

Testimony of

Mr Brad Buckles

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Thank you Mr. Chairman and Senator Leahy for holding a hearing on the devastating effects of counterfeiting. My name is Brad Buckles and I am the Director of the antipiracy operations at the recording Industry Association of America. The RIAA's member companies All of the copyright industries which comprise about 5% of our country's gross domestic product and are responsible for a trade surplus, suffer from optical disc counterfeiting. In many cases, counterfeiters use the proceeds from piracy to fund other nefarious activities. More and more, domestically and abroad, the counterfeiting of discs has evolved from small operations to organized syndicates, making it harder for private industry to combat without help from governments worldwide.

The Nature and Extent of Music Piracy

The counterfeiting of music is almost as old as the music industry itself but the advent of the compact disc radically altered the nature of music piracy, providing the pirate producer with the opportunity to produce near perfect copies of any recording. There is massive manufacture and international traffic of illegal CDs and DVDs and the recent proliferation of cheap recordable optical discs has served to create an easy and hard to detect means of mass duplication.

Annual world-wide pirate sales approach 2 billion units; worth an estimated \$4 - \$5 billion. Globally, 2 in 5 recordings are pirate copies. Total optical disc manufacturing capacity (video / audio CDs, CD-ROMs and DVD) - stands at well over 20 billion units, having quadrupled in the past five years.

Manufacturing capacity massively exceeds legitimate demand. This creates a business environment ripe for exploitation by criminal syndicates. Production costs may be as little as 35¢. Given that the pirate producer has few or none of the overheads associated with genuine production, the profit margin is substantial.

The preferred format for the music pirate varies from country to country and clear regional differences can be seen. Partly in response to successful enforcement actions and partly due to the availability of cheap recordable discs, the preferred choice in the Americas and most of southern Europe, is the CD-R. It is interesting to note that in countries such as Hong Kong, which introduced stringent legislation and active enforcement, the pirates have switched from producing CDs to CD-Rs. The advantages are perhaps obvious; a large investment in machinery and skilled manpower to operate it is avoided. Production can be divided among many sites thus avoiding the risk of detection. Unskilled and illiterate workers can be used and production can be undertaken close to the point of sale thus again minimizing the risks.

Underlying the continuing spread of music piracy is global overcapacity in the manufacture of all optical discs, i.e. discs carrying all media including music, film and computer software. IFPI estimates that the number of optical disc plants worldwide has increased to 1,000. 2002 saw a geographical shift in capacity within Asia and significant increases in Russia and Eastern Europe. This is a recipe for increasing illegal sales, because the supply of discs is far outstripping legitimate demand.

In Asia, China and Malaysia have seen sharp increases in manufacturing capacity. The movement of plant production facilities from Ukraine contributed to an increase in Russia's production capacity, which rose above 300 million. Poland's excess capacity more than doubled. In all these countries such increases underline the lack of adequate regulation of optical disc manufacturing.

Dealing with the problem of organized piracy

As a direct result of proliferating music piracy IFPI has established an Enforcement Unit specifically to target the organized criminals involved. The strategy adopted was to recruit experienced investigators with a wide range of abilities and to bring in support services in the fields of intelligence analysis and forensics. Currently there are 50 investigators worldwide who obtain evidence and intelligence from many different countries. A further 200 personnel in National Groups investigate domestic music piracy.

The success of the forensic laboratory in linking infringing discs to source factories has resulted in many raids on suspect plants worldwide. This has in turn encouraged several Governments including Malaysia, Poland, Bulgaria and Russia to establish their own forensic programs. Russia alone has over 30 known optical disc plants and pirate discs from 17 of these plants have been found in 25 different countries.

The evidence of organized crime involvement is incontrovertible. Music piracy flourishes in those jurisdictions in which corruption is endemic. Major evasion of tax is inherent to these offenses, causing huge losses in Government revenues. Illegal firearms have often been encountered during raids and in a number of investigations there is evidence that groups are also engaging in the trafficking of drugs. In some developing areas whole economies are being distorted internally leading to loss of revenue and the failure of legitimate domestic enterprise to flourish.

Our industry works in partnership with Interpol and the World Customs Organization. At their General Assembly in Budapest in September 2001, the General Secretary of Interpol, Mr. Ron. Noble, stated that, "Interpol recognizes the extensive involvement of organized crime and terrorist groups in intellectual property crimes. There is a real need for facilitation and coordination of international police efforts in combating this criminality, which operates across international borders and has very serious consequences for the public. Working in partnership with customs authorities, international agencies and the private sector, Interpol will provide an effective response to this growing threat."

Cases linked to Organized Crime syndicates

The following cases serve to illustrate the links between organized crime and piracy.

??February 2003 - Italy

Mafia boss, Luigi Giuliano, described in a trial the role of organized crime in music and video piracy. Giuliano, La Forcella (Naples downtown) Camorra boss, arrested two years ago, turned State's evidence and provided information on organized crime activities and strategies in Naples in the last two decades. On the 5th of February, in front of the Public Prosecutor Filippo Beatrice, Giuliano stated that the camorra clans earn some "100,000 Euros each week dealing with drugs, extortion and video and music piracy". He described in detail how organized crime manages all the illegal operations in Naples, with different gangs controlling the calls for tenders, the drugs sales, the illegal betting, and the production of counterfeit CDs in different city areas. These "local" gangs keep part of the illegal incomes while other monies are deposited in the Camorra bosses' bank accounts. Giuliano confirmed that the Camorra gang was directly involved in the production and distribution of pirate CDs, not just controlling the area used by organized crime to run illegal activities. Giuliano told the judges that in the early 80's, during a major war between the various gangs in which dozens were killed, the "Cupola", the illegal main board of the criminal alliance, agreed on the distribution of the illegal activities to various gangs. The "pax mafiosa" which followed the agreement allowed the criminal network to increase the business in many areas including the emerging piracy business.

??January 2003 - Spain

A series of 13 raids by the National Police in Madrid led to the arrest of 40 persons involved in the mass duplication of CD-Rs. The suspects many of whom were illegal immigrants from China and who had been brought to Spain by the other members of the gang were found in possession of 346 high speed burners, 168,400 blank CD-Rs, 24,450 recorded CDs, 39,000 DVDs, 10,500 VCDs with films, 515,000 jewel cases, 210,000 inserts and 48,000 Euros in cash. The gang used a number of computer shops and restaurants to launder the money generated by the pirate product.

??July 2002 - Mexico

An investigation led to a police raid that was met with fierce resistance from five juveniles aged under 18. There were 5kg of cocaine in the premises along with 25 CDR burners and 16,000 pirate CDRs. Using juveniles to run CDR and drug trafficking operations is a deliberate ploy by organized crime to protect those behind the syndicate.

??October 2001 - Mexico

Police raided eleven houses, three of which were linked by interconnecting passages and tunnels, which were disguised by false walls. Inside they discovered a massive counterfeiting operation. In total five persons were arrested during searches, which yielded 235 CDR burners, over 1 million blank CDRs and 512,000 pirated CDRs together with over 1,000,000 inlay cards. This illegal plant had the potential capacity to produce over 14 million CDRs annually. It is believed, that this crime syndicate have invested the profits from piracy into other activities such as narcotics and prostitution.

Four of the persons arrested were found to be in possession of loaded 9mm pistols. During the searches a car was deliberately crashed into a Police barricade and the driver arrested. This man, an associate of the others had been sent to the address to create a diversion to allow the others to escape. He was found to be in possession of an AK47 assault rifle and has been indicted for attempted murder.

??May 2001 - Taiwan

A raid on residential premises in Kaoshung City, revealed 70,000 suspected pirate discs. Most contained pornographic material but more significantly the search of the premises revealed several illegal firearms. These guns were Italian and German self-loading pistols. Five persons were arrested. As a result of these arrests, further searches were carried out and small quantities of pirate product and further firearms seized. At a third premises an illegal arms factory was discovered running alongside a sophisticated CDR facility. In total 17 rifle barrels, 7 modified handgun barrels, 10 shotgun barrels, 10 cartridge magazines, 50 bullets and other equipment were seized. The main suspect in this case had previous involvement in music piracy

??April 2000 - London

Following an IFPI investigation into the supply of high quality counterfeit CDs linked forensically to Russian plants, a series of raids were carried out in London and four persons arrested. During the search a sophisticated credit card counterfeiting operation was uncovered. The suspects, Russian nationals who had been granted political asylum in Britain, employed members of the Russian community in London, to secretly record details of credit cards when these were tendered for payment in restaurants and hotels. The data obtained was then downloaded onto computers and subsequently written to blank cards, which were then used to purchase high value items from London stores. Forensic examination of the computers revealed that over 30,000 credit card details were recorded. At the suspects addresses 10,000 blank credit cards were found together with stamps for attaching holograms and machinery for printing and embossing the cards. The sale of CDs financed the Credit card operation with a network of couriers smuggling the discs into the UK.

Music Piracy and links to Terrorism

The most extreme form of organized crime affecting society today is that of terrorism.

The clandestine nature of terrorist organizations requires large sums of money to maintain operatives in the field and for the purchase of arms and explosives. Some intelligence has been obtained to indicate that these groups are involved in the fabrication, distribution and sale of counterfeit music and other intellectual property infringing material to raise funds for their operations.

IFPI anti-piracy personnel do not investigate information giving rise to suspicion of terrorist involvement in music piracy. Information encountered has been, and will be, referred to an appropriate government agency.

In the United Kingdom and the Republic of Ireland the investigation of terrorist crimes committed by both sides of the sectarian divide has provided a great deal of intelligence about the operations of those groups. There is no doubt that a significant proportion of their funding stems from the sale of counterfeit product. At a recent Organized Crime seminar hosted by the Police Service of Northern Ireland it was stated by a senior police officer that 93% of persons involved with intellectual property crimes, including music piracy offences, were linked to para-military groups.

??December 2000 - Ireland

In December 2000 Garda Officers (Republic of Ireland Police) and Irish Customs officers, investigating the smuggling of diesel fuel between the Republic and Ulster searched a remote farmhouse, where they discovered over 20,000 optical discs suspected to contain infringing material. Whilst still at the premises they were attacked by men dressed in combat clothing and carrying handguns and rifles who stole the discs from them. A subsequent investigation led to the arrests of the gang and the seizure of a huge number of counterfeit music CDs, burning equipment and associated artwork. One of those arrested was a person suspected of being a senior figure in the Provisional IRA during the 1970s and 1980s.

??September 2000 - Russia

On 20 September 2000 the public relations department of the Federal Security Service (FSB), Moscow announced the elimination of a criminal organization headed by one, Ziyaudi Terloyev. This organization was reported to have been financing illegal rebel formations in Chechnya. Integral to Terloyev's activities was the manufacture of pirate compact discs at a plant in Noginsk, outside Moscow. During the raids this plant was closed and 5,000 pirate discs seized. Explosives, grenades, detonators and ammunition were reported seized at the suspects' residences. It was estimated that this groups average monthly earnings amounted to over \$500,000.

??September 2001- South Africa

During a raid on an address in Durban, in September 2001, counterfeit CDs were seized from a syndicate of Pakistani nationals. A search of the premises also revealed documentation indicating allegiance to Al Qaeda and Osama Bin Laden. This information was passed to the appropriate authorities in South Africa.

??November 2001 - Paraguay

Several CD-Rs, containing pirate music compilations, recovered by investigators in Paraguay contained inlay cards depicting graphic images of the exploding twin towers of the World Trade Centre, New York, and portraits of Osama Bin Laden. There is a large population of middle - eastern origin in Ciudad del Este, a city notorious in Paraguay for producing pirate products of all descriptions.

??November 2001 - Mauritius

Street hawkers selling counterfeit music products were seen to be selling video CDs containing footage of the twin towers of the World Trade Centre exploding and a message from Bin Laden. These propaganda discs were seized on the orders of the Police Commissioner in Mauritius who feared that they might foment public unrest. The origin of

these discs is suspected to be Pakistan. Pakistan has been identified to be a significant manufacturer and exporter of pirate music compact discs.

??April 2003 - Philippines

On 23 April 2003 officers from the Philippine Videogram Regulatory Board (VRB), supported by Police units, took action against street vendors selling pirate discs. During this action in which violent protests were staged a man, linked to the vendors was shot and killed by Police. Subsequently it was established that the dead man was the son of an alleged commander of an MILF unit, a proscribed terrorist organization, operating in Mindanao.

Conclusion

There is no doubt that in many jurisdictions the 'low risk - high reward' environment that characterizes the usual response to music piracy of government and law enforcement agencies encourages exploitation by organized crime groups. The experience of the British in Northern Ireland clearly illustrates that terrorist organizations are alive to the potential of intellectual property crime as a source of funding. The absence of evidence in other jurisdictions cannot be taken to indicate that such crime is not a major source of funding for such groups. The greater probability is that the difficulty in penetrating and investigating their activities, coupled with the fact that piracy thrives in corrupt regimes, allows such groups to engage in piracy unhindered by any authority.

The music industry is absolutely committed to confronting the organized crime groups that now threaten the very survival of our business. No other industry invests so much energy and capital to this; no industry has a team of professionals comparable with the investigative resource that we have constructed. However, this anti-piracy resource is tiny relative to the forces ranged against it. Our investigators have no enforcement powers to assist them in the investigation of the ruthless sophisticated groups that are realizing huge profits and which readily resort to extreme violence. It is submitted that there are currently few, if any, Governments that appreciate the threat posed by intellectual property crime and that assign commensurate levels of enforcement resources to it.

The music industry resource is capable of disturbing the debris at the edges of this particular stone but the substantial activities beneath continue undisturbed. The crime gangs, and any terrorist groups, engaging in intellectual property crime are fully aware of the relative absence of any effective law enforcement in this arena and, ironically, may be vulnerable because of this. They often fail to adopt the usual tactics that frustrate penetration and detection of their traditional activities. Indeed, intellectual property crime may be the soft underbelly of these pernicious groups.