

Before the
OFFICE OF MANAGEMENT AND BUDGET
Washington, DC 20554

In the Matter of the)
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Joint Strategic Plan of the)
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Intellectual Property Enforcement Coordinator)

**COMMENTS OF THE AMERICAN SOCIETY OF COMPOSERS
AUTHORS AND PUBLISHERS**

American Society of Composers Authors and Publishers
One Lincoln Plaza
New York, New York 10023
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The American Society of Composers Authors and Publishers (“ASCAP”), hereby respectfully submits these Comments in connection with the Office of Management and Budget’s Request for Written Submissions, as noticed in the Federal Register, 75 Fed. Reg 8137 (Feb. 23, 2010). In addition to this submission, ASCAP is also a signatory on the Copyright Alliance’s response to this Request for Written Submissions (“CA Reply”) and on the submission by the Coalition for Online Accountability.

ASCAP, established in 1914, is the oldest and largest U.S. performing rights organization (“PRO”) that licenses, on behalf of nearly 380,000 composer, songwriter and music publisher members, the right to perform publicly the many millions of copyrighted musical works in its vast repertory.

The ASCAP repertory is comprised of the most well known music in every musical genre, including pop, jazz, rock, classical, movie/television composition, country and urban. ASCAP’s members are equally wide and varied, including music luminaries ranging from George Gershwin and Irving Berlin to Madonna, Bruce Springsteen and Garth Brooks. Of course, not all of ASCAP’s members are as well-known as these celebrities. Most songwriters and composers are essentially small businessmen and women who make their living writing music, relying heavily on the royalties collected and paid to them by ASCAP. It is for this reason that ASCAP has a keen interest in this Request for Written Submission – to ensure a robust and protective intellectual property regime for its music-creator members.

ASCAP's Role in Advancing U.S. Creativity

To fully understand the important role that ASCAP performs on behalf of its members and the music community as a whole, we present a brief background on the business of music copyrights. A common refrain in the music industry is that it all begins with a song. However, songwriters must have both the time and incentive to write music. As a consequence, writers and composers have formed creative partnerships with music publishers, who handle many of the commercial aspects of the business, thereby giving writers the freedom to create without having to address the commercial aspects of the music industry. Just as importantly, this partnership ensures that the songwriters are fairly compensated for the use of their creative output – the music that provides the cultural backbone of our country.

Copyrights are essentially a bundle of rights with each right holding a unique value for the creator. Most rights in musical works, such as the right to make a copy or to distribute a work, are completely controlled by the music publisher. Among their many tasks, music publishers license these rights, promote the writers' works with record companies and performing artists, and provide career guidance. Some music publishers merely administer the catalogs of writers who form their own publishing companies. And it should be noted that many writers are self-published (either by choice or by necessity) and administer their own catalog of works.

However, the publisher does not generally handle the separate right to perform the musical work publicly. This right, distinct and apart from other copyrights, holds a unique value for songwriters. When one thinks of public performances, one thinks automatically of live performances. But public performances are made by a myriad of users, including television and radio stations (both commercial and noncommercial), cable networks and cable system operators, hotels, nightclubs, restaurants, colleges and universities, concert halls, Internet sites, wireless operators and many others.

Even writers and publishers working together cannot do all that is necessary to ensure that the millions of public performances of their music are properly licensed and that they are fairly compensated for these uses of their intellectual property. For that assistance, the music community historically has turned to ASCAP and other PROs, which were formed for those purposes. In the U.S., two other PROs, Broadcast Music, Inc. ("BMI") and SESAC, Inc. ("SESAC"), exist as alternatives to ASCAP. Similar societies exist in many European countries and elsewhere throughout the world.

First and foremost, ASCAP serves as a clearinghouse for its writer and publisher members, and the users of copyrighted music in ASCAP's repertory. Millions of non-dramatic public performances of copyrighted music occur each day in the U.S. (as opposed to "dramatic" performances that one might see on theatrical stages throughout the country). Given the vast number of users and performances, it would be extremely time-consuming and costly for the songwriters (or their publishers) to locate and license these performances by themselves. The corresponding responsibility of users of

copyrighted music would be equally daunting without ASCAP and the other PROs. If not for the PROs, users would have to identify the owners of the music they wish to perform and negotiate licenses with each one of them in advance of the uses. The administrative costs alone for individually licensing every work would be quite high. Consider the hundreds of songs that a typical radio station plays each day. Consider further that there are thousands of radio stations in the U.S. Without ASCAP's clearinghouse functions, obtaining permission to perform those works would be a formidable transactional task.

The PROs offer a solution by licensing in bulk. Users, large and small, obtain from ASCAP and other PROs the right to perform publicly all of the millions of copyrighted musical compositions in their repertoires, and the repertoires of their foreign affiliates, through a single license (often referred to as a "blanket" license) with each PRO. With these rights of unlimited access, users are free to use as much or as little music in the PROs' repertoires as they wish. The bulk licenses afford users instant access to all of the compositions in each of the PROs' repertoires for an annual fee.

However, ASCAP licenses and enforces its members' rights only within the U.S. Outside of the U.S., ASCAP authorizes foreign PROs to represent its members' and affiliates' rights within the territory or nation of that specific PRO. In turn, members of foreign PROs may elect to have their performing rights represented by a U.S. PRO, for the territories covered by that U.S. PRO.

Licensing is only one major part of the ASCAP equation – the other being the distribution of the music licensing revenue, in the form of royalties, to its members and associated foreign PRO members. ASCAP operates in a nonprofit manner, distributing all collected royalties after deducting a relatively small amount to cover operating expenses. In 2008, the most recent year for which final financial figures are available, ASCAP's operating expenses were among the lowest for any PRO worldwide, and the lowest in the U.S., at 11.5% of revenue. In other words, 88.5 cents of every dollar collected by ASCAP is distributed to its members and affiliated foreign PROs.

In order to properly distribute the royalties, ASCAP relies on various music usage data collected from the users directly or through other means such as media monitoring services like Mediaguide, the leading radio monitoring service. Utilizing fingerprinting technology, Mediaguide is able to detect the music playing on a given monitored media in real time.

ASCAP also seeks to support its members' careers in a variety of ways, from offering beginner workshops to master classes, a variety of showcases, various publications and events such as ASCAP's annual "I Create Music' EXPO," which brings together aspiring music creators with established professionals. Additionally, ASCAP provides member benefits packages, including access to a credit union and discounts on wide variety of goods and services, like musical equipment, music recording services, website services and travel, as well as referral services for identifying appropriate health insurance programs. ASCAP even went so far as to invest in the formation of an insurance agency, MusicPro Insurance, to support the offering of reasonably priced musical equipment insurance and other insurance policies for qualified music

professionals (even those professionals who are not members of ASCAP), when it realized there was a gap in its members' needs and market offerings.

In sum, ASCAP ensures that music continues to be created and performed legally. ASCAP simplifies the difficult task of granting and obtaining permission to publicly perform copyrighted music by facilitating quick and easy access to vast numbers of musical compositions at fair rates: writers' creativity is fostered and publishers are encouraged to promote the business of music across the nation and around the world. This sponsorship of creativity, and of the performance of music, benefits the public as well.

Before addressing our suggested additions to the Joint Strategic Plan, we thought it might be useful to briefly outline the current environment in which the U.S. PROs conduct business.

Issues Facing Music Creators in the U.S.

Infringement

Copyright infringement has plagued copyright owners since the inception of the copyright law. For music publishers, this has primarily taken the form of piracy – the unauthorized copying and distribution of music, which was heightened with the advent of the Internet. To be clear, ASCAP fully supports all measures to combat this form of piracy. And yet, for ASCAP, copyright infringement takes the form of license refusal – bars, nightclubs and other establishments, as well as online or mobile services that will not take a license offered by the PROs, despite the fact that they are legally required to do so. After letters, visits and calls fail to educate the user of their legal obligations, the music creators are faced with their last resort – infringement litigation. While copyright law provides for statutory damages, attorney's fees and costs, and collectively such awards can exceed the value of the offered license, such collection is not guaranteed.

As a result of the many thousands of users across the country that refuse to take a license, the copyright owners have long been forced to play infringement “whack-a-mole.” For every user that is found liable for infringement, another two infringers pop up. ASCAP could not possibly address all of these cases of infringement. After all, its raison d'être is to distribute royalties to its members, not expend them on infringement litigation. As the CA Reply makes clear, the advent of the Internet and other “new media” content distribution platforms have exponentially compounded the infringement problem. Similarly, websites and new media companies that perform publicly ASCAP music while refusing a license are also engaging in widespread copyright infringement. These public performance infringements are as much a legal violation and problem as piracy and illegal Internet music downloading.

A staggering amount of royalties are currently being denied to music creators by those who publicly perform copyrighted music without meeting their legal obligation to obtain permission for this use. ASCAP recognizes that this problem will not be solved without extensive educational efforts, which we discuss later in our submission. Unfortunately, these tactics have only made a dent in this problem. For now, we are left with no alternative but to supplement our educational approach with costly and time-consuming litigations.

PRO Licensing Issues

Licensing music on a collective basis raises certain competitive issues. ASCAP, as a result, operates under a Consent Decree with the Department of Justice (“DOJ”). ASCAP’s Consent Decree was first reached in 1941 and amended over the years, most recently in 2001 as the Second Amended Final Judgment. Second Amended Final Judgment in United States v. ASCAP, No. 41-1395 (S.D.N.Y. 2001) (“AFJ2”). One of the basic underpinnings of AFJ2 is that ASCAP, upon receipt of a written request for a license, must offer the requesting user a license. In other words, ASCAP cannot ordinarily refuse a user a license.

ASCAP’s Consent Decree provides the relief of a “rate court,” located in the Southern District of New York, to determine reasonable license rates and terms in the event ASCAP and the user requesting a license cannot reach an agreement on an appropriate license fee. In the past, a rate court proceeding was a rare occurrence. Traditional users of music such as concert promoters, radio stations and television networks understood that the use of music possessed value, and therefore reaching an agreement on such value was somewhat straightforward. However, it is common knowledge that the Internet changed the way in which users view intellectual property. Some new media users recognize that a value in music exists, but believe that value to be minimal. All too many users find no value whatsoever in our members’ works, and altogether refuse to pay for content. Copyright owners, as discussed above, ordinarily can bring infringement actions against such users, and recover damages that may well exceed the value of the license that the user originally spurned. However, when users apply to ASCAP for a license and we cannot reach agreement on an appropriate fee, ASCAP’s only recourse in these situations is a rate court proceeding, the costs of which may outweigh the value of the license itself.

Furthermore, the complexities of new technology have made rate setting difficult, as new media users continue to feature music in novel ways. The technological changes allow for constant disagreement over not only the value, but also whether the copyright law protects the use at all. Many users assertively argue that their particular use does not implicate the public performance right. This not only jeopardizes music creators’ fair domestic remuneration, but also places our foreign relationships at risk, as many countries have already confirmed the broad protection for music creators in such new media uses.

We raise these issues not to request specific relief, but rather to illustrate that the world in which U.S. music creators now live is one where the use of their music is growing, but their compensation for public performances is at risk of decreasing.

Part I: Joint Strategic Plan: Challenges

In response to the request for recommendations to accomplish one or more of the objects of the “Joint Strategic Plan” as it relates to the international enforcement of intellectual property laws affecting the rightsholders and owners of copyrighted musical compositions, ASCAP makes the following observations and proposals. ASCAP’s members receive hundreds of millions of dollars each year from overseas income alone, and yet the value of ASCAP’s members’ product is consistently and significantly undermined and diluted by a variety of challenges to enforcement of ASCAP’s members’ rights in foreign territories. We seek the help of the Intellectual Property Enforcement Coordinator (“IPEC”) and the U.S. Government in furthering and supporting ASCAP’s members’ rights. Set forth below is an illustrative range of the issues that ASCAP addresses on a regular basis.

China

Our relationship with China remains our single greatest international challenge. As with many other areas of intellectual property, copyright infringement and piracy in China presents a vast and pervasive problem for ASCAP. Nearly nine years ago, Chinese legislation came into force, which recognized the entitlement of creators of musical works to reasonable compensation for use of these works in television and radio broadcasts. It is dismaying, but not surprising, that in the entire nine-year period, up to and including today, not a single Yuan has ever been paid to PROs for disbursement to songwriters, composers and music publishers for these the music used by broadcasters.

Based on government data and other sources, ASCAP estimates that the copyrights in 15% of the music heard on Chinese radio and television broadcasts, are owned by U.S. songwriters, composers and music publishers. U.S. music publishers also manage a significant proportion of foreign works that are broadcast in China (for instance, their repertoires include many Chinese language works from Hong Kong, Singapore, Malaysia and other Asian markets).

In November 2009, after years of pressure by the Office of the United States Trade Representative (“USTR”) and various entities including ASCAP and certain trade organizations, the Chinese government finally adopted a tariff for radio and television stations which transmit copyrighted, recorded music. Yet, it is widely acknowledged that the actual tariff rates are so low as to be inconsequential (an English translation of the Chinese State Council’s order adopting the tariff, is available upon request).

It should be noted that television is thriving in China. The Wall Street Journal reported in November 2008 that a live auction of prime air-time on China Central Television (CCTV) brought in RMB 9.26 billion (US\$ 1.36 billion), 15% more than the

previous year. Obviously, this sum represents revenue for only some of the advertising industry of one network (albeit the largest) in one medium (television). Thus, while television broadcasters are generating massive revenues, the Chinese government has not yet set a meaningful broadcast tariff for the music being transmitted by the broadcasters.

The abysmal broadcast tariff is far from the only area in which Chinese users are failing to compensate U.S. and other copyright owners. The music performed at the numerous Olympic venues in 2008, and in the high-end hotels and restaurants patronized by millions of visitors to China, generated at most, a trickle of revenue to the songwriters, composers and music publishers who created it. China also lacks reliable systems to license the public performance of music on mobile devices or over the Internet.

In October 2009, government officials from the United States and China held a Joint Commission on Commerce and Trade to discuss major trade barriers between the countries. On the subject of intellectual property rights, China gave assurances that it will impose maximum penalties on Internet copyright infringers and it agreed to work closely with the U.S. to resolve concerns about a new, potentially troublesome publication released by China's Ministry of Culture. We hope that these efforts will be supported by IPEC.

Burdensome Documentation Requirements

Oftentimes, national laws present unreasonable procedural hurdles to ASCAP in bringing copyright infringement lawsuits. Below are a few examples that we have encountered:

- Music Copyright (Thailand) Limited (“MCT”), the Thai PRO, is currently bringing a lawsuit in Thai courts on behalf of many songwriters whose works are being used without permission by Truevision, a large cable operator in Thailand. In order for this lawsuit to commence, MCT asked ASCAP to reach out to certain of our members and have them execute a “Power of Attorney” document, showing that ASCAP and thereby MCT (by nature of ASCAP’s reciprocal representation agreement with MCT) can bring the lawsuit against Truevision. The Thai courts impose this additional layer of documentation despite the fact that each ASCAP member already grants ASCAP a Power of Attorney for copyright infringement purposes (when the member signs their membership agreement with ASCAP) and under this Power of Attorney, ASCAP, in turn, gives its authority to the Thai PRO, MCT. The agreement between ASCAP and MCT should be sufficient proof of MCT’s ability to represent ASCAP members’ rights.
- When the Music Copyright Society of Nigeria (“MCSN”), the Nigerian PRO, brought a lawsuit in its country, Nigerian law required that ASCAP produce voluminous documentation pertaining to its members, including almost 100 separate membership agreements. This documentation was required by the Nigerian courts even though the information was readily available from ASCAP’s website.

- The Russian Authors' Organisation ("RAO"), the Russian PRO, cannot bring a lawsuit for copyright infringement unless it receives a specific Power of Attorney on behalf of ASCAP, executed by the ASCAP's President and CEO; despite the fact that the ASCAP agreement with RAO already grants to RAO a Power of Attorney to enforce its rights.
- The South African Music Rights Organisation Ltd ("SAMRO"), the South African PRO, requires an "affidavit of originality" for each individual songwriter named in a lawsuit. In addition to requiring the witnessed signature of the songwriter, the affidavit also must include where and when the song was created. A copy of the official copyright registration with the U.S. Copyright Office does not suffice in these instances even though, legally, a U.S. copyright registration is considered prima facie proof of the originality of the work and is an official U.S. government document.

Taxation Issues

Many countries have passed excessive taxation laws and procedures, which greatly affect how ASCAP's members are compensated for their works. Some examples are listed below.

- In the Russian Federation and the Czech Republic, the local PROs are required by their fiscal authorities to collect Value Added Tax ("VAT") on the licenses that they issue. However, when the licensee (a bar or restaurant, for example) refuses to pay this VAT, the foreign PRO deducts the VAT from the royalties collected for and distributable to the U.S. PRO. This tax is wholly unfair to ASCAP's members because they have no way to recoup the VAT, whereas a member of RAO or Ochranny Svaz Autorsky ("OSA"), the Czech Republic PRO, could reclaim these amounts from their fiscal authorities. Imposing VAT in this manner is not the standard accepted practice of royalty collection for the vast majority of PROs around the world and the impact is significant; the VAT in the Czech Republic is 12% and the VAT in the Russian Federation is 18%.
- The U.S. has entered bilateral "Double Taxation Agreements" with most developed countries, whereby the rate of income tax withheld from royalties is minimized and/or equalized and copyright holders are able to claim all they are due via tax credits. However, the intent of these treaties is being undermined by an inordinate number of administrative hurdles. Normally, a foreign PRO deducts the tax from the royalties earned by ASCAP's members and ASCAP duly provides its members with a statement indicating the amount deducted. An ASCAP member can then list this amount as a foreign income tax credit when filing their income tax with the U.S. government. However, Sociedad General de Autores y Editores ("SGAE"), the Spanish PRO, insists that the fiscal authorities will not allow foreign PROs to act as agents for their members. The practical implication of this is that SGAE will not distribute the appropriate royalties to ASCAP members unless and until ASCAP confirms that a member due royalties

from SGAE is domiciled in the U.S. and may be taxed at the lower rate. Thus, SGAE delays distribution of royalties that have already been earned by ASCAP members, without paying interest to our members on such amounts; and adds unnecessary cost to the processing of our members' income from Spain. This amounts to an unequal treatment of our members because SGAE's members are paid without delay.

- The Venezuelan government's requirement that the local PRO, Sociedad de Autores y Compositores de Venezuela ("SACVEN"), acquire U.S. Dollars (the Bolivar being non-convertible) for distributions to foreign societies at rates typically 50% higher than the official exchange rate significantly penalizes U.S. PRO members by delaying and reducing their legitimate earnings.

Social and Cultural Deductions

Many foreign PROs deduct up to 10% of all distributable revenue for Social and Cultural ("S&C") purposes such as welfare and pension funds exclusively for their own members (Social) or the publishing and promotion of non-commercial domestic works (Cultural). However, reciprocal representation agreements between ASCAP and foreign PROs compliant with the standards established by The International Confederation of Authors and Composers Societies ("CISAC") permit such deductions only where they are equally levied on and accessible to the society's own members.

Since many long-established PROs insist that taking S&C is mandated by supervisory agencies or required by national law, neither this practice nor its incidental violation of the principle of national treatment (enshrined in the Berne Convention) can be addressed or resolved bilaterally by PROs alone. It is also important to note that if ASCAP chose to take a reciprocal S&C deduction, the imbalance of trade (i.e., far more is earned by U.S. songwriters abroad than by foreign songwriters in the U.S.) would make it impossible to compensate fully for S&C deductions made by foreign PROs.

Difficulty Licensing Cable Re-Transmission

In many countries, particularly in Central and Eastern Europe, local cable operators that retransmit U.S. cable programming refuse to enter into license agreements for the performance of music contained in such programming, invariably arguing that the rights are already cleared and/or that no license is necessary. ASCAP has attempted to explain that ASCAP has not licensed music in programs originating from the U.S., and it is the obligation of the local cable operator to obtain a performance license from ASCAP. Where ASCAP's explanations, including substantial documentation supporting our position, fall on deaf ears, the cable operators' continued refusal to obtain a license infringes on the rights of ASCAP members, at the further expense of the U.S. songwriting community.

Foreign Government Manipulation of Authors' Rights

In many instances, foreign governments use national copyright enforcement agencies to impose onerous auditing and accreditation conditions on local PROs, both undermining their credibility and viability, and frustrating the effective administration of our members' rights. Additionally, certain governments have sponsored legislation that would dilute the value of music authors' rights to support indigenous film production or favor other interested parties and rights owners at the expense of the music industry and thus, ASCAP's members. Recent examples include proposed legislation in Brazil and Poland.

International Trade Disputes

Very recently, the World Trade Organization ("WTO") has invited the Brazilian government to identify potential contributors from the intellectual property industry to a \$238 million fund for Brazil (additional documentation is available upon request). This invitation was extended because of a fact-finding by the WTO that has nothing to do with intellectual property (it is a dispute over cotton production). ASCAP is quite concerned that the Brazilian government will take this opportunity to reduce royalty amounts owed to ASCAP and earned by our members. This action by the WTO is even more troubling because our members are not at all related to the underlying issue cited by the WTO; the intellectual property community is being unfairly singled out.

Part II – Joint Strategic Plan: Accomplishing Objectives

Taking into consideration the above challenges, we would propose the following suggestions as to how IPEC can assist the enforcement of ASCAP's members' rights around the world.

China

We hope that IPEC will continue to work with the USTR on all matters related to the Chinese government's disregard for copyright laws, specifically to ensure that the Chinese government sets a meaningful broadcast tariff as well as enforcement of its collection of these tariffs, the collection of music usage data for the performances of our members works, and a timely and orderly distribution of royalties from these performances. U.S. negotiators should also work toward compensation for the use of music in Chinese broadcasts during the nine-year period that China simply ignored its international obligations and its own law by declining to set a tariff. More generally, ASCAP would like IPEC's assistance in continuing to pressure the Chinese government regarding the rampant and well-documented piracy and copyright infringement that is occurring in China.

Burdensome Documentation Requirements

When the U.S. is negotiating bilateral trade agreements, it is crucial that procedural safeguards are considered with respect to intellectual property enforcement. Technically, our examples are not in violation of any international treaties, but the documentation requirements needed to successfully bring a lawsuit are so onerous that even when ASCAP is able to comply with these requests, it is very costly, both in time and expense. In the worst examples, foreign PROs cannot effectively commence a lawsuit because of the current procedural requirements, thus allowing continued infringements of our members' copyrights.

Taxation Issues

The U.S.'s bilateral treaties should reflect a fair and logical means by which U.S. citizens who conduct business in foreign countries, can simply and effectively navigate the tax laws of the foreign territory. Specifically, we suggest the following solutions:

- As explained above, members of foreign PROs can reclaim VAT; ASCAP members must be able to do likewise or be exempt from VAT deducted abroad.
- ASCAP, in its dealings with SGAE, should be able to "stand in the shoes" of their members for tax purposes and not be subject to a protracted and unfair withholding of their members' royalties.
- Bilateral tax treaties should have their withholding caps lowered with respect to earnings abroad, by U.S. citizens.
- Venezuela should be made to abide by reasonable and practical foreign exchange arrangements with respect the royalties earned in Venezuela by our members.

Social and Cultural Deductions

Governments that require foreign PROs to take Social and/or Cultural deductions should be made aware of the consequent and indirect discrimination against and denial of national treatment for members of ASCAP.

Difficulty Licensing Cable Operators

Where cable operators refuse to take a license from their local PRO, we request that IPEC work with the USTR to begin a dialogue with the government of the country where the cable operator is located, regarding the operator's consequent infringement.

Foreign Government Manipulation of Authors' Rights

We request that IPEC work with the USTR to ensure that the intellectual property rights of our members are preserved and that our members continue to be fairly and equitably compensated, in accordance with international treaties.

International Trade Disputes

We request that IPEC work with the USTR to ensure that royalties earned by our members in Brazil are not affected by the aforementioned decree of the WTO.

Part III - Supplemental Topics

Efforts by Educational Institutions to Reduce or Eliminate Illegal Downloading over their Networks (Question 16).

Piracy is an enormous concern for ASCAP's members; the quantitative data on how piracy has impacted the music industry is well documented in the CA Reply. Rather than focusing solely on litigation-based tactics, we have sought to address the problem at the source, and have focused on developing successful educational methods that reduce the piracy of ASCAP's members' music.

In 2004, ASCAP conducted several focus groups on college campuses to see how students would react to the slogan "When You Illegally Download, You Hurt More People Than You Think." (A sample poster is available upon request). The intention was that this slogan would show students that illegal downloading affects more than just the record company, an entity that students oftentimes viewed as unethical and a faceless corporate conglomerate. However, the results of the focus groups demonstrated that students who had been illegally downloading music for years were unreceptive to this message. After much testing and consideration, ASCAP determined that college students were already too old to be adequately influenced by such a message and it subsequently focused its efforts on educating a younger audience.

The "Donny The Downloader" Program

ASCAP's anti-piracy campaign for the age group of 10-17 years and is focused on a character named "Donny the Downloader." Donny is a fourteen-year-old kid who loves skateboarding, video games and, most importantly, music. Donny is much more technologically savvy than his parents and takes advantage of that by illegally downloading all of his music. As he is somewhat socially unsuccessful, he tries to impress his peers by telling everyone about his "free" access to music. With each of Donny's misadventures, he painfully discovers yet another unexpected person that he has hurt with his illegal downloading.

Primarily, ASCAP features Donny in short animated clips (a sampling of these clips are available upon request). The focus group (again, most testing was done with children in the 10-17 age group) results showcased Donny's strength, indicating that 84.3% of those tested liked Donny somewhat or very much and 78.4% said they found it informative and had learned something new.

After concluding that Donny was likely to be successful, ASCAP partnered with "i-Safe", a program for in-school Internet education funded by the DOJ and certain corporate entities like Microsoft, Verizon and the Recording Industry Association of America to further the campaign. Beginning in March 2007, ASCAP and i-Safe brought Donny to in-school assembly programs and now he is a very recognized symbol with respect to the safe and legal downloading of music, movies and software.

By the end of 2009, Donny had reached over four million middle school students, their teachers and parents. Studies indicate that after experiencing the Donny program, these students are: 60% more likely to legally download music, 66% more likely to use legal online stores for downloading music, 67% less likely to make illegal copies of music for friends in the future and 73% less likely to accept illegally downloaded music from friends.

ASCAP believes that this program is the first effective and successful educational effort that supports copyrighted material and those that create it (a copy of the most recent iSafe statistical report is available upon request).

Creativity in the Classroom

The ASCAP Foundation, a separate not-for-profit organization formed by ASCAP, through the efforts of its then President, Marilyn Bergman, launched a "Creativity in the Classroom" initiative in 2004. This program was created to help very young students recognize their own creative works and to understand their rights as owners of intellectual property as well as the ethics of protecting and respecting the creative property of others. The ASCAP Foundation partnered with i-Safe in this endeavor to create a program that provided teachers with a set of teaching tools for grades 3 – 5, free of charge. The lessons easily incorporate into a variety of elementary school subjects including computer/technology, social studies, music, language arts, or library/media classes. Students are encouraged to label their own creative work with the © copyright symbol, the year their work is created and their names, just as they would see on any published, professional creative work. The goals for these actions are based upon assertions that (1) students produce creative work in many of their classes and (2) as creators, students need to understand and live by the laws and ethics of their creation.

From August 1, 2007 to March 1, 2009 over 689,949 students were taught using the ASCAP Foundation curriculum. At the start of the program, more than 38% of 3-4 graders believed that anyone would have the right to copy and use what they had created and put on the internet without their permission. After completing the lessons, just over 83% of 3-4 graders understood that no one would have the right to use their creations that

had been posted on the Internet without their permission. Almost 39% of students also thought that it was not stealing to copy content from the Internet for schoolwork. After completing the lesson, just over 92% of students believed that it is indeed stealing to copy content with the © symbol from the Internet without permission. For more information on this program, please see http://www.isafe.org/channels/sub.php?ch=ai&sub_id=cr_le

ASCAP's educational efforts are a proven and effective way to reduce piracy in the United States. The support of the DOJ has been instrumental to the success of ASCAP's educational programs and ASCAP would hope to expand on our partnership into the future. Finally, it is important to note that the success of ASCAP's programs is due to the early age at which students are taught the importance of respecting copyright. ASCAP recommends that future educational programs focus on elementary and middle school students.

Conclusion

ASCAP very much appreciates the opportunity to present this statement to IPEC. ASCAP's members make a living through the creation of songs – a pursuit whose chief safeguard is the enforcement of intellectual property laws around the world. ASCAP is grateful that IPEC realizes the importance of the challenges that music creators face, both domestically and abroad.

Respectfully Submitted,

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