

THE NATIONAL ACADEMIES
Project on the Impact of Copyright Policy on Innovation in the Digital Era
Comments of Fritz Attaway, Motion Picture Association of America
October 15 Public Hearing

- As a financial supporter of this project, MPAA obviously recognizes its potential to make a meaningful contribution to informed policy-making in the area of copyright. MPAA member companies are producers and creators of this nation's most distinguished art form – movies that are enjoyed by millions of people in the U.S. and around the world. Movie-making requires very large capital expenditures that must be recouped. Hence, copyright is the lifeblood of the industry. The success of the U.S. movie industry, and that of other U.S. copyright-based industries, suggests that our copyright system is working. Thus, **my first recommendation is that this project proceed from the perspective that our copyright systems is not broken, and in fact is operating rather well. Adjustments may be appropriate, but an a priori judgment that the system is broken and must be fixed is not justified.**
- The proposal we have been given reflects a great deal of thought and, as just stated, we support its objective to inform copyright policy-making. There are portions of the proposal, however, that suggest an undue focus on certain aspects of copyright policy-making at the expense of other, equally important and relevant aspects. For instance, in discussing the impact of digital networks, the proposal observes that “As a result of the Internet, the number of authors approaches the size of the population.” This suggests that all works are of equal value, which is surely not the case. Clearly, consumers value some works more highly than others. **My second recommendation is that the project not merely study the impact of copyright on the creation and dissemination of works generally, but distinguish between the type of works impacted and their value to our society in terms of cultural expression and consumer satisfaction, as well as employment, contribution to the economy, balance of trade, etc.** I would think that the impact of copyright on the export of creative works would be a particularly relevant subject of inquiry given the President's recent commitment to double exports in the next five years. The impact of copyright on the ability of U.S. copyright industries to maintain and grow their already substantial contributions to our balance of trade is a critical element of not just copyright policy discussions, but of national economic policy objectives.
- Another somewhat myopic perspective is presented in the proposal's discussion of the perceived tension between copyright protection and “the widespread flow of information and ideas.” Nowhere in this discussion is a mention of the role of copyright in incentivizing both the creation and distribution of information and artistic expression. (We all recognize, of course, that copyright does not protect “ideas.”) Information cannot “flow” unless it is created and is far less likely to “flow” in a well-publicized manner unless creators can benefit from such distribution. Thus, **my third recommendation is that the project direct focus on the positive impact of copyright with respect to both the creation and distribution of works, and the contributions of this creation and distribution to our culture and economy.** Given our current economic challenges, the impact of copyright on job creation should be a particular focus of this project.
- The proposal appropriately acknowledges the existence of “widespread digital piracy.” **My fourth recommendation is to expand the list of “salient issues” to include an examination of**

the impact of online content theft – be it on P2P “file sharing” networks or via linking sites and cyberlockers -- on the creation of new expressive works, and consequently their availability to the public. It is frequently and rather dubiously asserted that authorized marketers of copyrighted works can compete with “free,” citing the fact that marketers of bottled water seem to do well in competition with free municipal water systems. Is this an accurate assertion or is the proper analogy to ask how Pellingrino would do if its trademark were stolen and tap water were sold as Pellingrino at a fraction of the price of the legitimate product? What are the consequences of a marketplace where some participants “play by the rules” of copyright, privacy, consumer protection, taxation etc., and some do not? What impact does such an unlevel playing field have on new as well as old business models for distributing legal content?

- My fifth, and final recommendation (for now), relates to the composition of the organizing committee. There is no question that the people already chosen to be on the committee bring valuable expertise to this project. There are additional people, however, who have been personally involved in scholarly research on some of the subjects identified for exploration who I believe would add important insights to those already represented on the Committee. Specifically, the individuals listed by Steve Metalitz in his September 14 submission on behalf of MPAA and others, would add considerable depth of personal experience to the Committee that would materially contribute to the success of this project and I strongly recommend their inclusion on the Committee roster.