



ADDITIONAL SUBMISSION BY THE DIRECTORS GUILD OF AMERICA

For the

House Committee on Foreign Affairs

Hearing on “Sinking the Copyright Pirates: Global Protection of Intellectual Property”

April 6, 2009
Los Angeles, CA

The Directors Guild of America would like to thank Chairman Berman, Ranking Member Ileana Ros Lehtinen and members of the House Foreign Affairs Committee for hosting a hearing to discuss the issues of global piracy and the protection of intellectual property.

Founded in 1936 by the most prominent directors of the period, the Directors Guild today represents 14,000 directors and members of the directorial team who work in feature film, television, commercials, documentaries, news and new media. The DGA’s goal is to ensure that our craft continues unimpaired for the benefit of people worldwide, and that our members continue to be able to earn their living giving their talent to a craft they love. The Guild does this by protecting the economic and creative rights of directors and the directorial team.

Global piracy is a huge threat to the economic and creative health of the entertainment community. This is not an exaggeration. Nor is it an inevitable outcome. It is an acknowledgement of a reality we face which must be addressed because our ability to create and finance films is at risk. For that reason, all of us who work in film and television have a tremendous stake in this problem. That includes those whose names are well known and it

includes the hundreds of thousands more whose names are not known but who depend on the business of entertainment to support their families.

With the advent of the Internet—and all the promise it brings—there has arrived at our doorstep the threat of online piracy. This is very different from physical piracy and is in many ways a greater threat that has not been fully recognized. The theft of an entire movie, difficult to achieve before, is now easily accomplished by many. Because those who want to pirate films or television shows can instantaneously and illegally upload them and then allow others to just as illegally stream or download that digital copy, suddenly the “fruits of our labor” takes on a whole new meaning.

Directors stand at the very intersection of technology and creativity. From that perch, we embrace what the digital world enables us to do and we acknowledge that it is an extraordinary tool for exchange and commerce around the world. But we also believe that within that free exchange of ideas and information must be embedded an acceptance of the importance of protecting intellectual property—and the tools that are needed to make that a reality.

Examples of Digital Piracy’s Impact on Individual Films

In 2007, Steven Soderbergh’s “Oceans 13” was released in theaters. The film’s domestic box office was \$117,154,724 and the film’s worldwide grosses were \$293,836,46. In just the first 3 months, “Oceans 13” had been illegally downloaded through peer-to-peer networks nearly 6 million times. If we imagine that just 25% of those who downloaded the film illegally would have otherwise seen the film in theaters or bought or rented the DVD, we can estimate that online piracy cost us \$22.5 million – a figure that represents nearly 8% of worldwide box office.

The impact of peer-to-peer downloading on Soderbergh’s “The Good German” is far more destructive. This film, made in 2006, had a domestic box office of \$1,308,696 and worldwide gross of \$5,895,038. In the first three months after its release, there were 742,930 downloads. Again if we assume that one quarter of those would have otherwise seen the film legally, the piracy cost us \$2,785,980. And for this smaller film, that figure represents 47% of the

worldwide box office and more than DOUBLE the domestic box office. The point this clearly underscores is that piracy has the potential to completely put non-blockbuster, smaller films out of business.

Last Tuesday, a pirated copy of Gavin Hood's about to be released film "X-Men Origins: Wolverine" was put online and downloaded hundreds of thousands of times in its first 24 hours on the Internet. The damage to this film is yet to be calculated.

User-Generated Content Sites

Another way piracy is being made more accessible for consumers is the growth in "User-Generated Content" (UGC) sites around the world that allow films to be uploaded illegally and then streamed, rather than downloaded, illegally by users. China is particularly noteworthy for its rampant piracy through these UGC sites, which, frankly, we understand is permitted by the Chinese government which issues licenses for the operation of these sites.

It is worth noting that a few years ago, infringing content was rampant on UGC sites like YouTube and its rivals. However, a little over a year ago, the major western UGC sites – including YouTube, MySpace, Daily Motion, and Veoh - began to institute "content recognition" filtering. As a result, the amount of infringing content on these sites has been dramatically reduced.

But the full story is not told in just dollars and cents. Film is the lens through which we tell the story of our culture to ourselves and to the rest of the world. The work we do is a rich part of the fabric of America and has been for almost a hundred years. More importantly, it is not created in a vacuum nor can it easily exist if it is not supported.

There is no question that the Internet has eliminated geographic boundaries and allowed digital theft to take place at lightning speed on any continent. That is why it calls for a fight that is global in nature and international in its scope and understanding.

In the DGA's discussions with fellow filmmakers and the organizations that represent them in other countries, we have seen how the similarities between our efforts, the efforts of the opposition, and the need for reasoned solutions are far greater than any cultural differences.

French Proposed Solution

The French National Assembly last week passed a major legislative initiative called the "Creation and Internet" law. This is an effort to combat online piracy by giving warnings to those who use the Internet to steal intellectual property for their first two infractions and finally denying them Internet access for a period of one to three months after the third infraction. In this model, the ISPs become partners in creating a deterrent against persistent infringers. We think there is great promise in this approach. And French directors – who see the risk to their filmmaking in the same way we do - have been in the forefront of this debate in France. For them and the rest of the artistic community who are leading this fight, their guiding principle is that "culture is not free."

Other anti-piracy initiatives are taking place in the United Kingdom, and across Europe, before the European Parliament, and in countries like New Zealand. Unfortunately there has been strong opposition to government efforts by those who seek to devalue intellectual property.

We understand that it will be virtually impossible to eradicate piracy entirely. In fact, many of the changing business models in the entertainment industry are an attempt to work around piracy. But we must develop a method for preventing piracy from overwhelming our creative endeavors entirely, or else we risk doing permanent and irreversible damage to our industry.

If we may, we'd like to suggest four possible courses of action for the Committee and Congress:

First, we cannot fight this battle alone. Some of the worst offenders are located in other countries. We must engage our international partners in this effort, and we'd like to suggest to this Committee that it encourage the Obama Administration to ensure that issues of intellectual property protection be prioritized in all bilateral and multilateral economic and trade discussions.

For example, the US-EU Summit, the G8 process and APEC have all prioritized IP enforcement and better global coordination. These efforts must continue.

We would also urge Congress and the Administration to support the ongoing discussions with several major trading partners regarding the Anti Counterfeiting Trade Agreement (ACTA). ACTA has the potential to make significant improvements to global IP enforcement and contains important provisions to address Internet piracy.

Specifically, in the case of China, if the government is either directly or indirectly enabling sites to post and even profit from the uploading and downloading of illegal content, this Committee and the Administration should actively urge the Chinese to employ mechanisms that have been proven to cut down on piracy in the United States, Europe and even in China during the Olympics.

Second, there should be full funding for the implementation of the Pro IP Act which was signed into law last fall. This legislation contains law enforcement mechanisms that can be added to our government's arsenal.

Third, we urge you to examine efforts being undertaken in other countries to fight piracy of creative content and how those efforts might prove useful as the Congress frames its own solution.

Fourth, we urge you to help our industry work with the Obama Administration and Congress to ensure that legislative and regulatory measures that promote and open and innovative Internet also prioritize the protection of legal content.

Finally, we would like to ask that as the Committee considers various means at its disposal to address piracy and content protection on an international level that directors and other members of the creative community be part of those discussions. Directors are problem-solvers by nature, and the Directors Guild of America is an international organization with members who live and work all over the world, and we have strong relationships with our sister directors organizations

and rights societies in many other countries. We know that this issue calls for thoughtful policy and reasoned dialogue –at an accelerated pace--and we offer you our help in your efforts.

Thank you.