

INTERNATIONAL PIRACY INVOLVING INTELLECTUAL PROPERTY

HEARING
BEFORE THE
SUBCOMMITTEE ON TRADE, PRODUCTIVITY, AND
ECONOMIC GROWTH
OF THE
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CONTENTS

WITNESSES AND STATEMENTS

MONDAY, MARCH 31, 1986

	Page
Wilson, Hon. Pete, member of the Subcommittee on Trade, Productivity, and Economic Growth, presiding: Opening statement.....	1
Good, Alexander H., Director General, U.S. and Foreign Commercial Service, Department of Commerce.....	2
Valenti, Jack, president, Motion Picture Association of America, Inc.....	25
Morgan, Charles, senior vice president, Universal City Studios, Inc.....	44
Gortikov, Stanley M., president, Recording Industry Association of America..	54
Ertegun, Nesuhi, president, International Federation of Phonogram and Videogram Producers.....	65
Wells, Frank G., president, Walt Disney Co., accompanied by Peter Nolan, vice president, intellectual copyright.....	76

SUBMISSIONS FOR THE RECORD

MONDAY, MARCH 31, 1986

Ertegun, Nesuhi: Prepared statement.....	69
Good, Alexander H.: Prepared statement.....	7
Gortikov, Stanley M.: Prepared statement.....	58
Valenti, Jack: Prepared statement.....	30
Wells, Frank G.: Prepared statement.....	83

(III)

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MONDAY, MARCH 31, 1986

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON TRADE, PRODUCTIVITY,
AND ECONOMIC GROWTH OF THE
JOINT ECONOMIC COMMITTEE,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in the Brentwood Theater, Veterans' Administration Complex, Los Angeles, CA, Hon. Pete Wilson (member of the subcommittee) presiding.
Present: Senator Wilson.

Also present: John Starrels, professional staff member.

OPENING STATEMENT OF SENATOR WILSON, PRESIDING

Senator WILSON. Good morning, ladies and gentlemen. Welcome to this meeting of the Subcommittee on Trade, Productivity, and Economic Growth of the Joint Economic Committee.

The focus of our hearing this morning is piracy. We are going to stop piracy of intellectual property rights. The copyright industries in this Nation provide jobs, they provide entertainment, they contribute significantly to what would be a favorable balance of trade, or at least a far more favorable one were it not for the fact that this piracy goes on.

The word is not chosen lightly. It is an accurate description of the theft of computer software, of moving picture video cassettes, of musical recordings, of patents, of chemical formulas, any number of things that comprise what we term the copyright industries.

Now what has happened is that the pirates of old had to carry off their heavy booty, heavy enough to require several strong men to carry it. Today's pirate can make what is presumably a completely legitimate purchase of a toy, a piece of plastic, a book. He then takes the item and is able to reproduce it without authorization, without license, and to perhaps sell even more pirated copies than the original is being sold legitimately in the United States.

This cannot continue, because by both governmental and private estimates, the volume of this piracy, the magnitude of the injury that is being done, may come to as much as \$20 billion annually.

Obviously the pirate gives no compensation whatever to the investor. The average motion picture production involves millions of dollars in investment, enormous costs, which of course are in no way recompensed by those who simply pirate these motion pictures and who sell them for great profits, obviously at a far lesser cost

because the pirate is in no way required to absorb the same cost, he can make the same profit with no investment.

Ironically, the nations who are guilty of this, governments which knowingly condone by at least inadequate enforcement of laws, if they have even enacted copyright protections, are in many cases those that are supposed to be the special friends of the United States. They profess that friendship and clearly they receive enormous benefit from us, some under a system called the General System of Preferences.

They are able to export to the United States any number of items duty free, and they enjoy that competitive advantage at the very time that they are ripping off Americans who are investing time, effort, and money as well as talent in producing intellectual property of enormous value.

The obvious answer to all of this is that there's going to have to be much stronger governmental action by the U.S. Government. We are going to have to take section 301 of the Trade Act, and if it requires refinement, if it needs greater teeth, if the administration requires even stronger direction, then we are going to see to it that that occurs.

We will have to achieve the enactment of copyright protection and the enforcement of the law to end piracy, which is of a volume today that would have made the pirates of the Caribbean green with envy a couple of centuries ago.

We have a number of witnesses this morning. They will report to us the nature of the peril to their own industries. If the piracy does not end, some of them I think are faced with ceasing to do business.

We will hear from a representative of the Government, from the Department of Commerce, who has a primary responsibility in this area.

Having said that, I am particularly eager to hear from our first witness, Alexander H. Good, the Director General of the U.S. and Foreign Commercial Service of the U.S. Department of Commerce.

Mr. Good, thank you for being here. Welcome.

STATEMENT OF ALEXANDER H. GOOD, DIRECTOR GENERAL, U.S. AND FOREIGN COMMERCIAL SERVICE, DEPARTMENT OF COMMERCE

Mr. Good. Thank you very much, Senator.

I am delighted to be here, although not delighted to deal with an intractable problem, which we have been attacking aggressively but needs more aggressive attention yet, and I want to thank you for the leadership that you have shown on this issue.

I think it's going to take a great deal of cooperation between not only the executive and legislative branches of Government, but also with the private sector in order to solve this problem. I want to issue a special note of appreciation for the fine and close working relationship and support that we have had from many members of the private sector, a number of whom are here today.

Senator, I have a prepared statement that is on the table here, but in the interest of brevity, I thought I would submit it for the

record, if I might, and then go ahead and talk about some of the key issues.

Senator WILSON. Fine.

Mr. GOOD. Thank you, Senator, when we look at the trade deficit that this country faced last year of \$148.5 billion and we look at the tremendous potential for increased sales if we can solve some of the problems attendant to lack of protection of intellectual property rights, we absolutely see the need to take more aggressive action.

You mentioned a figure that the Government uses and the private sector has generated of around \$20 billion in lost sales annually, and we think that's a pretty good figure to work from. But we're not so sure, it may even be higher than that if you factor in the lost opportunity cost of companies that are not entering markets because of lack of patent coverage or copyright protection or trademark protection. So whatever the number is, it is large indeed.

In terms of employment in the United States, once again, our estimates are that 750,000 jobs are lost for failure to have countries respect and protect patents, copyrights, and trademarks.

So, Senator, this is something that has grown in our attention in the U.S. Government, like I say, thanks in large part to the close communication and cooperation we have had from the private sector. We want to be even more determined and aggressive at solving some of the problems.

This is an issue that has had direct Presidential attention. It was specifically noted in the President's major trade policy statement on September 23 of last year where he called for vigorous action through use of unfair trade laws and other bilateral mechanisms to get at the protection of intellectual property rights. The President reaffirmed that commitment in his State of the Union Address and we are now actively involved in working on a country-to-country and a multilateral basis to address the problem.

Let me just very specifically talk about a couple of things that we have done.

In October 1984, after a meeting with industry, Secretary Baldrige charged the International Trade Administration and the Patent and Trademark Office to come together and put together a systematic approach for dealing with the problem.

We did that. At the time we felt that we did not have the requisite amount of systematic data that would allow us to make the kind of decisions which we needed to make. So we set about to create a bank of information.

We initially decided on 10 countries that we thought represented some of the biggest problems for the industry. Those countries, the five ASEAN countries minus Brunei—that would be the Philippines, Indonesia, Malaysia, Singapore, and Thailand—plus Korea and Taiwan in the Far East, and India in Asia, and then Brazil and Mexico in the Western Hemisphere. We focused on those countries across the board, on patents, on trademarks, on copyrights, and then a catch-all category of unfair competition, which included trade areas and mandatory licensing provisions which we thought were unfair, in an effort to see where we were across the board on each one of those issues, to see what the country was doing, what

the laws of the country were, the regulations, and then a key area—and one I'll mention a little later—the area of enforcement, because as countries start passing the right type of laws, then enforcement becomes a key.

We published papers on each one of those countries, circulated those to the legislative branch, to industry, to get comments on where our information was accurate and where it was inaccurate. And after accumulating all the information, we put together what we thought were the primary problems with each one of those countries and then came up with an action plan for addressing it. That action plan has by and large been in bilateral consultations.

We had aggressive consultations with the countries that I've mentioned, among others, and there are others. We have been very aggressive with Japan and Canada, as well as some of the developing countries.

And we investigated the opportunities for additional aggressive action. I know you mentioned the section 301 actions, and we're going to change the trade laws to do what's necessary. We are very supportive of that process and we are delighted with the references to intellectual property protection, in the Caribbean Basin Economic Recovery Act, and then more specifically in the Trade and Tariff Act of 1984, which specifically solved some problems that we had seen, with having a set of laws that allowed us to take tough affirmative action.

We've made a lot of progress. The administration has also reviewed from top to bottom our patent, trademark, and copyright laws, and we will be submitting, and hopefully in the next few weeks, a package, a legislative package to the Hill to address what we see are the problems. We are convinced that by working together with the legislative branch we will be able to come up with changes in our laws that allow us to be more effective.

As you know, Senator, no administration has ever self-initiated a 301 action until just last year when this administration initiated a number of its own unfair trade actions, section 301 actions.

One of those actions specifically dealt with the failure to protect intellectual property in Korea, and since the filing of that action, we've had a series of intense negotiations with the Korean Government, and while nothing is concluded at this point, I think there is a strong awareness within Korea that dramatic action has to be taken to cure some of the problems.

You mentioned the benefits that we provide to developing countries through the Generalized System of Preferences, the GSP. I might note here for the record that our records show that Korea gets the largest benefit from GSP, and certainly that is something that we are looking at, examining very closely, is to see what appropriate levels of GSP benefits Korea should get unless it takes fairly dramatic action.

We talked a lot about the protection of intellectual property rights from a position of the economic problems that it causes, and they are indeed severe. But I think I would be remiss if I did not at least mention that this is not only an economic issue, but it is also a health and safety issue.

We've had a number of accidents in airplanes that had counterfeited products within the aircraft. We see a lot of automotive prod-

ucts that are being knocked off, pirated. So it's not just an economic issue, it's a health and safety issue.

And I might say that more than that, it's a moral issue. This is theft. Let's call it like it is: it's theft of ideas, it's theft of creativity, and we think that is some of the most pernicious types of theft and we are dealing with it as such.

We don't think we can call other nations friends of ours that allow, through their lack of enforcement of their laws or the lack of passing appropriate laws, the theft of our intellectual property and call these trading partners friends of ours.

So we feel very strongly about working as aggressively as we can to put an immediate end to some of the problems which are not only continuing but growing.

In addition to our series of continuing bilateral efforts, we are now, as you know, making plans for multilateral negotiations through the GATT, and while there has been a great deal of discussion of an anticounterfeiting code, we are now investigating very seriously the possibility of expanding that to beyond the counterfeiting code and to have a code across the board on patents, trademarks, copyrights, and unfair trading practices.

Like I say, we're in the preliminary stages of that, and I think up until a few months ago, we figured that that was something that was perhaps not doable. But we are now mustering not only our forces through the GATT but also through the Organization for Economic Cooperation and Development based in Paris, the so-called industrial countries, to look at what we can do to, one, work more cooperatively together, and, two, produce a code that provides a minimum, normative standards in these key areas.

So we are not only aggressive on the bilateral front but also on the multilateral front as well.

Our program within the Department of Commerce also had two other elements: One was to provide technical training for developing countries in administration of patent, trademark, and copyright laws—and we have had a number of seminars in the Far East on that and we are planning more—and also for an exchange between Government and the private sector, the so-called education, both trying to help us educate ourselves as to what the problems are and how we address them, and two, to the extent we can, provide a multiplier effect for helping companies that are trying to help themselves, understanding the nature of the problems and how they might be successful at getting at it.

All of these initiatives, the bilateral, the multilateral, the training, and the education, are underway and in full force. But I must say, Senator, that I am not optimistic that we will be successful unless we continue to work together and continue to get the kind of support and cooperation that we have from the private sector on the nature of the problem, the extent of the problem, what they're doing to try to prevent the problems.

When we go into negotiations or discussions with other governments, the first thing they try to tell us is—if we're talking to Koreans—they say, "Oh, that may be a problem in Taiwan and Singapore, but it's not a problem here in Korea."

The only way we can get around that is when we have the specific hard data, the examples of problems, when we actually have

products that have been knocked off in hand, and that will bring the officials right back to the table so we can sit down and then really talk about what we're going to do to solve the problem. We wouldn't have that information without the support of a number of groups that have been helpful in giving us information: The American chambers, the APCAC in the Pacific have been extremely cooperative. They've put together a number of very expansive articles on what the problems actually are and given us a kind of evidence, documentary and hard physical evidence, that we need in order to go in and negotiate on a bilateral basis.

So we are especially appreciative of this effort. I am on my way to the Far East where I will, once again, discuss the progress—hopefully progress—that there's been in a number of countries, in Bangkok, in Korea, and I will also be meeting with all of our senior commercial officers from our posts in Asia, and one of the primary purposes of that meeting is to explain how they can be more aggressive in monitoring intellectual property problems and working with U.S. industry in that regard.

So, Senator, let me just conclude by saying that we are very aware of the problem. It is a difficult problem. I am optimistic that some progress has been made, but I am also fully realistic about the extent of the problem and the tough road that we are going to have to solve it.

I think only by working together with the legislative branch and with the private sector can we realistically hope to solve the problem over the next 10 years.

Senator, once again, thank you for your leadership. I appreciate the opportunity to appear here before the Joint Economic Committee and I look forward to answering any questions that you may have.

[The prepared statement of Mr. Good follows:]

PREPARED STATEMENT OF ALEXANDER H. GOOD

I am pleased to have the opportunity to speak to you today on the growing threat to U.S. competitiveness presented by trade in counterfeit and pirated goods and to describe what the Administration and, in particular, the Commerce Department is doing to combat this problem.

It is no secret that the U.S. is running huge, sustained current account and trade deficits. U.S. industry is facing severe competition across the board -- in high and low technology sectors, services and agriculture. A major objective of the Administration is to reduce these deficits by seeking a fairer trading system, including the enactment and enforcement of laws in other countries to adequately protect U.S.-held intellectual property.

Background

Illegally traded goods, usually sold at cheaper prices, are displacing U.S. production in domestic and foreign markets. While lost sales due to intellectual property infringement are difficult to pinpoint, U.S. industry estimates the shortfall at about \$20 billion annually. 750,000 jobs are believed to have been eliminated as a result of infringing goods, many of them in import-sensitive industries such as textiles, footwear,

wearing apparel, and automotive parts production. Counterfeiting and piracy also result in health and safety concerns and a diminished reputation for U.S. goods.

Counterfeit and pirated goods span a wide range of industry sectors -- from agricultural chemicals and pharmaceuticals to motion pictures, video and audio cassettes and computer software. Software is an especially attractive target for pirates because it is costly to develop but cheap to reproduce. For example, unauthorized U.S.-developed software that sells for \$500 in the U.S. is sold for less than \$10 in the Far East.

The problem has grown dramatically in recent years -- in the case of some U.S. products, pirates now sell more unauthorized copies in foreign markets than the U.S. manufacturer sells of the real article. The principal sources of pirated goods -- newly industrialized countries such as Taiwan, Korea, Mexico and Brazil -- have increasingly become international trade competitors. At the same time, effective protection of intellectual property rights in these countries lags far behind that provided in developed countries.

U.S. business complains that some nations have yet to pass laws to protect intellectual property and that, in some countries, penalties for infringement are laughably low. For instance, Indonesia does not have a patent law. In Malaysia, penalties

awarded are so small, even in the context of income levels, that infringers can simply regard them as costs of doing business. Where laws do exist, U.S. firms may not be eligible for protection. Korea has a copyright law on its books, but U.S. works are not covered because Korea neither belongs to an international copyright convention nor has bilateral copyright relations with the United States. Some countries also restrict the use of well-known U.S. trademarks, sometimes by requiring their use in tandem with a foreign trademark. Mexico has such a requirement in its law which, although it has never been applied, hangs over the head of U.S. businesses operating there.

Another common problem is the ineffective enforcement of laws that may appear adequate on their face. This complaint has been lodged against a number of countries, such as Brazil and Taiwan. Enforcement problems stem from the lack of technical expertise or from a local judicial system that is simply ineffective. The uncertain legal status of emerging technologies, such as computer software, semiconductor chips and biotechnologies, also is a matter of great concern for the U.S.

Underlying all of these problems is the belief in many developing and newly industrialized countries that economic development will be hindered and infant industries endangered if counterfeiting is curbed. For these governments, it has

been said, theft of foreign intellectual property has become the basis of national industrial policies designed to provide a "short cut" to modernization.

USG Action and Commerce Department Program

It is clear that the U.S. Government needs to do more to curb the growth of piracy and counterfeiting. The President unveiled an Administration strategy to address this growing problem in his September trade statement and more recently in his State of the Union Address. Among other things he established the Strike Force on Trade, chaired by Commerce Secretary Baldrige, to uncover unfair trade practices, including those affecting intellectual property, and to propose actions to eliminate them. The Strike Force has already made its mark by proposing legislation to correct inadequacies in U.S. intellectual property law that I will explain more fully later and in serving as the driving force behind in-depth study of the inadequacies of foreign intellectual property regimes and U.S. Government actions to address them. The work of the Strike Force builds on work already undertaken by the Commerce Department and other agencies through bilateral contacts, multilateral fora and domestic legislative initiatives.

The Commerce Department, through two of its primary agencies, the International Trade Administration and the Patent and Trademark Office, has been working closely to develop several innovative programs to confront the growth in the unauthorized use of U.S. patents, trademarks and copyrights. ITA and PTO are uniquely qualified to tackle the problem because they can combine trade expertise with technical and legal know-how. This joint effort particularly emphasizes bilateral discussions with offending countries to persuade them to upgrade their protection of U.S. rights, and includes work to tighten U.S. statutes and to develop multilateral initiatives, particularly for a new round of trade negotiations.

Bilateral Consultations and Successes

The greatest progress has come from our bilateral activities. The Commerce Department helped to initiate discussions with Taiwan and Korea, often named as the principal problem countries, in 1983 and with Singapore, another trouble spot, in 1984. We now include the issue in most bilateral discussions, such as talks we have held with Mexico, Brazil, India, Indonesia, Thailand, Malaysia, Canada and Japan.

The issue is raised annually with Caribbean countries under the Caribbean Basin Initiative. To satisfy the eligibility criteria of the program, the 21 beneficiaries must adequately protect the intellectual property rights of foreign nationals. They must also prohibit the broadcast of U.S. copyrighted material without the consent of the owner.

In addition, we are making sure that all beneficiaries of the Generalized System of Preferences (GSP) know that we will be looking at how adequately they protect U.S.-held intellectual property rights in deciding benefits under this program. Bilateral discussions with GSP beneficiary countries are now taking place and Commerce will make its recommendations on country benefits to the U.S. Trade Representative's Office this summer.

The Commerce Department is working with other Government agencies in developing and implementing these bilateral initiatives. In particular, we are closely coordinating our efforts with USTR's mandate under the Trade and Tariff Act of 1984. In order to strengthen protection of U.S. intellectual property rights, the Trade and Tariff Act requires the U.S. Trade Representative to: 1) report annually to the Congress on barriers to trade, including those related to patents, trademarks and copyrights; 2) include intellectual property

practices under those eligible for section 301 action; and 3) condition generalized system of preferences benefits on progress in this area, among other criteria.

The GSP change is especially useful since many of the countries named as infringers also have been the major beneficiaries of the GSP program. As I mentioned earlier, the Administration is in the process of discussing GSP benefits with recipient countries and is reviewing country practices, including protection for intellectual property, very closely to determine whether benefits should be continued and at what level.

Another significant development in the last Congress was the passage of the Semiconductor Chip Protection Act of 1984. This Act provides a ten-year protection under U.S. law for the three-dimensional images or patterns fixed in a semiconductor chip product -- the "topography" of the chip. It also encourages other countries to protect semiconductor chips by extending protection to foreign nationals of countries using "good faith" efforts to protect the works of U.S. citizens. The Secretary of Commerce is charged with certifying the progress of countries under the Act and has so far granted protection under U.S. law to the nationals of 14 countries -- those of the European Community, Japan, Australia, Sweden and Canada.

To support the work of the Administration in the intellectual property area, country experts in Commerce's ITA developed action plans that detail the problems U.S. business faces in ten of the major problem countries (Taiwan, Korea, Singapore, Indonesia, Malaysia, Thailand, the Philippines, India, Brazil and Mexico) and propose strategies for U.S. Government action. These plans were drawn on for the USTR's trade barriers report to Congress last October and in planning what steps to take bilaterally, including in the GSP review.

The message is getting across to our trading partners:

- o Japan last spring decided to extend full copyright protection to computer software rather than choosing a much weaker form of protection which would have set a dangerous precedent for other countries.
- o Taiwan recently amended its trademark law to provide up to five years' imprisonment upon a conviction of product counterfeiting and passed a new copyright law last summer that improves protection, including coverage for computer software. Taiwan issued an executive order on January 8 that provides national treatment for U.S. works under its copyright law.

- o Singapore is considering a new copyright law, based on Australia's, that U.S. experts consider to be a great improvement over current legal remedies.
- o Malaysia also is considering a new copyright law that would provide protection for computer software and increase penalties for copyright infringement.

Our determination to conquer this problem is demonstrated in our willingness to use the new tools at our disposal. The section 301 case against Korea for inadequate protection for intellectual property rights, self-initiated by the Administration on October 16, is a prime example. The 301 talks with Korea are progressing and we are optimistic that the major shortcomings in Korea's intellectual property laws, such as the lack of copyright protection for foreign works and the lack of compound protection for chemicals and pharmaceuticals under Korea's patent law, can be resolved.

To supplement bilateral consultations on the issue, the Department is holding training programs and educational seminars both in the United States and on-site in problem countries to stress the importance of strong protection and to provide the necessary skills to administer this protection. ITA and PTO conducted seminars on copyright issues for government and private sector experts in Malaysia, Indonesia

and Thailand in January 1985. A follow-up program on all intellectual property issues (patent, trademark and copyright) was held in Indonesia in February and similar programs will be held in other problem countries later this year. These programs are sponsored by local groups who generate "grass-root" support for effective protection.

Also, PTO held two training programs last year on patent law and administration for representatives from developing countries. The participants are the "rising stars" in their countries' intellectual property bureaus and thus the effect of these programs should be strong and long lasting.

Finally, plans are underway to launch a seminar series for U.S. small and medium sized businesses to teach them how to better protect their valuable intellectual property. The program will be held in conjunction with Commerce Department district offices. The first program is planned for Los Angeles in June.

Multilateral

On the multilateral front, the U.S. continues to work towards inclusion of intellectual property rights issues on the agenda of a new round of trade negotiations. We would like countries participating in the new round to adopt a code to address the growing problem of trademark counterfeiting, which has been

under consideration since the end of the Tokyo Round. This could mark an important first step toward negotiating a comprehensive agreement on intellectual property rights under the General Agreement on Tariffs and Trade covering all forms of protection.

Domestic Legislation

Domestic protection for intellectual property also needs strengthening. The Administration will soon be forwarding legislation, on the recommendation of the Strike Force, to address some of the weaknesses we have identified. This legislation is necessary to close loopholes now enjoyed by foreign manufacturers and to make it less burdensome for U.S. business to enforce its rights under U.S. law.

The proposed bill will, among other things:

- o protect against trade in articles that infringe U.S. process patents;
- o extend the patent term for agricultural chemicals to match that for pharmaceutical inventions;
- o eliminate the requirement in section 337 of injury to an efficiently and economically operated U.S.

industry as a precondition for a relief where the International Trade Commission found a patent, trademark or copyright law.

Another matter of crucial importance in the intellectual property area is the elimination of the manufacturing clause from U.S. copyright law. Currently American authors must have certain works printed in the United States or Canada to obtain copyright protection in the United States. This provision will expire on July 1 unless efforts to make it a permanent part of U.S. law are successful. If the clause is allowed to become a permanent part of U.S. law, we will suffer the following disturbing consequences: 1) an escalation of trade tensions with Western Europe, which has threatened to retaliate if the manufacturer clause does not expire as scheduled this summer; 2) increased difficulty in encouraging other nations, such as countries where U.S. businesses currently have little or no protection from pirates, to enact strong intellectual property laws; 3) a major set-back in our efforts to secure international agreement for bringing certain intellectual property issues under GATT auspices; and 4) a roadblock to our efforts to adhere to the Berne Convention, which prohibits conditioning a copyright on "formalities."

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Conclusion

The infringement of intellectual property, once the sole province of lawyers and technicians, can no longer be ignored by those involved in trade policy. To keep the international trade edge in such important and growing areas as computer software, where the U.S. holds a 70 percent share of the world market, we will have to concentrate on protecting one of our most valuable trade commodities, our intellectual property.

Senator WILSON. Thank you very much, Mr. Good, for a very fine statement.

You've anticipated at least one of my questions in your comment that your trip is intended in part to allow you to convene commercial officers overseas to explain how they can be more aggressive. In terms of the specific piracy problem, have they then been advised that it is a part of their duties to monitor the specific situation in the nations to which they have been posted and, without waiting for the private sector, to initiate contact with the Department of Commerce so that you can get as much leadtime on a particular abuse as possible?

Mr. Good. Yes; they have. And once again, a lot of that has been reactive, honestly. They have reacted when businessmen have come in and said, we've had a problem. But beyond that, what we have done, Senator, is included in their performance plans their evaluation, if you will, a specific reference to their work on protecting intellectual property in countries where we feel it's appropriate, and that would cover most of the countries in the Far East.

So it is something that they are actually rated on and is in part of the document that guides their activities.

We have encouraged them to work hand in hand with the local chambers of commerce. I know, for example, in Bangkok there is an intellectual property subcommittee of an American chamber, and that subcommittee has been extremely helpful, as I mentioned, in preparing documents that lead us to understand what the problem is.

Now, beyond that, we are trying to make the officers much more proactive, to go out there and solicit information and to find out where governments are going and what enforcement actions they're taking.

Senator, one of the problems that I see is that our first initial hurdle is to get countries to adopt the appropriate law. But then enforcement becomes a problem. Unlike our laws and our procedures for civil discovery, in many countries in the Far East you don't have the flexibility and you must rely on the governments to take the investigatory steps.

That involves resource issues, it involves priorities, and one of the things we need to be more aggressive on is making sure that these governments recognize from an enforcement prospective, that they need to be vigorous and put the protection of intellectual property high on their list of priorities.

So that is something that we've using the commercial officers to do aggressively. Quite honestly, this meeting we're having in Seoul provides us with a good opportunity to tell them where we see the state of affairs, what direction we're heading and exactly how they can be more aggressive, and it gives them an opportunity to ask us questions about how they would proceed.

So we're trying to be more proactive than we've been in the past, although our officers have been involved.

I might also say that, of course, we are trying to work very closely with the state economic officers, who also have a role in reporting on and discerning problems with intellectual property protection, and I am optimistic that we are working much better togeth-

er. I think we need to do that in order to address the wide range of the problem.

Senator WILSON. In your prepared statement you've made reference to the fact that the problem of enforcement is, in your judgment, the major one, and I agree. But you said that you think a portion of that has to do with the lack of technical expertise, and we are talking about some technical areas here.

Is it, in your judgment, really a problem of their lacking that expertise, or is it simply a function that they either look the other way or in some cases the governments themselves are profiting as are the pirates?

Mr. GOOD. Well, Senator, I think you've correctly articulated what we see as—there's a couple of issues there. I think the first hurdle is for us to convince the government that it's in their best interest to protect intellectual property, to have a strong patent law and a strong copyright law and a strong trademark law. That's the first hurdle to overcome.

I know that there are some government officials in the concerned countries that I think in their heart of hearts don't honestly believe it's in their best interests. They see government revenues that are dependent on knockoffs of products, they see a lot of employment that comes from illicit trafficking in pirated products, and so there is a challenge there to convince the government officials that it is in their long-term best interest to provide tough intellectual property law.

Senator WILSON. Don't you think that in some instances where they are in fact partners with the pirates, not directly in the illegal enterprise but at least in sharing the fruits of that unlawful activity, as where they derive revenues from it, in the form of taxes and fees, I think the only way we're going to convince them that it is in their interest—and in the short rather than in the long term, because we can't afford to allow the problem to continue—is by taking very severe retaliatory measures against them, of the kind that you have outlined here with respect to the possible denial of continued preferences, to Korea.

I have written, as you are aware, because the Department of Commerce received copies, although you were not the direct recipient of the letter—I sent a letter with 10 of my State colleagues suggesting to Ambassador Yeutter, the United States Trade Representative, that in fact Korea be denied the General System of Preference of treatment precisely because of what they have been doing in the way of the piracy of intellectual property rights.

Now I think that in many cases it will be difficult to make the case for these governments that it is in their interest to adopt our laws and to enforce them except by persuading them that if they fail to do so they are going to pay a hell of a price for it.

Mr. GOOD. I think you're right, Senator. We need to have that kind of leverage. If we were just approaching them and saying, you know, "Out of the goodness of your heart would you pass these laws," I don't know how successful we would be. But now with the 301 action in Korea and with the hearings we had last year on the GSP, I think they are very aware that we are serious, and we have to be serious. We have to be serious about the economic leverage

that we have to make them take the necessary—at least adopt minimum normative standards in all of these areas.

So you're correct in asserting, I think, that we need to look seriously about what economic leverage we have and be willing to use that economic leverage.

I might say on the second part, there are, in my opinion, a number of countries that are trying to do a much better job, but administration of patents and trademarks and copyright is difficult. That's not an excuse, but we need to provide the assistance, in training and providing knowledge on computer systems and whatever else we can to help them, and also then, give them our intelligence on enforcement issues, on where we see the problems.

Once again, the tie-in here with the U.S. private sector is key. We need to get the information from the private sector to pass along to government officials in these countries, one, to let them know that we're aware of the specifics, but, two, to help them on their enforcement.

You know, we see with different officials varying degrees of willingness to entertain tougher protection and to be aggressive in enforcement. We just have to let them know that it's going to be in their economic best interest, especially given the bilateral relationship with the United States and such things as GSP, to take tough and aggressive action now rather to suffer the wrath of what we might do.

Senator WILSON. Well, I think that's the proper approach, because I think it's the only one that is going to persuade a great many. Having traveled to Korea, to Taiwan, to Japan, in every instance we found that they were not self-starters in terms of this reform, but that they were aware of the problem, as they could hardly fail to be aware of it, but that they needed the severest kind of show in order to actually make progress.

Let me ask in particular—this morning we're going to hear from a number of those private sector victims whom you have accurately described. We will hear from the motion picture industry, the recording industry and hear from those who are concerned about trademark infringement. We have no one here on this particular occasion, though we have at other hearings, who is directly involved in the protection of computer software.

I note in your prepared statement that as an example of success, you think, in getting this message across to our trading partners, you cited the action of Japan last spring in extending full copyright protection to computer software.

That is of particular concern to me, I must tell you because we have held another hearing of this same subcommittee on another occasion in which one of the witnesses, Mr. Jerry Sanders, indicated his fear that within as little as 2 to 3 years' time, Japan could in effect corner the market on the actual drivers of high technology, so that the United States, having developed much of this technology, would be in the ironic position of becoming a dependent upon Japanese technology.

The particular ill that we were dealing with there, the unfair trading practice that was the focus there, had to do with dumping and predatory pricing. It seems to me an interesting area to ex-

plore when you travel to the Far East. I assume that you're stopping in Japan—

Mr. GOOD. Yes.

Senator WILSON. It is going to be of very little value for them to extend us full copyright protection if they in fact are engaged in the kind of predatory pricing practices which—and I congratulate the Department of Commerce. You've done an excellent job. You have recently identified in seven cases, seven Japanese manufacturers have been guilty of this, and I hope that when you go there you take the opportunity not only to box them on the copyright measure but also to remind them that it is the same agency of Government that is watching very carefully and that you are prepared to do the same thing with regard to copyright that you have done in terms of requiring a strict bonding offset, requiring them to post a bond in the amount of damages that have been identified in terms of their cutrate pricing.

Mr. GOOD. Senator, we have been fairly aggressive. As you know, we self-initiated the antidumping case on the 256-K ram. We also had recent decisions, preliminary determinations, not only in that case but also in the EPROM's, the erasable, programmable read-only memories, and found a dumping rate, duties of 188 percent in some cases, and we think that this absolutely demands our highest priority.

I know that the U.S. Trade Representative's Office is working closely with us in the conduct of the 301 investigation that was filed by the semiconductor industry association.

So we appreciate your support on that, and we're pushing forward as aggressively as we can. I know that the Under Secretary of the Department of Commerce was in a meeting of the USTR and State Department all day Friday specifically on these issues.

We are delighted with the action that Japan finally took in protecting computer software. I might say we are a little disappointed in how much talking it took to have them adopt it the right way. They certainly didn't seem to be motivated to do it of their own instigation. We had to push them real hard on—

Senator WILSON. Mr. Good, I think as we have all learned the hard way, they regard rhetoric as cheap and, frankly, not at all persuasive. I think they will be persuaded only by a clear determination to see reform or else to bring about retaliation in order to compel it. That's not the way we like to do business. It's unfortunately apparently the only way that we're going to secure their attention and cooperation.

Let me commend your agency, the Department of Commerce. I have been pretty rough on my own administration many times by asserting that they needed to be more aggressive, more assertive of the rights of U.S. manufacturers and producers of all kinds. But, I must say that I am heartened not only by your testimony this morning but by the achievements that it has accurately and justifiably recorded.

You have mentioned—and this will be my last question and then I will wish you well on your trip—you have mentioned that the Department will be submitting legislation to the Hill in a matter of weeks. That anticipated one of my questions, which was, How can we help the Department in security copyright protection, and what,

if you're in a position to do so, what specific changes do you see necessary? We will eagerly give you whatever tools you require.

Mr. Goon. Well, we appreciate that. A number of changes that are necessary may be viewed as technical amendments to existing law. This is not my area of expertise, on the various provisions—technical but important. I think we need to make sure that our law is in order. Like I say, there have been a number of changes in the Trade and Tariff Act in section 301 that have been very helpful, but the proposed bill, we believe, will protect against trade in articles that infringe U.S. process patents, extend the patent term of agricultural chemicals to match that for pharmaceutical inventions and eliminate the requirement in section 337 to an efficiently and economically operated U.S. industry as a precondition for relief where the International Trade Commission found a patent, trademark, or copyright law.

There are a number of things that will be included. There are also other changes that we believe are important.

The other area, if I can speak just candidly, that I think we need everyone to show as much insight and creativity on is just how we do a better job with enforcement, how we should structure the multilateral trade negotiations to get the most effective code.

As you know, a lot of our businesses have complained that the GATT has real problems with enforcement. We're going to try to address that in the next round of trade negotiations. But we also have to look at the anticounterfeiting code to make sure that it is a code that can be enforced.

I don't think by any stretch of the imagination that we have a lock on ideas on how to solve this problem. I think, once again, it's going to take us all working together to look at new approaches, new enforcement mechanisms.

We have done a lot of things working through cooperative organizations. I mentioned the GATT and the OEACD. There's a customs cooperation conference, in which we are exploring the possibilities of establishing an anticounterfeiting subcommittee. I know that there's been a look into that.

So we appreciate that support, and like I say, if we'll work together on this I think we can solve some of the problems soon.

Senator WILSON. I commend you for your efforts to address the multilateral situation in what may be an earlier special round with respect to the General Agreement of Tariffs and Trade.

I will tell you, though, I think that the tack you are taking that you have set forth in your prepared statement, of hard, tough, no-nonsense bilateral negotiations is the way that you're going to bring about the change. The changes that have occurred with respect to the Taiwanese, the few that are coming forward with respect to Korea and the Japanese semiconductor and computer software reforms, I guess I don't need to tell you, have come about because it's been one on one and we simply insisted on it and threatened retaliation.

Well, thank you very much. Again, my thanks to you personally for your effort. My congratulations to your agency and specifically to Secretary Baldrige and Under Secretary Smart. I know they are well aware of the magnitude of the problem and are working very hard on it. It is heartening to those of us on the Hill who are con-

cerned about it to see the kind of tough and enlightened hard bargaining that is going on. If you need additional tools, ask for them; we will get them for you.

Mr. GOOD. Thank you very much, Senator.

Senator WILSON. Have a good trip.

Mr. GOOD. Thank you.

Senator WILSON. The next panel will represent the motion picture industry. I would invite now Mr. Jack Valenti, the president of the Motion Picture Association of America, and Mr. Charles Morgan, senior vice president of Universal City Studios.

I think these gentlemen hardly need any introduction. Mr. Valenti has been the eloquent spokesman for the Motion Picture Association of America for some years now, and Charles Morgan has, I think, received deserved publicity for the efforts that he has made to enforce the rights of not only his own company but the copyright industry generally by making use of such copyright protections as have been enacted in various countries.

Gentlemen, you are one of the major victims of piracy of intellectual property rights. We welcome you this morning and are eager to hear your testimony.

Mr. Valenti, you may begin.

STATEMENT OF JACK VALENTI, PRESIDENT, MOTION PICTURE ASSOCIATION OF AMERICA, INC.

Mr. VALENTI. Thank you very much. Charlie and I are glad to be here. First I want to say to you how grateful we are in the U.S. film and television industry to have you as our champion in a number of issues that we have confronted and have been challenged with and caused us a lot of grief. But you have been steadfast in your support. Most of all, you've been understanding and you've done your homework on these issues, which has been of great, great value to us. I would like to make a public acknowledgment of that.

Senator WILSON. Thank you.

Mr. VALENTI. On this issue, I have submitted a prepared statement. I would like to speak 5 or 6 minutes from notes that I have about an overview. I guess the best way to start, since we're in the capital where stories are told on film and tape, is to give proper acknowledgment to Mr. William Shakespeare for what we call additional dialog and speak the lines of Richard II, which I think form the basis of my testimony today. He said in act III—if you're interested in reading the play sometime, it's well worth your while:

Come, let us sit upon the ground and tell sad stories of the death of kings. Let us talk of graves and worms and of epitaphs.

I don't know of any lines from any dramatic narrative that would better undergird the theme of what I will present to you in the next few minutes. I believe that unless the Congress designs a comprehensive, firm and stringent trade policy that's going to soothe out a tormented unfair trade environment, we're going to find one day we will be sitting upon the ground imitating Richard II, composing our own epitaph for exported goods generally, and specifically that which is copyrighted, and more specifically of films and television.

I might add that the U.S. movie and the television program is the supreme visual dominant force in the world today. We literally dominate world screens, whether it's in a theater or in somebody's living room.

Let me tell you a sad story, which I have recounted in my prepared statement.

Rocky IV was released in this country on Thanksgiving last fall, and it was an instant and burgeoning success. MGM-UA was cheered and Sylvester Stallone, its writer, director and star, was jubilant, and rightfully deserved the superstar status that he had achieved.

UIP, which is United International Pictures—Mr. Morgan is connected with them—they distributed this film internationally. Just shortly after its American premiere they wanted to put it in foreign release. But a 35-millimeter print was stolen in Hong Kong, transferred to video tape—a master was made. Submasters were struck off of that. Then it moved over to Thailand where it was subtitled in the Thai language. And then it got shipped over to Turkey where it was subtitled into Turkish. And then, if you can imagine it, its next stop was in Germany where it entertained Turkish workers working in Germany.

The submasters then began to act like amoebas and split into several different forms. They went into Europe, found its way to Great Britain. Hundreds of thousands of copies were struck off.

Now, the fact is that all of this linear movement of Rocky IV preceded its introduction into theaters, and surely into television and home video, in Europe and in Asia.

I don't have to report to you, Senator, that the impact on the revenue stream of Rocky IV, as a result of this outright thievery, was enormous, and I might add, heartbreaking, too.

If Rocky IV were an isolated case, I think it's fair to say our anger and frustration would be muted. But it's not an isolated case. It is part of the contagion that goes on in the world. As a matter of fact, if anybody has an opportunity to be chagrined, it ought to be Sly Stallone, because Rambo II, which came out right afterward, suffered the same kind of thievery. It was a subject of monumental worldwide piracy. I could tell the same sad stories for a host of American films which are highly popular.

Pirates are skinning the cream off of the American hit pictures and some who "almost" hit. They are devastating the theatrical release of these films, abusing the flow of revenues that would come in the posttheatrical marketplaces. But the Treasury of the United States is also being hard hit because they are losing the revenues that would be repatriated back to the United States as a result of the enormous popularity of these American films and video material abroad.

Keep in mind a very singular, and I might add, dolorous fact: 6 out of 10 American movies do not—I repeat—do not recoup their total investment in all markets worldwide.

That's a fact we live with. That's part of the competitive cauldron, where the customer is king. We understand that kind of challenge. It's part of the turf that we operate on. But, I might add, to be abused by criminals who outright steal that which we have created, it's just a bit much.

I might also add a fact that you are more than aware of: that the American film and television industry repatriates to this country, and has for the last several years, over \$1 billion in surplus balance of trade. That's a worthy trade asset no matter how you slice it.

There are two barriers, two almost unscaleable cliffs which are built by foreign countries, as well as by international criminals, which we somehow have to surmount if our industry is going to prosper and endure and if our country is going to get its rightful share of the revenues that we would produce.

The first is what we call nontariff trade barriers. This is the denial by foreign countries of an easy access by our films into their marketplace.

I might add that there are no more ingenious bureaucrats in chancellories throughout the world than those people who each might devise ways to baffle our entry into the country. The kinds of hedgerows they put up are truly innovative.

They include investment policies which are anti-American, they include quotas of all kinds and in varying degrees of severity; discriminatory taxes which boggle the mind, remittance restrictions and dubbing licenses and a whole array of thorns that we have to pluck one at a time; and other defenses, all of them complicated, all of them complex, but whose objective it is to brand the American film, the American television program, the American prerecorded video cassette as an intruder and to keep it out of their country.

I am loath to say this, but let me give you some examples of what I mean.

Canada, our large, friendly, and loving neighbor to the north, has adopted an investment policy which absolutely, visibly and demonstrably subtracts from our ability to move easily into the Canadian market, even as Canadian businessmen have unlimited freedom in ours. Indeed, a government-sponsored task force report is recommending that Canada inflict on the United States the roughest kind of restrictions ever, more draconian than any we face anywhere in the world. If these recommendations are activated by the Canadian Government, United States film companies will no longer be able to operate in Canada. That's as simple as I know how to put it.

Nowhere on the globe are we challenged by such onerous restrictions. Nowhere.

In Brazil, to give you another example, the distribution of United States motion pictures in home video is subject now to a brass knuckled quota system that literally exiles us from the Brazilian marketplace.

These are just two examples. The list is long and the list is dark.

Now the second barrier, the one to which this inquiry is directed, has to do with copyright protection—or I might add, the lack of—in too many parts of the world. I'll tell you this: if we have no shield to protect our property, we're easy prey for pirates, for unscrupulous businessmen, and moreover, Senator, we are prey for legitimate businessmen who, if they break no law in their country by taking that which belongs to us, using it without our authorization,

and without giving us any compensation for what they use, they do it. They don't break any laws, so why shouldn't they do it.

Again, Canada has a slack copyright law. It is so lagard that Canadian cable systems can pick up United States television stations exhibiting American programs, bring them into their head ends, sell those programs to Canadian subscribers, and what do they pay American producers for those programs? Zero. Not one penny.

On the other hand, I am bound to report that Canadian producers whose programs and films are shown on American cable systems are treated precisely as American producers and receive compensation for that which is exhibited to the American cable public.

Moving on, as we say, the Middle East is out of copyright control, totally undisciplined. It's a jungle. With the exception of Egypt and Lebanon, no Arab-speaking country has a copyright law that protects motion pictures against assault.

I'm somewhat cheered to report that with some well-conceived, and I think carefully implemented suggestions from the United States, the Governments of Taiwan, Singapore, Malaysia, South Korea, and the Philippines have enacted, or have pledged they will enact, laws which will be protective of material that's copyrighted.

However, I have to tell you that while it is very fine to legislate, it is also important to act. And we're not going to know how effective those laws are until they are on the books and there is a reason for them to make them work. I don't want to tell you that I am cheered, because I don't want to have any delusions of adequacy about what's going on over there. There is a first step, a halting first step that has been taken.

But the ravages to American films and television material in most countries are certain and they are deadly damaging, both from nontariff trade barriers and from nonexistent to slackly conceived copyright laws.

What do I recommend to you? What is my "therefore," as I am wont to say?

One, I think the Congress and the executive department should include intellectual property protection in every forum that they can, beginning with GATT, for example.

Two, set an example by confirming U.S. membership in the Berne convention, which provisions copyrighted material with more protection that is now available in the Universal Copyright Convention to which we do belong.

Three, place copyright issues on every bilateral discussion we have anywhere.

Four, very important, link economic assistance and trade assistance, link it irretrievably and directly to the progress made by nations with whom we trade in providing not just adequate but superior copyright protection.

Five—and this is something I feel very strongly about—apply surgically precise trade retaliation to those countries who systematically build trade barriers in their country even as their businessmen roam our markets with total and unlimited freedom.

I would sum up all I'm saying, Senator, by saying that we believe we in the U.S. film and television industry, we believe in the golden rule of trade, which says, we want to be treated in foreign countries with the same hospitality and robust freedom which for-

eign businessmen find so alluring in our markets. We ask no more, we want no less, and we believe that's fair. Thank you.

[The prepared statement of Mr. Valenti follows:]

PREPARED STATEMENT OF JACK VALENTI

I. INTRODUCTION

I would like to begin my presentation today with a recent "case history" that will illustrate the technological challenge presently facing motion picture producers and distributors. As a result of a sophisticated industry print coding system, the MPAA and Warner Bros., one of its member companies, were able to track the following international piracy trail. ROCKY IV was released to U.S. theatres over the Thanksgiving weekend last fall. It achieved instant notoriety in the country and was a major box office success for MGM/UA, the company distributing it. United International Pictures (UIP), in an effort to make the film available quickly to foreign markets, put the film into international release shortly thereafter. A copy of the 35mm cinema print was "borrowed" from a theatre in Hong Kong and transferred to videotape. The videotape then became a "master" copy that was sent to Thailand where it was subtitled for local distribution. It was also exported to the Middle East where multiple "submaster" videocassettes were made. These were used to flood that region with pirate cassettes. One of these made its way to Turkey where it was dubbed into Turkish. A copy of this new version went to Germany to service the community of local Turkish workers. Another was sent to England where it joined pirate copies of the original Thai-subtitled version from Bangkok. All of these events preceded the legitimate U.S. home video release of ROCKY IV. The impact of this proliferation of videocassettes on theatrical, home video and television revenues was significant.

This is not an isolated case. The same story can also be told with regard to another movie starring Sylvester Stallone, RAMBO II. The reason is that extensive international and local networks of criminals are pirating the cream of the motion picture releases of American film studios upon which the survival of the production community depends. Two-thirds of American films never recoup their production, marketing and distribution costs. The third that

do are the basis for the continuing financial viability of the production community. The pirates concentrate upon the latter. This is equivalent to by-passing the \$25 million of research and development costs that go into producing a new high-power computer microchip and simply marketing the results without any appreciative overhead. Producers, distributors and most importantly creative artists are cheated of their rightful royalties in the process and so is American trade.

On June 25th and again on October 21, 1985 I appeared at public hearings conducted by the Office of the U.S. Trade Representative to testify for the motion picture industry on the issues of market access and intellectual property protection abroad. The focus at each of these hearings was the need for American copyrighted works to be treated fairly and equitably in countries to which our government is giving substantial trade benefits. In that context, all that we were requesting was the practice of the Golden Rule. By that I mean, these special beneficiaries should accord us the same protection and ability to market our copyrighted works in their countries as the United States accords them in this country.

Today, I will not repeat these earlier statements but merely incorporate our goals by reference thereto. Instead, my comments will concentrate upon several additional points which were not previously emphasized.

II. THE IMPORTANCE OF COPYRIGHT INDUSTRIES TO POSITIVE U.S. TRADE

Services, as distinguished from production goods, have become the dominant sector of our economy. Within the services sector, the copyright industries are among the fastest growing. While historically qualified as "services" the broader heading of "intellectual property" would be more appropriate terminology today. This includes movies, music, books, computer

software, etc. According to the American Copyright Council, as early as 1982 the copyright industries accounted for some 5% of our gross national product, producing over \$150 billion in final demand expenditures. The motion picture industry contributed about \$3.5 billion of this amount.

The export of services is critical to our balance of trade and the copyright industries are an important part of U.S. service exports. Although the motion picture industry is far down the list of copyright industries in terms of its contribution to GNP, it is a leading foreign exchange earner. The U.S. motion picture industry brings into this country an estimated \$1.2 billion in favorable balance of trade each year. U.S. motion pictures are also a cultural asset of inestimable value.

Trade barriers, particularly denial of market access and copyright protection, are a major and growing threat to U.S. motion picture exports. Of some 100 foreign countries to which we export motion pictures and television materials, we encounter some form of trade barrier in about 80.

In addition to piracy, which with varying degrees of severity acts as a barrier to U.S. trade in motion pictures in virtually every corner of the world, U.S. film companies are confronted with a wide variety of protectionist restrictions which inhibit or prevent access to foreign markets. For example, Canada has adopted an investment policy which severely restricts the ability of U.S. companies to enter the motion picture production and distribution business. In Brazil, the distribution of U.S. motion pictures in the home video market is subjected to quota requirements which virtually exclude most U.S. film companies from that market. Elsewhere, screen quotas, import quotas, discriminatory taxes and remittance restrictions, are among the trade barriers confronted by the U.S. motion picture industry.

III. MOTION PICTURE REVENUE LOSSES TO PIRACY & COUNTERFEITING

Piracy costs the U.S. motion picture industry an estimated \$1 billion in potential revenues annually. Most of these losses occur because of the lack of adequate and effective copyright protection abroad. As noted in a U.S.T.R. panel study, lack of copyright protection is our number one international trade problem.

In a more recent report to the U.S. Trade Representative by the International Intellectual Property Alliance, of which MPAA is a founding member, we limited our focus to ten countries which account for over \$131 million in piracy losses to the U.S. motion picture industry alone. (See the attached Chart A). The biggest offenders in this selected grouping are Singapore, Taiwan, Indonesia, Korea and the Philippines. They by no coincidence, happen to also be among the largest beneficiaries of the U.S. Generalized System of Preferences program. (See the attached Chart B listing the GSP beneficiaries and Chart C listing of the top 15 beneficiaries which includes the value of GSP imports to the U.S.).

IV. SUGGESTIONS FOR GOVERNMENTAL ASSISTANCE

There are two special situations that have not been articulated by the film industry to date which I would call to the attention of this Committee today. The first is concerned with the lack of effective treaty relations between the U.S. and key foreign countries. The second is the need for our government to begin to focus upon seeking "adequate and effective" intellectual property protection in the Middle East. ~~The third is concerned with the massive growth of in-home copying as millions of new videocassette recorders are imported into this country each year.~~

**A. INADEQUATE TREATY RELATIONS BETWEEN
THE U.S. AND KEY FOREIGN COUNTRIES**

The intellectual property relations between the United States and most foreign countries are governed by the Universal Copyright Convention (U.C.C.) to which the U.S. became a signatory in 1953. In a few instances, either in addition to the U.C.C. or in lieu thereof, there are bilateral Friendship, Commerce and Navigation (FCN) Treaties which cover, among other things, intellectual property protection. In a few pirate havens of the world, however, there are relatively modern copyright laws, but the country is neither a member of the U.C.C. nor does it have a bilateral treaty with the United States. For these countries, since the U.S. does not belong to the Berne Convention (a matter that is undergoing separate consideration by the Executive Branch and an April 15, 1986 hearing in the Congress) there is at most the prospect of proving that a U.S. work was "simultaneously published" in a Berne country and the U.S. This is a cumbersome and antiquated administrative problem. In the film industry this usually involves showing, by written documentation, that a film was released in Canada and the U.S. at the same time.

What is the importance of this seemingly abstruse technical dilemma? When faced with the need to establish by documentation that the U.S. and Canadian releases for hundreds of pirate films seized in the typical anti-piracy raid abroad, the time and effort to bring the copyright infringers to justice in a foreign court can be overwhelming. As a result, the ability of American copyright holders to fully and effectively assert their rights in court can fall down due to the practical results of this lack of a multi-lateral or bi-lateral treaty mechanism.

One U.S. Governmental strategy in dealing with foreign countries might be to assertively urge key nations to adhere to the U.C.C. Another one would be for the U.S. itself to adhere to the Berne Convention. A third, perhaps a more immediate and direct approach, would be for the Executive Branch to avail itself of the as yet unexercised right provided in 17 U.S.C. Section 104 (b) (4) which provides:

The works specified by Sections 102 and 103, when published, are subject to protection under this title if... (4) the works come within the scope of a Presidential proclamation. Whenever the President finds that a particular foreign nation extends, to works by authors who are nationals or domiciliaries of the United States or to works that are first published in the United States, copyright protection on substantially the same basis as that of which the foreign nation extends protection to works of its own nationals and domiciliaries and works first published in that nation, the President may by proclamation extend protection under this title to works of which one or more of the authors is, on the date of first publication, a national, domiciliary, or sovereign authority of that nation, or which was first published in that nation. The President may revise, suspend, or revoke any such proclamation or impose any conditions or limitations on protection under a proclamation.

The implementation of this right was recommended to Senator Patrick Leahy by then Register of Copyrights, David Ladd, in his September 25, 1984 testimony before the Subcommittee on Patents, Copyrights and Trademarks.

The three countries which we recommend to be the first targets of such Proclamations are Cyprus, Turkey and Egypt. Turkey and Egypt are huge potential new video markets due to their 2.7 million VCR's and 5.4 million TV sets. Cyprus is targeted because it is an export center for pirated videocassettes being shipped to the Middle East, Europe and Africa. The piracy level in these countries is extremely high reaching 100% in Turkey, Cyprus and Egypt. Those countries are most likely to respond positively (with mirror-image protection) to such an arrangement, because two of them, Cyprus and Egypt, are receiving major foreign aid from our country and the third, Turkey is a close ally of the U.S.

As a second stage in this process, we also would recommend this U.S. Intellectual property protection strategy be applied to Thailand, Sri Lanka in the Far and Near East respectively. Each has what appears to be a satisfactory national copyright law. Each is a country in which motion pictures are attempting to be legitimately distributed in theatrical and video formats. Legitimate distributors in each are overwhelmed by major piracy operations that seem to operate unchecked by law.

B. INTELLECTUAL PROPERTY PROTECTION IN THE MIDDLE EAST

Traditionally, it has been believed that the concept of intellectual property protection was so alien a concept in certain regions of the world that it was not worth devoting time to a discussion of the subject. Twenty-four months ago, before the enactment of the Caribbean Basin Initiative (CBI) which was then followed by the Tariff and Trade Act of 1984 and numerous GSP-related Congressional hearings and USTR initiatives, protection for American patented, trademarked and copyrighted goods in most of East Asia was believed to be an unattainable goal. However, with well-conceived and carefully-implemented pressures from the United States, the Governments of Taiwan, Singapore, Malaysia, South Korea and the Philippines have within this time frame have enacted or within the course of this year promise to enact new laws to protect against wholesale unauthorized uses of intellectual property. This is not to say that the battle has been won. Major improvements are still required in administrative and judicial procedures that undergird "adequate and effective" enforcement of these new measures. Nonetheless, the corners have been turned in each country.

Without diluting any ongoing efforts, we must also begin to formulate national policies and strategies for other regions that have shared the common assumption that intellectual property protection was beyond the pale. A case in point is the Middle East. In many ways this is the region that lead to the worldwide explosion of the VCR. It was the earliest to use pre-recorded videocassettes of films for playback at home. The region has nearly 5.5 million VCR's by official reports and a number of its countries have the highest per-capita VCR penetrations of anywhere in the world. There is one important factor to consider. With the exceptions of Egypt and Lebanon, no Arab-speaking country has a copyright law that protection motion pictures against unauthorized duplication. As a result, in the Middle East there is wholesale duplication

and distribution of American films that is unrivaled anywhere else on the globe. These films frequently appear in the pirate video outlets at the same time or within a few weeks of initial release in the U.S. The Middle East not only has massive piracy but it also serves as an export center to Europe, the Mediterranean and the entire African Continent.

The time has come for the U.S. Government to begin to focus some efforts on the Middle East in order to persuade the heads of these nations that the products of the mind are at least as valuable as those created by the hand. We urge that the focus of these efforts be placed on Saudi Arabia. It is the most progressive of the Arab nations and its leadership in new areas is frequently followed by other Gulf States. Saudi Arabia has for some time been rumored to be considering extending its limited publishing protection law to other intellectual property works. If this step is taken, then we believe other countries in the region will follow swiftly.

This is not a purely abstract request. To the contrary, legitimate home video distribution has been undertaken in this region during the last six months by two of our member companies. Their commercial strategy is to offer customers a video product with a superior visual image, audio-track, Arabic subtitling and release dates that are very close to the initial U.S. release dates of American films. In this manner, they have been attempting to "compete with the pirates" in the region. It must be understood that it will always be impossible to undersell the pirates since they do not pay royalties to the actors, musicians, writers and creative people who make films. They do not abide by the national tax and other laws that govern legitimate enterprises. Nonetheless, with the ability to obtain governmental enforcement assistance—or at least exercise self-help measures—stemming from copyright legislation, perhaps these struggling commercial pioneers might achieve at least the opportunity to compete on level ground in the

marketplace. Saudi Arabia, a country with nearly 1 million VCR's, might be the initial proving ground for the region. Twenty-four months from today, an area of the world which was previously considered lost to "owners" of intellectual property rights, might become the same success story that the Far East is in the process of becoming.

V. FUNDAMENTAL RIGHTS OF PROTECTION

U.S. trade policy should require our trading partners to enact adequate and effective laws providing guaranteed fundamental rights of protection for motion pictures and other intellectual property. These fundamental rights include:

1. Protection of traditional and new forms of works;
2. Protection of those works with the full panoply of exclusive rights traditionally protected;
3. Protection against compulsory licensing;
4. Protection for an adequate term;
5. Protection against onerous formalities; and
6. Protection by adequate remedies, effectively enforced against copyright infringers.

To secure these fundamental rights of intellectual property protection, the U.S. should adopt an aggressive trade policy which incorporates the following objectives:

1. Include intellectual property protection in multilateral fora such as the GATT;

2. Set an example by adhering to the Berne Copyright Convention which provides higher levels of protection than the Universal Copyright Convention to which the U.S. is now a member.

3. Most importantly, as far as this Committee is concerned, the U.S. should:
 - (a) Place copyright protection on the agenda in all bilateral trade discussions;
 - (b) Make economic and trade assistance contingent upon progress on the part of beneficiary nations in providing adequate and effective copyright protection; and
 - (c) Enforce strict sanctions against nations found to engage in unjustifiable trade practices, including a failure to protect U.S. intellectual property rights.

Steps toward these goals have already been taken by the Departments of State and Commerce and the Office of the U.S. Trade Representative. These efforts should be focused and assisted by trade legislation aimed at promoting the protection of copyrighted products throughout the world.

VI. CONCLUSION

The copyright industries, and particularly the motion picture industry, are of substantial and growing importance to U.S. trade abroad. Unfortunately, the contributions of the motion picture industry to U.S. trade as well as to our domestic economy,

especially in California, are being undercut by rampant piracy which is aided by inadequate and ineffective copyright protection by our trading partners. To stem the hemorrhaging of some of our most precious trade assets due to international piracy, the U.S. should act quickly and decisively to:

1. Establish relations with key foreign governments assuring adequate and effective copyright protection;
2. Improve of copyright protection in the Middle East where there is presently almost no copyright legislation in effect;
3. Adopt an aggressive, coordinated trade policy which emphasizes fundamental rights of copyright protection.

These steps are crucial to the very existence of the U.S. motion picture industry, its contributions to this country's trade balance, and the thousands of artists, craftsmen, business executives and others who make the American motion picture number one around the world.

CHART A

**ESTIMATED LOSSES FROM PIRACY
IN THE SELECTED COUNTRIES^{1/}**
(in millions)

	Records/ Tapes	Motion Pictures	Books	Software ^{2/}	Total
Singapore	\$220 ^{1/}	\$ 11	\$107 ^{1/}	\$ 20	\$358 ^{1/}
Taiwan	\$ 9	\$ 25	\$118 ^{1/}	\$ 34	\$186 ^{1/}
Indonesia	\$180 ^{1/}	\$ 17	\$ 6	\$ 3	\$206 ^{1/}
Korea	\$ 40	\$ 16	\$ 70	\$ 20	\$146
Philippines	\$ 4	\$ 19	\$ 70	\$ 4	\$ 97
Malaysia	\$ 33	\$ 13	\$ 20	\$ 7	\$ 73
Thailand	\$ 13	\$ 12	\$ 7	\$ 2	\$ 34
Brazil	\$ 19	\$ 13	\$ 8	\$ 35	\$ 75
Egypt	\$ 5	\$ 5	\$ 10	\$ 3	\$ 23
Nigeria	<u>\$120</u>	<u>6/</u>	<u>\$ 11</u>	<u>6/</u>	<u>\$131</u>
TOTAL	\$643	\$131	\$427	\$128	\$ 1,329 ^{1/}

^{1/} Estimated losses reflect sale of pirated works in the domestic economy except for Singapore, Taiwan and Indonesia where the figures include loss resulting from export of pirated works.

^{2/} While exports of software are known to occur from some countries, we have been unable to estimate such losses; these figures reflect domestic piracy only.

^{1/} Records/Tapes: domestic \$50 and export \$170; Books: domestic \$7 and export \$100; Total: domestic \$88 and export \$270.

^{1/} Books: domestic \$8 and export \$110; Total: domestic \$76 and export \$11

^{1/} Records/Tapes: domestic \$80 and export \$100; Total: domestic \$106 and export \$100.

^{1/} Because there are no available data on VCR penetration in Nigeria, it not possible to estimate losses. No estimate is available for software piracy.

^{2/} Domestic \$849 and export \$480.

CHART B

BENEFICIARY COUNTRIES IN THE U.S. GENERALIZED SYSTEM OF PREFERENCES

Independent Countries

Angola	Guinea	Philippines
Antigua and Barbuda	Guinea Bissau	Portugal
Argentina	Guyana	Romania
Bahamas, The	Haiti	Rwanda
Bahrain	Honduras	Saint Lucia
Bangladesh	India	Saint Vincent and the
Barbados	Indonesia	Grenadines
Belize	Israel	Sao Tome and Principe
Benin	Ivory Coast	Senegal
Bhutan	Jamaica	Seychelles
Bolivia	Jordan	Sierra Leone
Botswana	Kenya	Singapore
Brazil	Kiribati	Solomon Islands
Brunei	Korea, Republic of	Somalia
Burma	Lebanon	Sri Lanka
Burundi	Lesotho	Sudan
Cameroon	Liberia	Suriname
Cape Verde	Madagascar	Swaziland
Central African	Malawi	Syria
Republic	Malaysia	Taiwan
Chad	Maldives	Tanzania
Chile	Mali	Thailand
Colombia	Malta	Togo
Comoros	Mauritania	Tonga
Congo	Mauritius	Trinidad and Tobago
Costa Rica	Mexico	Tunisia
Cyprus	Morocco	Turkey
Djibouti	Mozambique	Tuvalu
Dominica	Nauru	Uganda
Dominican Republic	Nepal	Upper Volta
Ecuador	Nicaragua	Uruguay
Egypt	Niger	Vanuatu
El Salvador	Oman	Venezuela
Equatorial Guinea	Pakistan	Western Samoa
Fiji	Panama	Yemen (Sanaa)
Gambia, The	Papua New Guinea	Yugoslavia
Ghana	Paraguay	Zaire
Grenada	Peru	Zambia
Guatemala		Zimbabwe

Non-Independent Countries and Territories

Bermuda	Gibraltar	Saint Helena
British Indian Ocean	Heard Island and	Tokelau
Territory	McDonald Islands	Trust Territory of the
Cayman Islands	Hong Kong	Pacific Islands
Christmas Island	Macao	Turks and Caicos Islands
(Australia)	Montserrat	Virgin Islands, British
Cocos (Keeling) Islands	Netherlands Antilles	Wallis and Futuna
Cook Islands	New Caledonia	Western Sahara
Falkland Islands (Isles	Niue	
Malvinas)	Norfolk Island	
French Polynesia	Pitcairn Islands	
	Saint Christopher-Nevis	

CHART C

GSP 1984 Top 15 BENEFICIARIES

<u>Beneficiary Rank</u>	<u>Country</u>	<u>1984 GSP imports (\$million)</u>	<u>% of total (\$13 billion)</u>	<u>GNP per capita (1982\$)</u>
1	Taiwan	3,225	24.8	2,000
2	Korea	1,504	11.5	1,910
3	Hong Kong	1,326	10.2	5,340
4	Brazil	1,196	9.2	2,240
5	Mexico	<u>1,092</u>	<u>8.4</u>	2,270
Subtotal (1-5) =		8,343	64.1	
6	Israel	660	5.1	5,090
7	Singapore	627	4.8	5,910
8	Philippines	283	2.2	820
9	India	257	2.0	260
10	Yugoslavia	<u>238</u>	<u>1.8</u>	2,800
Subtotal (6-10) =		2,065	15.9	
11	Argentina	233	1.8	2,520
12	Peru	218	1.7	1,310
13	Thailand	192	1.5	790
14	Malaysia	178	1.4	1,860
15	Portugal	<u>149</u>	<u>1.1</u>	2,450
Subtotal (11-15) =		970	7.5	
Total (1-15) =		11,378	37.5	

Senator WILSON. Thank you. Mr. Morgan, please proceed.

**STATEMENT OF CHARLES MORGAN, SENIOR VICE PRESIDENT,
UNIVERSAL CITY STUDIOS, INC.**

Mr. MORGAN. Senator Wilson, there's not going to be an awful lot of controversy within this panel. I've noticed that the spokesman who is absent from the proceedings always is the pirate or someone who might speak on his behalf. I just don't think we're going to find a constituency who feels strongly enough about that to stand up and say, this is what I do and these are the reasons I do it. These people kind of run and hide.

I think to follow Jack Valenti as a speaker is about as easy to do as to not recognize the enormous range of contributions that he makes to our industry, both domestically and internationally. And not just—

Senator WILSON. It's unwise, it's unwise to follow him.

Mr. MORGAN. Senator, members of the subcommittee, I thank you for this opportunity to appear before you to discuss some of my thoughts regarding issues of international copyright protection. These issues are of great importance to Universal Pictures and to the entire American motion picture industry, as they are to many others of this country's most competitive industries.

In recent years the Congress has taken an active role in an effort to establish norms of international intellectual property protection and to foster adherence to those norms in other countries. Your leadership in this area has been vital to us, and we have to regard the concerted efforts of the Congress and the executive branch as a strong and reliable instrument for our protection in foreign marketplaces.

In spite of the efforts of our trade negotiators, both in bilateral and multilateral negotiations and of the Congress, which provided important legal tools to foster intellectual property protection in the Trade and Tariff Act of 1984 and the Caribbean Basin Initiative legislation of 1983, we continue to suffer acute problems in many areas of the developing world including countries within the Caribbean Basin.

The case of Panama offers a useful comparison between the two strategies available to American firms whose intellectual property rights have been misappropriated abroad. These are, first, self-help on a local basis through litigation under copyright treaties in effect within a foreign country; and second, recourse to trade agreements and U.S. trade laws such as those established in the Caribbean Basin Initiative.

In order to obtain the trade benefits provided by the Caribbean Basin Initiative, Panama promised the United States that it would put an end to exploitation of our most valuable motion pictures by pirated cable television transmissions. A Panamanian company called Rexsa has engaged in such motion picture piracy since 1981. Satellite signals intended for the domestic United States reached Panama and the rest of Central America and the Caribbean as a result of the overbroad "footprint" necessary for proper reception in Miami and Houston and San Juan, PR.

Rexsa and similar pirate firms in Costa Rica and the Dominican Republic have enriched themselves in misappropriating of these signals and selling our product to Rexsa's Panamanian subscribers. Profits tend naturally to be awesome when such a system is up and running and paying not a nickel to those who produced the programming.

We relied upon the Panamanian governmental promise to end the pirate transmissions and we licensed a legitimate cable television alternative, a Panamanian company with substantial background and experience and one which stands ready to transmit in English and Spanish and in dubbed or subtitled versions of each. One licensee, who also has an agreement with Paramount, MGM, and United Artists, believes that a bilingual service is more appropriate to its Panamanian audience, in contrast to Rexsa's pay service which merely retransmits programming tailored to the interests of viewers within the United States.

Through regular and consistent contact with both the State Department in Washington and the American Embassy in Panama City, we have sought to have Panama live up to its commitment to terminate the Rexsa transmissions so that the legitimate replacement service might get on to earning the sort of honest livelihood apparently scorned by Rexsa.

We want also to protect the theatrical and commercial television markets within Panama, which are seriously undercut by our current inability to synchronize cable release with release in the other media. It is thus often the case that theatrical motion pictures are retransmitted by Rexsa even before they are made available to the cinemas of Panama, which require subtitled and censor-approved prints.

And finally, there is an emotional side to our dispute with Rexsa. We simply don't like being robbed of what costs us millions of dollars to produce. We don't like it to happen even just once. But Rexsa has robbed us daily and systematically over 5 years.

Simultaneously, with seeking the assistance of the State Department and the diplomatic corps under the Caribbean Initiative, we dropped the other shoe. We brought litigation against Rexsa in Panama City for violation of the copyright laws and treaties in effect in Panama.

We have learned some things along the way in this proceeding. No. 1, that 10 percent ownership interest in Rexsa are held by each of two former Panamanian Presidents and a former Foreign Minister; and No. 2, that a judicial resolution against people of such influence is a difficult matter. Moreover, Rexsa generates \$400,000 per month by commercializing properties stolen from us, whereas our litigation treasure chest had to be funded from external sources. The cost has been enormous and has put to a very severe test the will and determination of our industry.

The best which might be said at this point about the results of private litigation is that they are inconclusive. We did obtain an administrative order to the effect that Rexsa violated not only copyright but other Panamanian licensing requirements as well, but a judicial review sought by Rexsa has bogged down implementation of that order for more than a year. While we are fortunate to have extremely able Panamanian counsel, it has to be recog-

nized that the legal and political system are profoundly different from what we are accustomed to.

Our opponent is rich, influential and adept in using that system to his advantage. We have seen Rexsa transform its losses into delays, and those delays into victories, for each month of transmission is another \$400,000. In the meanwhile, the legitimate service which we have licensed must pay interest on its investment, again with moneys generated elsewhere and in other businesses.

In spite of firm commitments made by Panama in exchange for certification under the Caribbean Basin Initiative, the wealth and influence of Rexsa have largely succeeded in blocking the Panamanian executive from fulfilling its promise. It apparently was not difficult for Panama to commit itself in writing before the U.S. Trade Representative and to specifically warrant that it would "prevent the broadcast or cable transmission of material belonging to U.S. copyright holders without their express consent having been first obtained."

But I hold in my hand as I speak to you today Rexsa's TV Guide of January 1986 as an indication of what that promise has meant. If you skim through this thick lengthy review of television programming and theatrical motion pictures conveyed to its subscribers by Rexsa, you won't find a single one to which Rexsa holds a copyright license. That is simply not their policy.

There is truly only one U.S. Government response which makes sense in light of Panama's broken promise on cable piracy:

Okay, you choose to ignore your express assurances to us under the CBI, but please don't expect that you will continue to enjoy the same preferential treatment under our trade laws, which was extended to you on account of those promises.

This was the message I delivered to the Oversight Subcommittee of the Ways and Means Committee of the House just last month, on February 27. The U.S. Government has since pressed these concerns with renewed vigor with the appropriate Panamanian authorities, and finally this has produced a dialog with Rexsa and a substantial modification of Rexsa's attitude toward its legal obligations.

A delegation from Rexsa made a hurried trip to Washington on March 25 and met with both the State Department and the U.S. Trade Representative. Rexsa's envoys asked for a "breathing spell" during which they would aggressively seek licenses from any American firm willing to do business with them. More importantly, they promised that by the end of May Rexsa will terminate altogether its piracy of American motion picture and television programs.

The Rexsa envoys brought with them evidence of attempts to negotiate licenses with a host of suppliers, although it is curious that these letters were all stamped by registered mail with Panama on March 6. Also, the June termination date coincides with scrambling of the Showtime signal, with HBO already scrambled.

But it's not my purpose here to cast doubt on the good intentions of Rexsa. I am here to say that the legal and diplomatic mechanisms contained with the Caribbean Basin Initiative, and essentially within the GSP as well, have provoked movement where there was no movement before. They have resulted in an acknowledg-

ment to USTR where there was never one before, admitting the very thing which Rexsa has so long denied on the homefront back in Panama: that there is copyright liability and that the transmissions must end.

We will monitor these developments carefully, and during the 2 remaining months of piracy by Rexsa, we will see to it that the industry's legitimate licensee is furnished with absolutely first-rate materials to commence transmissions. But if further problems arise and you ask me whether I have greater faith in U.S. trade policy than I do in our ability to prevail in foreign litigation, I won't have to think long before answering.

Elsewhere, and in countries such as Brazil where our negotiating leverage is not as strong as it is in the Caribbean and Pacific basin countries, official policy seems to be to let intellectual property rights, at least as concerns our industry, go basically unprotected. This, after an encouraging period of several months in 1984 when Brazilian prosecutors and police displayed serious concern about the enormous videocassette piracy problem. Indeed, in this fast-growing and important video market, Brazil has adopted openly discriminatory practices, such as requirements that distributors devote fully 25 percent of their titles and units to Brazilian films.

This is the antithesis of a free market in intellectual property. Obviously, if there were sufficient interest among Brazilian consumers to warrant this percentage of total video output, there would be no need to legislate the quota.

From the North we hear an oddly similar message: that implementation of a law already in the books in Quebec will oust us from distribution in that Province, and that a task force report filed in Ottawa recommends the same on a nationwide basis.

This leads me to wonder if our trade negotiators need to take a more forceful stance and recognize that the twin barriers of economic development and protection of culture are not at odds with open borders and protection for American motion pictures. It is entirely reasonable to believe in the potential for a uniquely Canadian or Brazilian culture without believing that the existence of either one is necessarily threatened by exposure to a foreign culture.

Of course, certain domestic "cultural industries" do rely on trade and investment restrictions, and the profits of certain uncompetitive forms might be threatened by free trade and by the protection of American intellectual property. I suppose that is what free trade is all about. Economic development and preservation of culture are lofty goals, but they are not necessarily undercut by free access to and protection for manifestations of foreign culture.

I know that much serious thought is being given in Washington to strengthening existing trade legislation or fundamentally changing our approach to a new trade act. I would urge you to consider as well the inclusion of specific guidelines for U.S. trade policy, including a definition of free and fair trade.

In this fashion, we might at least attempt to rise above the noisy debate regarding the extent to which trade-distorting measures, imposed in the name of cultural sovereignty and economic development, will be tolerated. Legislation could be patterned after the

bills now pending to establish a mechanism to promote open markets in the telecommunications sector.

There are three additional points which I think new legislation should cover.

The Congress should mandate an investigation that will culminate in findings as to who the culprits are, in other words, those governments that keep our competitive intellectual property companies out of their markets and give their own nationals free reign to trample upon the intellectual property rights of American firms. Second, such legislation should mandate negotiations with these identified offenders in order to produce agreements providing for the elimination of the complained-of practices. Finally, in instances where the foreign government simply refuses to budge, such legislation should mandate trade sanctions in proportion to the harm being done to American companies.

I know that this last provision might, in many cases, imply a reduction of the penalties already provided for under the Caribbean Basin Initiative, but it is my perception that the hesitancy of the executive branch to recommend imposition of trade sanctions is related to the perception that the measures provided by existing law are simply too draconian.

It has been mentioned to me on more than one occasion in Central America that yanking all CBI benefits, which is the only possible remedy provided under the CBI legislation, is simply too severe a sanction to be credible. Given an unacceptable choice between doing nothing and dropping what amounts to an atom bomb in terms of trade negotiations, our trade officials are often left with harsh talk as their only weapon, and both they and their foreign listeners know that these words are unlikely to be reflected in action.

A graduated scale of retribution would be much more credible and our Government would be willing to impose sanctions in proportion to the wrongdoing in question as opposed to all-or-nothing sanction under the CBI. By the same token, I would recommend streamlined procedures for invoking trade sanctions on recalcitrant trade partners. Two years is simply an absurd length of time to wait for a foreign partner to fulfill its own promises, as has been the case with Panama.

The copyright industries cannot really survive in many foreign markets absent action from our Government under the trade laws. The option of self-help through litigation in foreign countries is frequently not a viable one for the simple reason that inadequate protection for intellectual property is precisely what permitted the problem to arise in the first place.

Our litigation in Panama was initiated because we could not persuade the executive branch to put an end to cable piracy as it had promised. Such lack of resolve is better addressed by trade negotiators than by illusory recourse to courthouses and administrative agencies in developing countries.

New and stronger legislation is needed to give our trade negotiators the tools they will need in order to advance our cause through international trade, but these tools should be tied to expeditious trade sanctions if their use is unavailing.

The leadership provided by the U.S. Congress in the area of international trade and intellectual property protection has been vital. I urge you to continue on the path you are now on and I thank you for your attention.

Senator WILSON. Mr. Valenti, Mr. Morgan, thank you very much, both of you, for excellent statements. You have painted a bleak picture in vivid colors, if I may use a contradictory set of metaphors.

Let me just ask this of you. You, Mr. Morgan, mentioned that Rexsa is now apparently being a great deal more reasonable and approachable and that in fact they are exploring with you the possibility of being your licensee. Did I understand that correctly?

Mr. MORGAN. No, Senator Wilson. Rexsa in a meeting with the office of the U.S. Trade Representative just last week, in response to some questions, indicated an intention to cease the pirating transmission of American motion pictures sometime at the end of May.

We have not entered into negotiations with Rexsa. They have never expressed an intent to come to the table. Moreover, they have been stealing our property for 5 years, and we don't know if we really would want to trust that kind of an enterprise with a license. We wonder if they wouldn't pay us for certain of the properties and continue to pirate the rest.

What we've chosen to do as an alternative, and recognizing that to leave Panama without cable service would be objectionable at this point, is to license a second Panamanian company, one with substantial experience in cable television in Buenos Aires, Argentina. These are people who are known to us. They also have a relationship with UIP cable in Argentina. We know their background.

We are hoping that once Rexsa ceases the transmission of our properties without license, the new licensee, Video Cable Comunicaciones, can take to the air with our property and compete and make cable television marketable in Panama.

Senator WILSON. Well, the real point of my question was to ask how effective it has been within this very different political context that you described in Panama. With regard, not just to Panama but in terms of other areas where you've encountered this kind of piracy, has it has been possible to fight that sort of thing by licensing a national of the offending nation?

Mr. MORGAN. I would say that that is a possibility. It certainly is what we have done in Western Europe. Piracy was a major problem in Britain in the early 1980's. The video companies got up and running and first competed with the pirates, and ultimately, with the aid of judicial redress, they put the pirates out of business.

That's more difficult in the Latin territories. It's more difficult in the Far East. The pirates have achieved a degree of influence and power, which would place any competitive operation at a disadvantage. The competitive operation at a disadvantage. The competitor would have two big problems: His titles wouldn't be ready as soon as the pirate operator, who could care less about sequential distribution patterns which the copyright proprietor might have, but second, the pirate doesn't pay any royalties, so his profit is always going to be larger.

It is precisely for these reasons that we need legal assistance within those countries, because with the competitive disadvantages

that our licensee would have, he's just going to be able to compete on the same plan unless the copyright law or the promises under a system of trade negotiations do something to balance off or perhaps to get the legitimate licensee the kind of advantage that he ought to have in this world.

Senator WILSON. All right, that's what I wanted you to spell out. Your statement, and I think the prepared statement of Mr. Valenti, make clear that it is impossible for a legitimately licensed operator to compete with the pirates.

The second point I want to get at is that the pirates are able to flourish where they are because of political influence, or to put it bluntly, they have an end to the government, and if it's not outright bribery, it is at least a form that I think little better in terms of the sort of receipt of revenues that allows the governments at the very least to look the other way.

That is why I said to Mr. Good that I think that he cannot rely upon the moral probity of the people that we're dealing with to suddenly persuade them to do the right thing. I think that it is in the nature of things that they are going to have to see that it is in their economic interest only by being persuaded that there is going to be a tremendous cost to them for failing to operate as they should.

I am struck by your pragmatism in making the point that with regard to the remedies available under the CBI, we may be in a position of those who have enacted too strong a penalty for a crime and see a jury unwilling to impose that penalty, therefore, they let the guilty defendant, the obviously guilty defendant, go scot-free.

I would be interested in what more specific suggestions you think would provide for an appropriate remedy, one that will result in sufficient pain to change things, and the avoidance of the wholesale nuclear attack, that you employed in your metaphor when you mentioned withdrawing all the benefits that are available under the Caribbean Basin Initiative.

Mr. Valenti, you mentioned Canada, and that is not now news to me. It has long since ceased to be a revelation, but it still is shocking to me that Canada, of all of our trading partners, should be engaging in this kind of activity.

Let me ask, are these trade barriers, the nontariff barriers that you mentioned, are these imposed at the national level or the provincial level?

Mr. VALENTI. Good question. The barriers which I spoke about are recommended barriers at the national level, but because of the rather unique nature of the Canadian Constitution, a number of the issues that impinge on these trade barriers have to be provincially initiated and implemented.

There are 10 Provinces in Canada and the Cultural Minister of Canada must deal with the 10 Provinces, taking a program that the Federal Government is interested in moving. Then he has to get implementation through the Provinces. To that extent, yes, it is a combined Federal-Provincial matter.

We are faced in the Province of Quebec with bill 109, which was initiated by the Parliament of Quebec and passed, which has the same severe and gloomy effects on our business, in a sense. A number of our companies have publically stated in hearings in

Montreal that if this bill 109 were implemented, that we would have to withdraw from the Quebec market as a distributor of films and not allow our films to go in there. So that it is both provincial and it is Federal.

Senator WILSON. Well, I am not sufficiently familiar with the Canadian Constitution to know the extent to which it is legitimate for national officials of Canada to assert that they are helpless with respect to nontariff barriers. I gather that the provincial governments, under the Canadian Constitution, can impose—in the manner of States imposing a liquor tax in the United States—that they can impose tariff barriers. But with respect to the nontariff barriers, is this simply a convenient passing of the buck, or does the Canadian Constitution allow sufficient autonomy so that national officials are unable to exert more than jawboning on the provincial officials?

Mr. VALENTI. Well, without wearing the laurel of an expert on the Canadian Constitution, my judgment is that this is a legitimate enterprise on the part of Quebec. But I do believe that in any kind of bilateral trade treaties between two sovereign nations that our country would expressly lay down certain conditions whereby our businessmen would have equal treatment within the borders of Canada. I have the suspicion that this might supercede any kind of provincial matters, because if it's a bilateral treaty, then it is incumbent upon both countries to make sure that in Texas or Montana or California we don't do certain things which violate or trample on the spirit and the letter of a bilateral trade treaty.

That would be my judgment, but I wouldn't want that to be a lapidary statement here. I'm not that confident of it. But the problem exists and we have to find a way to deal with it.

Senator WILSON. It strikes me as a practical matter, reading your statement, your prepared statement, that the ability that we have to effect reform is clearly different in different parts of the world. Those nations to whom we have extended substantial preferential treatment it seems offer the best and the earliest opportunity for us to bring about reform, and yet, ironically, it is in many of those that the greatest abuses have taken place.

In the Middle East I am concerned about what seems to be this proliferation in terms of the VCR market and a lesser climate, to be blunt, to be pragmatic about it, than we would enjoy with Korea, Taiwan or some of the GSP countries. What suggestions have you there that can be linked to retaliation?

I will disclose, as I did with Mr. Good, my skepticism that appealing to people's better nature and their moral values is going to be successful. These are people who clearly aren't going to be moved by that.

Mr. VALENTI. I share that, Senator, and my rhyming response is, no pain, no gain. And that is, unless you can absolutely assure people that they are going to have pain inflicted upon them in their trade matters, then you're not going to gain anything in your negotiations, because if they don't have to give up anything, why should they, when they are reaping the bounty of all that they are doing, by either nontariff trade barriers or exclusion of their markets?

We've had a good example of that with Japan and others, where we've been talk, talk, talk, talk forever. All of these countries hire high-priced lobbyists in Washington who tell them, if you just hunker down for a while and don't get excited, nothing is going to happen.

So I have some specific suggestions. I think we have several pieces of weaponry at our command. One is the 301 unfair trade filing. There are a lot of defects in it right now. One, it takes too long. There has to be an amendment to the Trade Act for a fast-track 301, Senator, where you can, because of certain conditions that could be clarified, that you could move instead of a year's track, you could move on a 3-month track or a 2-month track.

Many of these questions are so—they're Manichaeian in nature: there's a black and there's a white and there's nothing in between, and you can make your judgments very quickly. But because there is this year's delay—a 45-day before the STR takes up your case and then a year's delay before they finally have to make a decision—and if you're a foreign country, you can involve yourself in all kind of delaying tactics.

So No. 1, a fast-track 301.

No. 2, following on what Charlie said, there has to be a graduated scale, a ratchet effect, as it were, so that you don't have to drop the nuclear bomb to have the war go on.

I think that at this time there ought to be penalties—for example, if you had GSP's, the first penalty is a stripping away of 10 percent of your GSP's. Then going up to 30, to 40 and 50 percent of GSP's.

If you're talking about Korea, \$1.5 billion in GSP. Taiwan, 25 percent of all GSP's are benefiting Taiwan. You have five countries that probably have 50 percent of all the GSP's.

But if you had a graduated scale of retaliation, surgically and precisely applied, I think that you could move on that.

No. 3, always you're going to have, Senator—when I was in the Government we had these controversies. The State Department doesn't really want to get a client country upset, so they take a more—quote—"reasonable" position, whereas the Commerce Department or the Justice Department or the Congress might want to do something else. So as a result, when the President has the sole authority to move, sometimes he doesn't, not because he doesn't want to but because he has contrary advice on the other side.

Therefore—and this is tough—I think there ought to be some mandatory retaliation at the lower graduated scales of that ratchet, where if there is a violation that has been confirmed by whatever process the Congress constructs, then something happens, and that the President then comes in with his discretionary power as you move, as you begin to tighten the vise, that he comes into play.

All of this is doable. It doesn't take a lot. But the reason why there's a lot of talk, talk, talk and no act, act, act is because, one, discretionary power of the President is contrawise to what his State Department foreign policy people tell him; No. 2, there is a vast gap between the beginning of the punishment and the punishment itself. The punishment is too severe.

In summary, then fast-track 301. No. 2, graduated retaliation. And No. 3, mandatory retaliation at the lower end of the scale and moving in to Presidential discretionary power.

Now those are three ways we can deal with this. If you don't do this, I promise you, Senator, we'll be back here next year and we could replicate this hearing. We would nod our heads sagely in dismay and then we would point with alarm and view with some pride some plans we have for rectification, and then the next year, the same thing again.

Unless there is a resolve, a firm resolve on the part of the White House and the Congress to really take this trade in hand and apply reasonable, practical and doable retaliation, nothing but nothing is ever going to happen.

Senator WILSON. Your first point is a fast-track procedure with respect to the 301 provisions, and mandatory lesser penalties. That's two of three. The third—

Mr. VALENTI. I said, first, the fast track. Then I said a graduated scale of retaliation, such as, instead of saying we're going to cut off all trade—like the CBI provision right now says that you are no longer eligible for benefits. You're no longer eligible on the first offense, as it were, 10 percent of your benefits, or 15.

It's just like we have in our criminal code, where the first offense is a misdemeanor, then you go to a felony with a 5 to 10, then you go to a felony with a 20 to 50.

I don't want to make my metaphor too bulky there, but nonetheless I think that's the way to do it.

So again, fast-track 301, graduated penalties, and mandatory penalties at the lower end of the scale, and No. 4, with the Presidential discretionary power moving in at a later time.

Mr. MORGAN. Senator Wilson, I wanted to mention that the formula, which is in the telecommunications bill, would make a lot of sense, it seems to me, for the CBI, and that is, that the complaining company, the outfit that's unable to do business in the foreign country makes a presentation before the Trade Representative, and in the course of that there is some understanding of the size of the loss and that amount then is deleted month-by-month from the amount of merchandise the foreign country is able to send up this way.

So that in the case of Panama, assuming that the \$400,000 by month earning figures roughly correspond to our earnings if we ran the station, we could talk of reducing by \$400,000 a month the subsidy on bananas that come out of Panama and coffee that comes out of Panama.

Senator WILSON. Not unlike what the Commerce Department is attempting to do by having these offsetting bonds in the cases of dumping.

Mr. VALENTI. That's correct, absolutely correct, sir.

Senator WILSON. Gentlemen, thank you very much. You've been very, very helpful.

We will take a 5-minute recess before inviting panel 3 to come forward. Our panelists will be Mr. Stanley M. Gortikov, the president of the Recording Industry Association of America, and Nesuhi Ertegun, chairman of Warner Bros.-Elektra-Atlantic International.

[A brief recess was taken.]

Senator WILSON. We will resume now with our third panel, with representatives of the recording industry. We have two very useful prepared statements, that of Stanley M. Gortikov, president of the Recording Industry Association of America, and the statement of Mr. Nesuhi Ertegün, the president of International Federation of Phonogram and Videogram Producers and chairman of Warner Bros.-Elektra-Atlantic International.

—Gentlemen, we thank you for being here. We thank you for the time and effort that went into your prepared statements. The prepared statements will be made a part of the record.

Summarize them as you choose and make whatever points you wish and then we will have some questions for you.

Sorry, the cameras have disappeared. I wish they could have taken in this fascinating display.

Mr. Gortikov, do you wish to begin.

STATEMENT OF STANLEY M. GORTIKOV, PRESIDENT, RECORDING INDUSTRY ASSOCIATION OF AMERICA

Mr. GORTIKOV. Thank you, Senator. In principle, our industry should be elated that American recorded music is enjoyed and purchased in such huge quantities throughout the world. But despite that universal popularity, the American creators and copyright owners and performers realize virtually no revenue from the sales of their property and their creativity. They are literally robbed every day almost everywhere and seemingly most of the governments in their foreign territories condone the thefts and really just don't give a damn.

Ironically, many of these same nations covet America's goodwill, America's trade benefits, America's market outlets. But at the same time they snub their nose at protecting American intellectual property.

The United States has lost a great measure of its uniqueness in many industries, but we do have uniqueness and innovation in fields of intellectual property, both creatively and technologically.

We create marketable entertainment better than anybody, at least in the judgment of the masses of the people of the world. They love our music, they love our talent, we are the leaders. This, therefore, should be a fount of contribution and revenue, and yet despite this uniqueness and innovation, we wind up on the short end as total losers.

All over the world our product is being stolen by pirates and counterfeiters with the acquiescence of patronizing governments. For these reasons, we do welcome the interest of yourself and your subcommittee to halt this attrition.

Here are some specific examples of what we're talking about. American recordings are made and marketed usually in the form of long-playing records or tape cassettes, the cassette, of course, being the dominant configuration in the world. These are readily reproduced at high speed, relatively low cost almost everywhere. And of course, the pirates who steal from us bear none of the risks of talent development or career investment that are the essential initial obligations of the creators and copyright owners.

The only costs of the pirates and counterfeiters are literally the raw materials themselves: the plastic, soundless blank tape, the printed parts. Put them all together and some stolen hit songs and you wind up with a highly marketable piece of stolen property.

These cassettes that are before you have several things in common. They feature major American artists, they provide no revenue to anybody, all the rights are abridged, and all the governments must be considered as partners in the acts of putting these things out.

The piracy and counterfeiting of recordings in the United States is endemic too, but we manage to keep it in reasonable control through our own self-help staff of investigators and attorneys working in our own industry's multimillion-dollar, antipiracy program.

We cooperate with the FBI, the Justice Department, U.S. attorneys, the IRS, Customs officials, State and local enforcement agencies. And we are aided by strong copyright laws and significant deterrents. Likewise, most Western nations keep the crime within bounds. But in vast areas of the world, such as those that are reflected up here, plus Latin America, Africa, and the Middle East, this crime abounds.

It is an absolute imperative for the American economy that we reverse the prevailing conditions in these arenas. In respect to my own industry, nations in these areas represent the greatest zones of potential future growth for our products, far greater potential than our own domestic U.S. market.

Granted, current piratical conditions are not going to change overnight, but even if the legitimatization of a given market might require 20 years, the clock won't start ticking on those 20 years unless we instigate the essential first steps now. And there is no mystery about what those steps are.

We need, first of all, the nucleus of a dedicated local legitimate industry, with even copyright owners obeying the core of that legitimate industry—the current pirates, rather.

Next, the local government must become intent on protecting intellectual property. This can come about only through effective copyright and antipiracy laws with strong penalties and truly effective enforcement. Only then can legitimate industry flourish.

These processes are essential to protect the interests not only of American and foreign music communities, but local talent and industry can blossom too if these conditions were to prevail.

Right now there is little chance. The minute a local popular performer makes a recording, within 24 hours several competitive companies are on the street with a replication of that pirate recording.

A little over a year ago I was in Singapore. I was approached by an individual who represented himself as a local performer speaking on behalf of 18 other recording and performing artists. He begged, literally begged, for American help in legitimatizing the Singapore recording industry and enacting proper laws, because right now he and his peers have zero opportunity for a recording career. He can only gain income from his personal appearances in local clubs. That is as much of his career as he can tap.

But these turnarounds that I have described can be achieved. They are doable. Hong Kong is a prime example. A few years ago it

was about 95 percent pirate, 5 percent legitimate. Now the reverse is true. So international recordings can sell, local industry now flourishes.

The local domestic piracy is a bad enough condition, but when that nation becomes an exporter of illegitimate recordings, the problem compounds. Singapore is the prime example. By conservative estimates, Singapore has exported hundreds of millions of pirate cassettes outside its own market.

Africa. The Middle East. Throughout the world. Saudia Arabia alone was estimated to have imported 38 million cassettes from Singapore in 1 year, of course featuring American talent. I was in England last year and was told that Singapore cassettes were allowed to enter that market surreptitiously. They were available for purchase. There was only one condition: that the purchaser had to accept multiples of a shipped container load, 180,000 cassettes. You could buy as many as you wanted as long as they were in units of 180,000.

Singapore promises reform, and then they promise again and they promise again, but nothing happens. They promised to Secretary of State Shultz less than a year ago that they would correct the situation. So far, zilch.

There is a new major leaguer coming on stream in the export of international pirate and counterfeit works, and that is Indonesia. It has a population of 140 million people, a huge market for recordings. But it's a big free lunch when it comes to American music. The pirates there are America's invisible, silent partners. They even established a new pirate trading center in Dubai to organize for the Middle East the illicit marketing of Singapore recordings.

In the United States we are doing our best to counter Indonesia's pirate enterprises with a little enterprise of our own. A few months ago my own organization's antipiracy unit learned that a major Indonesian pirate manufacturer was seeking a United States distributor to market a half million cassettes per month, with the ability to double or treble that output.

Contact was established via, of all places, the Indonesian consulate's office in New York, obviously indicating the involvement of the official government. Our investigator posed as a potential distributor for the United States. The major Indonesian pirate visited New York City briefly to discuss terms. The contact was recorded on videotape. Then illicit samples and a catalog that listed thousands of titles were shipped to the United States for our consideration via a unique mode of transportation, which was the Indonesian diplomatic pouch. At a later time the Indonesian major pirate again visited New York to finalize arrangements. This time he was arrested, jailed, charged, and is going to be tried shortly.

Indonesia and Singapore are not alone as pirate havens. The list is endless, it just goes on and on.

The penalties for America and its music and recording industries are extreme. Legitimate sales opportunities are displaced, markets are lost, competition is unfair, the balance of trade is imbalanced, profits and revenues are lost, opportunities curtailed, and certainly there are distortions in reciprocal benefits.

This international battle cannot be fought by us alone, although self-help is our commitment. Internationally, the recording indus-

try relies for antipiracy coordination on IFPI, which is our international association of associations.

Here in the United States we joined together with the motion picture, book publishing and computer software industries. We've created the International Alliance for Intellectual Property, an entity that coordinates with Congress and Government branches to urge the use of American clout to fight for worldwide interests of America and against worldwide piracy and counterfeiting.

We work with the USTR and other Government agencies. We utilize section 301 trade actions where appropriate. We foster the invoking of GSP sanctions, and certainly we urge multilateral and bilateral negotiations.

We welcome the motives and the interest of your subcommittee. We need all the help we can get. We have a lot at stake here, America's leadership, America's culture, and we certainly applaud what you're doing. Thank you.

[The prepared statement of Mr. Gortikov follows:]

PREPARED STATEMENT OF STANLEY M. GORTIKOV

IN PRINCIPLE, THE U.S. RECORDING INDUSTRY SHOULD BE ELATED THAT AMERICAN RECORDED MUSIC IS ENJOYED AND PURCHASED IN HUGE QUANTITIES IN VAST FOREIGN TERRITORIES. DESPITE THAT UNIVERSAL POPULARITY, HOWEVER, AMERICAN CREATORS, COPYRIGHT OWNERS, AND PERFORMERS REALIZE VIRTUALLY NO REVENUE FROM THE SALES OF THEIR PROPERTY AND FOR THEIR CREATIVE ENDEAVORS. THEY LITERALLY ARE ROBBED EVERY DAY, ALMOST EVERYWHERE...AND SEEMINGLY, MOST OF THE GOVERNMENTS IN THESE FOREIGN TERRITORIES CONDONE THE THEFTS AND JUST DON'T REALLY GIVE A DAMN.

IRONICALLY, MANY OF THESE NATIONS COVET AMERICA'S GOODWILL, AMERICA'S FOREIGN AID, AMERICA'S TRADE BENEFITS, AMERICA'S MARKET OUTLETS. BUT AT THE SAME TIME THEY SNUB THEIR NOSE AT PROTECTING AMERICAN INTELLECTUAL PROPERTY. WITH THEM IT IS ALL "TAKE" AND NO "GIVE".

THE UNITED STATES HAS TO A GREAT MEASURE LOST ITS UNIQUENESS AND LEADERSHIP IN IMPORTANT INDUSTRIAL FIELDS RELATING TO STEEL, AGRICULTURE, TEXTILES, AUTOMOBILES, AND THE LIST GOES ON. HOWEVER, AMERICA RETAINS TRUE UNIQUENESS AND INNOVATION IN FIELDS OF INTELLECTUAL PROPERTY, BOTH TECHNOLOGICALLY AND CREATIVELY. WE CREATE MARKETABLE ENTERTAINMENT, FOR EXAMPLE, BETTER THAN ANYBODY -- AT LEAST IN THE JUDGMENT OF THE MASSES OF THE PEOPLE OF THE WORLD. THEY LOVE AMERICAN MUSIC AND AMERICAN TALENT. WE ARE THE LEADERS. THESE ARENAS, THEREFORE, THEORETICALLY SHOULD PROVIDE AMERICA WITH VAST REVENUES AND VAST CONTRIBUTIONS TO OUR BALANCE OF TRADE. YET, DESPITE OUR UNIQUENESS AND DESPITE OUR INNOVATION, AND DESPITE HOW MUCH OUR TALENT IS LOVED, WE WIND UP ON THE SHORT END AS TOTAL LOSERS.

ALL OVER THE WORLD OUR WORKS ARE BEING STOLEN BY PIRATES AND COUNTERFEITERS. OFTEN WITH ACQUIESCENCE OF PATRONIZING GOVERNMENTS...THOSE SAME GOVERNMENTS THAT SEEK SO MUCH OF AMERICA'S OWN HANDOUTS. FOR ALL THESE REASONS, WE WELCOME THE INTEREST OF YOUR SUBCOMMITTEE IN FOCUSING NEEDED ATTENTION AND PRIORITY TO HELP US HALT THIS ATTRITION OF OUR TALENT, OUR RIGHTS, AND OUR PROPERTY.

FIRST, LET ME ACQUAINT YOU WITH SOME SPECIFIC EXAMPLES OF WHAT I AM TALKING ABOUT. AS YOU ARE WELL AWARE, AMERICAN RECORDINGS ARE MADE AND MARKETED USUALLY IN THE FORM OF LONG-PLAYING RECORDS OR TAPE CASSETTES, THE LATTER BEING THE DOMINANT CONFIGURATION THROUGHOUT THE WORLD. COMING ON-STREAM WITH REMARKABLE RAPIDITY IS THE NEW COMPACT DISC MEDIUM WHICH CAPTURES RECORDED SOUND WITH THE SAME CLARITY THAT ORIGINATED IN THE RECORDING STUDIO. UNFORTUNATELY, THESE NEW COMPACT DISCS THEMSELVES BECOME "PERFECT" MASTERS FOR ILLICIT COPYING.

AS I SAID, THE KEY CONFIGURATION AT THE MOMENT IS THE TAPE CASSETTE. IT IS READILY REPRODUCED AT HIGH SPEED AND RELATIVELY LOW COST ALMOST ANYWHERE. THOSE PIRATES WHO CHOOSE TO STEAL FROM US, OF COURSE, BEAR NONE OF THE RISKS OF TALENT DEVELOPMENT OR CAREER INVESTMENT THAT ARE ESSENTIAL INITIAL OBLIGATIONS OF THE CREATORS AND COPYRIGHT OWNERS THEMSELVES. THE ONLY COSTS OF THE PIRATES AND COUNTERFEITERS, THEREFORE, ARE LITERALLY THE RAW MATERIALS THEMSELVES -- THE PLASTIC, THE SOUNDLESS BLANK TAPE, AND PRINTED PARTS. PUT THEM ALL TOGETHER, ADD SOME STOLEN HIT SONGS, AND YOU WIND UP WITH A HIGHLY MARKETABLE PIECE OF STOLEN PROPERTY.

I HAVE HERE SOME TYPICAL EXAMPLES OF COUNTERFEITED AND PIRATED CASSETTES PICKED UP FROM VARIOUS PARTS OF THE WORLD.

(SHOW EXAMPLES)

THE INTERNATIONAL PIRATES' TOTAL ABSENCE OF MORALITY AND CONSCIENCE HAS BEEN HIGHLIGHTED OVER THE PAST YEAR, PARTICULARLY IN THE INDISCRIMINATE WORLD COUNTERFEITING OF RECORDINGS OF BAND-AID, LIVE-AID, AND USA FOR AFRICA RECORDINGS -- WHICH WERE GENEROUSLY CREATED BY THE WORLD RECORDING INDUSTRIES IN BEHALF OF WORLD HUNGER.

THE PIRACY AND COUNTERFEITING OF RECORDINGS IN THE UNITED STATES IS ENDEMIC, BUT WE DO KEEP IT IN REASONABLE CONTROL THROUGH OUR OWN SELF-HELP STAFF OF NINE PERMANENT INVESTIGATORS AND FOUR ATTORNEYS WORKING UNDER OUR OWN INDUSTRY'S MULTI-MILLION DOLLAR ANTI-PIRACY PROGRAM. WE COOPERATE TOO WITH THE FBI, JUSTICE DEPARTMENT, U.S. ATTORNEYS, CUSTOMS OFFICIALS, IRS AUTHORITIES, AND STATE AND LOCAL ENFORCEMENT AGENCIES. WE ARE AIDED DOMESTICALLY BY STRONG U.S. COPYRIGHT LAWS WITH SIGNIFICANT DETERRENT PENALTIES UP TO A MAXIMUM OF FIVE YEARS IMPRISONMENT AND/OR FINES UP TO \$250,000. MOST OTHER WESTERN NATIONS LIKEWISE KEEP THE CRIME WITHIN REASONABLE BOUNDS.

HOWEVER, IN VAST AREAS OF THE WORLD, ILLICIT MANUFACTURING AND MARKETING ABOUND -- LATIN AMERICA, AFRICA, THE MIDDLE EAST, AND THE FAR EAST. IT IS AN ABSOLUTE IMPERATIVE FOR THE AMERICAN ECONOMY THAT WE REVERSE PREVAILING CONDITIONS IN THESE ARENAS. IN RESPECT TO MY OWN INDUSTRY, NATIONS IN THESE AREAS REPRESENT THE GREATEST ZONES OF POTENTIAL FUTURE GROWTH FOR OUR PRODUCTS -- WITH FAR GREATER POTENTIAL THAN OUR OWN DOMESTIC U.S. MARKET. GRANTED, CURRENT PIRATICAL CONDITIONS CANNOT BE ALTERED OVERNIGHT. BUT EVEN IF THE LEGITIMATIZATION OF A GIVEN MARKET WILL REQUIRE 20

YEARS, THE CLOCK WON'T START TICKING ON THOSE 20 YEARS UNLESS WE AGGRESSIVELY INSTIGATE THE FIRST STEPS NOW.

THERE IS NO MYSTERY ABOUT WHAT NEEDS TO BE ACCOMPLISHED IN A COUNTRY WHICH NOW CONDONES PIRACY. FIRST, IT NEEDS THE NUCLEUS OF A DEDICATED LOCAL LEGITIMATE INDUSTRY -- WHICH MIGHT EVEN BE DRAWN FROM CURRENT PIRATE OPERATORS DESIRING TO TURN LEGITIMATE. NEXT, THE LOCAL GOVERNMENT MUST BECOME INTENT ON PROTECTING INTELLECTUAL PROPERTY. THIS CAN BE ACCOMPLISHED ONLY BY THE ENACTMENT OF EFFECTIVE COPYRIGHT AND ANTI-PIRACY LAWS...WITH PENALTIES STRONG ENOUGH TO BE DETERRENTS...ACCOMPANIED BY TRULY EFFECTIVE LAW ENFORCEMENT. ONLY THEN CAN A LEGITIMATE INDUSTRY TAKE ROOT AND FLOURISH.

THESE PROCESSES OF PROTECTION ARE NOT DESIGNED ONLY TO PROTECT THE INTERESTS OF THE AMERICAN AND FOREIGN RECORDED MUSIC COMMUNITY. UNDER THE FAVORABLE CONDITIONS I DESCRIBED, LOCAL TALENT AND CREATIVITY, AND INDUSTRY CAN BLOSSOM TOO. CURRENTLY THERE IS LITTLE CHANCE. FOR EXAMPLE, THE MINUTE A POPULAR LOCAL PERFORMER IN A PIRATICAL COUNTRY RECORDS A SONG, SEVERAL COMPETING PIRATES ARE ON THE STREETS WITH COPIES OF THAT RECORDING WITHIN HOURS AFTER THE ORIGINAL RELEASE -- OF COURSE, WITH NO REVENUE-SHARING FOR THE ORIGINATING TALENT. I WAS IN SINGAPORE OVER A YEAR AGO, AND WHILE THERE, WAS QUIETLY APPROACHED BY AN INDIVIDUAL WHO REPRESENTED HIMSELF AS A PERFORMING ARTIST AND SPOKESMAN FOR 18 OTHER ARTISTS. HE LITERALLY BEGGED ME TO OBTAIN PROTECTION FOR RECORDING ARTISTS IN SINGAPORE, SINCE HE AND HIS PEERS CAN ONLY ATTEMPT TO MAKE A LIVING FROM IN-PERSON PERFORMANCES, SINCE NO LEGITIMATE RECORDING CAREERS WERE POSSIBLE BECAUSE OF PIRACY.

THESE TURNAROUNDS CAN BE DONE IF THE CONDITIONS I PREVIOUSLY DESCRIBED ARE MET. HONG KONG IS A PRIME EXAMPLE. JUST A FEW YEARS AGO, HONG KONG WAS A HOTBED OF LOCAL PIRACY -- ABOUT 5% LEGITIMATE AND 95% PIRATE. THEN EFFECTIVE LAWS WERE ENACTED WITH STIFF PENALTIES, AND STRICT ENFORCEMENT FOLLOWED. NOW THE HONG KONG RECORDING INDUSTRY IS ABOUT 95% LEGITIMATE AND 5% PIRATE. INTERNATIONAL RECORDINGS -- INCLUDING AMERICAN -- CAN SELL TO THEIR POTENTIAL AND LOCAL TALENT HAS EMERGED AND CREATED NEW MARKETS.

LOCAL DOMESTIC PIRACY IN A GIVEN OFFENDING NATION IS DEPRESSING ENOUGH. BUT IF THAT NATION BECOMES AN EXPORTER OF ILLEGITIMATE RECORDINGS, THE PROBLEM COMPOUNDS. SINGAPORE IS A PRIME EXAMPLE. BY CONSERVATIVE ESTIMATES, SINGAPORE HAS EXPORTED HUNDREDS OF MILLIONS OF PIRATE CASSETTES OUTSIDE ITS OWN MARKET CHIEFLY TO AFRICA AND THE MIDDLE EAST. SAUDI ARABIA ALONE WAS ESTIMATED TO HAVE IMPORTED 38,000,000 CASSETTES FROM SINGAPORE IN ONE YEAR -- MANY, OF COURSE, OF AMERICAN TALENT. EVEN ENGLAND IS NOT INSULATED AS A RECIPIENT. I WAS THERE LATE YEAR AND WAS TOLD THAT SINGAPORE CASSETTES WERE AVAILABLE FOR IMPORTATION, VIA PORTUGAL. ONE COULD BUY AS MANY UNITS AS ONE WISHED, WITH ONE KEY PROVISION -- EACH PURCHASE MUST BE IN MULTIPLES OF 180,000 CASSETTES, OR A SHIP CONTAINER.

SINGAPORE PROMISES REFORM...AND THEN PROMISES AGAIN...AND THEN PROMISES AGAIN. LEE KWAN YEW, THE SINGAPORE LEADER, PROMISED GEORGE SCHULTZ PROTECTION FOR U.S. INTELLECTUAL PROPERTY A YEAR AGO. WE'RE STILL WAITING.

THERE IS A NEW MAJOR LEAGUER COMING INTO COMPETITION IN THE WORLD SERIES OF RECORDING PIRACY. IT IS INDONESIA -- A MAJOR MARKET ITSELF WITH A POPULATION OF 140 MILLION. INDONESIANS ADORE AMERICAN RECORDINGS, OF COURSE, BUT THEY DO NOT ADORE PAYING FOR

THEM. INDONESIA IS ONE BIG "FREE LUNCH" WHEN IT COMES TO AMERICAN MUSIC. INDONESIA IS EMERGING AS SINGAPORE'S RIVAL AS A WORLD EXPORTER OF OUR PROPERTY. THEY ARE AMERICA'S INVISIBLE, SILENT, AND CROOKED PARTNERS. THEY EVEN RECENTLY ESTABLISHED A NEW PIRATE TRADING CENTER IN DUBAI TO ORGANIZE FOR THE MIDDLE EAST THE ILLICIT MARKETING OF THEIR RECORDINGS...OR, MORE ACCURATELY "OUR" RECORDINGS.

IN THE UNITED STATES WE ARE DOING OUR BEST TO COUNTER INDONESIA'S PIRATE ENTERPRISES WITH A LITTLE ENTERPRISE OF OUR OWN. A FEW MONTHS AGO, MY OWN ORGANIZATION'S ANTI-PIRACY UNIT LEARNED THAT A MAJOR INDONESIAN PIRATE MANUFACTURER WAS SEEKING A UNITED STATES DISTRIBUTOR TO MARKET ONE-HALF MILLION CASSETTES PER MONTH -- 6,000,000 PER YEAR. CONTACT WAS ESTABLISHED VIA THE INDONESIAN CONSULATE'S OFFICE IN NEW YORK, OBVIOUSLY INDICATING THE INVOLVEMENT OF OFFICIALDOM. OUR INVESTIGATOR POSED AS A POTENTIAL U.S. DISTRIBUTOR AND AT HIS REQUEST, THE MAJOR INDONESIAN PIRATE VISITED NEW YORK CITY BRIEFLY TO DISCUSS TERMS. THE CONTACT WAS RECORDED ON VIDEOTAPE. THEN, ORIGINAL ILLICIT SAMPLES AND A CATALOG LISTING THOUSANDS OF TITLES WERE SUBSEQUENTLY SHIPPED VIA A UNIQUE MODE OF TRANSPORTATION -- INDONESIAN DIPLOMATIC POUCH. AT A LATER TIME, THE INDONESIAN PIRATE AGAIN VISITED NEW YORK TO FINALIZE ARRANGEMENTS. THIS TIME, HOWEVER, THE PIRATE WAS ARRESTED, JAILED, CHARGED AND WILL BE TRIED SHORTLY.

INDONESIA AND SINGAPORE ARE NOT ALONE AS PIRATE HAVENS. THE LIST IS SEEMINGLY ENDLESS, EMBRACING DIVERSE LOCALES AS KENYA, TAIWAN, INDIA, MALAYSIA, NIGERIA, EGYPT, PHILIPPINES, LIBERIA, SOUTH AMERICA, THAILAND, KOREA, SAUDI ARABIA...AND ON AND ON.

THE PENALTIES FOR AMERICA AND ITS MUSIC AND RECORDING INDUSTRIES ARE EXTREME -- DISPLACEMENT OF LEGITIMATE SALES OPPORTUNITIES... LOSS OF MARKETS...UNFAIR COMPETITION...IMBALANCING THE BALANCE OF TRADE...PROFIT AND REVENUE LOSSES...CURTAILED OPPORTUNITY... DISTORTIONS IN RECIPROCAL BENEFITS.

THIS INTERNATIONAL BATTLE AGAINST UNFAIRNESS CANNOT BE FOUGHT BY US ALONE, ALTHOUGH SELF-HELP IS OUR COMMITMENT. INTERNATIONALLY, THE RECORDING INDUSTRY RELIES FOR WORLD ANTI-PIRACY COORDINATION ON IFPI, WHICH IS OUR INTERNATIONAL ASSOCIATION OF ASSOCIATIONS. HERE IN THE U.S. WE HAVE JOINED WITH THE MOTION PICTURE, BOOK PUBLISHING, AND COMPUTER SOFTWARE INDUSTRIES TO CREATE THE INTERNATIONAL ALLIANCE FOR INTELLECTUAL PROPERTY -- AN ENTITY THAT COORDINATES WITH CONGRESS AND VARIOUS GOVERNMENT BRANCHES TO URGE THE USE OF AMERICAN CLOUT TO FIGHT FOR AMERICAN WORLDWIDE INTERESTS AND AGAINST WORLDWIDE PIRACY AND COUNTERFEITING. WE WORK WITH THE UNITED STATES SPECIAL TRADE REPRESENTATION AND OTHER GOVERNMENT AGENCIES...WE UTILIZE SECTION 301 TRADE ACTIONS WHERE APPROPRIATE ...WE FOSTER INVOKING GSP SANCTIONS...WE URGE MULTI-LATERAL AND BILATERAL NEGOTIATIONS.

WE WELCOME THE INTEREST AND MOTIVES OF YOUR COMMITTEE. WE NEED ALL THE HELP WE CAN GET. THERE IS A LOT AT STAKE HERE BEYOND THE NEEDS OF THE AMERICAN RECORDING INDUSTRY. THERE ARE BOTH PERILS AND OPPORTUNITIES HERE TOO FOR AMERICA'S TRADE...AMERICA'S ECONOMY...AMERICA'S LEADERSHIP...AND AMERICA'S CULTURE.

Senator WILSON. Thank you.
Mr. Ertegun, please proceed.

**STATEMENT OF NESUHI ERTEGUN, PRESIDENT, INTERNATIONAL
FEDERATION OF PHONOGRAM AND VIDEOGRAM PRODUCERS**

Mr. ERTEGUN. The International Federation of Phonogram and Videogram Producers, or IFPI, is a worldwide industry association that represents the great majority of the significant record companies of the world. Our membership consists not only of the major international companies but also of hundreds of independent local, national operations. In practically every country where records are sold there is a national IFPI group. In the United States, the RIAA is an affiliate member of the IFPI. It is the IFPI that coordinates the antipiracy activities of the world's record industry.

As president of the IFPI, I am happy to be a witness at this hearing on the subject of piracy of intellectual property. The fact that the U.S. Congress is examining the serious impact of pirate activities on American recording artists and composers and record companies is an extremely important event, and I can assure you that it will have worldwide repercussions.

Before the invention of the audio cassette, piracy existed but at controllable levels. Since the mass introduction of the audio cassette in the 1960's and the easy availability of relatively low-cost cassette duplicating equipment, piracy has become widespread in many areas of the world. I would like to take this opportunity to give you a quick overview of the piracy problem.

First, I would like to correct a wrong impression that many people have on this subject. It is commonly thought that piracy exists only in a few Far Eastern countries. This is not so. And I would like to add here that I'm using piracy in the widest sense of the word. Piracy, counterfeiting, bootlegged, which have different meanings, but basically it's all intellectual property which has been stolen.

In Europe, for instance, pirate tapes represent 90 percent of the total market in Turkey; 65 percent of the total market in Greece; 80 percent of the total market in Portugal; 50 percent of the total market in Spain; and even in an "advanced"—in quotes—country as Switzerland, it represents 9 percent of the market.

Naturally, these percentages reflect the total market and are a combination of both American music and local music. But it is safe to assume that at least two-thirds of the percentages I mentioned consist of American repertoire.

I am happy to say that progress has been made in some of these areas, in recent months especially. Strong copyright laws were recently adopted in Greece, and our IFPI experts tell us that country will be rid of piracy in the near future. Turkey recently passed equally effective antipiracy legislation, covering both audio and video. I visited there 3 weeks ago, had a meeting with the Turkish Prime Minister and received strong assurance from the Government that the new laws would be rigidly enforced. Within a year to a year and a half, piracy should be eliminated from this country of more than 50 million people.

Our next objectives in the Near and Middle East are Egypt and Saudi Arabia. There are some signs of hope in Egypt, as the Government seems disposed to introduce antipiracy measures. The situation is much more difficult in Saudi Arabia. I would like to say a few words about Saudi Arabia.

So far the focus, when piracy is discussed, has been on the pirates who manufacture and export. Very little is said about the countries who import, who buy from the pirates. Here the prime example is Saudi Arabia. To the best of our knowledge, Saudi Arabia has never imported recordings in quantity in a legal and commercially acceptable fashion. Saudi Arabia is a very prosperous country, as you know, with very limited entertainment available, and the people there buy enormous amounts of prerecorded cassettes. A typical sale there is 30 to 40 cassettes.

These cassettes come almost 100 percent from two sources, Singapore and Indonesia. We have good reason to believe that in 1985 Saudi Arabia imported a minimum of 60 million prerecorded cassettes, of which about 80 percent was American music, from Singapore and Indonesia. Imports on such a vast scale can surely not take place without the tacit approval of Government authorities. Therefore, all the recordings purchased in Saudi Arabia consist of stolen goods. Other Arab countries in the gulf also purchase large quantities of pirate product from the Far East. Surely such practices deserve to be examined more carefully, and that is why I am bringing them to the attention of the subcommittee.

Certain Far Eastern countries remain our biggest problem. You've heard already about this. We're talking especially about Singapore and about Indonesia. Hong Kong, it took us 5 years of hard work, with great support from the Government, to clean up. When we did that, the pirates moved their center of activities to Singapore. In that country there are copyright laws, but the problem is simply that they are not really enforced.

The Singapore Government could stop piracy overnight if it wished to do so. This is a small island with a population of 3 million people, and surely it isn't possible to manufacture millions and millions of prerecorded cassettes, stolen mostly from American creative sources, without the knowledge and consent of Government agencies. IFPI has an office in Singapore. I've been there several times, but our efforts so far have been largely unsuccessful. Many promises were given by Government leaders, but they were not kept.

The situation is even worse in Indonesia, a big country with a large population, and it has no copyright laws whatsoever. It's not illegal, from the Indonesian viewpoint, to steal somebody else's property and sell it around the world. There are, therefore, respectable businessmen who make unauthorized copies of American music and sell it around the world and they are proud to put the name of their company and its address on their cassette boxes. This is the most outrageous situation the IFPI has ever had to face. By the end of this year, Indonesia will surpass Singapore and become the biggest exporter of stolen recordings in the world. We have made no progress whatsoever in Indonesia, and we need your help.

In this connection, I would like to read a statement I received late last night from a famous recording artist whose name is Phil

Collins, who just won three Grammy Awards and who is one of the world's most popular recording artists. I wanted to bring him to this hearing, but unfortunately he's in the studio. He's recording, but he brought me a handwritten statement that I would like to read to you, sir:

Like many others in this business, I have been the subject of bootlegging. I have performed concerts and I have been offered tapes of the same concert in the hotel lobby afterwards. This taping and also the pressing of bootleg albums is obviously blatantly illegal and has to be stopped.

When participating in a TV show on piracy in England recently, I was shown bootleg tapes of my own albums that even I couldn't tell from the genuine article, random compilations of Genesis—a group of which Phil Collins is a member—and my own songs put on substandard tape almost designed to self-destruct after two listenings.

However, there is a far darker side of bootlegging. I was involved in the Live Aid concert last year . . .

"Live Aid" was a TV program which lasted some 15 hours, as you know. One-half was in England and the other half in the United States. It was to combat famine in Ethiopia. All the artists volunteered their services, and Phil Collins was the one artist who appeared both in England—then he flew to Philadelphia—he appeared in both concerts.

Indonesian pirates bootlegged the entire, the entire concert—which never existed on record—in 12 volumes. This is volume 3. Very fancy packaging with silver embossing and so on, and sold it by the millions.

So this is what Phil is referring to:

A few months after the concert I received some carefully put together tapes of the same event. The whole idea of this bootlegging exercise is sickening because besides being an illegal act, there is someone making a lot of money out of the starving misery of the people of Ethiopia.

Please help us in stopping these pirates.

Phil Collins.

I have been involved in antipiracy activities for 12 years and several campaigns have been successful. As of now, Malaysia is a country where we think we will repeat our Hong Kong success. Things also look brighter in Taiwan. I would like to tell you a story about Taiwan.

The company I work for has a licensee in Taiwan, and a few months ago we released a new album by Madonna. Our licensee sold 10,000 copies of the album. A careful market survey established beyond doubt that the pirates sold 300,000 copies of the same album, without royalties flowing back to the United States. The same proportion exists, by the way, for all the recording stars.

In my frequent travels and meetings with various government people, I have often tried to explain that by not enforcing antipiracy legislation they not only steal intellectual property that belongs to us, but also harm the culture of their own country.

We have companies in Singapore and Malaysia, for instance. We invest in recordings of local artists and are lucky if we sell 5,000 copies. The pirates sell 100,000 of the same recording. When you lose on every local recording project, you eventually stop and the local artists suffer.

As a closing note on Far Eastern activities, I would like to add that the People's Republic of China has created a copyright agency

to prepare copyright legislation. Can you imagine how important copyright legislation is in a country with 1,200 million people?

In this instance, the Chinese authorities seem eager to consult with IFPI as well as authors' societies to create fair and comprehensive legislation which will result in adequate compensation to rights' holders. I was in Beijing in November 1985 for meetings with the copyright agency as well as Government members of cabinet rank. It is estimated that copyright legislation will be ready within 2 to 3 years.

I have tried in this survey to give a quick review of the piracy situation around the world. Again, I would like to emphasize that we need your help and support, especially in such countries as Indonesia and Singapore and Saudi Arabia, to put an end to wholesale violations and thefts of intellectual property.

We estimate that in 1985 pirates around the world sold 500 million units of prerecorded audio cassettes. On at least two-thirds of these cassettes the music was made in the United States. This is morally wrong, economically wrong, and commercially wrong. We need the support of the U.S. Government to put a stop to this horrible situation. Thank you.

[The prepared statement of Mr. Ertegun follows:]

PREPARED STATEMENT OF NESUHI ERTEGUN

THE INTERNATIONAL FEDERATION OF PHONOGRAM AND VIDEOGRAM PRODUCERS, OR IFPI, IS A WORLDWIDE INDUSTRY ASSOCIATION THAT REPRESENTS THE GREAT MAJORITY OF THE SIGNIFICANT RECORD COMPANIES OF THE WORLD. OUR MEMBERSHIP CONSISTS NOT ONLY OF THE MAJOR INTERNATIONAL COMPANIES BUT ALSO OF HUNDREDS OF INDEPENDENT LOCAL, NATIONAL OPERATIONS. IN PRACTICALLY EVERY COUNTRY WHERE RECORDS ARE SOLD THERE IS A NATIONAL IFPI GROUP. IN THE U.S. THE RIAA IS AN AFFILIATE MEMBER OF THE IFPI. IT IS THE IFPI THAT COORDINATES THE ANTI-PIRACY ACTIVITIES OF THE WORLD'S RECORD INDUSTRY.

AS PRESIDENT OF THE IFPI, I AM HAPPY AND GRATIFIED TO BE A WITNESS AT THIS SUB-COMMITTEE'S HEARING ON THE SUBJECT OF PIRACY OF INTELLECTUAL PROPERTY. THE FACT THAT THE U.S. CONGRESS IS EXAMINING THE SERIOUS IMPACT OF PIRATE ACTIVITIES ON AMERICAN RECORDING ARTISTS AND COMPOSERS AND RECORD COMPANIES IS AN EXTREMELY IMPORTANT EVENT, AND I CAN ASSURE YOU THAT IT WILL HAVE WORLDWIDE REPERCUSSIONS.

FIRST, I WOULD LIKE TO DEFINE PIRACY. PIRACY IS THE REPRODUCTION AND SALE OF COPYRIGHT MATERIAL WITHOUT THE CONSENT OF THE ARTIST WHO PERFORMS ON THE RECORD,

THE COMPOSER WHO WROTE THE SONG, THE PUBLISHER WHO OWNS THE COPYRIGHT ON THE SONG AND THE RECORD COMPANY THAT FINANCED THE PROJECT, BROUGHT ALL THE ELEMENTS TOGETHER AND SUBSEQUENTLY SPENT ADDITIONAL MONIES ON MARKETING, ADVERTISING AND PROMOTION.

BEFORE THE INVENTION OF THE AUDIO CASSETTE, PIRACY EXISTED, BUT AT CONTROLLABLE LEVELS. SINCE THE MASS INTRODUCTION OF THE AUDIO CASSETTE IN THE 60'S, AND THE EASY AVAILABILITY OF RELATIVELY LOW-COST CASSETTE DUPLICATING EQUIPMENT, PIRACY HAS BECOME WIDESPREAD IN MANY AREAS OF THE WORLD. I WOULD LIKE TO TAKE THIS OPPORTUNITY TO GIVE YOU A QUICK OVERVIEW OF THE PIRACY PROBLEM.

FIRST, I WOULD LIKE TO CORRECT A WRONG IMPRESSION THAT MANY PEOPLE HAVE ON THIS SUBJECT. IT IS COMMONLY THOUGHT THAT PIRACY EXISTS ONLY IN A FEW FAR EASTERN COUNTRIES. THIS IS NOT SO. IN EUROPE, FOR INSTANCE, PIRATE TAPES REPRESENT 90% OF THE TOTAL MARKET IN TURKEY; 65% OF THE TOTAL MARKET IN GREECE, 80% OF THE TOTAL MARKET IN PORTUGAL, 50% OF THE TOTAL MARKET IN SPAIN, AND EVEN IN A COUNTRY AS "ADVANCED" AS SWITZERLAND IT REPRESENTS 9% OF THE MARKET. NATURALLY, THESE PERCENTAGES REFLECT THE TOTAL MARKET, AND ARE A COMBINATION OF BOTH AMERICAN MUSIC AND LOCAL MUSIC. BUT IT IS SAFE TO ASSUME THAT 2/3 OF THE PERCENTAGES I MENTIONED CONSIST OF AMERICAN REPERTOIRE.

PROGRESS HAS BEEN MADE IN SOME OF THESE AREAS IN RECENT MONTHS. STRONG COPYRIGHT LAWS WERE RECENTLY ADOPTED IN GREECE, AND OUR IFPI EXPERTS TELL US THAT COUNTRY WILL BE RID OF PIRACY IN THE NEAR FUTURE. TURKEY RECENTLY PASSED EQUALLY EFFECTIVE ANTI-PIRACY LEGISLATION, COVERING BOTH AUDIO AND VIDEO, AND I VISITED THERE THREE WEEKS AGO, HAD A MEETING WITH THE TURKISH PRIME MINISTER AND RECEIVED STRONG ASSURANCE FROM THE GOVERNMENT THAT THE NEW LAWS WOULD BE RIGIDLY ENFORCED. WITHIN A YEAR TO A YEAR AND A HALF, PIRACY SHOULD BE ELIMINATED FROM THIS COUNTRY OF MORE THAN 50 MILLION PEOPLE. OUR NEXT OBJECTIVES IN THE NEAR AND MIDDLE EAST

ARE EGYPT AND SAUDI ARABIA. THERE ARE SOME SIGNS OF HOPE IN EGYPT AS THE GOVERNMENT SEEMS DISPOSED TO INTRODUCE ANTI-PIRACY MEASURES. THE SITUATION IS MUCH MORE DIFFICULT IN SAUDI ARABIA.

I WOULD LIKE TO SAY A FEW WORDS ABOUT SAUDI ARABIA. SO FAR THE FOCUS, WHEN PIRACY IS DISCUSSED, HAS BEEN ON THE PIRATES WHO MANUFACTURE AND EXPORT. VERY LITTLE IS SAID ABOUT THE COUNTRIES WHO IMPORT, WHO BUY FROM THE PIRATES. HERE THE PRIME EXAMPLE IS SAUDI ARABIA. TO THE BEST OF OUR KNOWLEDGE, SAUDI ARABIA HAS NEVER IMPORTED LEGITIMATE RECORDINGS IN A LEGAL AND COMMERCIALY ACCEPTABLE FASHION. SAUDI ARABIA IS A PROSPEROUS COUNTRY, WITH LIMITED ENTERTAINMENT AVAILABLE, AND THE PEOPLE THERE BUY ENORMOUS AMOUNTS OF PRE-RECORDED CASSETTES. THESE CASSETTES COME ALMOST 100% FROM TWO SOURCES: SINGAPORE AND INDONESIA. WE HAVE GOOD REASON TO BELIEVE THAT IN 1985, SAUDI ARABIA IMPORTED A MINIMUM OF 60 MILLION PRE-RECORDED CASSETTES, OF WHICH 80% WAS AMERICAN MUSIC, FROM SINGAPORE AND INDONESIA. IMPORTS ON SUCH A VAST SCALE CAN SURELY NOT TAKE PLACE WITHOUT THE TACIT APPROVAL OF GOVERNMENT AUTHORITIES. THEREFORE, ALL THE RECORDINGS PURCHASED IN SAUDI ARABIA CONSIST OF STOLEN GOODS. OTHER ARAB COUNTRIES IN THE GULF ALSO PURCHASE LARGE QUANTITIES OF PIRATE PRODUCT FROM THE FAR EAST. SURELY SUCH PRACTICES DESERVE TO BE EXAMINED MORE CAREFULLY AND THAT IS WHY I AM BRINGING THEM TO THE ATTENTION OF THIS SUB-COMMITTEE.

CERTAIN FAR EASTERN COUNTRIES, HOWEVER, REMAIN OUR BIGGEST PROBLEM BECAUSE THEY HAVE BECOME HUGE EXPORTERS. YOU HAVE ALREADY HEARD THAT THE IFPI CLEANED UP HONG KONG; THIS TOOK FIVE YEARS OF HARD WORK COUPLED WITH TREMENDOUS SUPPORT FROM THE HONG KONG GOVERNMENT. SINGAPORE BECAME THE NEXT CENTER OF PIRATE ACTIVITIES. HERE THERE ARE COPYRIGHT LAWS, AND NEW AND STRONGER LEGISLATION IS BEING PREPARED.

HOWEVER, THE OVERALL PICTURE REMAINS GLOOMY BECAUSE LAW ENFORCEMENT HAS BEEN AND CONTINUES TO BE WEAK AND INEFFICIENT. THE SINGAPORE GOVERNMENT COULD STOP PIRACY OVERNIGHT IF IT WISHED TO DO SO. THIS IS A SMALL ISLAND WITH A POPULATION OF 3 MILLION PEOPLE, AND SURELY IT ISN'T POSSIBLE TO MANUFACTURE MILLIONS AND MILLIONS OF PRE-RECORDED CASSETTES, STOLEN MOSTLY FROM AMERICAN CREATIVE SOURCES, WITHOUT THE KNOWLEDGE AND CONSENT OF GOVERNMENT AGENCIES. IFPI HAS AN OFFICE IN SINGAPORE AND I HAVE BEEN THERE SEVERAL TIMES, BUT OUR EFFORTS SO FAR HAVE BEEN LARGELY UNSUCCESSFUL.

THE SITUATION IS EVEN WORSE IN INDONESIA. THIS IS A BIG COUNTRY WITH A LARGE POPULATION AND THERE ARE NO COPYRIGHT LAWS WHATSOEVER. THEREFORE, IT IS NOT ILLEGAL, FROM THE INDONESIAN VIEWPOINT, TO STEAL SOMEBODY ELSE'S PROPERTY AND SELL IT AROUND THE WORLD. THERE ARE, THEREFORE, "RESPECTABLE" BUSINESSMEN WHO MAKE UNAUTHORIZED COPIES OF AMERICAN MUSIC AND SELL IT AROUND THE WORLD AND THEY PUT THE NAME OF THEIR COMPANY AND ITS ADDRESS ON THEIR CASSETTE BOXES. THIS IS THE MOST OUTRAGEOUS SITUATION THE IFPI HAS EVER HAD TO FACE. BY THE END OF 1986, INDONESIA WILL SURPASS SINGAPORE AND BECOME THE BIGGEST EXPORTER OF STOLEN RECORDINGS IN THE WORLD. WE HAVE MADE NO PROGRESS WHATSOEVER IN INDONESIA AND WE NEED YOUR HELP.

I HAVE BEEN INVOLVED IN ANTI-PIRACY ACTIVITIES FOR 12 YEARS AND SEVERAL CAMPAIGNS HAVE BEEN SUCCESSFUL. AS OF NOW, MALAYSIA IS A COUNTRY WHERE WE THINK WE WILL REPEAT OUR HONG KONG SUCCESS. THINGS LOOK BRIGHTER IN TAIWAN. I'D LIKE TO TELL YOU A STORY ABOUT TAIWAN. THE COMPANY I WORK FOR, WARNER BROS.-ELEKTRA-ATLANTIC INTERNATIONAL HAS A LICENSEE IN TAIWAN AND A FEW MONTHS AGO WE RELEASED A NEW ALBUM BY MADONNA. OUR LICENSEE SOLD 10,000 COPIES OF THIS ALBUM. A CAREFUL MARKET SURVEY ESTABLISHED BEYOND DOUBT THAT THE PIRATES SOLD 300,000 COPIES OF THE SAME ALBUM, WITHOUT ROYALTIES FLOWING BACK TO THE U.S. SO THEY CAN BE DISTRIBUTED TO THE ARTIST AND THE COMPOSER AND THE RECORD COMPANY. THE SAME PROPORTION EXISTS FOR ALL BIG RECORDING STARS.

IN MY FREQUENT TRAVELS AND MEETINGS WITH VARIOUS GOVERNMENT PEOPLE I HAVE OFTEN TRIED TO EXPLAIN THAT BY NOT ENFORCING ANTI-PIRACY LEGISLATION, THEY NOT ONLY STEAL INTELLECTUAL PROPERTY THAT BELONGS TO US BUT ALSO HARM THE CULTURE OF THEIR OWN COUNTRY. WEA INTERNATIONAL HAS COMPANIES IN SINGAPORE AND MALAYSIA, FOR INSTANCE. WE INVEST IN RECORDINGS OF LOCAL ARTISTS AND ARE LUCKY IF WE SELL 5000 COPIES. THE PIRATES SELL 100,000 OF THE SAME RECORDING. WHEN YOU LOSE ON EVERY LOCAL RECORDING PROJECT YOU EVENTUALLY STOP AND THE LOCAL ARTISTS SUFFER.

AS A CLOSING NOTE ON FAR EASTERN ACTIVITIES, I'D LIKE TO ADD THAT THE PEOPLE'S REPUBLIC OF CHINA HAS CREATED A COPYRIGHT AGENCY TO PREPARE COPYRIGHT LEGISLATION. YOU CAN IMAGINE HOW IMPORTANT COPYRIGHT LEGISLATION IS IN A COUNTRY WITH 1 BILLION 200 MILLION PEOPLE. IN THIS INSTANCE, THE CHINESE AUTHORITIES SEEM EAGER TO CONSULT WITH IFPI, AS WELL AS AUTHORS' SOCIETIES TO CREATE FAIR AND COMPREHENSIVE LEGISLATION WHICH WILL RESULT IN ADEQUATE COMPENSATION TO RIGHTS' HOLDERS. I WAS IN BEIJING IN NOVEMBER 1985 FOR MEETINGS WITH THE COPYRIGHT AGENCY AS WELL AS GOVERNMENT MEMBERS OF CABINET RANK. IT IS ESTIMATED THAT COPYRIGHT LEGISLATION WILL BE READY WITHIN TWO TO THREE YEARS.

I HAVE TRIED IN THIS SURVEY TO GIVE YOU A QUICK REVIEW OF THE PIRACY SITUATION AROUND THE WORLD. AGAIN, I'D LIKE TO EMPHASIZE THAT WE NEED YOUR HELP AND SUPPORT, ESPECIALLY IN SUCH COUNTRIES AS INDONESIA AND SINGAPORE AND SAUDI ARABIA, TO PUT AN END TO WHOLESALE VIOLATIONS AND THEFTS OF OUR INTELLECTUAL PROPERTY. WE ESTIMATE THAT IN 1985, PIRATES AROUND THE WORLD SOLD 500 MILLION UNITS OF PRE-RECORDED AUDIO CASSETTES. ON AT LEAST 2/3 OF THESE CASSETTES THE MUSIC WAS MADE IN THE U.S.A. THIS IS MORALLY WRONG AND ECONOMICALLY WRONG AND COMMERCIALY WRONG. WE NEED THE SUPPORT OF THE U.S. GOVERNMENT TO PUT A STOP TO THIS HORRIBLE SITUATION.

Senator WILSON. Gentlemen, thank you. That's shocking testimony.

Let me just ask you a question, though. There were a couple of bright spots. Why have our efforts against piracy borne fruit, why have we been successful in Greece and Turkey? What are we doing right with respect to them that we have not done in the other areas?

Mr. ERTEGUN. We have established an office, IFPI has, with a lawyer who knows that part of the world very well, and for several years he's been visiting Athens, Istanbul, and Ankara to organize the local companies into becoming aware of how much they were losing through piracy, and was able to form national IFPI groups. And with the help of our lawyers, they approached the Government, first to pass laws, and then to enforce them.

This process normally takes 2 to 3 years minimum. In Turkey it was a little faster. The thing is that in Greece and Turkey—you see, once you get the cooperation of the government and their promise—even if they say, "We're going to enforce the laws," that scares the pirates to a point where a lot of it—in Turkey, for instance, piracy has already been reduced maybe by half overnight because the government has said, we are now going to enforce these laws.

Now we don't have that cooperation from Singapore, we don't have it in Indonesia. The thing is to mount a campaign and hope that the Government will be sympathetic to your views.

Senator WILSON. It seems to me that it does make an enormous difference whether or not the piracy is occurring in a nation that has copyright protection, for the reason that if—and I'm making an assumption here that I will ask you to verify or contradict if I'm wrong—it seems to me that where there is on the statute books of the country copyright protection, that there is a very different situation than where there is not in that the revenues derived by the Government, in the noncopyright situation, are, frankly, an incentive not to enact copyright, because, as you pointed out, in one of the nations, Indonesia, where there is no copyright protection, so-called respectable businessmen are in this business, and I assume that because it is not illegal, they don't hide necessarily their profits and the Government, for that reason, becomes a partner with them in the illegal practice; whereas if we're talking about a country that does have copyright protection, then this piracy is illegal and in order to escape from the obvious consequences of the illegal activity, they don't report what they do and they do it outside the law and outside the normal revenue practices.

Now, they may be paying people off—they probably are—but I would assume that there would be a greater profit to a government in the situation where there is no copyright protection. Is that true?

Mr. ERTEGUN. In theory, sir, you are absolutely right. In theory, there should be a big difference between are there copyright laws in existence or not. Actually, in some parts of the world, it doesn't make that much difference, because Indonesia has no copyright laws of any kind. Singapore does, Singapore has copyright laws. We have been trying for 10 years to talk sense to the Government and

we have totally failed in really getting effective enforcement of the law. So in the end it doesn't seem to make that much difference.

Senator WILSON. Do we know, in the case of Singapore, what kind of taxes these pirates are paying to the Singapore Government?

Mr. GORTIKOV. I'm not aware of that, but certainly the attitude of the Government is a keystone. In Singapore, which is a benevolent dictatorship, laws to change the prevailing situation can be undertaken overnight if it is the will of that benevolent dictator. When they wanted an antilittering law with a severe penalty, they did it overnight.

In the case of counterfeit and pirate recordings, Singapore is a major exporter, as I mentioned. If they turn legitimate, they would lose the export market. We can work through local licensing and support a displacement—we can turn the illegitimate local industry into a legitimate industry and work with it, but we can't replace their illicit exports. That's why they are not taking any action, because they want that revenue from exporting throughout the world. There's no substitute for that.

Senator WILSON. Let me ask you this: It's obvious that IFPI has been vigorous in the defense of its own rights throughout the world, and where you have achieved some success it seems that it's been largely through your own efforts. You've made quite clear from your testimony that you feel that you need help and that you can't do it purely by self-help, by retaining attorneys.

The statement made by the panel before you, Mr. Morgan and Mr. Valenti, was that they thought that appropriate penalties, perhaps more graduated than the all-or-nothing proposition that's available, as a case in point, under the Caribbean Basin Initiative legislation, but with certainty, at least the greater certainty of an expedited procedure and with the certainty that those penalties would be mandatorially applied, was the solution.

It would seem to me that what they are prescribing as needed action to assist in avoiding these copyright piracies with respect to motion pictures would apply with equal force, or a greater force perhaps, with regard to the recording industry.

Mr. GORTIKOV. Yes; those are achievable, reasonable steps, and I support Jack Valenti's statement on their behalf to you.

In the Indonesia matter that I described, for example, in the wake of that operation, we are initiating a private 301 action against Indonesia shortly, with the support and acquiescence of the Special Trade Representative, and other copyright interests will cooperate and add their voices to that 301 action as well.

So the Valenti proposals are genuinely worth supporting.

Senator WILSON. Now I assume, human nature being what it is, unhappily, that Europe represents a potentially large market for illegally produced records and tapes but that your experience has been better there, first because the law, copyright protection exists there, and because there has been enforcement. Is that correct?

Mr. ERTEGUN. That's absolutely right. But still, as you see in the southern part of Europe, there are still huge areas where the pirates are still very strong. But I think that that's one battle we are going to win, whereas, to be very frank with you, Senator, I am extremely pessimistic about our possible success in such countries as

Singapore or Indonesia unless we actually get the active support of the United States Government. We've tried everything for years and years and we have not really been successful. And unless there is some threat of sanction so that they treat us the same way we treat them, unless there is that, I really don't know—I can't be at all optimistic that we will succeed.

Senator WILSON. Gentlemen, thank you very much. I appreciate very much your being here this morning and the prepared statements that you have provided for the record as well.

Mr. GORTIKOV. Thank you.

Mr. ERTEGUN. Thank you, Senator.

Senator WILSON. Our final panel, having to do with trademark infringement, consists of Mr. Frank Wells, the president of the Walt Disney Co.

Mr. WELLS. I would like to bring Mr. Peter Nolan with me from our company, if I may—

Senator WILSON. By all means. He is most welcome. Mr. Wells, we have your prepared statement which will be inserted in its entirety in the record. Let me invite you to make whatever summary of it you choose to do.

STATEMENT OF FRANK G. WELLS, PRESIDENT, WALT DISNEY CO., ACCOMPANIED BY PETER NOLAN, VICE PRESIDENT, INTELLECTUAL COPYRIGHT

Mr. WELLS. Thank you very much, Senator. I speak for the Walt Disney Co., a business located in the Los Angeles area, involved in film entertainment, theme parks and resorts, community development and consumer products. I appreciate the opportunity to speak with you today and to this subcommittee about the protection of some of our company's most important assets by the copyright and trademark laws of certain foreign countries.

Actually there are two business segments of the Disney organization which suffer the most from this problem. One is filmed entertainment, and the second is consumer products.

I listened with great interest to Mr. Valenti's and Mr. Morgan's comments having to do with the filmed entertainment side of our business, so to speak, and the foreign laws that simply do not protect us against the ravages of film piracy.

As a member of the motion picture and entertainment community, I heartily endorse everything you heard today. I take this opportunity to thank Mr. Valenti for his vigorous efforts and also MCA for providing an effective advocate in the person of Charlie Morgan, who has been very active all around the world.

I want to take this opportunity to take a brief aside from my prepared comments in relation to some of the things that Jack particularly talked about, having to do with the country of Canada.

Senator, Michael Eisner and I joined the Walt Disney Co. in September 1984. That background, it's unnecessary to go into, but it essentially represented a change in the management of the company.

One of the early priorities we targeted for our motion picture division was to go into the distribution business, the film distribution business for ourselves in Canada rather than license our product

into the Canadian exhibition markets, to the theaters, through another company who had traditionally been handling our distribution of theatrical motion pictures.

It is obvious to say that if we're in the theatrical motion picture business the very lifeblood of that organization is a worldwide distribution organization. All of the major companies have them; indeed, it is the touchstone, if I may use that word, since that happens to be one of our labels—but it is the touchstone of the mark of a major motion picture company to be in the front rank distribution business right around the world.

We duly applied for permission to enter into the Canadian market with our own distribution business, as most if not all of the major motion pictures company have—one or two may not simply because they haven't applied. I look at you today, Senator, some year and a half later and can only report there has been absolutely no progress, despite repeated assurance on our part of the way we would run our business and of the production we would bring to Canada, which is something that they wanted.

Indeed, it seems very clear that under the guise of calling the motion picture distribution business—not the production business—a cultural business, that we are going to be denied access to that market with our own distribution organization until or unless we agree that that company will be at least 51 percent owned by Canadians, this, sir, at a time in the face of which one of the third or fourth largest theatrical motion picture chains in the country was bought by a Canadian citizen and a Canadian company.

I think the facts speak for themselves. We refused to back down. I have no idea at this point how that stalemate will resolve itself, although I can tell you, and we have been advised by representatives of companies doing business in other areas, that it is going to be nothing but a very long and difficult route in which, without the aid of the U.S. Government, we stand little chance of success.

But today, sir, since you have heard about the motion picture and television business in terms of intellectual property, I am going to—and I will try to summarize my prepared statement—talk about the lack of protection in what we call the character licensing area, and particularly in the Far East.

Our company, as you know, is the owner of the famous Mickey Mouse character, as well as Donald Duck, Minnie Mouse, Goofy, Pluto, and Winnie the Pooh, to name just a few, as well as such ongoing new characters as two Saturday morning cartoon favorites, the Wuzzles and the Gummy Bears.

The consumer products segment of the Walt Disney Co. is engaged not just in licensing those characters but in manufacturing, wholesaling and retailing business. It is an enormous part of our business, sir. Part of this organization purchases Disney character merchandise and publications from manufacturers, about 80 percent of which are located within the United States and resells those in our theme parks. At retail the sale of such items generated \$177 million in revenues in the past year. Some of the apparel items sold at such shops are actually manufactured in the country directly by a subsidiary of the Walt Disney Co.

In addition to manufacturing then, our company also licenses independent manufactures around the world for such products as ap-

parel, toys, greeting cards, and watches. It also licenses our characters and stories to be used in various kinds of publications. Indeed, there are over 250 million Disney magazines sold at retail around the world.

We presently estimate that at retail Disney merchandise around the world, including publications, generated approximately \$1.8 billion in sales in the last fiscal year, from which we received royalties of over \$65 million, and over \$42 million from outside of the United States.

As you will see from my prepared statement, these characters do not simply appear out of thin air. They are indeed befitting of the description intellectual property. They are worked on long and hard in the development stage, many of them are rejected. Then they are worked on in the marketing stage. We have very active efforts all around the world led by the gentleman on my left, Mr. Peter Nolan, our vice president of intellectual copyright, to protect those characters. Many of them are not successful, so there is a serious risk when we go in and take on a new character and start to promote it. But of course, alas, when it comes to piracy, it is only the successful ones which the pirates choose to literally steal from us.

You can imagine under these circumstances how the consumer products division feels when, after having spent all that time on both creating, marketing and sizable investment, they turn up in the next month or year as counterfeit copies in the marketplace.

A very high percentage of these infringing products are unfortunately imported from the Far East, where in many cases the laws, as well as the judicial system, simply do not allow American owners like Disney to take effective action against those pirates of our work.

For instance, under Mr. Nolan's leadership, in the past year we found literally an entrepreneurial independent contractor, so to speak, who was willing to take on, on a contingency basis, the rights to enforce on our behalf our copyright, and in some cases, trademark protection, just in the United States.

After a 6-month investigative sweep in New York City, Los Angeles and Orlando, being next to our Florida theme park complex, he uncovered over 500 retail stores selling infringing products. That is, Disney merchandise for which no license had been granted. Over 70 percent of that infringing merchandise, Senator, came from the Far East. And we say this despite what we assert are the heroic efforts of the U.S. Customs Service to keep counterfeit Disney character merchandise from entering ports of this country.

Lawsuits have already been brought against most of those retailers who have failed to settle with us out of court, which most of them did. But you begin to get an idea of the enormity of this problem. The problem, of course, is not just limited to the United States. Indeed, my reason for bringing it up was to underpin it with the fact that 70 percent of that merchandise came from abroad.

Even more important, the lack of protection in the Far East precludes us, in many instances, from developing business in the Pacific rim countries. Taiwan is a prime example where it is virtually impossible for us to even enter, and yet we calculate on a conservative basis that if we had copyright protection there, the royalties to

our company alone would be \$1 million, from that country and from the Philippines, Thailand, Malaysia, Korea, and Indonesia collectively, at least \$3 million a year, all of which we are being plainly deprived of by the counterfeiting, the rampant counterfeiting which goes on in those territories.

What is ironic is that despite the lack of good protection in those countries, we do authorize manufacturers in those countries to produce Disney character merchandise for export to ourselves and to licensees in other countries. In fact, we have licensed over 900 manufacturers in the Far East. There we have to enforce our rights not through copyright or trademark laws but through contract.

At some point, however, we may well have to consider not allowing the manufacture of Disney character merchandise in those countries on the principle that they must become reputable members of the international community before we will let them manufacture.

I hasten to say we frequently look at this issue, and if we thought it would do any material good—and we have no indication that it would—standing alone, our one company, cutting off those countries as a source of supply, we would be the first to do it. It's going to take much more than that. It's going to take a lot of companies doing the same thing, but more than that, again and alas, it's going to take governmental action.

I too wish to join in Mr. Ertegun's comments about the incredible support we have received from Hong Kong. We are only praiseworthy of their efforts to help to alleviate this problem in the character licensing field as well as in the motion picture and the recorded music field.

Such is not the case in other countries, however. Indonesia is probably the best example—or worst example, depending on your choice of phrase—of a country without either laws or a judicial system nor the national resolve to help prevent the unauthorized taking of our creations. It has the largest population, as you know, outside China, and although it may sound funny at first, let me briefly relate to you one of our experiences in Indonesia that dramatizes the problem.

In Mr. Valenti's remarks it was pointed out that regardless of the law, unless there was cooperation from the administration; that is the executive branch of a government, so to speak, one's efforts to stamp out copyright violations come to naught. Listen to this, sir, in relation to the judicial branch of the government and, again, in particular Indonesia.

A few years ago we discovered that an Indonesian company had applied for a trademark for the name and design of our world famous Donald Duck character. They do have trademark protection in Indonesia, at least on the books. But listen to how well it works.

There was absolutely no question but that the Indonesian had pirated our character design as well as the name Donald Duck. We were advised by a top law firm in Indonesia that represented us that the judge in the trial court had clearly been bribed by the defendant. He was stating this to us as a fact, no supposition. He assured us, however, that we would receive a favorable ruling on appeal based on the law and also because the defendant did not

appear to have sufficient resources to bribe all of the judges on the appellate court. We were wrong.

We also advised the U.S. Embassy in Indonesia to inquire as to the status of the case once the appeal was filed because the case file could be intentionally "lost" if the defendant did bribe the court clerk. Our Embassy did make such an inquiry and later the appellate court, contrary to a clear reading of the law, affirmed the lower court ruling that our Donald Duck character had been legitimately stolen from us.

We later learned that the panel of judges had also probably been bribed by the defendant. This became clear to us once we read the opinion of the appellate court. The judges on the bench not only agreed the defendant had not infringed but that Disney was guilty of the Indonesian equivalent of malicious prosecution. We had supposedly acted in bad faith by bringing a lawsuit to try to prevent someone from stealing our own creation.

The defendant subsequently filed such a lawsuit against Disney. Not only does Indonesia not have copyright protection for U.S. owners, but it obviously treats with contempt any action on the part of such owners to try to stop pirates.

In conclusion, I would summarize my comments to you as follows:

One, U.S. copyright and trademark owners are losing substantial income because of the lack of protection in certain countries of the Far East; namely, those I have specifically mentioned.

Indeed, sir, just before I came here to be part of the panel, I was given a statistical analysis that suggests that in the Far East countries alone which I have named, piracy reaches—I have a rather precise figure—in connection with all products, records, tapes, motion pictures, books and software, for the year I believe 1985, it reached in those countries \$1,108 million.

Two, that income is lost because such countries become havens for piracy that preclude proprietary rights owners from entering those markets successfully and because the infringing products are exported to markets where viable businesses are injured by the pirated articles.

Three, the lack of protection not only results from the failure to enact adequate copyright and trademark laws, but most importantly, from the absence of resolve on the part of the executive branch, and as I have indicated today, at least in one case, the judicial branch to enforce those laws.

Four, this lack of income to U.S. proprietary rights owners exacerbates the existing U.S. trade deficit.

Five, Congress, through trade incentives or otherwise, must persuade countries of the Far East that are currently denying protection for U.S. copyright and trademark owners that it is in their best economic and international interest to enact tough laws.

I can hardly do more at this point than endorse the very concrete steps and proposals that Jack Valenti outlined to you, and I realize the practical problem of overkill such as you raised, although I am not as sure I would have been as charitable as Mr. Valenti was in his response to you.

I think maybe—and we saw that with the Caribbean Basin Initiative where it was used very effectively at one point—where? In the Bahamas, or Bermuda?

Where the threat of, if you will, call it overkill, the mere threat alone will ultimately produce the result. I'm not sure that the ratchet effect, as Jack Valenti described it, is not too long and too cumbersome to reach a result where the clearest possible indication is that there is massive, massive piracy in these Far East countries.

Before I conclude, I want to again depart from my remarks in two respects.

Aside from effective Government action, legislatively, administratively, through using the Caribbean Basin Initiative, GATT, the Bern Convention, GSP, and the whole plethora of possible retaliatory—I don't think they should be called anything else—retaliatory trade action, there continues to be an educational process within our own country.

This is a point that Sidney Sheinberg, Mr. Morgan's colleague from Universal, has mentioned time and time again. I remember he mentioned it when all the heads of all the companies—I was at Warner Bros. at the time—traped back to Washington and had a meeting with President Carter, just the motion picture companies.

It is an educational process to convince our country that intellectual property is just as tangible as any other business, be it automobiles, the production of oil or anything else, because ultimately what you have in these countries is nationalization without compensation. They are literally, those governments, condoning the stealing of our product just as much as if they took over and nationalized an oil company or stole an automobile plant or anything else.

But there seems to be a harder leap to make, in Congress and indeed in the administrative or the executive side of our Government, because it is intangible, because it is intellectual property, because you can't touch and taste it, and yet it is the product of just as much, if not more—we would like to think—hard work and creative efforts that should be properly rewarded as any other form of more tangible business.

The final point I would like to make—we would hardly be here for a show biz company if we didn't have a prop or two. I have here for you two Mickey Mouses. They both come from Korea. The one on my right was properly licensed by us for which we received a percentage of the retail sales price. The one on our left, this was also purchased in Korea. It not only offends me on creative grounds, Senator, as perhaps you can observe when you see it, but in addition, of course no royalties were paid on it.

Finally, on another aspect of this, as you know, we have very carefully protective laws in this country for children's safety. This creature in my left hand, a poor replica—I hate to even call it Mickey Mouse, it's so poor—violates practically every one of them. The nose comes off, the eyes come out, and the pieces readily pull apart.

So again, not just in terms of revenues to our company or anything else, but to the safety laws of the country or for any number of reasons, we urge and endorse everything else that's been said

today and hope that the Congress will become even more alert and vigilant in this area of copyright protection.

Thank you very much. I am pleased to have been invited here and I would welcome any questions.

[The prepared statement of Mr. Wells follows:]

PREPARED STATEMENT OF FRANK G. WELLS

Mr. Chairman and members of the Joint Economic Committee. I am Frank Wells, President and Chief Operating Officer of The Walt Disney Company, a business located in the Los Angeles area and involved in filmed entertainment, recreation and resorts, community development, and consumer products. I appreciate the privilege and opportunity to address you today on a topic of great importance to the Disney organization, the protection of some of our company's most important assets by the copyright and trademark laws of certain foreign countries.

Two business segments within the Disney organization suffer most from this problem: our filmed entertainment and consumer products segments. I shall not duplicate the information and presentation given to you separately by Mr. Valenti of the Motion Picture Association of America on the issue of foreign laws that do not protect us against the ravages of film

piracy. We have heard the testimony of the MPAA; it reflects our position and we support it wholeheartedly.

Instead, I wish to focus on the problems Disney has encountered with inadequate or, in some cases, the total lack of protection of our famous characters and marks in countries of the Far East. Our company, in case you did not know, is the owner of the rights to the famous MICKEY MOUSE character, as well as the owner of DONALD DUCK, MINNIE MOUSE, GOOFY, PLUTO and WINNIE THE POOH, just to name a few. We have also developed and own rights to whole new character groups, including the WUZZLES, GUMMY BEARS and FLUPPY DOGS.

The Consumer Products segment of The Walt Disney Company is engaged in the manufacturing, wholesaling, licensing and retailing businesses. Part of this organization purchases Disney character merchandise and publications from manufacturers, about 80% of which are located within the United States, and resells those items at our parks and Disney owned retail outlets near those parks. At retail the sale of such items generated \$177,000,000 in sales last fiscal year. Some of the apparel items sold at such shops are actually manufactured in this country directly by a subsidiary of The Walt Disney Company.

Secondly, our Consumer Products group licenses independent manufacturers around the world to use our

copyrighted works and trademarks on various merchandise items, such as apparel, toys, social expression items, and watches. It also licenses our characters and stories to be used in various kinds of publications, such as story books, comic magazines, coloring books and the like. Indeed, over 250 million Disney magazines are sold at retail each year around the world. We estimate that at retail Disney merchandise and publications generated approximately \$1,800,000,000 in sales last fiscal year, from which Disney, as a licensor of copyrights and trademarks, received royalties in the amount of \$66,200,000. Of that amount Disney received over \$42,000,000 in royalties from outside the United States.

Characters such as the ones I referred to earlier take a long time to create; they do not just come out of thin air. At Disney, story people and artists spend hour upon hour of work in developing a number of character concepts, most of which are discarded for a variety of reasons. Once a concept is preliminarily accepted by our people, stories are created to provide personality and a setting in which the characters can be perceived. Market testing follows, often with failure. The character and story concepts developed by our artists and story people are not always what the public wants. The characters and

stories that survive the testing process are then subject to extensive planning by marketing experts inside Disney and by those hired by Disney on the outside, planning that must be coordinated worldwide with the Disney offices throughout the globe. If a motion picture using the new character group is produced, literally hundreds of thousands of drawings are created by Disney artists to be photographed for incorporation in the film. Later comes the expensive advertising and promotion and the selection of manufacturers and publishers in many countries. Only companies of the highest quality are chosen because of the necessity for maintaining the good reputation of Disney merchandise and publications that we have painstakingly nurtured through the years. Lawyers must concurrently secure the protection for the character group and draft up all the necessary contracts to license our properties properly. Finally, quality control personnel make sure that the items produced meet our standards.

As you can see, all of this activity takes enormous dedication and inspiration , as well as large investments of risk capital and the hard work of many Disney employees. None of this activity would, however, take place but for the presence of legislation that protects our creative efforts. Those laws

(copyright, trademark, unfair competition, and patent laws) provide us with the incentives to create such works in the first place, to invest our money and to hire the people to make the works available to the public.

You can imagine, then, how our Consumer Products group feels when, after having spent all that time, effort, and money, they see "Chinese" or counterfeit copies of their characters on the marketplace. A high percentage of those infringing products are, unfortunately, imported from countries of the Far East, where in many of those countries the laws as well as the judicial systems do not allow American owners like Disney to take effective action against those pirates of our works. For instance, The Walt Disney Company within the last six months made investigative sweeps of New York City, Los Angeles, and Orlando, Florida, and uncovered over 500 retail infringers. Over 70% of the infringing merchandise emanated from the Far East. This is despite the heroic efforts of the United States Customs Service to keep counterfeit Disney character merchandise from entering ports of this country. Lawsuits have already been brought against most of the retailers who have failed to settle with us out of court, but you can get an idea of the enormity of the problem.

The problem is, of course, not limited to just the United States. Our businesses in other countries are substantially injured because of counterfeit Disney character merchandise imported into those territories.

Even more importantly, the lack of protection in the Far East also precludes us in many instances from developing business in the Pacific Rim countries. Taiwan is an example where the law does not provide sufficient protection to U.S. owners, and we are as a result unable to enter that market with any force. We estimate that if Taiwan afforded Disney with adequate protection we would be able to earn \$1,000,000 in royalties this year alone. Other examples are the Phillipines, Singapore, Thailand, Malaysia, Korea, and Indonesia, where we believe we could have earned over \$3,000,000 in royalties last year. The Peoples Republic of China is, of course, a special case because of its enormous population. But to a large degree we do not have a presence in that marketplace due to the lack of a copyright law in that country, and the royalties lost to Disney are really incalculable. We would like to exploit our properties in those countries, but cannot because of the lack of good copyright and/or trademark laws.

What is ironic is that, despite the lack of good protection in those countries, we do authorize

manufacturers in those countries to produce Disney character merchandise for export to ourselves and to licensees in other countries. In fact, we have licensed over 900 manufacturers in the Far East (apart from Japan) to produce such merchandise to supply our licensees in other areas of the world. We enforce our rights in those instances through our contracts, not the copyright and trademark laws. At some point, however, we may have to consider not allowing the manufacture of Disney character merchandise in those countries on the principle that they must become more reputable members of the international community before we will let manufacturers in those countries have our business.

While it is true that the basic structure of the law is important to U.S. copyright and trademark owners, equally significant is the resolve of the government has in enforcing the law. Hong Kong, for instance, has good laws that protect U.S. owners and it has a superb court system, as well as a cooperative customs bureau to help stamp out piracy. Disney for one brings on the average 60 lawsuits a year in Hong Kong against infringers and has an active investigative force that, among other things, checks on our manufacturers and works with the customs bureau there. We are willing to pay for such lawsuits and

surveillance services to stamp out piracy there. The government in Hong Kong is supportive and we are making significant inroads there against pirates.

Such is not the case in other countries. Indonesia is probably the best example (or worst example, depending upon your point of view) of a country without either laws or a judicial system, nor the national resolve, to help prevent the unauthorized taking of our creations. Outside of China, Indonesia has the largest population in the Far East, and yet because it does not provide for copyright protection (except for its own citizens) Disney cannot effectively market its licensed goods there.

Although it may sound funny at first, I would like to relate to this Committee one of our experiences in Indonesia that dramatizes the problem. A few years ago we discovered that an Indonesian company had applied for a trademark registration for and used the name and design of our world famous DONALD DUCK character. There was absolutely no question but that the Indonesian had pirated our character design as well as its name. We brought a lawsuit in Indonesia against this infringer, and lost in the trial court. We were advised by the top law firm that represented us that the judge in the trial court had been clearly bribed by the defendant. He was stating this to us as a fact,

not a mere supposition. He assured us, however, that we would receive a favorable ruling on appeal based on the law and also because the defendant did not appear to be wealthy enough to bribe all the judges on the appellate court.

We were advised also to ask the U.S. Embassy in Indonesia to inquire as to the status of the case once the appeal was filed, because the case file could be intentionally "lost" if the defendant bribed the court clerk. Our Embassy did make such an inquiry and, later, the appellate court, contrary to a clear reading of the law, affirmed the lower court ruling that our DONALD DUCK character had been legitimately stolen from us.

We later learned that this panel of judges had also probably been bribed by the defendant. This became clear to us once we read the opinion of the appellate court. The judges on that bench not only agreed that the defendant had not infringed but that Disney was guilty of the Indonesian equivalent of malicious prosecution. We had supposedly acted in bad faith in bringing the lawsuit to try to prevent someone from stealing our own creation. The defendant subsequently filed such an action against Disney. Not only does Indonesia not have copyright protection for U.S. owners, but it obviously treats with contempt any

action on the part of such owners to try to stop pirates.

In conclusion I would like to summarize my comments to you:

1. U.S. Copyright and Trademark Owners are losing substantial income because of the lack of protection in certain countries of the Far East, namely, Taiwan, Korea, Singapore, Malaysia, The Phillipines, Thailand, and Indonesia.

2. That income is lost because such countries become havens for piracy that preclude proprietary rights owners from entering those markets successfully and because the infringing products are exported to markets where viable businesses are injured by the pirated articles.

3. The lack of protection not only results from the failure to enact adequate copyright and trademark laws, but also from the absence of resolve on the part of the government in the particular country involved.

4. This lack of income to U.S. proprietary rights owners exacerbates the existing U.S. trade deficit.

5. Congress through trade incentives or otherwise must persuade countries of the Far East who

are currently denying protection for the U.S. copyright and trademark owners that it is in their best economic and international interest to enact tough copyright and trademark laws that protect U.S. owners and to set as a national priority the stamping out piracy.

We ask the help of this Committee and Congress to accomplish this goal.

I respectfully ask that the comments I have made today be placed in this Committee's record.

Thank you for your attention and interest.

Senator WILSON. Mr. Wells, thank you very much.

Let me ask you about this section—this creature. You say it was from Korea. How did it come to this country? Was it smuggled in?

Mr. NOLAN. It was purchased in Korea.

Senator WILSON. It was purchased in Korea. You mentioned the heroic efforts of the Customs Service. How many—what's the volume of this knock-off trade coming into this country, that is coming in illegally, wholly apart from the violation of copyright and trademark infringement?

Mr. WELLS. Well, we estimate—and please correct me if I'm wrong, Peter—that only the Customs Service is successful—and we really mean it, despite their heroic efforts—in catching only about 20 percent of the illicit counterfeit products that come in in this area that we're concerned with, apparel, toys, watches, and the rest.

I think that really doesn't precisely answer your question, which I think was what percentage does that represent of the total volume of business?

Senator WILSON. What occasioned the question was your prepared statement that over 70 percent of the infringing merchandise in the area of your three Disney operations emanated from the Far East—

Mr. WELLS. Right.

Senator WILSON. And this you say is despite the heroic efforts of the U.S. Customs Service.

You're saying that these counterfeit artifacts were smuggled into the country?

Mr. WELLS. Yes, indeed, right past Customs. But, of course, that 70 percent is only of the counterfeited goods that we found. That implies that 30 percent was counterfeited here in the United States or other countries, 70 percent from the Far East.

Senator WILSON. Let me ask you this. As you point out in your statement, you point out the irony of the fact that despite their lack of protection, certain countries are host to manufacturers whom you have licensed to produce Disney character merchandise, both for export to the United States and to other nations.

What percentage—not precisely—but is there a significant percentage of your own manufacturing that is licensed to manufacturers in these offending nations?

Mr. WELLS. Well, first, let me explain that the only manufacturing that we do for our own account is for the merchandise primarily that we sell in our own theme parks. We don't reach right around the world with our own manufactured goods. We license people to do it and then they, in turn, turn around and sell it through their own distribution outlets. We are primarily a licensing organization with the exception of the theme parks.

Now with that qualification, what is your question, sir?

Senator WILSON. My question is, to what extent—you've answered that question—to what extent is Disney involved in foreign manufacturing?

Mr. WELLS. Let me answer it. About 10 percent, about 10 percent we have manufactured for our own account, of the total Disney goods that are sold. If you take the figure that I had, that's about \$1.8 billion of Disney merchandise is sold around the world, and

about \$180 million we manufacture ourselves to sell in the theme parks. That's about 10 percent. Ninety percent we license others to sell around the world.

Senator WILSON. Well, I gather that it is not much of a threat for Disney to say to the Korean Government, for example, that if you don't adequately protect us, we are going to pull our operation here, no longer license Korean manufacturers?

Mr. WELLS. That's a good focus. Yes, just in terms of the percentage I gave you, it represents—if you assume its pro rata around the world—what we have manufactured for our own account, which is what we license, it's only about 10 percent that we would have manufactured. So it's not a strong balance.

Senator WILSON. Has your experience been that the licensure of foreign manufacturers has provided you any find of real protection, or is it the situation that's described in the earlier panels that a licensee operating legitimately just can't compete with the pirates?

Mr. WELLS. How would you respond to that, Mr. Nolan, because you've been doing this for years?

Mr. NOLAN. The licensees are paying us royalties, they are complying with our quality control requirements. The counterfeiter doesn't pay any royalties and puts out shoddy products like this. So, yes, our licensees cannot compete fairly, and they get buried.

Mr. WELLS. That's important to mention. It's not just the single effect or our licensee having to pay us a royalty, which typically is in the 5 to 8 percent area, let's say, which is a significant addition to the cost of his goods. So that's one way in which he is at a competitive disadvantage to the pirate.

The second way is in quality control. I mean, this piece on my right probably costs two or three times what it did for this piece to be turned out. And this, as you see, we are rigorous about quality control of Disney-licensed merchandise as we are about the royalty or collecting it. It's always been a cornerstone of the company since Walt's time, that quality.

Senator WILSON. The problems that you have outlined, would you generalize and say that they are peculiar to Disney, or do you find that your competition suffers the same kind of problem in the same magnitude?

Mr. WELLS. I think we can be relatively sure that this is a place where a kind of perverse form of supply and demand operates just as effectively as it does in the economic marketplace. If it's successful it's going to be ripped off, if it's successful it's going to be pirated. That's what we face with the set of characters that are literally the most well known in history in the character merchandise field.

But right after this, I'm sure, all the Star Wars characters—at the height of the Star Wars, we know were ripped off just as badly right around the world. The Muppets, all those characters which sell well—if a pirate is going to be in the business, he's going to go for what ultimately will sell well.

It's probably—I don't know that we've ever made a study of it, but I dare say it is proportionate to its popularity. I don't think they just pick on Disney—in fact, we know they don't.

Senator WILSON. It seems that the major area of difficulty for you, the chief piracy is occurring in the Far East—

Mr. WELLS. Yes; and strongly so for the reasons that you reviewed quite rightly with the previous panel.

We have a thriving business in Europe. We have just a whole matrix of licenses with all of these products. We have separate offices in each of the countries. It is quite decentralized. The local managers deal with local companies to license our products.

Peter, because you are dealing with that every day, what is the extent of piracy, if any, of this sort of product in Europe?

Senator WILSON. Or in the Middle East?

Mr. NOLAN. Well, in the Middle East we don't have a great presence at this point, but in Europe, for example, the European countries do provide adequate protection for us. We do have infringements; they're inevitable. But we successfully prosecute the infringers. The problem with the Far East is we can't successfully prosecute them.

Senator WILSON. How about in Mexico, Latin America?

Mr. NOLAN. In Latin American we do have problems there, not nearly what they are in the Far East, though. Again, it's more a question of going after the infringers, who are always going to be there. But we don't have very serious problems in South America, in the character licensing area.

Senator WILSON. Coming back to your ad libbed remarks with which you prefaced your summary of your prepared statement, Mr. Wells, having to do with the film side of the business, it occurs to me that both for the sake of equity and effectiveness, that we should engage in some kind of reciprocity with our Canadian trading partners and if, as you indicated, one of them has recently acquired the rights to the third largest distributor in the United States—

Mr. WELLS. Excuse me for interrupting—exhibitor. Theater chain. He actually came in here and bought the theaters.

Senator WILSON. Perhaps assert a little reverse cultural sovereignty.

Mr. WELLS. I can't endorse that more. We've all sat around scratching our heads, I think waiting for you to come out here and hear this sad tale.

It's just a sorry case for a progressive country, with a legislative and cultural history not unlike our own in many respects, to just look us straight in the eye across the table and say that a distribution business center, a film distribution business, which is essentially a mechanical operation, is somehow cultural.

If they were talking about film production, you would at least understand why that is cultural, just as the publication of books—Prentice Hall is just going through this, incidentally, because it was books. They said this has a cultural aspect to it and we want to be sure to preserve Canada's cultural identity.

But just the raw mechanism of distributing the film is about as cultural, if I may say so, as a car dealership, and yet that's the hook they're using to insist on ownership.

Senator WILSON. Is this of relatively recent origin?

Mr. WELLS. Yes; this whole thing has happened in the last 1½ to 2 years. It started with something called I believe—I may be corrected on this—it started with something called Investment Canada.

Senator WILSON. Was this under the Trudeau government?

Mr. WELLS. No; it's been very largely, to the extent where it is today, it's been under the new government, it's a result of the new government, without a question. There were problems before, but nothing close to this.

Senator WILSON. Well, gentlemen, thank you very much. This has been very useful, I must say. Your story about your Indonesian judicial experiences makes the point very effectively.

It would seem, whether we're talking about the Canadians or the Indonesians, we need to focus quite specifically on retaliatory measures that will simply bring them to the negotiating table.

Mr. WELLS. Strongly and immediately, I hope. Thank you.

Senator WILSON. Thank you very much. I'm grateful to all who have participated, and without objection, this hearing is adjourned. [Whereupon, at 12:20 p.m., the subcommittee adjourned, subject to the call of the Chair.]

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