GLOBAL
INTELLECTUAL PROPERTY
CENTER

December 10, 2010

The Honorable Gary Locke
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Re: Inquiry on Copyright Policy, Creativity, and Innovation in the Internet Economy, United States Department of Commerce (Federal Register Volume 75, Number 192, Docket number: 100910448-0448-01)

Dear Mr. Secretary:

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region. These comments are submitted by the Chamber's Global Intellectual Property Center (GIPC), which represents a broad spectrum of intellectual property-intensive companies and leads the over 700-member Coalition Against Counterfeiting and Piracy, the largest business coalition dedicated to fighting the growing threat of counterfeiting and piracy to the economy, jobs, and consumer health and safety. The GIPC leads a world-wide effort to protect innovation and creativity by promoting strong intellectual property rights and norms around the world. We recognize that these rights are vital to creating jobs, saving lives, advancing global economic growth, and generating breakthrough solutions to global challenges. The GIPC appreciates this opportunity to respond to the above-referenced Notice of Inquiry (NOI).

The GIPC shares the Department's recognition of " the prevalence of online copyright infringement " and welcomes this inquiry with its " primary motivation " to improve understanding of and, we hope, responses to that problem.[1] We believe that

[1] 75 Fed. Reg. at 61421.

online infringement of copyright and other intellectual property (IP) rights costs jobs, slows economic growth, and endangers consumers. The GIPC also believes that because of the importance of IP to the United States and the harm of infringement, the U.S. Government has a special duty to lead the world in IP protection and enforcement. This includes the adoption of policies that encourage voluntary private sector cooperation in combating online IP infringement.

The Importance of IP

The NOI properly recognizes both the importance of copyright-based industries to our economy and the harm done by infringement.[2] In particular, we highlight that copyright-based industries are a powerful engine of two of our most pressing economic needs: jobs and exports. According to economist Stephen Siwek, in 2007 there were 11.7 million people (over 8.5% of the workforce) employed by industries related to copyright. He also found that the annual compensation of workers in core copyright industries in 2007 exceeded the average annual compensation paid to all U.S. workers by a whopping 30%. More broadly, IP companies employ 18 million Americans.[3]

Moreover, copyrighted products can serve a critical role in President Obama's and the Chamber's shared goal of doubling exports. Siwek found that core copyright sales in foreign markets exceeded $116 billion in 2006 and nearly $126 billion in 2007, an 8% increase.[4] Improving the enforcement of copyright could generate even more jobs and more exports. For example, the Business Software Alliance has concluded that reducing the rate of software piracy by only 10% over four years would generate over 25,000 jobs in the United States, and almost half a *million* jobs, worldwide.[5]

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[2] *Id.* at 61419-20.

[3] Stephen E. Siwek. " Engines of Growth: Economic Contributions of the US Intellectual Property Industries, " Economists Inc. commissioned by NBC Universal, 2005.

[4] Stephen E. Siwek, " Copyright Industries in the U.S. Economy: The 2003-2007 Report ", Economists Incorporated, prepared for the International Intellectual Property Alliance (IIPA), July 2009.

[5] Available at: http://portal.bsa.org/piracyimpact2010/studies/piracyimpactstudy2010.pdf.

IP Protection and Enforcement Promotes Creativity and Innovation

The NOI states a " dual public policy imperative – to combat online copyright infringement more effectively and to sustain innovative uses of information and information technology. " [6] The GIPC urges the Department to consider that these are in fact complementary goals representing a single public policy imperative.

The fundamental understanding of the role of IP in the American legal system is articulated by the Constitution itself, which authorizes Congress " To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries. " [7] Although this passage is oft-cited, it bears repeating yet again in an age when some claim, contrary to both history and logic, that IP *hinders* growth and development. The GIPC recognizes that IP *drives* innovation, whether in the context of copyrighted works such as the stunning special effects of the latest Hollywood blockbuster, computer software that has become so realistic it is used to train our war fighters, or in the context of the patented products and services that provide greater flexibility and productivity-enhancing functionality through which these innovative works are used and enjoyed or new medicines and medical treatments that help keep creators, innovators, and consumers healthy and productive.

Respect for IP is a universal good. The Founders of our country saw this so clearly that in explanation of the inclusion of the Patent and Copyright Clause in the then-draft Constitution, they wrote:

> " [t]he utility of this power will scarcely be questioned. The copyright of authors has been solemnly adjudged, in Great Britain, to be a right of common law. The right to useful inventions seems with equal reason to belong to the inventors. The public good fully coincides in both cases with the claims of individuals. " [8]

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[6] 75 Fed. Reg. at 61420.

[7] U.S. Const. Art. I, sec. 8, cl. 8.

[8] Federalist No. 43.

The final sentence of that passage deserves special attention. Although the nature of IP rights is to give legal and economic exclusivity largely to private entities, that system as a whole creates a *public* good. And the corollary necessarily is that infringement is harm not merely to the individual right holder, but to the public as a whole because it undermines the very basis of the system created by the Founders to promote the progress in creativity and innovation. Consumers do not benefit from infringement; they are harmed by it. No one benefits from piracy, counterfeiting, or other infringements of IP, except perhaps for the illicit gain that accrues to the infringers themselves.

The Need to Enforce IP and the Harm from Infringement

This has been borne out in the contemporary market for copyrighted works. As discussed above, the NOI demonstrates the Department's recognition of the facts of the harm to the U.S. economy from piracy. Nowhere is this starker than in the recording industry, which continues to suffer dramatic declines in revenues, leading directly to layoffs, at the same time that online piracy of music has reached historic and previously unthinkable levels. There are some who scoff at the common-sense relationship between increased theft and decreased revenue, arguing, for example, that sales have declined due to poor quality product. But they have no convincing answer for why, if the product is so bad, millions of people are stealing downloads of it by the billion.

The harms generated by piracy go beyond the loss of jobs and revenue and the corresponding reduction in the ability of creators to make a living. Computer security company McAfee recently released a study demonstrating a clear connection between websites offering pirated copyrighted content and threats of malware and identity theft.[9]

While the focus of this NOI is on remedying the infringement of copyright, respect for IP applies equally to trademarks and patents. Trademarks offer consumers an easy way to identify quality, safe products that are made in accordance with applicable industry or government standards by companies who stand behind those products. Counterfeits deceive consumers into buying unsafe products, often from criminal enterprises. Patents are the lifeblood of innovation across our economy.

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[9] Available at: http://newsroom.mcafee.com/images/10039/DMMRReport_US_25Aug2010.pdf.

Correspondingly, failure to provide effective protection for patents translates into reduced innovation, whether in technology, Internet, manufacturing, pharmaceutical, or other sectors of our economy.

Next Steps

The GIPC recognizes that scope of protection of copyright is surely a matter on which reasonable people may disagree. But those policy discussions should not be confused with the imperative of combating infringement. Contemporary online piracy offers seemingly endless opportunities to address unambiguous acts of copyright infringement. The new challenges of enforcement online, where the pirates can hide in cyber-anonymity and sites can move easily across national borders, is to provide correspondingly contemporary tools.

The GIPC supports a number of strategies and tactics to combat online IP infringement effectively. We join a host of other companies and business and labor organizations in applauding legislative efforts to stop " rogue sites. " S. 3804, the " Combating Online Infringement and Counterfeits Act, " is one example of an approach to address the worst of the worst online infringers, rogue sites. The bill would apply a strict test for identifying rogue sites and provide a set of remedies available when a Federal court, in response to an action filed by the U.S. Attorney General, is persuaded of the site's dedication to counterfeiting and piracy. In our view, the bill is a balanced, appropriate, and much-needed step towards reducing online counterfeiting and piracy by narrowly focusing on the most open and notorious actors. The GIPC supports S. 3804 and urges the Department of Commerce and the Administration to express its support as well. The GIPC is committed to working with others in support of this bill with the goal of eliminating any unintended consequences and maximizing its effectiveness against rogue sites.

The GIPC also commends the assertive work of federal law enforcement agencies in deploying the authorities available under existing law. Last summer's " In Our Sites " takedowns of several prominent rogue sites, followed by an even more extensive action against 82 sites on " Cyber Monday " provide heartening examples. Full funding for these critical law enforcement efforts, as well as full implementation of the 2008 PRO-IP Act, will keep the U.S. squarely on record as a leader in the global effort to combat online counterfeiting and piracy.

The GIPC appreciates the Department's attention to these critical issues and stands ready to assist its ongoing review.

Sincerely,

David T. Hirschmann
President and Chief Executive Officer
Global Intellectual Property Center