

***Testimony of Robert Holleyman
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***Before the Subcommittee on Government Management, Organization, and
Procurement
House Committee on Oversight and Government Reform***

***Hearing on
Protecting Intellectual Property Rights in a Global Economy: Current
Trends and Future Challenges***

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Good morning. My name is Robert Holleyman. I am the President and CEO of the Business Software Alliance.¹ BSA is an association of the world's leading software and hardware companies. BSA's members create approximately 90% of the office productivity software in use in the U.S. and around the world. We appreciate the opportunity to testify today on issues that are important to our member companies.

BSA commends you, Madam Chairwoman, and Ranking Member Bilbray for holding today's hearing. The theft of intellectual property, commonly known as "piracy," is a matter of great concern to the business software industry. Piracy costs the industry billions of dollars in lost revenues each year. It reduces investment in creativity and innovation. And it harms national economies including our own.

In my testimony, I will give a brief overview of the contributions that the business software industry has made and continues to make to the global economy and to describe how piracy has undermined those contributions. I will next describe the evolving challenges the software industry faces with respect to piracy and explain the steps industry is taking to address these challenges. Finally, I will summarize the lessons that we have learned regarding how best to end piracy both here at home and abroad, including certain steps the government can take to more effectively stem the tide of piracy.

¹ The Business Software Alliance (www.bsa.org) is the foremost organization dedicated to promoting a safe and legal digital world. BSA is the voice of the world's commercial software industry and its hardware partners before governments and in the international marketplace. Its members represent one of the fastest growing industries in the world. BSA programs foster technology innovation through education and policy initiatives that promote copyright protection, cyber security, trade and e-commerce. BSA members include Adobe, Apple, Autodesk, AVG, Bentley Systems, CA, Cadence, Cisco Systems, Corel, CyberLink, Dassault Systèmes SolidWorks Corporation, Dell, Embarcadero, HP, IBM, Intel, Intuit, McAfee, Microsoft, Minitab, Quark, Quest Software, Rosetta Stone, SAP, Siemens, Sybase, Symantec, Synopsys, and The MathWorks.

Software Industry Contributions and the Impact of Piracy

Information technology has changed the world in which we live. It has made us more efficient, more productive and more creative. IT delivers better results in dealing with national priorities such as health care, energy, infrastructure, education, and e-government. Software has been at the heart of this technology revolution. Software drives productivity and innovation in almost every economic sector, helping businesses of all sizes perform better in good times and bad. It makes our lives easier, more connected, and more fun at home.

The software industry has also proven to be a remarkable engine for jobs and economic growth. The software and related services sector employed 1.7 million people in the US in 2007 in jobs that, on average, paid 195% of the national average. This sector contributed more than \$261 billion to US GDP in 2007, making it the largest of the US copyright industries.

This sector has yet to reach its full economic potential. This is due, in large part, to piracy. Just as the software industry is the largest copyright sector, software piracy is the biggest component of the piracy problem that we share with the other copyright industries.

As of 2008, one in every five copies of software in use in *this* country, valued at more than \$9.1 billion, was stolen. Globally, 41 percent, or more than one out of every three copies of software in use – nearly \$53 billion worth – was stolen. There are few industries that could endure theft of its products at this level.

Pirates steal jobs and tax revenues as well as intellectual property. A study conducted for BSA by IDC last year found that lowering software piracy rates stimulates the entire IT sector, creating jobs and increasing economic growth and tax revenues. The study concluded that a global 10-point reduction in PC software piracy over four years would deliver an additional 600,000 new jobs, \$24 billion in tax revenues, and \$141 billion in economic growth. This is not an unattainable goal – China has reduced its piracy rate by ten points since 2004, and Russia has reduced its rate by twelve points since 2006.

Reducing piracy delivers indirect benefits as well. Society benefits from new technological innovations. Consumers benefit from more choices and greater competition. Internet users benefit from new ways of communication and expanded creative content made available online. And national economies benefit from enhanced productivity leading to higher standards of living.

Defining Software Piracy

“Software piracy” generally refers to the reproduction or distribution of copyrighted software programs without the consent of the copyright holder. Piracy of software can take a number of forms, but BSA focuses specifically on two particular types: organizational end-user piracy and Internet piracy.

Organizational end-user piracy

The business software industry's most harmful piracy problem traditionally has involved its primary users – large and small corporate, government and other enterprises – that pirate our members' products by making additional copies of software for their own internal usage without authorization. We commonly refer to this activity as "organizational end-user piracy."

Organizational end-user piracy occurs in many different ways. In what is perhaps the most typical example, a corporate entity will purchase one licensed copy of software, but will install the program on multiple computers. Other forms of end-user piracy include copying disks for installation and distribution, in violation of license terms; taking advantage of upgrade offers without having a legal copy of the version to be upgraded; acquiring academic or other restricted or non-retail software without a license for commercial use; and swapping disks in or outside the workplace. Client-server overuse – when too many employees on a network have access to or are using a central copy of a program at the same time, whether over a local area network (LAN) or via the Internet – is another common form of end-user piracy.

Organizational end-user piracy goes on in enterprises large and small, public and private. These enterprises receive the productivity benefits that the software provides, while foregoing the expense of licensed copies of the software. Not only do they steal from software producers, these enterprises enjoy an unfair commercial advantage over their law-abiding competitors who must make a choice between paying for software or doing without. This unfair commercial advantage operates at an international level as well: On average, enterprises in countries with high rates of software piracy are competing unfairly with enterprises from countries with low rates of software piracy.

In many cases, organizational end-user piracy is attributable to negligence and poor asset management practices. Enterprises can also be victimized by unscrupulous computer manufacturers and dealers who install copies of software onto the internal hard drive of the personal computers they sell without authorization from the copyright holder. In some cases, however, organizational end-user piracy is undertaken willfully, with management fully aware and supportive of the conduct.

Internet piracy

The Internet is an indispensable part of global communication and commerce. It has opened up opportunities for faster, more efficient and more cost-effective distribution of information, products and services across the globe. It has also opened up new forms of social interaction that render geography largely irrelevant. As technology innovators, BSA's members are at the forefront of these developments. Software and software functionality are not only sold and delivered over the Internet, but also comprise a key component of the Internet infrastructure.

Unfortunately, in addition to creating significant social and economic opportunities, the borderless and anonymous character of the Internet makes it an ideal forum to engage in a broad variety of unlawful conduct, including copyright piracy.

The scale of software piracy on the Internet is mind-boggling. In the first half of this year, BSA sent almost 2.4 million takedown notices related to P2P and BitTorrent filesharing. We also requested the removal of almost 103,000 torrent files from just nine of the largest BitTorrent index sites worldwide. These torrent files were being used by nearly 2.9 million individuals to download software with a retail value in excess of \$974 million. And this is only a part of the Internet piracy problem.

In addition to harming right holders, Internet piracy exposes computer users to serious risks. Globally, there is significant evidence to link software piracy with the frequency of malware attacks. This is not surprising, since those who use pirated, unlicensed software are typically unable to access or download essential patches and critical updates that ensure their systems remain as secure as possible. This makes them more susceptible to attack over the long term. Moreover, websites that offer access to pirated software often disseminate malware that infects visitors' computers.

Industry Efforts against Piracy

The Business Software Alliance and its individual members devote significant financial and human resources to preventing piracy worldwide. Our efforts are multi-faceted.

First, we are engaged in extensive educational efforts, designed to increase public understanding of the value of intellectual property and to improve overall awareness of copyright laws, on a global basis.

Second, we work closely with governments to encourage adoption of laws that strengthen copyright protection and promote an environment in which the software and IT industries can flourish.

Finally, where appropriate, BSA undertakes enforcement actions against those involved in the unlawful use, distribution or sale of its members' software. As I have already mentioned, BSA has an active notice-and-takedown program directed at various forms of Internet piracy. BSA also has an extensive program to combat corporate end-user piracy. All over the world BSA legal action on behalf of its members against corporate end-users who are using our members' products without authorization.

Technology plays a role in protecting intellectual property rights as well. These may include technological protection measures applied to copyrighted works, or other approaches such as the use of automated content detection and filtering technologies. BSA supports the voluntary development and use of such technologies. We do not, however, believe that government mandates are useful or appropriate. Technology develops most effectively in response to market forces; government mandates would stifle innovation and retard progress.

The Role of Government

Of course, the government also has an essential role to play. Domestically, the investigation and prosecution of IPR-related offenses, using the legal tools provided by Congress, is a vital complement to our own enforcement efforts. We look to the government to continue to expand its IP law enforcement activities here at home.

Internationally, the software industry looks to the U.S. government to persuade foreign governments to commit to protect and enforce intellectual property rights, and to ensure that these countries meet their commitments.

Domestic

Software piracy in the United States is a serious problem – make no mistake. Even though the piracy rate in the U.S. is the lowest in the world, because the market is so large piracy losses exceed \$9.1 billion annually.

Investigation and prosecution of copyright piracy is an essential part of the solution to this problem. BSA commends the Congress for enacting the PRO-IP Act last year. This law provides legal and organizational tools to combat piracy more effectively in the US. The PRO-IP Act also includes authorizing language for increased DOJ funding for IP enforcement activities. In total, the PRO-IP Act authorizes \$55 million per year for FY 2009-2013 for these purposes. We believe that Congress should fund the initiatives contained in Title IV of the PRO-IP Act fully.

Another key element of the PRO-IP Act was the creation of an IP Enforcement Coordinator (IPEC) within the Executive Office of the President to coordinate the development of a Joint Strategic Plan against counterfeiting and infringement, and to improve coordination and communication among the federal agencies involved in IPR protection and enforcement. We are pleased that President Obama has nominated Victoria Espinel, a highly-qualified candidate to hold this important post. It is our hope that, once confirmed as IPEC, Ms. Espinel can bring greater focus and renewed energy to the federal government's efforts to combat IP crime.

International

Intellectual property, including computer software, is a vital part of international trade. In 2007 the copyright industries generated more than \$125 billion in foreign sales and exports. The US-based software industry alone had a \$36 billion *positive* balance of trade in 2008.

Piracy is the most significant market access barrier faced by our industry in many countries around the world. This is certainly the case in emerging markets such as the BRIC countries (Brazil, Russia, India and China). In China, for example, the PC software piracy rate was 80% last year. Only one in five pieces of software that were put into use was acquired legitimately. This represents a \$6.7 billion loss for our industry.

Viewed in isolation, the piracy rates and losses in China and the other major emerging markets are sufficient cause for concern. But that's only part of the story. One of the facts of life for the software industry is that these markets are our future. PC sales in mature markets like the US, the EU and Japan are projected to grow by only 2% over the next three years. In the BRIC countries, by contrast, PC sales are expected to grow by 43% over the same time frame. PC sales drive PC software sales, so it is to these countries that we look for a growing software market. But only if we can make significant reductions in piracy rates that are running well in excess of 50% in each of them.

The nexus between IP and trade has provided one of the principal levers for moving foreign governments into compliance with international norms for protection and enforcement of IP rights. The U.S. government has had great success in using a variety of tools at its disposal for achieving this goal – principally the negotiation of strong IP provisions in free trade agreements, enforcement of the TRIPs Agreement through WTO dispute settlement procedures, the Special 301 program, and administration of trade preference programs such as GSP. BSA applauds the efforts of the small but dedicated professional staff at USTR, supported by the Departments of State, Commerce and Justice, the USPTO and the US Copyright Office, who have made these trade tools work for the benefit of the US copyright industries.

Nevertheless, there is much still to be done. The US government must continue to use these tools to secure improvements to IPR protection and enforcement overseas. Moreover there is important unfinished business remaining from the last Administration. Three free trade agreements have been concluded with our trading partners, but have not been submitted to Congress for approval. These agreements with South Korea, Colombia and Panama have languished long enough. They should be approved.

Another important piece of unfinished business is the Anti-Counterfeiting Trade Agreement (ACTA). The US and a small group of like-minded governments (Australia, Canada, the European Commission, Japan, Mexico, Morocco, New Zealand, Singapore, South Korea, and Switzerland) launched negotiation of this IPR enforcement-oriented agreement just over two years ago. This June, Ambassador Kirk announced that the Obama Administration would support a resumption of ACTA negotiations, and negotiators have met on several occasions since then. We view this as a very positive sign. BSA fully supports conclusion of a strong ACTA that provides an important framework for international IP enforcement standards building on existing IPR rules. We believe that the US can and should negotiate a strong international agreement that is fully consistent with US law.

Conclusion

Software contributes profoundly to the world in which we live. It allows us to share, to create and to innovate in ways previously unimaginable. Software-driven productivity strengthens national economies, including our own, and makes them more competitive and more prosperous. Unfortunately, piracy prevents the software industry from realizing its full potential. We urge the U.S. Government and other governments worldwide to help us solve this problem. We thank you for the efforts made to date.

Thank you again for the opportunity to testify here today. I look forward to your questions and to continued dialogue on this important topic in the future.