



September 4, 2002

Under Secretary of Commerce for Intellectual Property and
Director of the U.S. Patent and Trademark Office
Attention: Elizabeth Shaw
Box 4
Washington, DC 20231

Re: Request for Comments on the Agenda for the
National Intellectual Property Law Enforcement
Coordination Council (NIPLECC), Docket No. 2002-
C-003, 67 Fed. Reg. 50633 (August 5, 2002)

To the Council:

The International Intellectual Property Alliance (IIPA) submits this document in response to the August 5 request for public comments issued by James E. Rogan, Under Secretary of Commerce for Intellectual Property and Director of the U.S. Patent and Trademark Office, and Michael Chertoff, Assistant Attorney General for the Criminal Division at the U.S. Department of Justice, the co-chairs of the National Intellectual Property Law Enforcement Coordination Council (NIPLECC). These comments represent the collective views of the six associations which comprise the IIPA. Our comments outline the actions which NIPLECC could take in both the domestic and international law enforcement arenas.

Description of the IIPA and its Member Associations

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. IIPA is comprised of six trade associations, which in turn represent over 1,100 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media).

In April 2002, the IIPA released an economic report entitled Copyright Industries in the U.S. Economy: The 2002 Report, the ninth such study written by Stephen Siwek of Economists Inc. This report details the economic impact and contributions of U.S. copyright industries to U.S. Gross Domestic Product, employment, and trade. The latest data show that in 2001, the U.S. copyright industries accounted for 5.24 percent of U.S.

Gross Domestic Product (GDP), or \$535.1 billion – an increase of over \$75 billion from 1999 and exceeding 5 percent of the economy and one-half trillion dollars for the first time. Over the last 24 years (1977-2001), the U.S. copyright industries' share of the GDP grew more than twice as fast as the remainder of the U.S. economy (7 percent vs. 3 percent). Between 1977 and 2001, employment in the U.S. copyright industries more than doubled to 4.7 million workers, which is now 3.5 percent of total U.S. employment, and the U.S. copyright industries' average annual employment grew more than three times as fast as the remainder of the U.S. economy (5 percent vs. 1.5 percent). In 2001, the U.S. copyright industries achieved estimated foreign sales and exports of \$88.97 billion, again leading all major industry sectors, including: chemicals and allied products, motor vehicles, equipment and parts, aircraft and aircraft parts, and the agricultural sector.

IIPA'S VIEWS ON NIPLECC'S AGENDA 2002-2003

NIPLECC's statutory mission is broadly "to coordinate domestic and international intellectual property law enforcement among federal and foreign entities." The Federal Register notice stated that "[t]he Council has identified four areas of its mission and requested comments on how it might best address these areas: law enforcement liaison, training coordination, industry and other outreach, and increasing public awareness."

Law Enforcement Liaison

IIPA continues to view NIPLECC as vehicle through which its inter-agency members can productively share information and promote common "non-operational" law enforcement interests without requiring authority or mandate to approve or disapprove of any single agency's ongoing enforcement activities. Productive contributions would include:

- U.S. law enforcement working with its fellow U.S. agencies: In the domestic arena, our industries continue to urge active involvement by federal law enforcement authorities in the fight against criminal copyright piracy. Because operational matters fall within the jurisdiction of only two NIPLECC members (the Justice Department (including the FBI) and Customs), IIPA believes that NIPLECC's role must remain non-operational.

However, given the vast threat piracy poses to our nation's economy and security, it is essential that enforcement activity at the federal level continues to increase, and that NIPLECC may continue to do its part to enhance the amount of federal resources and public attention brought to bear against intellectual property crimes. IIPA continues to support all ongoing efforts to improve interagency communication and coordination on investigations here in the U.S. involved criminal copyright infringements. Our associations, and in turn our member companies, will continue to work closely with these agencies 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. Over the past year, there have been some major federal operations involving piracy, such as "Operation Buccaneer," "Operation Bandwidth" and "Operation Digital Piratez," along with federal courts issuing significant jail time for those involved in those and other infringing activities (see the DOJ's website www.cybercrime.gov for more details). One potentially valuable role for the NIPLECC is in continuing to report on and publicize these successes to Congress to ensure that targeted appropriations continue to produce direct results.

In addition, NIPLECC might be able to play a role in informing, motivating, mobilizing and training state and local law enforcement agencies involved (or willing to become involved) in the investigation and prosecution of IP crimes.

- More enforcement training for U.S. federal law enforcement officials: There is always a need for more and better training of federal officials involved in on-the-ground law enforcement activities. 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. IIPA's associations (as well as our respective member companies) have been involved in many training activities with these agencies over the years. They stand ready to continue to provide domestic training on investigative techniques to federal offices, to their best ability. The associations and companies already have good working relationships with these investigative agencies and have worked with them on training programs' agendas and schedules. We wish to continue to deepen our roles as experts to assist in various training endeavors, and appreciate the continuing ongoing contacts to date. 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. A productive role for NIPLECC would be to keep IPR enforcement high on each agency's internal training agendas.
- U.S. law enforcement working with their international colleagues: In a global economy (and particularly given the increasing role of international criminal syndicates in the piracy business), it is imperative that the operational agencies like Customs and Justice coordinate closely with their foreign counterparts, especially on multinational cases. IIPA recommends that agencies like Justice and Customs continue to work to improve communication and coordination with their foreign colleagues on international copyright investigations and actions. This involves ongoing efforts to improve overseas contacts with foreign law enforcement personnel (e.g. FBI attachés talking with in-country counterparts, creating a database of current foreign personnel contacts, etc). The copyright industries were encouraged that INTERPOL created a multi-agency working group to deal with IPR crimes in July 2002. This group, which includes public and private sector representatives, will focus on investigations into intellectual property crimes and provide advice on training and best practices to police agencies worldwide.¹ It is less encouraging, however, that during the recent public roll-out of the joint Customs-FBI National Intellectual Property Center, no specific plans were revealed that would enable the center to collect and share information about violations for which a specific U.S. nexus had not yet been established.² One possible role for the NIPLECC would be to help promote a truly international enforcement approach and agenda within and among its member agencies.
- U.S. law enforcement coordination within the U.S. Embassies: IIPA again suggests that NIPLECC assist in improving interagency coordination regarding international investigations by working with its State Department colleagues. For example, given the critical importance that strong copyright enforcement and deterrence plays in ensuring economic growth in the U.S. and other countries, NIPLECC should encourage the creation of an "IPR law enforcement team" within U.S. embassies and missions in countries with serious IPR 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 an 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.

¹ See INTERPOL press release, "Interpol acts against intellectual property crimes," 28 July 2002 at <http://www.interpol.int/Public/ICPO/PressReleases/PR2002/PR200216.asp>.

² See July 17, 2002 press releases of the U.S. Customs Service and the FBI about the opening of the NIPC at <http://www.customs.gov/news/news.htm> and <http://www.fbi.gov/pressrel/pressrel02/outreach071702.htm>

Industry and Other Outreach

IIPA and its member associations continue to have regular contact with the various agencies on a regular basis, on both domestic and international matters. For example, IIPA and its members have been working with agencies (both statutory NIPLECC agencies and others) on recommending countries which might receive certain USG-funded IPR-related training. In addition, we have been supporting the efforts of the U.S. government interagency in the development of its www.training.ipr.gov database, an endeavor led by the State Department's Office of Intellectual Property and Competition (IPC).

With respect to NIPLECC's improving its own outreach to the private sector, IIPA offers the following observations:

- **Ensure consistent advocacy on copyright/trade policy issues:** IIPA believes that NIPLECC should continue to 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, fighting internet piracy and encouraging countries to ratify and implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, and supporting other governments to modernize their software management systems and use legitimate software.³ IIPA strongly supports this agenda, and urges that it be used consistently by all U.S. government agencies in their representations with other nations. To encourage this goal, NIPLECC's members could work within their own agencies to ensure that such a consistent message is distributed through its respective agency. Each NIPLECC member would then provide a regular summary of its activities to its NIPLECC colleagues.
- **Compile 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 collect information on restitution awards and criminal fines paid and collected in federal criminal copyright infringement cases. Ongoing communication with industry is important because some statistical information is not gathered by the public agencies but by the private sector. IIPA believes that NIPLECC (or a working group level of NIPLECC members) could work together to provide all the relevant agencies with ideas, recommendations and tools to improve their statistical-gathering capabilities to assess enforcement results. And finally, to the extent that government agencies have already committed (or plan to do so) commit resources to compile information or investigate matters related to piracy and enforcement, communication with the private sector would be welcome.

Training Coordination

IIPA views this "training coordination" element as including coordination for U.S.-funded training for foreign intellectual property law experts (both abroad and in the U.S.) as well as enforcement training for U.S. government agencies involved in domestic operational matters here in the U.S. NIPLECC and its working level staff could play a more useful role in the former area (foreign officials) than the latter (which involves operational matters) to help achieve the following broadly-stated activities:

- **IPR Training Database on the Web:** This IPR training database effort has been in development for over a year, and was recently launched (as mentioned above). The goal is for both USG and private sector to

³ See Press Release 02-48, Office of the United States Trade Representative, "USTR Releases Annual 'Special 301' Report on Global Intellectual Property Protection," April 30, 2002, at <http://www.ustr.gov/releases/2002/04/02-48.htm>.

load training information onto this database. IIPA's associations and their member companies will be providing information on their respective efforts to train foreign officials on matters of copyright reform and protection. Having current and accessible data to review trainings which have already occurred, as well as those planned in the future, will greatly assist in the prioritization of future trainings of foreign officials and prevent waste and unnecessary duplication of resources.

- Improve transparency: IIPA also hopes that the centralization process afforded by the IPR training database will result in greater transparency in reporting from certain U.S. government agencies, and specifically the U.S. Agency for International Development (AID). AID has existing budgetary resources for funding IPR and broader law reform events, and IIPA would like to see these resources allocated in a manner more consistent with established industry and government agency priorities. IIPA requests that the Council take specific action to obtain more transparency in the development of the IPR technical assistance programs funded by U.S. government agencies, including AID.
- Continue to work with the private sector to prioritize U.S. intellectual property-related trainings, here and abroad: Over the past year, the interagency-industry "IPR Working Group" (described above) and several NIPLECC agencies (acting on their own initiative) have taken steps to invite industry input with respect to identifying priority countries and/or foreign officials to receive and/or participate in IPR-related training events. In general, these kinds of trainings take two forms. First, various U.S. agencies fund and/or conduct training activities and symposia abroad. Second, various U.S. agencies sponsor a large number of international visitors who come to the United States to receive IPR-related training and education. Both are valuable endeavors, and industry is eager to participate when and where it can. What industry has requested is an open line of ongoing communication about upcoming events at the earliest stages possible. The good news is that this channel of communication has improved over the past year. As a result, problems with receiving invitations on short-notice have declined somewhat, although there have been instances of last-minute invitations to participate in trainings abroad.
- Improve evaluation and follow-up of U.S. government trainings of foreign officials: IIPA recommends that NIPLECC and its members follow-up on the effectiveness of the numerous trainings the U.S. government provides. Accountability and the impact the training made on these officials should be built-in to this process. NIPLECC might be in a good position to develop a standard form to evaluate U.S. government-led trainings of foreign officials. Given the vast amount of U.S. government resources targeted for the training of foreign IPR officials, we believe it is imperative to know (a) if the officials believed that the training/information they received was valuable, and (b) what the officials will do with the information once they return to their country. Feedback and implementation are important.
- Include intellectual property components into judicial reform projects in projects sponsored by both the U.S. government and other institutions: Inadequate judicial systems have served as increasingly serious barriers to the copyright industries' and local authorities' abilities to pursue criminal and civil infringement actions abroad. All judicial reform projects conducted by any and all U.S. agencies should have an intellectual property component to them. For example, generic "rule-of-law" projects should include an intellectual property rights component, given the increasing importance of IPR creation and distribution to cultural, social and economic development. NIPLECC could 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. Incorporating an IPR component in each of these myriad "rule of law" and similar programs would greatly support the U.S. government's and industries' goals to improve IPR protection and enforcement around the world. In addition, NIPLECC should act to press for the inclusion of IPR components in judicial reform projects sponsored by other multilateral and regional institutions.

Public Awareness

NIPLECC invited comments on the industries' public awareness campaigns on IPR and how the Council may be effective in coordinating a public awareness campaign.

IIPA believes NIPLECC should become active in promoting messages, in all its member agencies, that copyright piracy is a federal crime, piracy damages the U.S. economy, and that law enforcement will actively investigate and prosecute this crime. Publicizing enforcement actions is extremely important in educating the public about the value of copyright and the deleterious impact of piracy.

- Improving press/media outreach on domestic operations: There have been some improvements in U.S. government press activities and press conferences related to law enforcement matters. For example, press efforts taken by the Justice Department in the "Operation Buccaneer" and its sister cases received a good amount of press attention. In our view, however, Customs and the FBI have not been as assertive as they could be in their respective publicity efforts. More press conferences and better media outreach on investigations and sentencing would be a welcome move. Simply put, more members of the American public need to know what the U.S. enforcement agencies are currently doing to protect copyright. NIPLECC agencies should make existing resources available for IPR-related press activities. In fact, NIPLECC agencies may consider pooling existing funds for a concerted press campaign reflecting a law enforcement message against piracy.
- Improve government outreach to the copyright industry on press matters: We also suggest that the press affairs offices of the NIPLECC agencies more actively reach out to industry representatives and their press offices. While industry understands the sensitivities related to the timing of certain announcements by government agencies involving ongoing investigations and litigation, we are certain that many more possibilities for public awareness efforts between the agencies and the industry exist.
- Coordinating 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. 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 that already are available through the individual federal agencies.

The Council also requested information on the private sector's activities regarding its public awareness efforts related to intellectual property rights protection.

- IIPA and its six associations all maintain websites chock-full of factual information on copyright law and piracy issues, all of which are easily accessible to the public: www.iipa.com; www.publishers.org; www.afma.com; www.bsa.org; www.idsa.com; www.mpa.org; and www.riaa.com.
- All six of these associations have press affairs offices which work to deliver the associations' messages on everything from ongoing litigation, to policy papers, to testimony, to other industry-specific activities.
- Many of the IIPA member associations, as well as their member companies, are involved in ongoing criminal anti-piracy enforcement (at the federal level, at the state level, and internationally) as well as civil litigation to protect their members' legal rights under copyright and related laws.

Conclusion

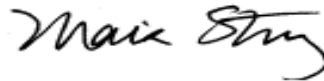
Piracy threatens the economic and cultural development and viability of America's valuable treasures – the creativity which provides us and the world with the products and services protected by copyright.

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 and our member associations will continue to work with NIPLECC and the individual NIPLECC member agencies on both domestic and international copyright-related enforcement matters.

Sincerely,



Eric H. Smith
President
International Intellectual Property Alliance



Maria Strong
Vice President and General Counsel
International Intellectual Property Alliance