

**Statement of  
Hilary Rosen, Chairman and CEO  
Recording Industry Association of America  
Before the  
Subcommittee on East Asian and Pacific Affairs  
Committee on Foreign Relations  
United States Senate  
On  
“Effects and Consequences of an Emerging China”**

**Wednesday, March 19, 2003**

Thank you for holding this important oversight hearing. China's impact on the US economy is significant, and it is important that Congress stay involved along with the Administration to ensure that Chinese law and practices continue to evolve in ways that reflect its place in the international community, and its international obligations. I have been personally involved in working on issues related to China for nearly two decades, and can state that there have been both good and bad developments over that time. I can also advise this Committee that the greatest breakthroughs in China have come during the times of the greatest engagement by the US Government. I therefore urge the Subcommittee to remain engaged, and to convey along with the Administration to the Government of China that it expects progress in areas where Chinese practices have lagged. We ought to be straightforward with our praise, and with our criticism, because only with transparency will we be able to effectively deal with the problems of today and tomorrow.

With that as my guide, let me offer my views on the successes and failures that we have witnessed in China over recent years. Let me start with the positive. In the early 1990's, China became home to the largest concentration of pirate CD plants the world had known. Largely financed and operated by Taiwanese syndicates, China amassed over 26 CD plants at a time when 1 plant would have had sufficient capacity to meet all of China's legitimate needs. These 26 plants produced pirate CD's around the clock, almost entirely for export. During these dark days, Chinese pirate exports decimated surrounding markets, and we witnessed significant declines in markets throughout Asia. In 1996, this came to a grinding halt. Faced with the imposition of US sanctions to the tune of approximately \$1 billion a year, the Chinese authorities took swift action, shutting down half of the plants, impounding the equipment, and introducing a new licensing regime for the remaining plants to create more of a deterrence for future piracy. This plan worked, and continues to work. To this day, we have not seen the resurrection of an export based pirate industry in China. Unfortunately, other countries have picked up where China left off, but we leave that story for another day.

This triumph is not to be underestimated—either with respect to the US commitment to address it, or with respect to the Chinese determination to resolve it. The fact that this success has lasted is a testament to the manifest will of both parties. It is now time, however, to turn our attention to the issues that were left unresolved, and which continue

to be unresolved to this day.

Simply, and transparently, put, piracy in China for all categories of copyrighted materials exceeds 90%. In the music sector, piracy hovers at approximately 95%. This is, quite plainly, unacceptable. The Chinese Government has itself expressed dismay at these levels of piracy—levels that it does not challenge, but it has not organized itself, either from a legal or practical standpoint, to do anything meaningful about it. Many Chinese officials have undertaken sincere efforts to address this, particularly within the Ministry of Culture and within Customs, but they lack both the necessary manpower, and legal support, to get the job done. As a consequence, Chinese officials can, and have seized over two hundred million pirate CDs over the past two years—a truly staggering sum, but have not had any impact on piracy in China due to the fact that there are no criminal prosecutions. This failure is exacerbated by some legal impediments to bringing criminal copyright cases, but it is primarily the consequence of the lack of will on the part of relevant Chinese officials to pursue these cases criminally. USTR and other parts of the Administration have been discussing this lack of criminal prosecutions with China for some time, and continue to do so, but have yet to see any resolution or even any meaningful progress. This is unacceptable, and demands an immediate solution. If China does not quickly get a handle on the CD piracy issues, then all will be lost as we move to try to address internet issues, issues which are already beginning to heat up in China notwithstanding the Chinese control over other kinds of content on the net.

Rampant piracy led to an estimated loss of \$600 million for the recording industry alone last year, with losses for US repertoire amounting to about \$48 million per annum. The problem, of course, is that the profits are so high, and the deterrence is so low. Given the lack of criminal prosecutions, and the fact that enforcement manpower and resources devoted to combat piracy are clearly inadequate, the authorities are in reality, fighting a losing battle. Until China modifies its legal system to facilitate criminal copyright enforcement, and directs all parts of the enforcement structure to deal with copyright matters as a priority matter, China will not be in a position to meet its TRIPS obligations to provide effective enforcement. Criminal penalties in particular are required by TRIPS as an essential element of an effective enforcement regime, and these, as a practical matter, are simply lacking in China at the moment.

Aside from the resource and legal issues impeding China's anti-piracy performance, there are also the complications arising from the fact that foreign record companies are only permitted very limited access to the Chinese market. This not only limits our ability to partner with law enforcement in the battle against piracy, but also restricts our capacity to improve the infrastructure for the development of local talent, and for the manufacturing, distribution, promotion and sale of legitimate recordings. China has determined, consistent with its WTO obligations I hasten, however sadly, to add, that it will only allow very limited forms of foreign participation in the development of the cultural industries.

This is a grave error that we hope the Government of China will reverse. Presumably, the idea behind limiting our access to the Chinese market is the desire to maintain control

over the content that reaches the Chinese public. While we may or may not agree with this goal, the fact remains that it can be upheld while simultaneously permitting us much broader access to the Chinese market. All foreign sound recordings, whether licensed for local production or imported by a Chinese state firm for the Chinese mainland market, are subjected to strict censorship. Any sound recordings regarded as unsuitable for public consumption are rejected. The Chinese have very tough laws punishing offenders for releasing uncensored materials. This system of censorship offers more than sufficient safeguards concerning the content of cultural materials. Limiting our ability to do business in China is unnecessary, and destructive.

It is also highly instructive to note that if these market access provisions are indeed intended to guard against unwanted content, that such an objective is completely undermined by the total lack of control over piracy. The controls over content affect only US owners and their legitimate Chinese partners, but have no bearing on the pirates' activity whatsoever. Indeed, the inability to release materials EXCEPT in pirate form creates yet an additional competitive advantage for the bad guys. There is simply an enormous disconnect in China between the indifference and permissiveness shown towards the distribution of supposedly "undesirable content" on illegal carriers, and the great abundance of impediments placed in selling legitimate materials. This gap or double standard fuels the vast demand for piracy while ensuring that legitimate industry cannot compete. Present Chinese policy operates to effectively grant illegal enterprises far greater access to consumers than legitimate companies. This must be reversed through the significant liberalization of China's restrictive regime so that at a minimum, legitimate ventures can operate with at least with the same level of access to consumers as pirates.

At present, almost every aspect of operating a recording company is restricted. The basic business of a recording company is to release or publish recorded music, whether in physical format such as CDs or cassettes, or via transmissions. Chinese investment laws prohibit any foreign investment in this scope of business. Therefore our companies have to find a Chinese state owned publishing house or company to release or publish their recorded music in China, regardless of whether there is any company suitable as a partner.

Record companies need to sign artists, select suitable compositions, produce the recordings in a studio, manufacture physical products, and distribute these products to the public. Here we can see trade barriers erected at every stage in the process. Chinese law prohibits us from investing in a company to promote our own artists. Chinese authorities only issue permits to production houses wholly owned by locals, and allow only a minority stake in joint ventures or cooperative joint ventures for manufacture or distribution.

These trade barriers restrict us from doing business effectively or successfully in China, and contribute to the Chinese Government's inability to effectively address piracy. We hope that members of this Committee can convey to your Chinese counterparts your

interest in extending the market access of US record companies, and in seeing China address its serious shortcomings in connection the enforcement of its copyright law through criminal measures. There have been encouraging recent statements from Chinese leaders about the need to address the overwhelming copyright piracy problem that affects US and Chinese creators alike, but these expressions of understanding alone will not solve the problem. To meet its WTO obligations, it is essential that China immediately commit to a course of action that will materially decrease the level of piracy in the Chinese market. In order to achieve this, China should closely consider expanding the market access it grants to foreign firms so that it will have powerful new allies in expanding the capacity to deliver legitimate materials to the Chinese public, and in confronting the scourge of piracy.

In just over one month, China will host the World IP Summit celebrating the importance of intellectual property for the improvement of the condition of society and the betterment of man. Let's hope, no, let's WORK, to translate this recognition of the value of copyright protection into meaningful action on the part of the Chinese Government to finally address this devastating problem.