



Institute for Policy Innovation  
The Role of Intellectual Property in the Global Recovery

A World Intellectual Property Day Event  
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***Intellectual Property Protection -- Driver of Innovation, Catalyst  
for Job Creation***

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Thank you to IPI, to Tom (Giovanetti), Bartlett (Cleland) and the IPI staff for the opportunity to speak with you this afternoon about the positive effect that intellectual property protection has on innovation and jobs creation from the perspective of this country's fastest growing entertainment industry.

On the occasion of World Intellectual Property Day 2009, my comments are a "thank you" to the U.S. government and other governments that invest in the ideas of their citizens and in their national welfare by offering greater protections for intellectual property rights.

Intellectual property isn't protected for its own sake. It is a privilege granted by governments to foster innovation. Innovation creates desirable products and services, the sale of which, domestically and internationally, grows jobs. Connecting all that up, protecting intellectual property creates jobs – this is true globally and is certainly exemplified by what we have seen from the U.S. tech industries, including the one I represent – the entertainment software sector.

While my observations come from the entertainment software industry, I am fairly certain that those from other industries dependent on intellectual property protection -- including other entertainment industries, the business software industry, and all those who benefit from trademark and patent protection -- would be able to make similarly compelling observations from their own experience.

America's IP-intensive industries account for 18 million American jobs, and more than \$5 trillion of the U.S. gross domestic product. They represent 40 percent of U.S. economic growth, and an even higher percentage of growth in U.S. exportable products and services (up to 60%).

Through the 1990s to the present, the "core" U.S. copyright industries have added new workers to our economy at two to three times the rate of the economy as a whole.

Protecting the rights of those in the innovative sectors -- particularly in uncertain economic times -- is a sound investment.

## **Industry Innovation**

IP protection encourages innovation in the entertainment software industry. Gamers are a discerning and demanding group, and routinely expect features and innovation that can be achieved only through the rewards made available by effective IP protection.

Top games cost tens of millions of dollars to develop – and many multiplayer worlds, even more than that. Without a fair opportunity to recoup the investment and R&D that stands behind these innovations, the industry would stagnate. Fortunately, it has not. I am pleased to report that industry innovation is alive and well – and you gamers out there already know that.

- Consider new character and title development. Game publishers regularly demonstrate their willingness to take chances by developing new characters and entirely new game environments. Some of these new "IPs," as they are called in the industry, become fantastically popular – and some not. The key point is that sufficient incentives exist to make game publishers still willing to take the chance. And gamers don't want it any other way. Imagine a world where there is investment only in the tried and true. Everything would be a sequel.
- Consider how far the industry has come in a very short time to revolutionize console game play and create a wealth of brand new business models. It's been only 7 years since the

first major game console was released with a hard drive onboard. Since then, it has become commonplace for consumers to play console games online, download games and episodic content, develop and share user-generated content, and pipe in audio-visual entertainment, such as movies and music, to the home.

- With PC games, we are experiencing a revolution in how games are made available -- with tremendous advances in portability and convenience. Some of today's most popular PC titles allow for copies of the game to be loaded on and played from multiple PCs without even having the disc in the drive.
- Music-based video games were virtually unheard of in the U.S. console market five years ago. Today, it is one of the industry's most popular genres, accounting for nearly \$2 billion in sales last year, and represents an important revenue stream for the music industry.

These innovations have translated directly into market success. Consider some numbers:

- During 2007-08, publishers of computer and video games released over 1,300 console game titles, 800 portable game titles, and 1,250 PC game titles in North America alone. Not to say all were hits – but all had a fair opportunity to be hits, which is unfortunately more than can be said about the fate of games in many other world markets.
- Today we employ more than 80,000 people in 31 states. The average total compensation for a direct video game industry employee is now \$92,300, and entry-level game designers earn almost twice as much as other recent college graduates.
- In 1996, the U.S. entertainment software industry accounted for a modest 74.1 million units sold and \$2.6 billion in sales revenue. Twelve years later, computer and video game companies sold nearly 300 million units – equal to 9 every second -- leading to an astounding \$11.7 billion in software revenue and \$22 billion overall, including console and hardware sales in the U.S. alone. These sales benefit not only game developers and publishers, but everyone along the value chain, including distributors, large retailers, and small specialty stores.

- And as gamers know – and economists have confirmed -- the demand for great video and computer game experiences also drives sales of complementary products and services, such as for broadband and high-definition TVs. Our industry stimulates complementary product purchases of roughly \$6.1 billion a year in the U.S. alone. These purchases are also spread around to businesses large and small.

## **Export Sales**

For those who may have missed it, Ambassador Kirk published a compelling editorial in Tuesday's San Francisco Chronicle underscoring the need for trade rules to provide a strong framework for protecting innovation and creativity. Earlier this month Ambassador Kirk spoke about innovation and how it contributes to job creation. He recognized that last year, exports were a record 13 percent of our GDP.

This is also consistent with our industry's experience. It is not uncommon for a U.S. entertainment software publisher to derive as much as 30% of its sales from exports. We would like to help the industry grow that figure even higher – which of course would mean even more U.S. jobs and increasingly favorable balance of trade with our trading partners.

Unfortunately, not all foreign markets are friendly. In many otherwise promising markets, piracy continues to serve as this industry's most significant market access barrier.

That is why we also appreciate the leadership of Commerce Secretary – and former Governor of my home state – Gary Locke in his statement commemorating World IP Day, and acknowledging the link between IP and job creation, and pledging the Department's support for protecting US IP around the world.

## **Piracy as Market Access Impediment**

Many promising markets remain unavailable to the industry, as a practical matter, because of piracy rates estimated to exceed 80% or even 90% -- such as in Russia and China -- to name just two. Even in countries where market access is not so completely foreclosed, sales could

be much stronger – such as in Canada and Mexico, where IP laws and the commitment to enforcing them are sorely lacking.

Today, even historically strong markets including Western Europe are becoming less available due to the massive influx of infringing product coming through online channels. During December of last year, ESA conducted a study to estimate the number of successful downloads made through the BitTorrent and eDonkey P2P file-sharing networks from just a handful of member titles. More than 6 million infringing copies were downloaded that month – with 53% going to users in Italy, Spain, France, Germany and Poland. Astoundingly too, 37% of this infringing traffic traversed the networks of only 10 leading European ISPs. The ability to work cooperatively with those ISPs to address these problems cannot help but boost U.S. export sales.

Fostering cooperation between governments and industry on significant market challenges is a critical goal for U.S. trade policy. And intellectual property challenges should be no exception. So let me offer a few thoughts about those processes that have, and hold the promise to continue to serve, the IP-based industries well:

- On Special 301 – We appreciate that the U.S. government is keeping its trading partners regularly apprised of how they are doing in protecting intellectual property rights. We are proud to participate and contribute information to these determinations. We think that the U.S. government provides a valuable service to those nations by identifying with specificity what they need to do to continue to attract U.S. products and U.S. investment to its markets, as well as to better protect their own valuable products and services.
- We are deeply appreciative that USTR has sent a strong message this year to Canada, by naming it to the Priority Watch List and calling for specific legislative and enforcement reforms. This is a strong and timely indicator of the Administration's intent to press this firmly with the Canadian government.
- We also underscore the helpful role played by recent Free Trade Agreements in opening and safeguarding markets to industry products and investment. These agreements set high standards of intellectual property protection and enforcement, eliminate duties on

goods, secure market access for services, and create clear rules for e-commerce and trade in digital products.

- We urge approval of the FTAs already concluded and the extension of Trade Promotion Authority so that the Executive Branch can continue to negotiate these beneficial agreements. And, of course, assuring trade partner compliance must also be a high Administration priority.

## **Growing Exports – E-Commerce**

I would also like to add just a few perspectives on the role that e-commerce plays and will continue to play in our industry's further growth and success -- for large, small, and even tiny businesses alike.

I mentioned earlier the revolution brought about by the inclusion of hard drives in the leading home consoles, which today are capable of storing scores of gigabytes of entertainment software. Think, too, about advances being made to deliver compelling game software to mobile platforms.

Together, these trends have created a renaissance for businesses that develop and publish software for these platforms. More so now than at any time in the industry's history, we see small development studios of 1-2 people able to make hits – much of this made possible through direct distribution online. For example:

- A tiny two-man company spent \$96,000 in two years as it created World of Goo, which has now become one of the most critically acclaimed independently developed titles of all time. Millions of copies of the game have been purchased (for \$20) through online distribution channels (Steam and WiiWare) and only 3% of sales have been through traditional retail channels.
- Another example -- the "Community Games" section of Xbox LIVE Arcade features independently-created casual and arcade games. Creators share in the revenue from the sales.

- Mobile platforms such as the Apple iPhone are creating new opportunities for innovators to develop and be directly compensated for sales of their software. The iPhone application IShoot, for example, earned \$800,000 for its lone developer within five months of release.

These compelling games are often made available at a lower cost to consumers, in part because of the convenience and cost savings of delivering them via electronic download. Larger game publishers, too, are gearing up for an increasingly large percentage of games to be sold online, which carries a number of benefits, including benefits to the environment.

The irony is that this promising distribution channel has not been made subject to the same “play fair” trade rules that exist for delivery of software on physical carrier media. We urge WTO member countries to again take up discussions on the trade treatment of electronically delivered software, as well as to renew the existing moratorium on customs duties for electronic transmissions.

The moratorium operates across the board, across a range of products, and to the benefit of suppliers from all countries. It operates to the benefit of large and small businesses, and, if our experiences are any indication, can greatly expand direct access by small businesses to the global market.

As a final example of the linkage between IP protection and innovation – consider South Korea, long recognized as a leader in promoting high-speed connectivity and online innovation. In the FTA that was negotiated with the U.S., Korea has agreed to make internet piracy a law enforcement priority, with specific commitments that surpass those contained in U.S. FTAs with other trading partners. We hope that South Korea will soon be given an opportunity to make good on these promises.

In summary, measures taken by the Administration to promote IP protection and expand E-commerce drive innovation and contribute to job growth. They benefit small to medium sized businesses at least as much as larger enterprises, and contribute directly to aiding our economic recovery.

We welcome further opportunities to work with the U.S. and allied governments in achieving these laudable goals, as well as continuing to provide great entertainment experiences to an expanding consumer base. The entertainment software industry serves as a shining example that greater IP protection worldwide translates directly into expanded markets and to an expanded workforce at home. I am proud to represent this industry, and grateful for the opportunity to share its story with you today.