of comparative advantage for the United States and a wellspring of export opportunities by many of America's most creative and innovative companies.

Recent figures reveal that the copyright sector is growing at twice the rate of the rest of the U.S. economy; that intellectual property is now our economy's largest exporter and source of revenue. A study conducted by the firm Economists Inc. found that core copyright industries accounted for over 3.6 percent of the Nation's GDP. This figure translates into approximately \$278.4 billion in revenue for our U.S. economy. When combined with related industries, the figure increased by yet again 2 percent. The Motion Picture Association, represented today by Ms. Bonnie Richardson, calculated a 12 to 14 percent rise in revenues between 1996 and 1997, just for the film and television industry alone.

The potential is limitless, for a human being's imagination knows no boundaries. In much the same way that Whitney's cotton gin is credited with igniting the industrial revolution, intellectual property industries are propelling us into a new age of discovery and growth.

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The American formula for excellence and success in the area of intellectual property is one many would like to emulate. Unfortunately, many across the world are seeking to repeat the U.S. experience through stealing, pirating, counterfeiting, and other unauthorized use of American products. They are seeking to capitalize on the hard work and commitment of authors, songwriters, producers, publishers, and so many in these industries, by systematically violating intellectual property rights.

The impact of piracy on the U.S. economy is widespread. As industry leaders have stated: "Piracy puts brakes on the development of the national producers, generates tax evasion, reduces the creation of employment on the part of American companies, and it provokes serious losses for the national economy."

The pervasiveness of this infringement is resulting in billions of dollars in losses worldwide for our U.S. industries. The International Intellectual Property Alliance reported in 1996 that 29 countries cause more than \$6 billion in trade losses. It is estimated that piracy in the People's Republic of China has cost U.S. copyright owners about \$2 billion.

Intellectual property right issues continue to be at the heart of U.S.-Japan discussions in a number of areas. It is an integral part of the negotiating agenda for the Free Trade Area of the Americas and a serious concern impacting U.S. relations with individual countries in the hemisphere.

For example, improper enforcement of copyright and trademark laws threaten a broad range of U.S. exports to Mexico. It has been widely reported that 65 percent of all videos rented or sold in Mexico are pirated, posing a significant loss of royalties and property rights. Piracy levels in Mexico exceed 50 percent in all relevant categories, including software, motion pictures, sound recordings, and books.

The estimated losses last year were \$425 million, up from \$414 million in 1996, and there have been almost 2,000 raids conducted by U.S. motion picture, software, and recorded music industries in Mexico.

Piracy and other violations of intellectual property is also a contentious matter with the European Union countries, such as Greece and other states that fail to take action against, for example, television stations that routinely broadcast U.S. movies and other programming without permits. Viewing this as a violation of obligations under the WTO, the United States has filed a complaint against Greece and the EU at the Dispute Settlement Body.

Nevertheless, the issue of intellectual property rights is not just a matter of criminal violations of international and domestic laws. It is a direct infringement on free trade, as it creates distortion in the market and creates parallel black market systems which, in the end, will hurt, not just the United States but the global economy as a whole.

For this reason, we must focus on protection and enforcement. We must look at the recent agreements reached, which are aimed at creating a framework to provide maximum security and recourse for victims of pirating.

In essence, intellectual property rights are national in scope. The rights granted by a U.S. patent or copyright do not extend into for-

eign countries and the United States does not enforce intellectual property rights granted solely under foreign laws. Thus, in order to provide some degree of protection in foreign markets, national laws have been woven together by international conventions and treaties which traditionally establish limited standards of protection.

The Convention for the Protection of Literary and Artistic Works has been the primary legal structure offering protection for production in the literary, scientific and artistic domain. Revised several times, it began to fall short of the demands for protection created by technological developments. It failed to fully address the new piracy threats.

It became evident that the global phenomena of intellectual property industries, a Finnish copyright specialist has said, "can only be dealt with by a global approach and, where necessary, by global rules."

From the U.S. perspective, however, it should be a global approach that raises standards and does not infringe upon U.S. domestic laws or protection.

One agreement considered by experts to be a good first step was the Uruguay Round and the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), which took effect in January 1996. It established international obligations for the protection and enforcement of intellectual property rights, and established enforcement and dispute settlement mechanisms.

However, there were still issues relating to protection of intellectual content in cyberspace, loopholes regarding duplication of sound recordings, and other challenges posed by global networks that needed to be addressed.

In December 1996, the World Intellectual Property Organization Diplomatic Conference concluded negotiations on two multilateral treaties, one to protect copyrighted material in the new digital environment, and another to provide stronger international protection to performers and producers of phonograms. Experts underscore the latter's importance, as it would provide guarantees abroad of the same strong protection for American records, tapes, and compact discs abroad that is provided here domestically.

There were a few policy issues that raised concern from different parties to the negotiations. Of particular interest for U.S. industries was the discussion over the liability of online service providers and other communication entities that provide access to the internet. In the end, this and other items were resolved by two separate agreed statements of the participating countries.

Currently, there is implementing legislation in the House for both the Copyright Treaty and the Performances and Phonograms Treaty.

Thus, one of the purposes of today's hearing is to better inform Members on the issue of piracy and the protection of intellectual property, prior to the vote on the new international agreements. The music and film industry provide one of the most dramatic and relevant examples of the costs of infringement and the widespread nature of the problem. Through their experiences, we will all be able to gain a better understanding relating to intellectual property rights and free trade. As our witnesses will state today, this is a global issue, a national issue, and a local problem.

I'm pleased to recognize Mr. Clement for opening statements that he might make.

Thanks, Bob.

Mr. CLEMENT. Madam Chairman, it's good to be here with you today. I guess you know I represent Nashville, Tennessee, Music City USA; and these issues are critically important not only to Nashville but to the world about fairness. And I'm looking forward to hearing what the various witnesses have to say today.

Thank you.

Ms. ROS-LEHTINEN. Thank you so much, Mr. Clement. We're pleased to introduce our first witness today. It's Bruce Lehman, Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

Commissioner Lehman served as the head of the U.S. delegation to the World Intellectual Property Organization's Diplomatic Conference; and also chairs the working group on IPR of the National Information Infrastructure Task Force.

Before assuming his current position, he was a partner in the Washington, DC law firm of Swidler and Berlin as counsel to the House Committee on Judiciary and as an attorney with the U.S. Department of Justice.

We thank the commissioner for being here with us and providing us with insight on this very important issue.

Thank you so much, Mr. Lehman.

STATEMENT OF BRUCE LEHMAN, ASSISTANT SECRETARY AND COMMISSIONER OF PATENTS AND TRADEMARKS, DEPARTMENT OF COMMERCE

Mr. LEHMAN. Thank you very much, Madam Chair. I'm not sure that I need to provide you with much insight because you had a very comprehensive statement which indicates that you already have a very, very good understanding of the problem.

I want to thank you and welcome this opportunity to hold a hearing like this that helps educate Congress at large and the public on this very important issue.

My prepared testimony cites some of the same statistics that you had in your opening statement so I'm not going to review those but—

Ms. ROS-LEHTINEN. And we will put your opening statement, without objection, as part of the record.

Mr. LEHMAN. Thank you very much, Madam Chair. I would observe, if one looks simply at the membership of this Committee, and Mr. Clement has already testified to this fact, and even in your own district, Madam Chair, you can see the reality of these statistics that you describe. It used to be that the entertainment industry, the copyright-based industries, were the New York, Los Angeles axis. That's just simply not the case anymore. It certainly is one of the biggest growth industries in Florida. It's a very important industry, as you know, in your own district. It's certainly a very important industry in Tennessee.

With the rise of the computer software industry, which increasingly is becoming both, not just a highly technologically based industry, but also a cultural-based industry as well, we see intellectual property industries growing virtually everywhere in every