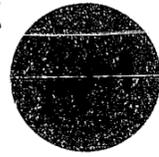


95456
THE PIRACY AND COUNTERFEITING AMENDMENTS
ACT OF 1981—S. 691



HEARING
BEFORE THE
SUBCOMMITTEE ON CRIMINAL LAW
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE
NINETY-SEVENTH CONGRESS

FIRST SESSION

ON

S. 691

A BILL TO AMEND TITLES 18 AND 17 OF THE UNITED STATES
CODE TO STRENGTHEN THE LAWS AGAINST RECORD, TAPE,
AND FILM PIRACY AND COUNTERFEITING, AND FOR OTHER
PURPOSES

JUNE 19, 1981

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(II)

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CONTENTS

PROPOSED LEGISLATION

S. 691—A bill to amend titles 18 and 17 of the United States Code to strengthen the laws against record, tape, and film piracy and counterfeiting, and for other purposes Page 3

OPENING STATEMENT

Mathias, Charles McC., Jr. 1

WITNESSES

Szybala, Renee L., special assistant to the Associate Attorney General, Department of Justice 8
Prepared statement 11
Bouras, James, vice president and deputy general attorney, Motion Picture Association of America, Inc. 19
Prepared statement 26

(III)

**THE PIRACY AND COUNTERFEITING
AMENDMENTS ACT OF 1981—S. 691**

FRIDAY, JUNE 19, 1981

U.S. SENATE,
SUBCOMMITTEE ON CRIMINAL LAW,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10:10 a.m., in room 5110, Dirksen Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the subcommittee) presiding.

Staff present: Ralph Oman, staff director; Charles Borden, professional staff member; Grace Rienhoff, chief clerk, and Bob Lystad, assistant, Criminal Law Subcommittee; Miriam Mills, counsel to Senator Specter; John Nash, counsel to Senator Laxalt; Carla Engel, assistant to Senator Thurmond; Mark Morris, assistant to Senator Dole.

OPENING STATEMENT OF CHAIRMAN MATHIAS

Senator MATHIAS. The subcommittee will come to order.

The Criminal Law Subcommittee will hear testimony on the Piracy and Counterfeiting Amendments Act of 1981. I think it should be at this point the Piracy and Counterfeiting Amendments bill of 1981—whether it will be an act is something that is still lodged in the womb of time.

Piracy is the term for unauthorized duplication of original commercial products. In counterfeiting, the packaging and labeling of the original product are also forged. Senate bill 691 would amend titles 17 and 18 of the United States Code to increase the penalties for trafficking in counterfeit labels for copyrighted records, tapes, and films, and for copyright infringements involving illicit reproduction and distribution of these products.

Recent experience strongly suggests that the current penalties are inadequate to discourage the burgeoning practice of piracy and counterfeiting in these industries. The problem is worse than ever because of the tremendous progress that we have seen in the technologies of reproduction over the last 20 years.

Estimates of losses to the legitimate recording industry now range above \$600 million a year domestically. Pirated movies and pirated television programs that are shipped overseas now threaten to undermine the vitality of our export efforts in these industries which have heretofore been a substantial moneymaker—both in terms of domestic income and balance of trade.

The purpose of our meeting this morning is to examine in more detail the magnitude and consequences of these copyright infringe-

ments, and to consider whether a stiffening of the penalties is called for.

The subcommittee will be interested in hearing from Ms. Szybala, the representative of the Justice Department, which has taken a position against a similar proposal in recent years but is, I believe, reconsidering that position.

We are also looking forward to the testimony of the Motion Picture Association and the Recording Industry Association.

I want to assure the witnesses that your written statements will appear in full in the record as if read, but that the committee will be happy to have you briefly summarize your statements so that we can have an opportunity for some dialog before the bells ring which will summon the committee to the floor, and disrupt these hearings. So, we will have to make the best use of the limited time we have.

At this point I wish to place a copy of S. 691 in the record.
[A copy of S. 691 follows:]

97TH CONGRESS
1ST SESSION

S. 691

To amend titles 18 and 17 of the United States Code to strengthen the laws against record, tape, and film piracy and counterfeiting, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 12 (legislative day, FEBRUARY 16), 1981

Mr. THURMOND introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend titles 18 and 17 of the United States Code to strengthen the laws against record, tape, and film piracy and counterfeiting, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That this Act may be cited as the "Piracy and Counterfeiting*
4 *Amendments Act of 1981".*

5 SEC. 2. Section 2318 of title 18, United States Code, is
6 amended to read as follows:

1 **“§ 2318. Trafficking in counterfeit labels for phonorec-**
 2 **ords, and copies of motion pictures and**
 3 **audiovisual works**

4 “(a) Whoever, in any of the circumstances described in
 5 subsection (c) of this section, knowingly traffics in a counter-
 6 feit label affixed or designed to be affixed to a phonorecord,
 7 or a copy of a motion picture or an audiovisual work, shall be
 8 fined not more than \$250,000 or imprisoned for not more
 9 than five years, or both.

10 “(b) As used in this section—

11 “(1) the term ‘counterfeit label’ means an identify-
 12 ing label or container that appears to be genuine, but
 13 is not;

14 “(2) the term ‘traffic’ means to transfer or other-
 15 wise dispose of, to another, as consideration for any-
 16 thing of value or obtain control of with intent to so
 17 transfer or dispose; and

18 “(3) the terms ‘copy’, ‘phonorecord’, ‘motion pic-
 19 ture’, and ‘audiovisual work’ have, respectively, the
 20 meanings given those terms in section 101 (relating to
 21 definitions) of title 17.

22 “(c) The circumstances referred to in subsection (a) of
 23 this section are—

24 “(1) the offense is committed within the special
 25 maritime and territorial jurisdiction of the United
 26 States; or within the special aircraft jurisdiction of the

1 United States (as defined in section 101 of the Federal
 2 Aviation Act of 1958);

3 “(2) the mail or a facility of interstate or foreign
 4 commerce is used in the commission of the offense; or

5 “(3) the counterfeit label is affixed to or encloses,
 6 or is designed to be affixed to or enclose, a copyrighted
 7 audiovisual work or motion picture, or a phonorecord
 8 of a copyrighted sound recording.”.

9 SEC. 3. Title 18, United States Code, is amended by
 10 inserting after section 2318 the following new section:

11 **“§ 2319. Criminal infringement of a copyright**

12 “(a) Whoever violates section 506(a) (relating to crimi-
 13 nal offenses) of title 17 shall be punished as provided in sub-
 14 section (b) of this section.

15 “(b) Any person who commits an offense under subsec-
 16 tion (a) of this section—

17 “(1) shall be fined not more than \$250,000 or im-
 18 prisoned for not more than five years, or both, if the
 19 offense—

20 “(A) involves the reproduction or distribu-
 21 tion, during any one-hundred-and-eighty-day
 22 period, of at least one thousand phonorecords or
 23 copies infringing the copyright in one or more
 24 sound recordings;

Senator MATHIAS. We will now ask the Justice Department's representative, Ms. Szybala, to come to the desk.

STATEMENT OF RENEE L. SZYBALA, SPECIAL ASSISTANT TO THE ASSOCIATE ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Ms. SZYBALA. Thank you.

I am very pleased to be here today, Mr. Chairman, to give your subcommittee the views of the Department of Justice on S. 691. This bill, as you have explained, would strengthen the laws against criminal copyright infringement and counterfeit label trafficking by primarily increasing the penalties for violations.

Piracy and counterfeiting of copyrighted works has now become a major white collar crime. There are huge profits to be made in this industry and the current very lenient penalties have done very little to deter violators.

It has been estimated that in 1980 worldwide sales in pirated sound recordings exceeded \$1 billion. For these reasons, the Department of Justice supports the enactment of this legislation.

As you noted, the Department had taken a previous position a few years ago. Experience has shown, however, that the misdemeanor penalties now available have done very little to either stem the tide of this type of offense, or to encourage prosecutors to prosecute for it.

We believe that the enhanced penalties that this bill would provide will bring the sanctions for the crime more in line with the seriousness of it. With vigorous enforcement, the substantially increased penalties should act as a deterrent to major violators.

Under the bill, felony penalties could be imposed for all counterfeit label offenses, for serious offenses involving sound recordings, motion pictures and audio-visual works, and for all subsequent offenses involving those works. The seriousness of the piracy under the bill is gaged by the number of infringing copies and the time-span within which they are produced or distributed.

The Department of Justice supports this penalty scheme. We believe that it recognizes correctly that counterfeiting, which defrauds the consuming public, is a far more serious crime than simple piracy, and that substantial violators deserve harsher treatment.

We do have some revisions to suggest, and these are addressed in detail in my written statement. The most serious of these suggestions concerns the proposed definition of "trafficking" in the trafficking in counterfeit label section of the bill.

This definition appears to be narrower than that under current law, and we suggest that it be revised in order to continue to cover those who offer counterfeits for sale and those who transport them. In addition, we note that the bill as drafted omits the forfeiture provisions currently in 18 U.S.C. 2318(b) and (c), and we suggest that the bill be revised in order to preserve those provisions.

With the revisions noted, the Department of Justice supports the bill. We believe it will provide a more effective tool to combat the growing problems of piracy and counterfeiting.

Thank you, and I will be pleased to answer any questions.

QUESTIONS AND ANSWERS—RENEE L. SZYBALA

Senator MATHIAS. You say the Department of Justice has altered its view. One of the problems, however, as I see it, one of the practical problems, is that regardless of what the level of the penalty is, enforcement is going to involve the apprehension of the pirate, the detection of his work.

Is there any way that the Department has under consideration which would make it possible for a viewer to identify what is in fact an authorized copyrighted version of a tape or film, and what is a pirated version?

Ms. SZYBALA. There is no proposal like that under consideration at the Department of Justice. What we would hope is that the limited resources available for prosecution would be directed to major violators as the result of FBI investigations.

We depend largely on the industry to use the technology that exists to make counterfeiting more difficult, first of all, and more easily detectable, secondly.

Senator MATHIAS. Of course, with the remarkable and really miraculous developments in the communications industry it may be possible to put some kind of a "hallmark" on or into a product.

This committee in its other activities has of course considered the problem of terrorist criminal acts, and one of the means of tracing weapons would be to put some sort of tag into ammunition. That has not been a particularly popular idea, but it is the kind of thing that in a highly technological period might be applied.

Ms. SZYBALA. I have no personal knowledge of where the technology is. My understanding is that the ways do exist or are being developed to do both the things I described, that is to make the counterfeiting or reproduction, unauthorized reproduction more difficult or impossible; and two, to make it more easily apparent that a particular copy is unauthorized, that is to mark in some way the authorized copies.

Senator MATHIAS. But you are assuring the committee that if the bill is passed, there will be a more vigorous prosecution effort.

Ms. SZYBALA. There will be a more vigorous effort directed at major violators. There has been, in more recent years, a tremendous growth of organized crime infiltration into this particular area of criminal enterprise. I would hope that that is where most of our enforcement efforts would be directed.

Another problem is the courts. That is, we cannot guarantee that even given the increased penalties, the courts will sentence people to increased penalties. Hopefully, we can help educate the courts by bringing to their attention the most serious violators, the people who clearly deserve the increased penalties.

Senator MATHIAS. The bill alters the criterion for establishing the offense from fraudulent intent to an act committed knowingly.

Will the Department find this a more difficult standard to establish?

Ms. SZYBALA. I do not think so. It is my understanding that the current law requires both fraudulent intent and knowing, that is, both those words appear. What we have largely done with this bill is dropped the fraudulent intent requirement. All we would need to prove now is that they knew they were counterfeits, that they were transported.

That should be a somewhat easier standard to meet than that under current law, but it really will get the guilty violators. That is, one cannot claim easily that he knew he was transporting counterfeits but had no intention to defraud.

Senator MATHIAS. Now, you also have recommended some amendment of the forfeiture provisions.

Ms. SZYBALA. It is not an amendment. The bill as drafted completely supplants the current section—I think it is section 2318—and in doing so it omits to preserve the current (b) and (c) provisions that are in 2318.

What we suggest is that those provisions be renumbered and retained in the bill. Those are our major criminal forfeiture tools.

There are other forfeiture provisions in title 17. To retain the forfeiture provisions in title 18 will give the prosecutor in one place all his tools.

Senator MATHIAS. As the bill is now drafted, we would have to amend it to restore those provisions?

Ms. SZYBALA. Yes.

ORGANIZED CRIME

Senator MATHIAS. In 1980, the Attorney General made a report on white-collar crime which stated that there is evidence that organized crime is becoming increasingly involved as a major supplier of counterfeit products.

Now, you said earlier that the prosecution would probably, at least initially, center on the major violators, the major pirates. Does that mean organized crime, or does that include other criminals?

Ms. SZYBALA. It includes organized crime, I think. When people say "organized crime" I presume they mean those professional criminal enterprises that are wide-reaching, that is, do many things.

When I speak of major violators I mean all those who make huge profits and run off large numbers of tapes and records. That may be organized crime among others.

Senator MATHIAS. Thank you very much for being here. We appreciate having the benefit of your advice.

Ms. SZYBALA. Thank you.

[The prepared statement of Renee Szybala follows:]

PREPARED STATEMENT OF RENEE L. SZYBALA, SPECIAL ASSISTANT TO THE ASSOCIATE ATTORNEY GENERAL

Mr. Chairman and members of the subcommittee, I am pleased to be here today to give the views of the Department of Justice on S. 691, the Piracy and Counterfeiting Amendments Act of 1981.*

This bill would amend titles 17 and 18 of the United States Code with respect to criminal copyright infringement and trafficking in counterfeit labels. Its primary effect would be to strengthen the laws against record, tape and film piracy and label counterfeiting by increasing the penalties for violations.

Piracy and counterfeiting of copyrighted material, the theft of intellectual property, is now a major white-collar crime. The dramatic growth of this problem has been encouraged by the huge profits to be made, while the relatively lenient penalties provided for by current law have done little to stem the tide. The Department, therefore, in principle favors the enactment of this legislation. We believe that the enhanced penalties S. 691 would impose would help bring the criminal sanctions for copyright infringement more in line with the seriousness of the problem. Coupled with vigorous prosecution, the increased maximum sentences and fines should act as a deterrent to major violators. We do, however, have some technical suggestions to make with respect to individual provisions.

*/ S. 691 is identical to H.R. 3530, except that the section sequence differs, and S. 691, as discussed *infra*, fails to preserve the forfeiture provisions of current 18 U.S.C. 2318(b) and (c).

I will first address the substantive provisions of the bill that would amend title 17.

Section 5 of the bill amends the criminal penalties for willfully infringing a copyright for purposes of commercial advantage or private financial gain (17 U.S.C. 506(a)). The substantive offense remains unchanged. The current penalty for criminal infringement of copyright in works other than sound recordings or motion pictures is a maximum term of one year and/or a fine of \$10,000. Where sound recordings or motion pictures are involved, the penalty for a first offense is up to one year and/or a fine of \$25,000, increased to up to two years and/or \$50,000 for subsequent offenses.

Section 5 provides that the penalties will now be those fixed in 18 U.S.C. 2319, a new section which will be added to title 18 by section 3 of this bill. Under this new section, the penalties will be dependent not only upon the type of copyrighted work infringed, and whether the offense is a first or subsequent violation, but also upon the number of infringing copies and the time frame within which they are made or distributed. Thus, an offense, not involving a sound recording, motion picture or audiovisual work, will be punishable by imprisonment for up to one year and/or a fine of \$25,000 (2319(b)(3)); a first offense involving sound recordings will be punishable by up to five years and/or \$250,000, if 1,000 or more copies are

made or distributed within a 180-day period (2319(b)(1)(A)); up to two years and/or \$25,000, if less than 1,000 but more than 100 copies are made or distributed in that period (2319(b)(2)(A)); and by up to one year and/or \$25,000, if less than 100 copies are involved or more than 180 days elapse (2319(b)(3)). A subsequent offense involving a sound recording is punishable by up to five years and/or \$250,000, regardless of the time frame or number of copies involved (2319(b)(1)(C)).*

The penalties proposed for infringement of copyright in motion pictures or audiovisual works are similar, but require fewer infringing copies: The penalty of up to five years and/or \$250,000 may be imposed where 65 or more copies are made or distributed within a 180-day period (2319(b)(1)(B)); up to two years and/or \$250,000, if less than 65 but more than 7 copies are made or distributed within that period (2319(b)(2)(B)); up to one year and/or \$25,000, if less than 7 copies are involved or more than 180 days elapse (2319(b)(3)); and up to five years and/or \$250,000, if it is a subsequent offense, regardless of

*/ Section 2319(b)(1)(C), which provides enhanced punishment for subsequent offenses involving sound recordings, motion pictures or audiovisual works, requires clarification. It is not clear whether the first offense must have involved the same type of work as the second -- whether both offenses must involve, for example, a motion picture -- or, indeed, whether the first offense had to involve a sound recording, motion picture, or audiovisual work, at all.

time frame or number of copies involved (2319(b)(1)(C).*/

Section 2 of the bill would completely redraft 18 U.S.C. 2318, which concerns trafficking in counterfeit phonorecord labels. At present, section 2318(a) provides that the transportation, receipt, sale or offer for sale in interstate or foreign commerce, with fraudulent intent, of articles bearing counterfeit labels, is punishable by imprisonment for up to one year and/or a fine of \$10,000, for a first offense, and up to two years and/or \$25,000, for a subsequent offense. The amended section 2318 increases the penalty for all offenses, first or subsequent, to a maximum of five years and/or \$250,000. **/

In addition, the proposed section 2318 would eliminate the requirement of fraudulent intent; it will be sufficient that the offense of "trafficking" is committed "knowingly."

*/ See footnote p. 3

In addition, we note that both under current law and the proposed bill, where sound recordings, motion pictures or audiovisual works are not involved, subsequent offenses are not punished more severely than first offenses. The subcommittee might wish to consider whether subsequent offenses involving works other than sound recordings, motion pictures or audiovisual works should be punished more severely than first offenses.

**/ The bill would not provide for consideration of time or quantity criteria in the trafficking in counterfeit labels section, but rather would allow the maximum penalty for counterfeiting without regard to such criteria. We believe that this scheme correctly recognizes that counterfeiting, which defrauds not only the recording industry, but the consumer as well, is a much more serious crime than traditional piracy. Where counterfeits are involved, the consumer is led to incorrectly believe that he is purchasing a product of the legitimate source identified on the label.

We see no problem with dropping the fraudulent intent requirement. It is difficult to imagine how one could traffic in articles knowing they bear counterfeit labels without intending that some purchaser, immediate or remote, will be misled and cheated in his purchase.

The Department supports the enhanced penalties of both the counterfeit label trafficking and criminal copyright sections. We also support, as explained more fully below, the inclusion of time and quantity criteria in the proposed 18 U.S.C. 2319.

As to the enhanced penalties, a word of explanation is in order, since we took a different position in commenting on S. 22 in the 95th Congress. In our report on that bill we recommended that a first offense should be only a misdemeanor. It was believed at that time that, if a misdemeanor were not available, the plea negotiation process would be impaired; it was also thought that some United States Attorneys would consider certain criminal copyright cases to warrant nothing more than misdemeanor treatment.

Experience has shown, however, that the meager penalties under existing law appear to have had little deterrent effect in this area. The World Intellectual Property Organization, an intergovernmental group sponsored by the United Nations, has estimated that worldwide sales in pirated sound recordings totaled \$1.1 billion in 1980. In North

America alone, the figure is estimated at \$560 million. Yet the present criminal sanction for a first offense involving copyright infringement of a sound recording or motion picture is a misdemeanor and carries a fine of not more than \$25,000. It is difficult to avoid a comparison between the minimal penalties risked, even for subsequent violations, by those who commit this type of offense, and the increasing substantial industry losses. As compared to other theft and forgery statutes, penalties for copyright piracy and counterfeiting are among the most lenient, while these schemes are among the most lucrative.

Additionally, we have learned that, because of their substantial caseloads, United States Attorneys may be less enthusiastic about prosecuting misdemeanor offenses than felonies. Moreover, the existence of penalties of up to five years affords the prosecutor greater flexibility in the plea negotiation process than do misdemeanor penalties. Rule 11(e)(1) and (2) of the Federal Rules of Criminal Procedure, which permits plea agreements between the government and the defendant as to a specific sentence, subject to court approval, provides an opportunity to minimize exposure to incarceration in appropriate cases. It was for these reasons that the Department was able to support the classification of this offense as a class D (5-year) felony by section 1746 of S. 1722, the Criminal Code Reform

Act of 1979, as reported to the Senate by the Judiciary Committee in the 96th Congress.

The graduation of penalties by the volume of illegal conduct, based upon the number of units illegally reproduced or distributed, seems to be an appropriate way to gauge the severity of the offense. Under existing law, there is no differentiation between a person who, at a given time, illegally reproduces five copies of a copyrighted work and one who reproduces five thousand. Moreover, classification of the seriousness of the offense by the volume illegally reproduced or distributed during a six-month period recognizes that the large-scale offender is a major law violator, deserving of severe penalties. Concomitantly it prevents those who may engage in trivial distribution on several occasions from being subject to the same penalties as those who make, obtain and distribute voluminous quantities on one occasion or within a short time-span.

The definition of "traffic" in proposed 2318(b)(2), however, appears to be narrower than that under current law, which reaches not only those who sell in interstate and foreign commerce, but also those who ship and offer for sale. We think this cutback is ill-advised and recommend that the bill be revised to continue to cover those who knowingly transport infringing matter. We would, in addition, recommend that the manufacturer be covered as well, since

he plays so essential role in the criminal enterprise. We, therefore, offer as a substitute for proposed 2318(b)(2) the following:

The term traffic means to make, transport, transfer or otherwise dispose of, to another, as consideration for anything of value or, to obtain control of with intent to so transport, transfer or otherwise dispose.

For like reason, i.e., to continue to cover those who offer for sale in interstate commerce, we suggest that proposed section 2318(c)(2) be amended by including the underscored words so that it will read:

the mail or a facility of interstate or foreign commerce is used or intended to be used in the commission of the offense.

The proposed definition of "traffic" will remove from coverage those who knowingly purchase or acquire counterfeit material for personal use, without any motive of financial gain. While not condoning such conduct, we do not object to the decision of the draftsmen of this bill that it does not merit federal prosecution and punishment. We also note with approval that the bill provides for some increase in the jurisdictional base of the existing statute. It adds the special maritime, territorial and aircraft jurisdiction of the United States and the use of the mail to the interstate and foreign commerce base of current law (18 U.S.C. 2318(c)(1)(2)).

As currently drafted, S. 691 fails to preserve the forfeiture provisions of subsections (b) and (c) of 18 U.S.C. 2318. We recommend that this omission be corrected by adding to the bill a section redesignating subsections (b) and (c) of section 2318 as (d) and (e) and thus retaining them.

With the revisions noted above, the Department believes that this legislation would provide a more effective tool for combatting the growing problem of piracy, counterfeiting and other criminal copyright violations and supports its enactment.

I would be happy to respond to any questions you may have.

Senator MATHIAS. Our next witness is Mr. James Bouras, the vice president and deputy general attorney of Motion Picture Association of America.

Mr. Bouras?

STATEMENT OF JAMES BOURAS, VICE PRESIDENT AND DEPUTY GENERAL ATTORNEY, MOTION PICTURE ASSOCIATION OF AMERICA, INC.

Mr. BOURAS. Thank you, Mr. Chairman.

I am in charge of running the Motion Picture Association of America's worldwide program to combat the pirating and counterfeiting of films and video tapes. I am making this brief statement today on behalf of both MPAA and the Recording Industry Association of America, or RIAA.

MPAA and RIAA strongly support S. 691.

Senator MATHIAS. What is your relationship with RIAA?

Mr. BOURAS. We are completely separate organizations. They are a trade association for producers and distributors of sound recordings, or records, whereas we are a trade association for producers and distributors of motion pictures.

Senator MATHIAS. But you are authorized to speak for them this morning.

Mr. BOURAS. I am.

Senator MATHIAS. All right.

Mr. BOURAS. We support this bill, which would essentially do the following:

One, make the counterfeiting and large-scale pirating of motion pictures and sound recordings felonies for the first offenses.

Two, move the penalties for criminal copyright infringement to the Criminal Code, which U.S. attorneys regard as their charter.

Three, increase the criminal penalties for counterfeiting and for most cases of piracy in order to make the penalties commensurate with the crimes.

The purpose of these oral remarks is to highlight some of the reasons why we support this bill.

It is an inescapable fact that the pirating and counterfeiting of motion pictures and sound recordings has become a massive worldwide problem, a fact which is attested to by the resolutions adopted in 1977 by Interpol, the International Criminal Police Organization, and in 1981 by the World Intellectual Property Organization.

They are crimes which adversely affect not only motion picture and sound recording companies but also the individuals—such as writers, actors, and musicians—involved in the creation of films and records.

They are crimes which affect the public, which pays for illicit goods of inferior quality. I have with me today several samples, both of motion pictures and sound recordings. Some are legitimate, some are counterfeit, and we would be happy to make them available for your inspection. In this particular case, I might add, we have here "The Muppet Movie." One copy is a legitimate copy, one copy is a counterfeit copy. In the counterfeit copy, the picture quality is so bad that any consumer paying \$60 to acquire this is getting ripped off completely. In fact, this particular counterfeit copy was returned to the manufacturer for a refund. So, the manufacturer lost twice, once when he lost the initial sale, and once when he had to refund the money.

Senator MATHIAS. He could not detect it as a fraudulent copy?

Mr. BOURAS. We can detect it as a fraudulent copy. Unfortunately, the consumers who acquire this material often cannot. You can examine these two copies side by side, and it is relatively easy to tell which is the counterfeit and which is the legitimate copy. Unfortunately, a consumer going into a store to acquire a copy, not having a legitimate copy for comparative purposes, really cannot tell the difference.

Senator MATHIAS. I assume the one with the box with the sharper print is the original.

Mr. BOURAS. Yes, sir. The one which is sort of muddy, that is, the colors are rather muddy and dark, is the counterfeit copy and, as I indicated, there is almost no picture on the cassette. There is sound, almost no picture.

Senator MATHIAS. I regret that the committee is not adequately equipped to make an immediate investigation of this, but we appreciate the copies.

Mr. BOURAS. In addition, piracy and counterfeiting are crimes which affect both the Federal and State Governments, to whom pirates pay no taxes and which are also deprived of the tax revenues which would flow from sales of legitimate goods.

They are crimes which adversely affect thousands of retailers and other types of businesses all over the United States which serve as outlets for legitimate motion pictures and sound recordings, and who simply cannot compete with illicit merchandise.

Piracy and counterfeiting are also crimes in which the Attorney General has recently concluded "There is evidence that organized crime is becoming increasingly involved. . . ."

I might interject here our own experience with one particular pirate in the State of Florida who was dealing in pirated video tapes of current motion pictures; he was also selling machineguns for export purposes. He was eventually prosecuted and convicted for violations of the Neutrality Act.

The potential profits from pirating and counterfeiting are substantial, to put it mildly. For example, a sound recording piracy operation uncovered in Pennsylvania was found to be turning out 25 million counterfeit records a year. Those are record units, not dollars.

For a further example, a pirate who was apprehended shipping illicitly duplicated films out of the country signed customs documents in which he underdeclared their value at \$600,000. I want to emphasize that he underdeclared their value.

Pirates and counterfeiters who operate on this scale—and these are only two examples of many—cannot be deterred or adequately punished under current law.

In supporting S. 691, MPAA and RIAA are not suggesting that everyone who violates its provisions should necessarily be subjected to its maximum penalties. Prosecutors would still have discretion in bringing charges, as would judges in meting out sentences.

However, MPAA and RIAA believe that cases of piracy and counterfeiting should be carefully evaluated for prosecutive merit and not dismissed out of hand, as is all too frequently the case under current law, on the ground that "It's only a misdemeanor."

Figures compiled by MPAA's Film Security Office, for example, show that since 1975 there have been a total of 166 criminal convictions for motion picture and video tape piracy in the United States, of which only 26 resulted in jail sentences. During this same period, prosecution has been declined in more than 530 cases.

A few additional considerations merit some emphasis. Both the motion picture and sound recording industries fully recognize their own obligations in this area, and are doing everything they can to help themselves. For example, many cases are never referred to law enforcement at all and are instead pursued civilly. But civil remedies and sanctions have proved completely ineffective in dealing with large-scale pirates and counterfeiters.

Second, piracy and counterfeiting represent the theft of intellectual property, but the current penalties therefor are way out of line with the penalties which existing Federal law provides for thefts of patents, tangible property, and analogous crimes.

On pages 30 and 31 of our joint statement we list many examples. I will mention one here. The counterfeiting of a patent currently carries a maximum possible penalty of 10 years in prison. The penalties which S. 691 provides are thus not a radical departure from the norm for crimes of this type.

Third, and perhaps most significantly, S. 691 would serve to eliminate the current climate in which prosecution of pirates and counterfeiters is all too often automatically declined on the ground that, "It's only a misdemeanor."

Instead of discouraging prosecutors, or encouraging judges to mete out sentences which are not even remotely commensurate with the gravity of the offenses, S. 691 would at least induce

prosecutors and judges to evaluate more thoughtfully the prosecution of, and sentencing in, such cases.

In conclusion, the respective experiences of MPAA and RIAA show that piracy and counterfeiting of motion pictures and sound recordings is growing by leaps and bounds, and that the penalties provided in current law are totally inadequate to deal with these lucrative crimes.

As things stand now, our experience has been that the present penalties serve more to deter prosecutors from prosecuting than they do to deter pirates and counterfeiters from engaging in those offenses.

We therefore sincerely hope that this subcommittee will report favorably on S. 691. Thank you.

INTELLECTUAL PROPERTY

Senator MATHIAS. Thank you, Mr. Bouras.

I have for a number of years been interested in questions that relate to intellectual property. Intellectual property is a concept that is not fully understood, I think, by lawyers as well as by the general public.

So, it has been a very interesting subject of study and legislation and we have, I think, made some improvements in the law with respect to intellectual property through the revision of the copyright laws several years ago, and through a number of legislative acts that have touched upon that subject.

It is not unusual that the law is not up to date with progress in society, progress in technology. But I think on this particular subject it is very clear that technology and its application by society is way ahead of the law. That the law really does not have the capacity, as it is presently constituted, to protect intellectual property that is represented by images on a film or sounds that are on a tape or a record.

So, we are going to need the advice of the industry in trying to bring the law up to date. I would suspect that this bill increasing the penalties is merely a first step in dealing with the problem—at least as I would view it, it is only a first step.

We are going to have to somehow or other gain a greater knowledge of the technology in order to fashion a more sophisticated legal approach. We can only get that knowledge from you, from the industry.

So, I would hope that your visit today will be only part of a continuing communication on this subject.

Mr. BOURAS. Definitely. Both industries would be more than willing to provide to this committee any information or knowledge they have in this entire area.

Senator MATHIAS. Let me confess the depth of our ignorance, which is that probably we do not even know enough to ask intelligent questions, the questions that ought to be asked. So, you may have to start from scratch with us and I invite you to do that.

Now, there has been mention this morning of the fact that some of this piracy is the work of organized crime. Is it ever the work of people who otherwise appear to be legitimate practitioners?

Mr. BOURAS. Certainly. There are all types of cases and it is rather hazardous to make generalizations. There are clearly cases

which involve organized crime. There are clearly cases which involve small-time operators. There are large cases and there are small cases.

The thrust of this bill is toward the large-scale pirates and counterfeiters. But there are as many types of cases as there are individuals.

Senator MATHIAS. You mean there are really scavengers within the industry who will feed upon each other?

Mr. BOURAS. That is quite clear. There are pirates who pirate from each other. I must be candid. I mentioned our Film Security Office. One of its functions is to do everything we can to tighten security within the film industry itself. We have found cases where employees at shipping depots, storage companies, or motion picture theaters have made prints available illicitly for duplication purposes.

So, we are trying to do everything we can to tighten this up, but that is one of the sources for pirated material.

Senator MATHIAS. As I understand it, Interpol addressed itself to this question in 1977.

Mr. BOURAS. That is correct.

Senator MATHIAS. Has their effort borne any fruit?

Mr. BOURAS. Well, Interpol is primarily a coordinative body, it does not engage in investigations itself. But the United States is a member as, I believe, are roughly 120 or 130 other countries. It provides a forum through which various national police organizations can coordinate their efforts.

It did adopt this resolution. It has no power to follow through and insist that its member states pursue the recommendations of the resolution. Interpol has in several cases been extremely helpful to the motion picture industry and I believe the sound recording industry as well, where pirate operations were based in several countries and some sort of coordinated effort was needed to attack all branches of the operation simultaneously.

We had a case in Europe about 1½ years ago involving pirates located simultaneously in the Netherlands and in England, and coordinated police efforts against both aspects of that operation were arranged through Interpol.

So, in that sense Interpol has followed up on it. But Interpol itself cannot compel its member states to adopt its recommendations.

SEVERITY OF PENALTIES QUESTIONED

Senator MATHIAS. You have testified that you think that the fines proposed in this bill would be a deterrent. As a layman, let me challenge you on that because for those of us in the public the movie industry, the television industry, the recording industry seem to deal in macro figures; box office receipts are millions. Movie stars make millions. Rock recording artists all end up as multi-millionaires. You deal in big, big figures, very big from the perspective of the average citizen.

Now, certainly to me the prospect of being fined \$250,000 would be a very serious thing, but in an industry which deals in such huge sums, will \$250,000 as a potential fine really scare anybody?

Mr. BOURAS. It is a potential deterrent when coupled with a possible prison sentence of up to 5 years. Moreover, in those cases

one of the substantial virtues of this particular bill is that it grades the penalties to the severity of the offense.

I would think if you were to uncover a pirate who was making millions and millions of dollars per year and he were indicted under this bill that, depending on how the indictment is structured and how many counts there are—that is, how many times he repeats the offense—he could be fined substantially in excess of \$250,000.

In addition, he faces a possible jail sentence, as well as a subsequent civil lawsuit from the industry involved.

But whatever problems there may be with this, there is no question but that the provisions of this bill would be substantially more effective than current law. These people make so much money that they simply laugh at a misdemeanor penalty.

Senator MATHIAS. Now, you referred to the case where the manufacturer, or the producer, of "The Muppet Movie" was forced to give back a refund for the pirated version.

Mr. BOURAS. Yes.

Senator MATHIAS. Is it the general custom of the trade to refund these films or tapes?

Mr. BOURAS. I can only speak for the film and video trade. I have with me Joel Schoenfeld of the Recording Industry Association; perhaps he could come up and address the question from their point of view.

No, it would not be. But as a practical matter, if a distributor or customer returns a cassette and it goes to a clerk or somebody to examine it and they simply look at the picture and say, "This is a terrible copy and we must refund the money." Then it goes to somebody else and they say, "Wait a minute, we refunded the money mistakenly on the assumption that this was a legitimate copy and it is really a counterfeit, we should not have done so." But in fact, they have already done it.

Senator MATHIAS. They have a fat chance of getting it back again.

Mr. BOURAS. Absolutely.

Senator MATHIAS. My real interest in this is whether there is any perceived legal obligation which arises, because that, of course, just doubles the trouble.

Mr. BOURAS. I think it is less a perceived legal obligation than it is a preservation of a company's goodwill when a customer acquires that.

Now, that particular cassette is issued by a company called Magnetic Video Corp., which is a subsidiary of 20th Century-Fox. If a customer comes in with an ostensibly or reasonably good-looking copy and complains rather bitterly about the quality of the tape, I think Magnetic Video Corp. as a matter of sound business practice rather than legal obligation would say, "OK, you bought a counterfeit. We will refund the money this time, but watch out the next time. Make sure you are buying legitimate goods."

So, I think it would be viewed in that light rather than the question as to whether or not there is a legal obligation.

Senator MATHIAS. The Justice Department has suggested certain amendments to this bill. What is your reaction to that suggestion?

Mr. BOURAS. Having heard Ms. Szybala this morning, I would agree with her comments and suggested amendments and changes in the bill. I think they are all to the good.

Senator MATHIAS. Fine.

Thank you very much, Mr. Bouras.

Mr. BOURAS. Thank you.

Senator MATHIAS. I will direct that the record on this matter remain open for 2 weeks for any additional statements or information that may come to the committee on the subject, if you wish to submit anything further in this time.

You have brought these exhibits. We can give you a receipt for them and return them to you. We might retain them until the full committee has acted and they then can be returned to you.

Mr. BOURAS. Fine.

Senator MATHIAS. If there is nothing further, the committee will stand adjourned.

[Whereupon, at 10:40 a.m. the subcommittee adjourned, to reconvene subject to the call of the Chair.]

[Prepared statement of James Bouras follows:]

PREPARED STATEMENT OF THE MOTION PICTURE ASSOCIATION
OF AMERICA, INC., AND THE RECORDING INDUSTRY
ASSOCIATION OF AMERICA, INC.

This statement is submitted by the Motion Picture Association of America, Inc. ("MPAA") and the Recording Industry Association of America, Inc. ("RIAA") in support of S. 691, a bill introduced by Senator Thurmond to strengthen the laws against record, tape and film piracy. MPAA represents eleven of the largest producer-distributors of motion pictures and television programs in the United States. RIAA is a trade association of 49 recording companies which create and market more than 90% of the records and tapes sold in the United States, and its division, RIAA/Video, consists of 25 companies engaged in the emerging business of videocassettes and video-disks.^{1/}

SUMMARY

-- The counterfeiting and piracy of motion pictures, records and tapes is a highly sophisticated business that has grown into a billion dollar a year industry. Lured by the huge profits which can be made in a short period, organized crime has become increasingly involved in large-scale counterfeiting and piracy schemes.

^{1/} The membership lists of MPAA, RIAA and RIAA/Video are appended as Attachment A.

-- Counterfeit films, records and tapes are virtually indistinguishable from the legitimate products, deceiving consumers into buying low-quality imitations as well as robbing the creators of the authentic works of royalties and revenues.

-- Existing criminal penalties do not deter counterfeiters and pirates. A first offense is only a misdemeanor, a very small risk in light of the enormous profits to be made.

-- The misdemeanor penalty is so mild a sanction that it discourages prosecutors from pursuing cases. And even when criminals are convicted, the misdemeanor penalty leads judges to impose light sentences.

-- S. 691 would make counterfeiting and piracy a felony for a first offense and would codify these crimes into Title 18 of the United States Code, which federal prosecutors regard as their "charter." This would help to deter criminals and catalyze prosecutions.

-- The penalties in S. 691 are graded according to the quantity of illegal films, records or tapes involved. Judges would have the discretion to impose sentences commensurate with the crime. The \$250,000

and 5-year penalties are maximum sentences for major offenders -- criminals who, as discussed below, often make millions from their crimes. Small-scale offenders would remain subject to only a misdemeanor charge.

INTRODUCTION

MPAA and RIAA welcome this opportunity to support S. 691 which, for the first time, would (1) codify the offense of film and record piracy as part of the federal criminal code; (2) classify the counterfeiting and piracy of motion pictures, records and tapes as felonies; and (3) increase the penalties for those serious crimes to a meaningful level. Specifically, S. 691 provides for graduated penalties based on the size of the counterfeiting or piracy operation. The bill would increase the penalty for large-scale counterfeiting and piracy -- involving the manufacture or distribution of 1,000 or more phonorecords or 65 or more copies of a motion picture -- to a fine of up to \$250,000, imprisonment for up to five years, or both.

The motion picture and recording industries believe that such legislation is essential to curb the explosive growth of counterfeiting and piracy, and that only through penalties such as those provided in S.

691 can the law deter the sophisticated and organized criminals who now control a more than billion dollar a year "industry" in the illegal reproduction and distribution of motion pictures, records and tapes.

I. FILM AND RECORD PIRACY AND COUNTERFEITING ARE MASSIVE PROBLEMS THAT DEMAND IMMEDIATE ATTENTION.

A. The Nature of the Problem

For a number of years, the legitimate motion picture and recording industries have been victimized by various forms of piracy and counterfeiting. "Piracy" is the term used to describe the unauthorized duplication of records and films on disks, tapes, cassettes, cartridges, videocassettes or videodisks. Audio piracy began its rapid growth in the late 1960s when pre-recorded tape cartridges were introduced into automobiles and homes; video piracy began in the 1970s with the introduction of videocassette recorders. The pirates quickly discovered that they could reap huge, untaxed profits by copying and selling hit records and tapes on a massive scale. The pirates are able to do this, of course, because they do not make any of the substantial investment in the development of new talent and distribution of the product which must be made by legitimate producers,

but rather concentrate on "hit" products for which a sure market has already been established.

The impact of piracy on legitimate industry is enormous. As one Justice Department official described it:

"The effects of piracy are debilitating; the pirate brings no creativity to his entry into this art form; indeed he feeds as a parasite on the creativity, the productivity, and the enterprise of others. He is anticompetitive for, to a substantial degree, he suppresses the creativity and initiative of both artists and producers as he feeds like a vulture upon their creations. . He is really a thief of major stature."^{2/}

"Counterfeiting" goes a substantial step beyond piracy. In a "conventional" pirated film or tape, the recorded performance is a copy of the original commercial version, but the package and graphics used to market the pirated product are usually unrelated in appearance to that of the original. In the case of a counterfeit film, record or tape, however, the package and graphics --

^{2/} Testimony of John L. Murphy, Chief, Government Regulations Section, Criminal Division, U.S. Department of Justice, Hearing Before the Subcommittee on Courts, Civil Liberties, and the Administration of the House Judiciary Committee on H.R. 13364, 93d Cong., 2d Sess. at 7 (1974).

including artist photos, color art, company labels, corporate logos and trademarks -- are also forgeries or close facsimiles of the authentic product.

It is thus very difficult to distinguish a counterfeit film, record or tape from the authentic product until the counterfeit is played. Indeed, the identification of counterfeits is so difficult that unscrupulous or uncaring distributors and retailers are often able to meld counterfeits into their stock of legitimate products.

Counterfeiting is thus an even more insidious crime than conventional piracy, for counterfeiters deceive the public as well as rob the legitimate artists and producers. Consumers are induced to believe that they are purchasing the product of the legitimate motion picture studio or recording company identified on the counterfeit label. Even honest retailers who would otherwise refuse to distribute pirated products are often defrauded into selling counterfeits. Counterfeiters thus steal not only the intangible property of the copyright owner, but also the business name and good will of the motion picture studio, recording company, artists and actors.

B. The Destructive Effects of Piracy

The victims of counterfeiters and pirates are numerous:

1. The Public. The public is victimized by counterfeiting and piracy in a number of ways. The consumer who purchases a counterfeit film or record at full price, believing it to be legitimate, is often cheated by the poor quality of the forgery. Because sophisticated equipment is needed to reproduce feature-length films faithfully, counterfeits are often marred by imperfections. In some versions, entire scenes have been deleted or cropped, making them unintelligible. Records and tapes reproduced on cheap or faulty equipment with inferior materials likewise often fail to provide the true fidelity of the legitimate products.

The consumer, taken in by the counterfeit packaging, does not know he has purchased a cheap, pirated version until he attempts to play it on his stereo or video machine. Some of these dissatisfied customers return the defective counterfeits to the retailers or legitimate manufacturers for credit. Counterfeiting thus often injures the legitimate manufacturer twice -- by the loss of the original sale and

by the replacement cost of products sold by the counterfeiter.^{3/}

The public is also injured by piracy and counterfeiting in another, longer-term respect: By their debilitating effect on the legitimate motion picture and recording industries, counterfeiting and piracy reduce the choice of films, records and tapes available and limit the opportunities for new artists. The public is thus injured as the legitimate motion picture studios and recording companies are forced to cut their losses by committing to fewer releases and concentrating on known artists and material.

2. Recording Artists, Actors and Actresses.

Most of these talented performers have only very brief careers because of changes in consumer tastes. Counterfeiters and pirates feed off these artists at the peak of their careers when their screen triumphs and recording hits are selling well. Recording artists lose millions in royalties and fees from the unchecked activities

^{3/} These replacement costs are often substantial. For example, in February 1980 one recording company discovered that during a short period of time several of its retailers had claimed credits on counterfeit tapes and records worth more than \$400,000. The Wall Street Journal, February 1, 1980 at 12.

of pirates and counterfeiters. On the other hand, counterfeiters and pirates leave the new or less popular artists to be subsidized by the legitimate entertainment companies. As sales of legitimate products are increasingly displaced by sales of counterfeit and piratical copies, however, the legitimate companies are increasingly less able to support these marginal artists.

3. Musicians. Both the lead recording stars and the multitude of background musicians are directly injured every time a counterfeit or piratical record or tape is sold. The members of the American Federation of Musicians receive supplemental income through a Special Payment Trust Fund based on the number of records sold. In 1980 the recording companies paid nearly \$19 million into that fund.

Each time a legitimate record or tape is sold, the recording industry also makes a payment to a Music Performance Trust Fund which is used by the musicians union to finance free concerts by their members at veterans' hospitals and in underprivileged areas. In 1980 the recording companies paid another \$19 million into this fund. The current volume of counterfeit and piratical records and tapes deprives these two musicians' funds of millions of dollars each year.

4. Directors, Writers, Composers and Publishers.

These creative individuals also have a vested interest in the success of their films, records and tapes. Indeed, in the recording industry, the earnings of composers and publishers are determined by the legitimate sales of records and tapes. Again, whenever a counterfeit or piratical film or record displaces the sale or rental of a legitimate product, these individuals are robbed of the fruits of their labor.

5. Motion Picture Studios and Recording Companies.

Piracy and counterfeiting have an adverse effect on the legitimate motion picture studios and recording companies which must take the risk and provide the investment in new films and recordings. A studio will often invest \$20 million in the production of a single motion picture, and another \$10 million in its distribution and advertising, before it returns one penny at the box office. Recording companies likewise invest \$250,000 and more to record and advertise a new album before a single copy is sold.

Only a small percentage of films and records make money; most never earn enough to cover basic product, talent and promotional costs. In 1979, 84% of the record albums released failed to recover their costs.

A motion picture studio or record company is thus dependent on its relatively few hits to cover its costs, develop new talent, subsidize losing projects, and hopefully make a profit. Counterfeiters and pirates, by contrast, copy only the hits, depriving motion picture and recording companies of the revenues they need to survive in a very risky business. Counterfeiters and pirates bear no risks, but substantially increase the risks borne by legitimate producers.

Piracy and counterfeiting are growing so rapidly that it is difficult to estimate with certainty the economic impact on legitimate business. Jules E. Yarnell, Special Counsel, Anti-Piracy for the RIAA, estimates that more than \$600 million a year is diverted from legitimate recipients in the recording industry. The impact on the motion picture industry may be as high. Overall, it is reasonable to estimate that pirates and counterfeiters siphon more than a billion dollars a year from the legitimate industries.^{4/}

^{4/} In light of these statistics, it is not an exaggeration to say that the financial straits of the American recording industry are at least partially the result of the explosive growth of counterfeiting and piracy. A number of major recording companies (ABC, Capricorn, Casablanca, GRT, Infinity, London, and Private Stock) have recently been merged or gone out of business because of their severe financial problems.

In addition, the export of American-made motion pictures and television programs contributes approximately \$900 million annually to the U.S. balance of payments. Many of the piratical films and videotapes manufactured in the United States are today being shipped overseas, threatening the continued financial viability of overseas markets for American motion pictures and television programs -- and also the positive impact these markets have on the U.S. balance of payments.^{5/}

6. Employees. This drain on the income of the legitimate motion picture and recording companies from counterfeiting and piracy has contributed to widespread lay-offs at every level. No one should think that piracy and counterfeiting harm only a few wealthy film and recording stars; those serious crimes directly

^{5/} See, e.g., United States v. David Barnes (U.S. District Court, Southern District of New York, 78 Cr. 80 WCC) (shipment of pirated films to South Africa); United States v. Ralph E. Smith (U.S. District Court, Southern District of Texas, Crim. No. H-79-82) (pirated videotapes manufactured in the United States shipped to Ghana, Egypt, Malta and the United Arab Emirates); United States v. Drebin, 557 F.2d 1316 (9th Cir. 1977), modified, 572 F.2d 215 (9th Cir. 1978), cert. denied, 436 U.S. 904 (1978) (shipment of pirated films to South Africa); United States v. Keith Austin and Mohy Quandour (U.S. District Court, Central District of California, reported in the Los Angeles Times, July 16, 1979, page 15) (pirated videotapes manufactured in the United States shipped to England, Saudi Arabia, Jordan and the United Arab Emirates).

injure thousands of both white-collar and blue-collar workers as well.

7. Retailers and Distributors. These small businesses are among those most damaged by counterfeiting and piracy. A legitimate retailer selling a videocassette, record or tape simply cannot compete with a dishonest retailer who traffics in pirated or counterfeited versions which cost the retailer less than a third of the genuine product.

8. The Government. Last, but by no means least, counterfeiting and piracy harm the government in two important respects. First, pirates and counterfeiters, who deal strictly in cash, do not pay any state or federal taxes on their illicit profits. Tax authorities have been forced to expend an increasing amount of their resources in an attempt to reach this illegal income.

Second, as organized crime expands its involvement in piracy and counterfeiting, there are obvious costs to government in attempting to untangle the web of illegal operations which support one another. As one of the participants in a recent conference on piracy and counterfeiting conducted by the World Intellectual Property Organization -- an arm of the United Nations -- stated:

"It should not be thought that record piracy is only carried on by petty traders and small-time criminals. As soon as the large profits possible from record piracy became apparent, big-time criminals began to appear on the scene. Nowadays, record pirates are often the same people who are active in other illegal enterprises, such as the trade in dangerous drugs."^{6/}

C. Piracy and Counterfeiting..
Are Growing at an Alarming
Rate

Piracy, and particularly counterfeiting, have plagued the recording industry for some time. And recent changes in the distribution methods of the motion picture industry have increased the opportunity for both piracy and counterfeiting immensely.

Until recently, motion pictures were only licensed, rather than sold, for viewing in a sequence of outlets -- theaters first, followed by pay television, network television, local television, and various non-theatrical outlets (e.g., hospitals, ships, and airplanes). In the last few years, however, motion picture studios have also begun to offer films for outright purchase in the form of pre-recorded videocassettes and videodisks

^{6/} Statement of John Hall, Director General of the International Federation of Producers of Phonograms and Videograms (March 25, 1981) at 3.

some time after their initial theatrical engagements, thus adding another step to the distribution pattern. This market is now growing rapidly as consumers purchase videotape and disk playback devices.

Unfortunately, the growth in the market for pre-recorded videotapes and disks has been accompanied by a tremendous growth in film piracy and counterfeiting. The illegal duplication and sales of videotapes and disks means, just as it has meant for the recording industry, that labels and other identifying marks are now being counterfeited so that illegally duplicated films, tapes and disks can be palmed off on the public as legitimate products.

Moreover, because films are distributed in a sequential pattern, motion picture studios also face a number of piracy problems besides the "pirating" and/or "counterfeiting" of legitimate videocassettes and videodisks. The most serious of these other problems is the illicit film-to-tape transfer of films still in initial theatrical release which have not yet legitimately been issued in the form of videocassettes and videodisks. Indeed, many pirates focus their efforts on just such films because, facing no legal competition,

they can charge whatever the market will bear. For example, pirated videocassettes of "Star Wars" are known to have been sold for as much as \$500 a copy. The pirating of films which have not yet legitimately been issued in the form of videocassettes and videodisks has a doubly deleterious impact upon the motion picture studios: It not only adversely affects current theatrical attendance but also dilutes the future potential for sales of legitimate cassettes and disks.

Despite the substantial efforts of MPAA, RIAA and federal law enforcement officials, film and record piracy -- and particularly counterfeiting -- are growing by leaps and bounds.^{7/} In December 1978, the FBI seized

^{7/} Both the motion picture and recording industries have established special anti-piracy offices. Each industry is spending more than a million dollars a year in that effort. But these industry efforts to curb the growth of record and film piracy have met with only limited success. This is because, on their own, copyright owners, such as the members of MPAA and RIAA, can only file civil infringement actions. Such civil actions have no effect on the sophisticated criminals who engage in pirate and counterfeiting activities. They simply set up new operations in another location and ignore the injunctions issued by the civil courts.

A case in point is George Tucker. Although enjoined from piracy in three different civil actions dating back to 1971, Tucker's name was prominent in multi-state raids by the FBI in December 1978. (In August 1979, Tucker pled guilty to an indictment stemming from the raids.)

[Footnote continued on following page]

over \$150 million worth of equipment and counterfeit recordings in simultaneous raids at 23 locations in five states. These raids and subsequent investigations resulted in the indictment and eventual conviction of Sam Goody, Inc., a major retail chain, for the purchase and sale of over \$1 million in counterfeit recordings. In another recent FBI raid in five states, 78 individuals were convicted for operating a massive piracy ring.

Multimillion-dollar piracy and counterfeiting operations are not at all uncommon. For example, one counterfeiting ring raided in 1977 was alone responsible for producing and disseminating more than 25 million counterfeit records a year, reaping an annual profit of more than \$30 million.

The Department of Justice has recognized the epidemic proportions of piracy and counterfeiting. In August 1980, the Attorney General published the results of a survey of FBI field offices throughout the nation which ranked the problem areas in all forms of white collar crime, including corruption, financial

[Footnote continued]

Efforts by the industry to develop some technological solution to the problem of piracy and counterfeiting have likewise not been successful. Although both industries have sought out and tested all devices designed to impede piracy and counterfeiting, no satisfactory technological solution has been found.

crimes, and various frauds. Of the 44 crime areas listed in the survey, the FBI ranked copyright violations -- that is, film and record piracy and counterfeiting -- as the third most troublesome.^{8/}

Although the legitimate industries and the Justice Department are concerned by both piracy and counterfeiting, counterfeiting presents the more difficult and faster growing problem. This burgeoning growth has been caused by a number of factors:

1. As a result of the increased efforts of industry and law enforcement officials against the manufacturers, distributors and retailers of pirated products, unscrupulous retailers who had previously dealt in pirated products have turned to counterfeits which are virtually impossible to detect. Moreover, even when counterfeits are detected, the retailer or distributor can often evade prosecution by claiming that he too was duped by the counterfeiter.

^{8/} Report of the Attorney General, National Priorities for the Investigation and Prosecution of White Collar Crime, Appendix C. Film and record piracy and counterfeiting were viewed to be as troublesome as all forms of housing frauds and labor corruption. (The most troublesome problems were corruption of state and local officials and bank embezzlement.)

2. Counterfeit films and records are more readily saleable through legitimate outlets and bring greater profits to the counterfeit manufacturers and distributors because they can be sold for higher prices than piratical products. The consumer, unaware that he is purchasing a counterfeit, will pay the full market value for what is really only an elaborate forgery.

3. Because of the extraordinary profitability of counterfeiting, organized crime is becoming more and more involved in manufacturing and distributing counterfeits. Indeed, organized crime is in a unique position to move into counterfeiting because the crime requires more technology and capital than piracy due to the sophistication necessary to forge faithful graphics, labels and packaging.

The August 1980 Report of the Attorney General concluded that "[t]here is evidence that organized crime is becoming increasingly involved as a major supplier of counterfeit products."^{9/} As a group of investigative reporters found,

^{9/} Report of the Attorney General, National Priorities for the Investigation and Prosecution of White Collar Crimes, August 1980, at 28.

"In the last three years, the Mafia has become one of the biggest producers of records and tapes in this country, turning out millions of copies of the hits on the Top 20 list.

"The mob's first big hit was the music from the soundtrack of the movie, 'Saturday Night Fever' featuring the Bee Gees. RSO records, the company that made the original legal recording, says it sold 23 million copies of the soundtrack from 'Saturday Night Fever.' Federal investigators say mob counterfeiters made and sold at least that many."^{10/}

These sophisticated criminals are well aware of the huge profits and small risks involved in piracy and counterfeiting. As an FBI agent stated in June 1980,

"We now know . . . that video piracy has moved out of its initial stage as the province of small-time operators and semiprofessionals to where the Mob is involved in a big way. It had to happen, I suppose. The potential profits are enormous, and the risks are fairly small."^{11/}

The rising tide of piracy and counterfeiting -- and particularly the fact that piracy and counterfeiting are increasingly the domain of organized crime -- is

^{10/} Transcript of NBC Nightly News, May 9, 1979, at 1-2 (emphasis added).

^{11/} TV Guide, June 21, 1980, at 3.

a subject of concern of law enforcement authorities throughout the world. In 1977, INTERPOL, the body through which the police forces of member nations coordinate the investigation of crimes with international consequences, unanimously adopted a resolution sponsored by the United States seeking the support of all of its member nations in the fight against counterfeiting and piracy.^{12/}

These efforts, however, have not been very effective, in large part because of the inadequate penalties in existing legislation for large-scale counterfeiting and piracy operations. This past March, the member nations of the World Intellectual Property Organization met to consider the alarming growth in recording and video counterfeiting and piracy. The WIPO convention reported that piracy and counterfeiting are virtually out of control. The WIPO members adopted another resolution, again supported by the United States, which called on all nations to combat counterfeiting and piracy "by imposing penalties of sufficient severity to act as a deterrent."^{13/}

^{12/} INTERPOL Resolution (September 8, 1977) (Attachment B).

^{13/} WIPO Resolution (March 27, 1981) (Attachment C).

As described below, S. 691 is a meaningful response to this call for action. For the first time, the penalties for film and record counterfeiting and piracy would be an appropriate deterrent to the organized criminals who are now responsible for that billion dollar a year underworld "industry."

II. THE EXISTING PENALTIES FOR PIRACY AND COUNTERFEITING ARE INADEQUATE.

The existing penalties for film and record piracy and counterfeiting have become inadequate. The lack of appropriate penalties -- particularly the fact that a first offense is only a misdemeanor -- deters law enforcement officials from prosecuting rather than criminals from piracy and counterfeiting. Prosecutors frequently decline to prosecute at all; and even when cases are prosecuted and the criminals convicted, judges often give the offenders suspended sentences because they consider the crime to be "a mere misdemeanor."

A. Criminal Copyright Infringement (Piracy)

At present, Title 18 of the United States Code -- the federal criminal code -- does not contain any provision prohibiting copyright infringement of a record or motion picture. Rather, the penalty for that crime is found in 17 U.S.C. § 506(a), a portion of the

Copyright Act. The act provides for a fine of up to \$25,000, one year in prison, or both for a first offense, and a fine of up to \$50,000, two years in prison, or both for repeat offenders. A pirate who has not previously been convicted is thus faced with only a misdemeanor penalty no matter how massive his operation may be. Many pirates believe that the misdemeanor penalty -- with the likely prospect of a declined prosecution or a suspended sentence -- is a small risk well worth taking in order to reap the enormous profits piracy can yield.

Unfortunately, the pirates are correct. United States attorneys, who see their "charter" in terms of enforcing Title 18, are often unaware of, or unfamiliar with, the criminal provisions tucked away in the Copyright Act or believe that the misdemeanor nature of the offense does not justify the time necessary for a prosecution. Judges likewise often hand out suspended sentences on the grounds that copyright infringement is not really a "crime."

Recent cases demonstrate that the inadequacy of the existing misdemeanor penalty undermines effective law enforcement. One individual who was caught with more than 200 completed pirate videocassettes and six

video machines capable of making many more each day was given a 30-day suspended sentence. Another who was arrested with more than 600 pirated tapes and 12 recorders was also given probation and a \$2,500 fine. In the latter case, the judge even returned the recorders to the pirate.

Given the evidence that organized crime is increasing its control over film and record piracy and reaping large profits from this illegal activity, the misdemeanor penalties in the Copyright Act have become inadequate. S. 691 would make it clear that piracy is a criminal offense punishable under the federal criminal code, and that large-scale piracy is a felony warranting stiffer sentences.

B. Counterfeiting

Since 1962 the interstate shipment of records or films with counterfeit labels has been covered by a separate provision of the criminal code. 18 U.S.C. § 2318. Recognizing that counterfeiting had become "so profitable that ordinary penalties failed to deter prospective offenders," in 1974 Congress increased the maximum fine to \$25,000 for a first offense and to \$50,000 for any subsequent offenses. H.R. Rep. No. 93-1389, 93d Cong., 2d Sess. 4 (1974).

When the Copyright Act was revised in 1976, however, the penalties for counterfeiting were reduced to their present level -- a \$10,000 fine, one year in prison, or both for a first offense, and a \$25,000 fine, two years in prison, or both for subsequent offenses. The result is a curious anomaly -- the penalty for piracy (which itself is too low) is greater than the penalty for counterfeiting, which is the far more profitable, deceitful and insidious crime.

The present misdemeanor penalties for both piracy and counterfeiting are clearly inadequate. As early as 1974 -- when the counterfeiting fine was more than twice what it is today -- the Chief of the Government Regulations Section of the Criminal Division of the Justice Department reported that the misdemeanor penalty was a

"[m]ild sanction [which] necessarily creates a psychological attitude on the part of prosecutors and courts that mitigates the seriousness of the offense and militates against the imposition of sentences compatible with it."^{14/}

^{14/} Testimony of John L. Murphy, Hearing Before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice of the House Judiciary Committee on H.R. 13364, 93d Cong., 2d Sess. at 5 (1974).

For these reasons, the Justice Department official supported a proposal which would have made the penalty for a first offense a felony.

In 1979, Mr. Ted Gunderson, then Special Agent in Charge of the FBI's Los Angeles Field Office -- the office perhaps most directly involved in combating counterfeiting and piracy -- acknowledged that United States attorneys are reluctant to prosecute piracy and counterfeiting cases because of the inadequate misdemeanor penalties available:

"Many U.S. attorneys don't want these cases in their courts. I know an instance where a guy made more than one million dollars in counterfeiting, and the judge gave him one-year probation and a \$1,000 fine. Nobody seems to care.

"What judge in this city is going to sentence an individual to severe punishment for a misdemeanor? In a raid on the East Coast of a record-album counterfeit operation, there were in excess of 23 search warrants issued, and out of that in excess of 100 indictments are projected. There are going to be 100 people convicted . . . and they probably will plead guilty to one or two counts of copyright infringement. For that they will get a fine, probation, suspended sentence. All the man hours and time that went

into that . . . for what? For these guys to go into business again."^{15/}

Despite these criticisms by law enforcement officials, the situation has not improved. In August 1980, the Attorney General conceded that, despite the growing problem in copyright violations, "sentences for convicted offenders have . . . been light."^{16/}

During the last session of Congress, both the House and Senate Judiciary Committees, as part of their overall revision of the federal criminal code, recommended the enactment of provisions that would have accomplished the same modifications of law now proposed in S. 691.^{17/} In recommending these changes, the Senate Committee explained that

"The 'pirating' of films and records has been growing at an alarming rate and there are indications that these crimes often involve highly organized production and distribution

^{15/} "Counterfeit! LA's Hot Status Crime for the 80's," Los Angeles Magazine (February 1979) (emphasis added).

^{16/} Report of the Attorney General, National Priorities for the Investigation and Prosecution of White Collar Crimes, August 1980, at 29.

^{17/} H.R. 6915, 96th Cong., 2d Sess. §§ 2537, 2544; S. 1722, 96th Cong., 2d Sess. §§ 1738, 1746.

rings. Such crimes are also extremely lucrative."^{18/}

The House Committee emphasized that "increased penalties are necessary" to combat the

"explosive growth in record and film piracy in recent years, depriving legitimate recording companies and motion picture studios of very large revenues. Record and film piracy has the effect of reducing the legitimate volume of sales and the payment of royalties to recording artists, actors and actresses, musicians, producers, directors, writers, composers, publishers, and other participants in the creative process. Reduced profits also deprive Federal, State, and local governments of tax revenue."^{19/}

Although the omnibus criminal code revision bill was eventually tabled, the increased penalty provisions for piracy and counterfeiting -- which were supported by the Justice Department -- "were not controversial in [the House] subcommittee, nor was any question about them raised during the 18 markups of the criminal code bill that were held by the full [House] Judiciary Committee."^{20/}

^{18/} S. Rep. 96-553, 96th Cong., 2d Sess. at 727.

^{19/} Report of the Committee on the Judiciary on H.R. 6915, 96th Cong., 2d Sess. at 324.

^{20/} 126 Cong. Rec. (daily ed.) E5191 (Dec. 3, 1980).

III. S. 691 WOULD HELP STEM THE TIDE OF PIRACY AND COUNTERFEITING BY PROVIDING APPROPRIATE FELONY SENTENCES.

MPAA and RIAA vigorously support S. 691 as a meaningful response to the problems described above. S. 691 would help stem the tide of piracy and counterfeiting by (1) bringing criminal copyright infringement -- piracy -- into Title 18, the criminal code, and (2) providing that large-scale counterfeiting and piracy would be felonies subject to fines and prison terms which would be a deterrent to the organized criminals who now control such operations.^{21/}

Like the omnibus criminal code bill, S. 691 provides that the penalty which could be imposed by a court for the large-scale piracy or counterfeiting of records, tapes or films would be a fine of up to \$250,000, imprisonment for up to five years, or both.^{22/}

^{21/} A companion bill with essentially the same provisions, H.R. 3530, has been introduced in the House by Representative Frank and a bipartisan group of co-sponsors.

^{22/} The Senate version of the omnibus criminal code bill (S. 1722) made these penalties applicable when the conduct involved the infringement of 100 or more copies of sound recordings or 10 or more copies of motion pictures or audiovisual works. S. 691 adopts the more lenient provisions of the House version of the omnibus bill (H.R. 6915), which made these penalties applicable

[Footnote continued on following page]

We have reviewed other federal criminal statutes concerning counterfeiting, fraud, and theft -- all of which are involved in piracy and counterfeiting operations. That list demonstrates that a five-year sentence for such offenses is common:

<u>18 U.S.C.</u>	<u>Offense</u>	<u>Maximum Sentence</u>
§ 478	Counterfeiting Foreign Securities	5 years
§ 494	Counterfeiting Contractor's Bonds, Bids, or Records	10 years
§ 495	Counterfeiting Contracts or Deeds	10 years
§ 497	Counterfeiting Patents	10 years
§ 501	Counterfeiting Postage Stamps	5 years
§ 656	Bank Embezzlement of More than \$100	5 years
§ 659	Embezzlement or Theft of More than \$100 from a Common Carrier	10 years
§ 661	Theft of More than \$100 of Personal Property Within the Territorial Jurisdiction of the U.S.	5 years
§ 664	Theft or Embezzlement from an Employee Benefit Plan	5 years
§§ 2312-13	Transportation or Sale of a Stolen Vehicle	5 years

[Footnote continued]

when the conduct involved the infringement of 1000 sound recordings or 65 motion pictures or audiovisual works. Both the House and Senate versions imposed the maximum penalties for trafficking in counterfeit labels, regardless of the quantity involved.

§§ 2314-15	Transportation or Sale of Stolen Goods Valued at More than \$5,000	10 years
§§ 2316-17	Transportation or Sale of Stolen Cattle Valued at More than \$5,000	5 years

As this list demonstrates, the maximum sentence for the sale or transportation of stolen or counterfeit goods is typically five to ten years. The counterfeiting of a patent -- an offense with the same implications as the counterfeiting of copyrighted work -- warrants up to ten years in prison; the transportation of stolen goods valued at more than \$5,000 likewise justifies a ten-year sentence. In keeping with these provisions, S. 691 reserves the maximum sentence of five years for large-scale piracy and counterfeiting operations involving trafficking in more than 1,000 records or 65 audiovisual works -- amounts which are calculated to approximate the \$5,000 amount which triggers the stiffest sentences under these other statutes.^{23/}

^{23/} The quantity approach, rather than the "value" approach of other theft provisions, is appropriate in the case of criminal copyright infringement and counterfeiting because of the difficulties inherent in assigning a value to illegal reproductions. For example, if the "property" stolen is defined as the copyright which has been infringed, then the value will almost certainly exceed \$100,000, since any record or film worth pirating would have a copyright value of at least that much. On the other hand, if the "property" is defined as the illegal reproduction itself, the question arises as to what value (retail value, wholesale value, or thieves' market value) would be the most appropriate measure for each unauthorized copy.

S. 691 is thus narrowly focused on the problem of large-scale, organized piracy and counterfeiting. The less serious offender -- who produces less than 100 records or 7 copies of a film -- would remain subject to only a misdemeanor charge.^{24/}

S. 691 would be a clear message to the organized criminals now involved in piracy and counterfeiting that Congress will not tolerate their illicit activities

^{24/} S. 691 also improves the existing counterfeiting statute by eliminating certain possible loopholes. At present, Section 2318 requires that the counterfeit labels be "affixed" to recordings or films when shipped in interstate commerce. To avoid federal jurisdiction, counterfeiters have been known to ship across state lines only the unattached counterfeit labels and jackets, leaving the disks, 8-track cartridges or other containers to be shipped separately. The packaged product is then assembled in the state where the dissemination or distribution will take place. Such tactics may preclude proof of a violation of Section 2318. The language of S. 691 would eliminate this loophole by providing that the penalty applies to anyone who knowingly traffics in a counterfeit label "affixed or designed to be affixed" to a record, motion picture or audiovisual work.

S. 691 would also cover labels with minor modifications and "simulated" labels which are designed to defraud the public by appearing to be genuine but are not technically "counterfeits" because no genuine label in fact exists. For example, cases have arisen where a counterfeiter has reproduced, packaged and distributed videotapes of a film that has never been released in that form to the public. S. 691 defines "counterfeit" labels so as to encompass this new and rapidly growing fraud.

which deprive legitimate artists and producers of needed revenues and defraud customers on a massive scale. Those sophisticated and organized criminals would be forced to recognize that their offenses will be punished under a statute which appreciates that such crimes constitute a grave threat to creative activity and a massive fraud on the public. Only in this way can Congress act to stem the growing menace of piracy and counterfeiting.

For these reasons, MPAA and RIAA strongly support S. 691 and urge its prompt enactment.

ATTACHMENT A

Members of the
MOTION PICTURE ASSOCIATION OF AMERICA, INC.

Avco Embassy Pictures Corp.
Columbia Pictures Industries, Inc.
Walt Disney Productions
Filmways Pictures, Inc.
Metro-Goldwyn-Mayer Film Co.
Orion Pictures Company
Paramount Pictures Corporation
Twentieth Century-Fox Film Corporation
United Artists Corporation
Universal Pictures, a division of Universal City Studios, Inc.
Warner Bros. Inc.

Associate Members

Eastman Kodak Co.
Technicolor, Inc.

Members of the
RECORDING INDUSTRY ASSOCIATION OF AMERICA, INC.

A & M Records, Inc.
 Hollywood, California

Alfa Records
 Los Angeles, California

Alshire International, Inc.
 Burbank, California

Ariola Records
 New York, New York

Arista Records
 New York, New York

Art Attack Records, Inc.
 Tucson, Arizona

Atlantic Recording Corp.
 New York, New York

Bee Gee Records
 Los Angeles, California

The Boardwalk Entertainment Co.
 Beverly Hills, California

Bush Country Records
 Tampa, Florida

Capitol Records, Inc.
 Hollywood, California

CBS Records
 New York, New York

Charlie's Records, Inc.
 Brooklyn, New York

Chrysalis Records
 Los Angeles, California

The David Geffen Co.
 Los Angeles, California

Elektra/Asylum/Nonesuch Records
 Los Angeles, California

EMI-America/United Artists Records
 Los Angeles, California

Forte Record Company
 Kansas City, Missouri

GNP-Crescendo Records
 Los Angeles, California

Goldband Recording Corp.
 Lake Charles, Louisiana

Handshake Records, Inc.
 New York, New York

Jamie Records
 Philadelphia, Pennsylvania

Jerico Records
 Orlando, Florida

Kelit-Aurora Record Corp.
 New York, New York

Kristin Records
 New York, New York

Lifesong Records Inc.
 New York, New York

MCA Records
 Universal City, California

Mirage Records, Inc.
 Stamford, Connecticut

Monitor Records
 New York, New York

The Moss Music Group, Inc.
 New York, New York

Motown Records
 Los Angeles, California

Nashboro Record Company
 Nashville, Tennessee

Ovation Records
Glenview, Illinois

Peters International, Inc.
New York, New York

Philadelphia International Records
Philadelphia, Pennsylvania

Platinum Records (Music Factory)
Miami, Florida

Polygram Classics
New York, New York

Polygram Records, Inc.
New York, New York

RCA Records
New York, New York

RMS Triad Productions
Madison Heights, Michigan

RSO Records
Los Angeles, California

Tabu Records
Los Angeles, California

20th Century Fox Record Corp.
Los Angeles, California

Thomas J. Valentino, Inc.
New York, New York

Vanguard Recording Society, Inc.
New York, New York

Vantage Recording Co.
Pottstown, Pennsylvania

V.R. Records & Tapes
Southfield, Michigan

Warner Bros. Records
Burbank, California

Word Records
Waco, Texas

Members of
RIAA/VIDEO

ABC Video Enterprises, Inc.
New York, New York

American Radio & Television
Productions, Inc.
New York, New York

CBS Video Enterprises, Inc.
New York, New York

Digital Video Systems, Inc.
New York, New York

John Goodhue Productions
Westport, Connecticut

Home Theater/VCI
Hollywood, California

Instant Replay Video Cassette
Magazine
Coconut Grove, Florida

Karl Video Corporation
Costa Mesa, California

Magnetic Video Corporation
Farmington Hills, Michigan

Mastervision, Inc.
New York, New York

MCA Videocassette, Inc.
Universal City, California

North American Phillips Corp.
New York, New York

The Nostalgia Merchant, Inc.
Hollywood, California

Panacea Productions, Utopia Video
New York, New York

Pioneer Artists, Inc.
Moonachie, New Jersey

RCA Records
New York, New York

RCA SelectaVision VideoDiscs
New York, New York

The Video Society
Los Angeles, California

Time Life Video
New York, New York

Video Communications, Inc. (VCI)
Tulsa, Oklahoma

Video Corp. of America
New York, New York

VHD Programs, Inc.
Los Angeles, California

Walt Disney Telecommunications
Burbank, California

Warner Communications Records Group
Burbank, California

Warner Home Video
New York, New York

ATTACHMENT B

INTERPOL 46th GENERAL ASSEMBLY
Held in Stockholm

Resolution Unanimously Adopted on
Thursday, September 8, 1977

The full text of the INTERPOL resolution follows:

"Conscious of the fact that international traffic in stolen and unlawfully duplicated motion pictures and sound recordings has harmful effects on the economies of the countries affected,

"Aware of the loss of revenue legitimately accruing to the Governments of such countries and to persons engaged in the lawful production and dissemination of sound recordings and motion pictures, thus aggravating the problems of unemployment in the industries concerned,

"Noting that, as presently implemented, international agreements have not been fully effective in combatting this illicit traffic,

"Convinced that national enforcement of laws and international police cooperation are absolutely essential for the suppression of the traffic in pirated motion pictures and sound recordings,

"Believing that such police cooperation needs to be supplemented by judicial and diplomatic cooperation which should be expanded and facilitated,

"The ICPO-INTERPOL General Assembly, meeting in Stockholm from 1st to 8th September 1977 at its 46th session,

"Asks the National Central Bureaus to:

"(1) Cooperate as fully as possible with other NCBS who request assistance in investigating cases of traffic in stolen or unlawfully duplicated motion pictures and sound recordings,

"(2) Ensure that local police forces in their countries are aware of this problem and of the channels of communication to be used whenever such international traffic is suspected,

"(3) Heighten their Governments' awareness of the severe consequences resulting from the traffic in pirated motion pictures and sound recordings,

"(4) Draw their Governments' attention to:

"(A) The advisability of becoming parties to existing multilateral agreements

on copyright, where they have not already done so,

- "(B) The need to implement effectively the provisions of any such agreements which they are already party to, or in concurrence with,
- "(C) The desirability of adopting procedures and/or enacting legislation, where these do not already exist, to combat traffic in stolen and unlawfully duplicated motion pictures and sound recordings."

#

WIPO



PF/1/21
ORIGINAL: English
DATE: March 27, 1981

WORLD INTELLECTUAL PROPERTY ORGANIZATION
GENEVA

WIPO WORLDWIDE FORUM
ON THE PIRACY
OF SOUND AND AUDIOVISUAL RECORDINGS

Geneva, March 25 to 27, 1981

RESOLUTION
adopted by the participants
on the suggestion of delegations and experts of
Czechoslovakia, Guinea, Hungary, India, Mexico, Sweden and the United Kingdom.

The participants in the WIPO Worldwide Forum on the Piracy of Sound and Audiovisual Recordings held at Geneva from March 25 to 27, 1981, express their great appreciation of the initiative taken by WIPO in organizing this Forum to discuss the nature, extent and the effects of commercial piracy and to exchange information and opinions on the matter.

The participants affirm the unanimous view that:

- (1) the enormous growth of commercial piracy of sound and audiovisual recordings and of films all over the world is posing dangers to national creativity, to cultural development and to the industry, seriously affecting the economic interests of authors, performers, producers of phonograms, videograms and films, and broadcasting organizations;
- (2) commercial piracy stifles efforts undertaken to safeguard and promote national cultures;
- (3) commercial piracy constitutes a grave prejudice to the economy and to employment in the countries affected by it;
- (4) possible inadequacies of, or inadequate use of, existing legislations do not effectively prevent acts of commercial piracy, which are facilitated by continual technological progress of the means of reproduction and communication.

The participants express the wish that, both in developed and developing countries, steps may be taken as necessary, as a matter of urgency, to combat and eliminate commercial piracy of sound and audiovisual recordings and films and, in particular:

- to bring into force appropriate legislation, where such legislation does not already exist, which guarantees the specific rights of those affected by such piracy to prevent the unauthorized fixation and/or reproduction of the products of their creative efforts; and
- to ensure the application of such legislation, civil and criminal, by the establishment of speedy and efficient procedures which would put an immediate stop to the production, distribution, import and export of pirate product and by imposing penalties of sufficient severity to act as a deterrent;
- an increasing number of countries should adhere to the appropriate intellectual property Conventions.

The participants suggest that WIPO should continue to intensify its activities in the fight against commercial piracy of sound and audiovisual recordings and films by adopting the following measures among others:

- to alert Governments and public opinion to the need to fight such piracy;
- to give emphasis in all its technical cooperation activities to education and legal advice in this field;
- to make available to States and owners of rights information concerning all legislation and jurisprudence on the subject of intellectual property which may be made use of in the fight against such piracy;
- to coordinate research and take initiatives for the purpose of improving such legislations as well as their more effective application in collaboration with the intergovernmental and international non-governmental organizations concerned;
- to give priority to undertaking an interdisciplinary study of all relevant international Conventions on intellectual property administered by WIPO.

Geneva, March 27, 1981

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