



Lic. Felipe de Jesús Calderón Hinojosa
Presidente Constitucional de los Estados Unidos Mexicanos
Residencia Oficial de los Pinos Casa Miguel Alemán
Col. San Miguel Chapultepec
C.P. 11850
México, D.F.



President Barack Obama
The President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, D.C. 20500



Right Hon. Stephen Harper, P.C., M.P.
Prime Minister of Canada
Langevin Block, 80 Wellington Street
Ottawa, Ontario K1A 0A3
Canada



Dear President Calderon, President Obama, and Prime Minister Harper:



The organizations listed below, representing musicians, performers, composers, songwriters, music publishers and record companies from Mexico, Canada and the United States, offer the following thoughts as you prepare for a variety of regional meetings designed to enhance economic prosperity in North America and the hemisphere.

The vibrant music of North America is widely recognized as one of the great contributions of our peoples to global society. Yet our ability to continue creating and offering this magnificent music is today under threat like never before. The collective output of our songwriters, performers, musicians, technicians and producers is being pirated on a massive scale that, unless adequately addressed, could fundamentally undermine our hemispheric cultural treasure. None of our three countries is immune from this threat. The United States inexplicably fails to provide a right of broadcasting to performers and producers. Canada has failed to update its copyright legislation to international standards of the late 20th Century, much less the last eight years. Mexico clings to an enforcement structure that requires the filing of a complaint to initiate a criminal action—just part of an overall environment that has failed to rein in rampant piracy and has largely destroyed the infrastructure for legitimate distribution. And each of the three countries is struggling under the weight of crushing internet-based infringements.





The victims of piracy include the artists, songwriters and composers whose creativity receives no reward; governments that lose hundreds of millions of dollars in tax revenues; economies that are deprived of new investments; consumers who receive less diversity and less choice; and record producers and music publishers who, due to rampant theft, have less money to invest in the development of new talent.



The greatest victim of piracy is new cultural development. Companies invest hundreds of millions of dollars—up to 15 percent of turnover in some countries—in new talent. Local repertoire accounts for nearly 70 percent of the global music market. Unless investment is compensated, it will dry up, and along with it will perish the fantastic diversity of music that has been our region's legacy.



In addition, piracy nurtures organized crime. Very often the money that is paid for pirate CDs is channeled into the drug trade, money laundering or other forms of serious organized criminal activity.



For these reasons we call upon you to ensure that regional discussions advance the consideration by all parties of strong substantive standards and enforcement mechanisms so that we can collectively turn the tide on the destructive forces of music piracy. Regional discussions offer an unparalleled opportunity to address common problems affecting cultural output and diversity through the articulation of a strong and unambiguous commitment to fighting piracy, and to pave the way for e-commerce in cultural materials to prosper by helping to create standards that will ensure the protection of cultural materials in the on-line environment.



We call upon all three governments to ensure that their domestic legislation provides effective and modern copyright protection for authors, performers and record companies, including rights of communication to the public, and the right of making available as contemplated by the WIPO Treaties. All rights should be provided on a non-discriminatory basis, without exception or derogation. We should seek to harmonize term of protection as much as possible around a term of life plus 70, or 95 years from publication for materials where term is not measured with reference to life. Legislation should clearly prohibit trafficking in devices designed to circumvent technological protection measures employed by rights holders to guard against unauthorized use of, or access to, their works, performances or phonograms, and should provide protection of rights management information from unauthorized alteration and removal, consistent with the WCT and the WPPT.



More broadly, it is of critical importance that governments implement laws and practices that reflect the fact that effective criminal remedies are essential against those who violate rights on a commercial scale—including offenses on

the internet that entail the offering of unauthorized materials to a broad audience regardless of whether or not money is demanded in return. Customs and police authorities in each country must be able to initiate criminal actions ex officio, without the need for a prior complaint by a private party or right holder. Governments should ensure that piracy is both punishable in law and punished in practice by effective criminal sanctions, including imprisonment, and should ensure that copyright and neighboring rights offenses are treated as serious crimes. Governments should also provide clear and workable mechanisms so that rightholders will be able to enforce their rights against infringers. Remedies must provide effective deterrents to further infringements.

Perhaps most importantly, governments must ensure that there are means other than reliance on wide scale end user suits to address the massive infringement currently taking place over information networks. Network operators must take reasonable and appropriate action to address the use of their proprietary networks for the distribution of infringing materials.

It is also critical that liability attaches for conduct that: (a) encourages infringement by third parties, in particular with respect to products, components and/or services whose predominant application is the facilitation of infringement; and (b) has little or no purpose or effect other than to facilitate infringement, or that intentionally induces others to infringe (specifically allowing proof of "intent" by reference to objective standards--i.e., a reasonable person would surmise such an intent).

This is not a zero sum game that pits technological developments in the communications sector against intellectual property protection. Technological advances in communications technologies have the potential for greatly enhancing new cultural production. Unfortunately, the potential for growth is instead being undermined by massive infringement on the internet.

At present, most internet "commerce" in copyrighted materials is infringing. It has become manifestly clear that an adequate and effective response to online piracy can not be achieved based solely on litigation against individual infringers. Governments can effectively promote innovation and competitiveness in both the communications and IP sectors by enhancing responsibility and accountability in the online space. Internet service providers must play a reasonable role in cooperating with right holders to address the use of their proprietary networks in the transmission of infringing materials, and governments should focus on finding ways to best encourage that cooperation.

In conclusion, we hope that the governments of Mexico, Canada and the United States will demonstrate leadership in promoting effective protection of intellectual property--both domestically and abroad-- that will sustain some of

North America's most competitive and vibrant sectors. Lest this submission be misunderstood, we want to clarify that we are not proposing that the elements discussed herein should be addressed in a binding trilateral agreement. This letter should be understood solely as a reflection of our belief that the three governments owe it to themselves, to each other, and to the hemisphere's creative community and broader society, to provide an environment that expands cultural and economic output.

Respectfully submitted by:

A2IM	CIRPA
ADISQ	CRIA
AFM	NMPA
AFTRA	SACM
Amprofon	SOMEXFON
ANDI	SoundExchange
APCM	The Recording Academy
	RIAA

cc:

Ambassador Ron Kirk, United States Trade Representative
 Secretary Gary Locke, US Secretary of Commerce
 Secretary Hilary Clinton, US Secretary of State
 Marybeth Peters, Register of Copyrights
 Honorable James Moore, P.C., M.P., Minister of Canadian Heritage
 & Official Languages
 Honorable Tony Clement, P.C., M.P., Minister of Industry
 Dr. Alonso Lujambio Irazábal Secretaria de Educación Pública)
 Lic. Juan Francisco Molinar Horcasitas (Secretario de Comunicaciones)
 Lic. Fernando Francisco Gómez Mont Urueta (Secretario de Estado)
 Ing. Gerardo Ruiz Mateos (Secretario de Economía)
 Lic. Eduardo Medina Mora (Procurador General de la República - AG)

Attachments: Translations of Company descriptions