



Comments of the

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

on Issues Related to the Policies and Agenda
for the National Intellectual Property Law Enforcement Coordination Council

July 7, 2000

The International Intellectual Property Alliance (IIPA) submits these comments in response to the June 5 request for public comments circulated by the Co-Chairing agencies of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC). See 65 Fed. Reg. 35611 (June 5, 2000) and 65 Fed. Reg. 39601 (June 27, 2000).

These comments represent the collective views of the seven associations which comprise the IIPA. Our comments outline the actions which NIPLECC could take in both the domestic and international law enforcement arena.

ABOUT THE IIPA

The International Intellectual Property Alliance (the "IIPA" or "Alliance") is a coalition formed in 1984 consisting of seven trade associations, each of which represents a significant segment of the copyright industry in the United States. The IIPA consists of AFMA (formerly the American Film Marketing Association), the Association of American Publishers (AAP), the Business Software Alliance (BSA), the Interactive Digital Software Association (IDSA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA) and the Recording Industry Association of America (RIAA).

The IIPA represents more than 1,450 U.S. companies producing and distributing works protected by copyright laws throughout the world: all types of computer software, including business software and entertainment software (such as videogame CD-ROMs and cartridges, personal computer CD-ROMs, and multimedia products); motion pictures, television programs and home videocassettes, video CDs and DVDs; music; records, CDs and audiocassettes; and

textbooks, tradebooks, reference and professional publications and journals (in electronic and print media).

The U.S. copyright-based companies are the leading edge of the world's high technology, entertainment, and publishing industries. According to Copyright Industries in the U.S. Economy: The 1999 Report, prepared for IIPA by Economists, Inc., 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 last year for which complete data is available). In 1997, the total copyright industries¹ accounted for \$529.3 billion in value added, or approximately 6.53% of GDP.

The U.S. copyright industries are also among the nation's most dynamic and fast-growing economic sectors. The core copyright industries' share of the GDP grew more than twice as fast as the remainder of the U.S. economy between 1977 and 1997 (6.3% vs. 2.7%). Employment in the core copyright industries grew three times the rate of national employment growth between 1977 and 1997 (4.8% vs. 1.6%). More than 6.9 million workers were employed by the total copyright industries, about 5.3% of the total U.S. work force, in 1997. The core copyright industries generated an estimated \$66.85 billion in foreign sales and exports in 1997, an 11.1% gain over 1996 and larger than the foreign sales and exports of the food, tobacco, apparel, textile, and aircraft industries combined. Preliminary estimates for foreign sales and exports for 1998 are \$71.0 billion. For more information on IIPA and its member associations, visit <http://www.iipa.com>.

IIPA'S VIEWS ON NIPLECC'S DOMESTIC LAW ENFORCEMENT MISSION AND AGENDA

NIPLECC's statutory mission is broadly "to coordinate domestic and international intellectual property law enforcement among federal and foreign entities."

Each of these associations has been involved, to varying degrees, in both criminal infringement actions and civil intellectual property litigation here in the United States, at both the federal and state level. They have been engaged for decades, at investigative and operational levels, in supporting criminal prosecutions and conducting civil actions to combat traditional forms of piracy (e.g. unauthorized reproduction, distribution and sale on physical carriers and public performance piracy of all kinds) of motion pictures, sound recordings, music, and business and entertainment software. More recently, these associations and their member companies have taken on the fight against on-line piracy by initiating investigations, supporting criminal prosecutions, and filing civil cases. They have worked closely with federal officials to support new efforts, including new legislation, to prevent the potentially massive threat to their business through uncontrolled, unauthorized upload, transmission, download and unauthorized use of their creative products in this new on-line environment.

¹ The "total" copyright industries include the "core" industries plus those that, under conservative assumptions, distribute such products or other products that depend wholly or principally on copyrighted materials. The "core" copyright industries are those which create copyrighted materials as their primary product.

Enforcement of rights under copyright at the domestic federal level is the direct responsibility of only two members of NIPLECC. These agencies are the Justice Department (including the Federal Bureau of Investigation) and the U.S. Customs Service. While the Commerce Department, the Patent and Trademark Office and the Copyright Office have a role in domestic policy issues affecting the substantive copyright law and its enforcement provisions, none of these agencies is actually engaged in enforcement of rights under copyright. The remaining three agencies, the Office of the United States Trade Representative, the State Department and the International Trade Commission have almost no role to play in the area of domestic enforcement. Therefore it is important to be cognizant of the division between operational matters (e.g. hands-on anti-piracy investigations and criminal prosecutions) and non-operational matters.

Operational Matters:

- **The urgent need for more effective prosecutions of copyright offenses at the federal level**

In the domestic arena, the primary and most urgent concern of our industries is the need to improve federal copyright enforcement by the DOJ, FBI and Customs. Because this is almost entirely an operational issue within the jurisdiction of DOJ, the FBI and Customs, we believe that it would unnecessarily complicate the mission of these agencies to create another level of bureaucracy on top of these agencies' primary mission and jurisdiction. Therefore, we believe that, at most, NIPLECC as a separate entity should limit itself to advisory and consultative mechanisms, some of which are discussed below. It would be counterproductive to involve other NIPLECC agencies in any operational domestic enforcement matters.

Our associations, and in turn our member companies, will continue to contact and work with these two NIPLECC agencies (Justice and Customs, along with the FBI) to conduct their enforcement programs on a confidential, case-by-case basis, and where broader enforcement policy issues are involved, with senior level officials of these agencies and, as appropriate, with the Congress. We believe it would unnecessarily complicate the difficult job of establishing enforcement priorities and then implementing them to involve NIPLECC or any other federal agencies. Instead, we believe the relevant enforcement agencies should focus their attention on enforcing the U.S. Copyright Act.

In the past year, intellectual property crimes have received increased attention from federal law enforcement agencies. One year ago the DOJ, FBI and Customs announced their "Intellectual Property Rights Initiative." This established, among other things, an infrastructure whereby seven districts would make intellectual property rights issues a priority issue. Our associations strongly supported the launching of this initiative, particularly in light of the growing complexity of IP crime and the recent explosion of online piracy of copyrighted works. The impact and significance of such piracy will only grow as technology continues to develop, making intellectual property crimes easier to commit and more difficult to detect and root out.

Congress recognized the importance of criminal deterrence of electronic piracy by enacting the No Electronic Theft (NET) Act in 1997. Here in the United States, copyright owners and federal authorities were stymied for a lengthy period of time until the U.S. Sentencing Commission recently adopted its amendments to the Sentencing Guidelines to implement the NET Act. Unfortunately, with the amended guidelines now in place, there remains a paucity of prosecutions in this area, although more are reported to be in the investigatory pipeline.

When it comes to domestic criminal copyright law enforcement at the federal level, the very simple fact is that more federal cases need to be taken by federal prosecutors, including Internet cases. Our industries are presenting such cases to the authorities, and we are concerned that the federal response has been far less than we anticipated.

In addition to working with federal law enforcement agencies, several of our associations and member companies also work diligently with state and local law enforcement authorities to coordinate seizures of pirated products under applicable state laws. (State enforcement measures are properly beyond the scope of possible NIPLECC activities.)

We see a most urgent and critical need for the DOJ, the FBI and Customs to support an examination of the internal processes within their agencies in order to expedite the investigation and prosecution of federal criminal copyright cases. We believe that there are many more cases ripe for criminal prosecution than are currently being taken.

We believe that NIPLECC can encourage its law enforcement member agencies to take concrete actions to fight copyright piracy within this country. NIPLECC's support for additional measures, such as more training, compiling statistics and promoting educational messages (outlined below) could also serve to enhance the copyright industries' anti-piracy efforts here in the U.S.

- **More enforcement training for federal officials**

There is always a need for more and better training of federal officials involved in on-the-ground law enforcement activities. NIPLECC (or a subcommittee of NIPLECC) might be effective in discussing and reaching consensus on a broad program of trainings. Training in anti-piracy investigation, seizure, identification and evidentiary techniques and prosecutorial issues could encompass many groups of individuals, including for example: FBI agents, Customs officers, postal investigators, Assistant U.S. Attorneys (AUSAs), U.S. Attorneys, and U.S. District Court Judges.

Our associations (as well as our respective member companies) have been involved in many and various training activities with these agencies over the years. We stand ready to continue to provide domestic training on investigative techniques to federal offices, to their best ability. Our associations already have good working relationships with several of the investigative agencies and are able to work with them on training programs' agendas and schedules.

We wish to continue to broaden and deepen our roles as experts and contacts to assist in various training endeavors. We request that, to the extent possible, the copyright private sector be able to contribute to programs' designs/agenda in order to ensure maximum impact of the training. We also ask that the lines of communication be open, and that the private sector be informed of upcoming events. Our goal will always be to have these training activities result in additional investigations, more prosecutions and better deterrence against all types of intellectual property theft.

Non-Operational Matters:

There are some areas in which NIPLECC, or a subcommittee within NIPLECC, could work together at the non-operational level to improve the climate for copyright enforcement generally. We briefly outline these areas below.

- **Compilation of enforcement statistics here in the U.S.**

While several agencies (e.g. Justice, FBI and Customs) do collect criminal copyright-related enforcement statistics arising out of actions taken within the U.S. or at its borders, this information often lacks a useful degree of specificity. For example, the Justice Department does not distinguish between the specific kinds of criminal copyright cases brought under Title 18 (are these actions involving records, music, motion pictures, videogames, business software or other). Information on restitution awards and criminal fines paid and collected in federal criminal copyright infringement cases is not compiled. We believe that NIPLECC or a subcommittee of NIPLECC could work together to provide all the relevant agencies with ideas, recommendations and tools to improve their statistical-gathering capabilities.

One area where the domestic enforcement agenda and the international agenda overlap is in the area of compliance by the U.S. with its TRIPS Agreement enforcement obligations in the World Trade Organization (WTO). The collection of accurate enforcement statistics is a key element of this compliance agenda and any U.S. statistics system should be a model for similar activities by other WTO trading partners on a global basis, many of whom have enforcement records that do not meet TRIPS obligations and who would benefit from keeping accurate records of the performance of their enforcement systems.

- **Coordination of educational messages on the domestic front**

Building awareness of the law among members of the general public is key to the success of any long-term enforcement efforts. This is one area where an interagency approach might prove feasible and effective. NIPLECC, or a subcommittee of NIPLECC, might serve as a coordinating point for preparing and distributing public materials regarding the importance of effective domestic copyright enforcement. Such materials could be distributed to both U.S. government officials (here and abroad) as well as made available for the public at large. Such documents would serve as a supplement, not a substitute, for existing informational materials which already are available through the individual federal agencies.

Effective enforcement of the law does promote and facilitate legitimate trade by removing illegitimate, piratical trade from the marketplace. Again, to support effective enforcement, we encourage open channels of communication between copyright holders and federal law enforcement entities on investigatory and prosecutorial matters. NIPLECC could serve an educational role in disseminating straightforward messages to the public that "respect for the copyright law" and that "piracy is theft." We believe that NIPLECC could support each of its seven member agencies to devise a public relations plan to promote these kinds of educational messages within their own agencies' already existing infrastructure. For example, agencies' websites could be updated to relay this common message.

IIPA'S VIEWS ON NIPLECC'S INTERNATIONAL LAW ENFORCEMENT MISSION AND AGENDA

IIPA believes that there are several areas related to law enforcement at the international level where NIPLECC could perform a central coordinating role for the U.S. Government. These areas include: (a) working with industry to prioritize and assist in training and other technical assistance programs offered by U.S. agencies abroad and in the U.S., (b) centralizing information on U.S. government agency activities, including training activities, in the intellectual property field, and (c) working directly with the U.S. private sector to shape effective enforcement programs. It is important to clarify that IIPA sees NIPLECC as a coordination and information clearinghouse, and that NIPLECC would not have any authority or mandate to approve or disapprove of any single agency's ongoing activities. IIPA believes that improved interagency communication and coordination should be the primary missions of NIPLECC in the international realm. Below is a non-exhaustive list of the kinds of activities NIPLECC could undertake and/or oversee with respect to international copyright-related matters.

- **Work with the private sector to prioritize U.S. intellectual property-related trainings, here and abroad**

NIPLECC's seven members should meet regularly with each other and with private sector representatives at the operational level to prioritize training activities. NIPLECC members also should share their agency's plans for intellectual property rights-related trainings with foreign officials. In general, these kinds of trainings take two forms. First, there are a wide variety of training activities and symposia planned abroad by U.S. agencies. Second, various agencies sponsor a large number of international visitors who come to the United States to receive IP-related training. Member agencies, acting through NIPLECC, should share information about their training programs and projects well in advance so as to prevent waste and unnecessary duplication of activities. At the same time, NIPLECC itself should not have any authority to preempt the specific plans of individual agencies. We would hope, however, that this increased information-sharing would result in the reduction of any duplication of resources. An additional by-product of these agencies sharing their training efforts to NIPLECC would be for NIPLECC to compile and maintain current lists of U.S. government-provided technical assistance programs and missions on intellectual property rights.

Furthermore, NIPLECC should invite private industry participation and input with respect to identifying priority countries and/or foreign officials to receive and/or participate in IPR-related training events. We hope that NIPLECC can encourage more transparency in the development of these IPR technical assistance programs conducted here and abroad.

- **Expand training opportunities and industry participation**

With respect to improving the international law enforcement environment, IIPA believes that NIPLECC, in its coordinating role, can continue to encourage its member agencies to conduct IPR training programs which support improved law enforcement and provide educational training on current IPR-related issues. Training programs by U.S. government agencies can cover both investigatory programs as well as programs aimed at foreign policy-makers.

The TRIPS Agreement provides the foundation for enforcement elements across civil, criminal and border measures which each WTO member country needs to have in place and in operation. While many countries have made efforts in recent years to raise their substantive levels of copyright protection up to the minimum standards outlined in TRIPS, the biggest challenge our industries' continue to face is ineffective enforcement. A country fails to be in compliance with TRIPS if its law merely provides those measures on-the-books but its legal system fails to enforce those measures. These deficiencies in national laws and legal systems, if corrected, would enable copyright owners to better protect their rights.

IIPA believes that more trainings for foreign officials on copyright enforcement matters is needed. For example, FBI officials lead copyright-related trainings at their International Law Enforcement Academies (ILEA) in Budapest and Thailand. These trainings have been extremely useful, both for training foreign officials and introducing these officials to the industries' investigators and experts in the region. We strongly encourage that more trainings with copyright emphasis be conducted. Issues like cyber-hacking, banking fraud and other white-collar crimes are now being placed on agendas at international governmental forums. It is not sufficient to cover the important issue of copyright matters as a sub-topic to other forms of cyber crimes; copyright deserves its own slot. Customs officials also travel to many countries to discuss customs operations and provide training on investigatory techniques. Again, our industries find these sessions very useful, and recommend that these sessions be expanded, both in terms of copyright-dedicated sessions per program as well as overall number of training programs offered. The U.S. Patent and Trademark Office (PTO) and the Commerce Department hosts educational and policy sessions on various high technology issues. The Copyright Office has its International Copyright Institute for foreign copyright officials. These separate programs should continue, and should be expanded. IIPA supports training programs which encourage adequate and effective copyright protection and enforcement throughout the world.

IIPA and its members will continue to support and participate in international IP law enforcement trainings, to the best of our abilities. What industry needs is an open line of ongoing communication about upcoming events at the earliest stages possible. We have received requests to participate in international training programs aboard with as little as 7 days' notice. Clearly, this short notice can place a strain on our resources. Improved flow of information between the U.S. agencies and the private sector on these opportunities would be most welcome.

We also recommend that NIPLECC and its members follow-up on the effectiveness of the numerous trainings the U.S. government provides. Accountability and efforts to review the impact the training made on these officials should be built-in to this process.

- **Improve international coordination of investigations**

IIPA believes that the importance of intellectual property rights protection and enforcement should be elevated at all international levels. Especially in a global economy, it is imperative that the operational agencies like Customs and Justice coordinate closely with their foreign counterparts, especially on multinational cases. IIPA recommends that individual agencies like Justice and Customs continue to work hard to improve communication and coordination with their foreign colleagues on international copyright investigations and actions. We believe that those agencies charged with the actual investigation and prosecution should continue to have such authority, separate and apart from any NIPLECC coordination.

IIPA believes that NIPLECC could serve an organizational role in improving the infrastructure of interagency coordination regarding international investigations. For example, NIPLECC could encourage the creation of an "IPR-law enforcement team" within U.S. embassies and missions in countries with serious IP problems. We understand that such issue-specific enforcement teams already exist in some embassies for other issues, such as drug trafficking, anti-terrorism, alien smuggling, and the like. Such a IPR team could be chaired by a senior embassy official (like the Deputy Chief of Mission) and team members could include the Customs Attaché and the FBI Attaché. In addition, an IPR team could also include economic and commercial officers who often work to identify foreign officials for international visitor programs and to host various public IP functions and events in-country.

- **Coordinate a consistent U.S. copyright agenda in the international realm**

NIPLECC could provide a discussion forum to ensure that a unified, U.S. government message is being disseminated both to the public at large and to individual nations. NIPLECC, (or a subcommittee of NIPLECC members) could serve as a coordinating point for preparing and distributing public materials regarding the importance of effective domestic copyright enforcement. Such materials could be distributed to both U.S. government officials (here and abroad) as well as made available for the public at large. Such documents would serve as a supplement, not a substitute, for existing informational materials which already are available through the individual federal agencies.

IIPA believes that NIPLECC should encourage its members to take all actions to communicate with their respective foreign counterparts to make clear that the U.S. government places a high degree of importance on the effective legal protection and enforcement of copyright and other intellectual property rights abroad. For example, the U.S. Trade Representative has outlined several key international policy goals in the IPR context, for example: implementing the WTO TRIPS Agreement, controlling optical media production, supporting other governments to modernize their software management systems, and encouraging countries to sign, ratify and implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.² We support this agenda, and urge that it be used consistently by all U.S. government agencies in their representations with other nations.

IIPA and its members believe that effective enforcement and educational messages are needed to foster respect for intellectual property rights, both here and abroad. Effective copyright protection and enforcement is imperative, and the stakes for the U.S. economy are high. The United States is the largest single country market for copyrighted products in the entire world. While our copyright industries do experience economic losses due to piracy within the U.S, the estimated piracy levels in the U.S. are actually among the lowest in the world. Below is a sampling of estimated losses and piracy levels in just a few countries around the world.³ The numbers cited

² See Press Release 00-30, Office of the United States Trade Representative, "USTR Releases Super 301, Special 301 and Title VII Reports," May 1, 2000.

³ Sources: For motion picture statistics, the Motion Picture Association of America. For sound recordings and music, the Recording Industry Association of America. For business software, the Business Software Alliance. For a full description on how the international numbers were compiled, please see the Methodology Section of the February 2000 Special 301 Submission to the U.S. Trade Representative made by the International Intellectual Property Alliance (IIPA), at <http://www.iipa.com>.

below reflect conservative estimates, and do not include any estimates for losses due to online piracy, the biggest challenge we all now face. IIPA estimates that the annual estimated losses due to copyright piracy of U.S. creative products around the world amount to approximately US\$20-22 billion.

**Estimated Losses Due to Copyright Piracy
of U.S. Creative Products (in \$US millions)
and Estimated Piracy Levels for 1999**

In Country	Motion Pictures		Sound Recordings And Music		Business Software	
	Losses	Video Piracy Level	Losses	Piracy Level	Losses	Piracy Level
United States	\$250.0	5-10%	\$365.0	5-10%	\$2,534.1	25%
Italy	\$160.0	25%	\$ 60.0	25%	\$ 338.4	44%
Brazil	\$120.0	35%	\$300.0	95%	\$ 319.4	58%
Thailand	\$ 21.0	55%	\$ 6.0	40%	\$ 66.5	81%
Russia	\$250.0	90%	\$200.0	70%	\$ 134.5	89%

- **Insert intellectual property components into judicial reform projects in other institutions**

NIPLECC could also serve as a coordination point for the U.S. government to commence consultations and discussions with the various regional and multi-lateral lending institutions to compile information on current judicial reform projects in-country and in-region. These judicial reform projects should have an intellectual property component to them. Inadequate judicial systems have served as a serious barrier to the copyright industries' and local authorities' abilities to pursue criminal and civil infringement actions abroad. Rule-of-law projects which include an IPR component would greatly support our goal to improve IPR enforcement around the world.

CONCLUSION

IIPA appreciates this opportunity to share our views on NIPLECC's mission to coordinate intellectual property law enforcement issues among federal agencies and foreign entities. We look forward to continuing to work with each of the NIPLECC agencies and their representatives.

Sincerely,

Maria Strong
Vice President & Associate General Counsel
International Intellectual Property Alliance