

**Written Statement of Caroline Bienstock  
President and Chief Executive Officer  
Carlin America, Inc.**

**Before the Senate Judiciary Committee**

**Oversight of the Office of the Intellectual  
Property Enforcement Coordinator**

**June 24, 2010**

Good morning, Chairman Leahy, Ranking Member Sessions and Members of the Committee. I am Caroline Bienstock, President and Chief Executive Officer of Carlin America, Inc. (“Carlin America”). Carlin America was founded in 1966 by my father, Freddy Bienstock. I have been with the company since 1989.

Carlin America represents the history of American Popular Music at its finest. The Carlin catalog includes more than 150,000 titles, including such song classics as Body and Soul, Chantilly Lace, Dedicated To the One I Love, Fever, Happy Together, I Got You (I Feel Good), Malaguena, Manhattan, The Twist, Under the

Boardwalk and What A Wonderful World, as well as the musical scores of Cabaret, Company and Follies.

I am also a Board Member of the National Music Publishers' Association ("NMPA"). For more than 80 years, NMPA has been the principal trade association representing the interests of over 2,500 music publishers and their songwriter partners in the United States.

A music publisher is a company or individual that represents songwriters by promoting songs, licensing the use of songs, and protecting the property rights of the songwriter. Put simply, the role of the music publisher is to represent the interests of the songwriter and the song.

Thank you for inviting me to testify today about Oversight of the Office of the Intellectual Property Enforcement Coordinator (IPEC). NMPA strongly supported both the creation of the IPEC by the Pro-IP Act of 2008, and the appointment of Victoria Espinel in this position. While this is a hearing about the IPEC Coordinator and the development of a Joint Strategic Plan for intellectual

property enforcement, I must also thank you, Mr. Chairman, and the Members of this committee for all you have done to help music through your efforts to protect intellectual property. You have long recognized that the property rights in intellectual property deserve no less protection than physical property. It is an important value, and one that is relevant to this hearing.

Many organizations, corporations, and individuals have already submitted written comments regarding the development of a Joint Strategic Plan for intellectual property enforcement to the Honorable Victoria Espinel, the United States Intellectual Property Enforcement Coordinator. The comments are detailed and offer thoughtful recommendations. I do not have time to address all of the issues raised in the comments, but I want to join and support, in particular, the issues, concerns and recommendations submitted respectively by the International Intellectual Property Alliance, the Copyright Alliance, and six stakeholder associations identified as the Creative Community Organizations. The groups in the Creative Community Organizations include the American

Federation of Television and Radio Artists (AFTRA), the Directors Guild of America (DGA), the International Alliance of Theatrical and Stage Employees (IATSE), the Motion Picture Association of America (MPAA), the Recording Industry Association of America (RIAA), and the National Music Publishers' Association (NMPA).

Online digital theft has had, and continues to have, a profound negative economic impact on the music publishing industry, as it has on all industries that rely on copyright protection and enforcement.

Despite the extensive copyright regime for songwriters and music publishers, online digital theft is rampant. Millions of copyrighted songs have been and continue to be downloaded illegally from the Internet. Every illegal download or stream means that a copyright owner is denied compensation for his or her creative work. This theft is no different in concept than the burglary of a home, the pirating of a master work or shoplifting from a local store. Each such activity is unlawful.

Financial losses from the online theft of music are enormous:

- Data collected by the International Federation of Phonographic Industries (“IFIP”) shows that worldwide, more than 40 billion songs were illegally downloaded via file sharing in just 2008, which translates into a global online music piracy rate of more than 95%.<sup>1</sup>
- IFPI data also shows that global recorded music sales dropped precipitously from \$30 billion in 2000 to \$18.4 billion in 2008.<sup>2</sup>
- An analysis by the Institute for Policy Innovation concludes that global music piracy causes \$12.5 billion of economic losses every year, 71,060 U.S. jobs lost, a loss of \$2.7 billion in workers’ earnings, and a loss of \$422 million in tax revenues, \$291 million in personal

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<sup>1</sup> <sup>2</sup> IFPI, “Digital Music Report 2009,” at 22, available at [http://www.ifpi.org/content/section\\_resources/dmr2009.html](http://www.ifpi.org/content/section_resources/dmr2009.html).

<sup>2</sup> Id.

income tax and \$131 million in lost corporate income and production taxes.<sup>3</sup>

- According to the Bureau of Labor Statistics, songwriter mechanical royalty income dropped 32% between 2003 and 2006.

Thus, the authorized transmission of copyrighted works, including illegal peer-to-peer (P2P) file sharing of copyrighted musical works, continues to grow at an unprecedented level. To safeguard the sanctity of copyrighted works, government must substantially increase their efforts to combat online digital theft.

Songwriters and music publishers, in particular, are especially vulnerable to harm. Songwriters generally do not have the option of earning money from ancillary income streams like live performance, acting, merchandise, or endorsements. The songwriter and music publisher must rely on the traditional sources of revenue for the use of the song, even while the marketplace is changing every day.

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<sup>3</sup> [www.ipi.org](http://www.ipi.org)

Effective intellectual property protection, therefore, is inextricably linked to the survival of the music publishing business. Without it, publishing companies would not risk investing in catalogs, new writers or new songs; existing jobs would be lost; and new jobs would not be created – all to the detriment of the American economy and our culture, of which music is a central part.

As a general matter, the Committee should focus its attention on how the IPEC will coordinate a more effective and efficient intellectual property enforcement effort by means of the Strategic Plan. The IPEC should promote a program that is flexible, comprehensive, and balanced in its approach.

While there are numerous worthwhile suggestions incorporated within the stakeholders' comments, I believe the Committee and IPEC must focus on and address four areas of specific concern:

- First, the IPEC office must strive for greater coordination between government agencies, on the one

hand, and between government and private industry on the other. Presently, there is less than desirable inter-agency coordination. Interaction between agencies like the Departments of Justice, Homeland Security, Commerce, and Customs is essential for improved and effective enforcement, both in the United States and in foreign countries. Just as important is developing better interaction between those in government engaged in criminal and civil copyright enforcement actions, and those in the private sector directly impacted by those enforcement actions. Private industry would gain by better understanding the status of ongoing enforcement actions, and the process and procedure for such actions.

- Second, the US government should promote adoption of stronger and more uniform foreign copyright laws, and improved international cooperation and judicial process. Copyright owners in the United States often find it remarkably frustrating when trying to enforce



their copyrights abroad. Judicial process should be streamlined and expansion of extraterritorial jurisdiction should be seriously considered. We should not accept the status quo whereby copyright infringers, especially in the digital and wireless worlds where online theft proliferates, side-step liability by escaping to foreign jurisdictions that are proponents or standard bearers of weak copyright law. This approach will sometimes necessitate negotiating or re-negotiating bilateral or multi-lateral trade agreements and mutual assistance treaties.

- Third, we must make education a top priority. The IPEC should focus on coordinating domestic anti-theft educational initiatives for users of all ages, and for corporations of all sizes. The IPEC should also provide increased and better coordinated training for those engaged directly in the enforcement process – whether in government or in private industry.

- Fourth, adequate funding is imperative. Congress must fund initiatives that will improve education, cooperation, and enforcement throughout the copyright industries. Simply put, without proper funding, the ideas and goals set forth in the Strategic Plan will be unattainable.

As we move further into the digital and wireless age, music publishing has a chance to flourish, but only if combating online theft remains a top priority of our government. Cooperation, education, and modernization of the entire copyright enforcement process will ensure success – but only by means of coordinated and effective measures undertaken by the IPEC office and other agencies of government, in coordination and cooperation with the private sector.

The music publishing community is willing to work closely with this Committee and the IPEC office to ensure that copyright enforcement measures are enhanced and streamlined. If Congress properly funds the initiatives, and seriously considers enacting

and/or implementing the proposals submitted to IPEC in a serious manner, the scourge of online music theft will be minimized, and music will flourish well into the foreseeable future. And most importantly, songwriters will continue to write the songs that are so dear to those on this Committee and to the rest of the country.

I thank you again for this opportunity to testify, and look forward to answering your questions.