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Edward P. Murphy along with Bernadette Gorman after receiving an AIMP award December 6, 2001.

NEWS FROM WASHINGTON

Legislative Developments

The focus in Washington during the spring of 2002 shifted perceptibly toward a wider recognition that both Internet and terrestrial piracy represent serious, potentially catastrophic dangers to the American intellectual property community. In April, House Commerce, Justice, and State Appropriations Subcommittee Chairman Frank Wolf (R-Va) held a field hearing at which the exceptionally high piracy rates in certain foreign countries against American intellectual property was discussed. The bulk

of the hearing focused on the appropriateness of withholding non-humanitarian foreign aid from those countries with high piracy rates, including Mexico, one of several nations in which the sale of pirated goods now far surpasses authorized product purchases.

U.S. domestic piracy, especially peer-to-peer file sharing on the Internet, was also the focus of statements from the Motion Picture Association of America and AOL Time Warner. Those statements warned of the extreme dangers posed to American creators and

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copyright owners by the unauthorized mass distribution of music and film, a subject which is garnering increasing attention on Capitol Hill. NMPA and the other members of the U.S. copyright industries are carefully studying an array of potential weapons in the war against piracy, but so far no general, pan-industries consensus has developed in terms of a coordinated series of programs to help curb the problem.

The Hollings Bill

There are currently two principal bills pending in Congress concerning copyright and the Internet. The first, introduced by Senate Commerce Committee Chairman Ernest F. Hollings (D-SC) and known as the "Consumer Broadband and Digital Television Promotion Act" (S.2048), is backed by several major Hollywood studios. It would set a 12-month period for negotiation of voluntary industry standards governing copy protection and copyright management of motion pictures and other works transmitted in digital form. If no agreement is reached within the established period, the Federal Communications Commission is directed to conduct a rulemaking to establish appropriate standards.

At its core, the Hollings bill is an attempt to require technology companies to become partners with the entertainment industries in protecting motion pictures and music against rampant online piracy. Supporters say government intervention is necessary because piracy is escalating and progress in voluntary, private sector negotiations has been inadequate. Those who oppose the bill, namely consumer electronics and computer hardware and software companies, express support for the inter-industry partnership concept, but say the marketplace is far better equipped than federal rulemaking to deal with the rapid pace of technological change and the emergence of new business models. A middle camp takes the position that

Congressional attention to the threat of Internet piracy is welcome and that technological protections for works in digital form must be part of the solution to the piracy problem.

Both the Senate Commerce and Judiciary Committees have held hearings on issues raised by the Hollings bill. While Senate Commerce Committee members appeared to embrace the goals of the bill if not the bill itself, the Senate Judiciary Committee has not. Senate Judiciary Committee Chairman Patrick Leahy (D-VT) and members of his Committee openly questioned whether or how Congress might usefully intervene in the establishment of technical standards.

MOCA

The second bill, introduced by Congressmen Rick Boucher (D-Va) and Chris Cannon (R-UT) and known as the Music On-line Competition Act or "MOCA" (H.R. 2724) would, among other things, create exceptions for certain "buffer," "ephemeral" and "archival" copies, and would restructure the section 115 compulsory mechanical license to greatly reduce the administrative responsibilities of parties seeking the license. Most of the bill's provisions would benefit copyright users without regard for the rights of creators and copyright owners, by creating exceptions from infringement liability and/or limitations on rights.

In connection with the issues raised by the MOCA bill, a report issued by the U.S. Copyright Office in August 2001 the "Section 104 Report" recommended that Congress consider enacting legislation that would, in effect, preclude music copyright owners from seeking mechanical licenses from services transmitting music using streaming audio technology and similarly preclude public performance licensing for downloads. The music copyright community has substantial concerns with this recommendation, maintaining that there are clearly

instances of Internet music usage that implicate more than one right.

Calls for Comments

In March 2002, House Judiciary Committee Chairman F. James Sensenbrenner, Jr. (R-WI), invited interested parties to submit their views on the Copyright Office recommendation, the pending MOCA bill, and other matters affecting copyright, music and the Internet.

The Committee heard from nearly 150 associations, companies and private individuals. NMPA urged the Committee to focus on ways to improve copyright enforcement, especially against Internet piracy, and to refrain from moving ahead with any legislation that would preempt or alter the significant progress that has been made in the marketplace. NMPA outlined key provisions of licensing agreements between NMPA/HFA and RIAA, Listen.com and FullAudio, and explained that the benefits of these agreements could be made available to all copyright owners and all covered musical works through rulemaking by the Copyright Office, without need for legislative intervention.

RIAA generally endorsed the "no legislation" approach, but in a surprise move that has caused unease in the songwriter and music publisher community, unilaterally suggested legislation creating a limited antitrust exemption that "would allow common agents of musical work copyright owners (i.e., both mechanical licensing organizations like HFA and performing rights organizations like ASCAP, BMI and SESAC) to negotiate on an industry-wide basis, 'all in' licenses" authorizing both the performance of a musical work and the ephemeral and other reproductions necessary to deliver the performance."

As this publication went to press in August 2002, draft legislation addressing the recommendations of the Copyright Office's Section 104 Report was being circulated to members of the House

Subcommittee on Courts, the Internet, and Intellectual Property for comments. Whether the draft will move forward before the end of the current Congress is an issue to which NMPA will be paying close attention.

Antitrust Oversight

House Judiciary Committee Chairman Sensenbrenner indicated late last year his intention to hold several hearings examining various antitrust-related matters affecting the music and copyright communities. The Chairman stated that separate hearings would address (1) recording industry licensing practices relating to MusicNet, pressplay and other online ventures; and (2) recent developments in connection with the ASCAP and BMI consent decrees.

ASCAP and BMI and the recording industry continue to argue that antitrust oversight hearings are not necessary given the non-discriminatory manner in which the marketplace is functioning.

“Payola” Inquiry

The House Judiciary Committee’s Ranking Democrat, Rep. John Conyers, Jr. (D-MI), has written to Chairman Sensenbrenner requesting that the Committee convene hearings “to investigate issues surrounding consolidation in the ownership of radio stations and allegations that stations are inappropriately charging record companies to play their music.” Chairman Sensenbrenner has tentatively agreed to the request, but no hearing date to examine so-called “payola-related issues” has been set. Mr. Conyers is scheduled to be the guest speaker at the NMPA Annual Meeting in California this June.

Eleventh Amendment Legislation

Pending legislation (S. 2031) introduced by Senate Judiciary Committee Chairman Patrick Leahy would address a series of Supreme Court decisions concerning state immunity from lawsuits under the 11th Amendment to the U.S.

Constitution. Those decisions have had a chilling effect on the ability of copyright owners to pursue infringement claims against states instrumentalities such as public universities and schools.

Representatives of state universities have begun to lobby for changes in the measure that would weaken the measure. NMPA and allies in the Property Owners Remedies Alliance, formed to support the principles of the bill, are responding to these efforts with more vocal support for the legislation.

Distance Education

A Senate-approved “distance education” bill (S. 487) reflects a narrow and carefully balanced exemption from copyright infringement liability for certain public performances and displays of material for use in a bona fide class session, under the direction of an instructor. As a result of input from NMPA and others, the bill would not permit downloads or other distribution of music or other materials for student use. The House Judiciary Committee has not yet acted on the companion bill pending before it, and there is some concern that it could be combined with other bills in an end-of-session “package” that could become a vehicle for music-related amendments that NMPA opposes.

CARP Reform

Rep. Howard Coble (R-NC), chairman of the House Judiciary Committee on Courts, the Internet and Intellectual Property, has invited participants in proceedings before Copyright Arbitration Royalty Panels (“CARPs”) —including NMPA— to “provid[e] their thoughts and opinions about the [CARP] process.” As an initial matter, Chairman Coble has asked parties to evaluate several alternatives to the CARP proposed by the Copyright Office in a 1998 report. Apart from its reference to the 1998 Copyright Office Report, the Subcommittee’s request for comment is

open-ended, and no deadline for the submission of views has been set.

Most copyright owners entitled to receive royalties under compulsory licenses subject to proceedings before a CARP would agree that the CARP process has proven less efficient and more costly than its predecessor, the Copyright Royalty Tribunal. A 1998 Copyright Office report suggested several alternatives to the CARP process, including utilizing a permanent core of part-time arbitrators in a new CRT-like independent agency.

On April 30, 2002, Sen. Joseph Biden (D-Del.) introduced S.B. 2395, a bill to expand counterfeiting laws to cover digital music and movies and to make it illegal to replicate authentication devices on copyrighted product, including watermarks and holograms. The proposal, which essentially gives digital music and movies the same anti-counterfeiting protection that computer software enjoys, also allows copyright owners to more easily sue alleged pirates for damages, and triples fines for repeat offenders.

DART Distribution

Digital Audio Recording Technology (“DART”) royalties deposited with the Copyright Office for 2001 total \$3,875,100, with many fourth quarter royalty payments still outstanding. Total deposits for calendar year 2000 exceed \$5,425,000. One-third of the royalties deposited in any year are allocated to the Musical Works Fund, to be divided equally between Music Publishers and Writers Subfunds.

PIRACY UPDATE

Music piracy, both of the physical kind and on the Internet, remains an issue of critical importance to the global music industry. While improvements in education, legislation and law enforcement are being seen in many territories, there still remains much work to be done.

In 2000 – the last year such data has been made available – the International Federation of the Phonographic Industry (IFPI) reported the global pirate music market totaled 1.8 billion units, or roughly one of three CDs and cassettes sold, representing a skyrocketing increase over the previous two years. IFPI maintains that the spread of music piracy is being driven by increasing disc capacity and the explosive growth of the CD-Recordable format. Discs accounted for 35% of all pirate sales, compared to just over 25% in 1999, and almost one in ten pirate products were sold in the CD-R format.

Worldwide sales of pressed pirate CDs were 475 million units in 2000, up from 450 million in 1999, with pirate CD-R discs estimated at around 165 million units (up from approximately 60 million in 1999). Sales of pirate cassettes fell to 1.2 billion units (down from 1.4 billion in 1999), reflecting the growing displacement of the cassette by the CD as pirate operators upgrade their formats. This in turn led to a slight increase in the value of the overall global pirate market, from \$4.1 billion in 1999 to \$4.2 billion in 2000.

The growth in disc capacity can be measured by the number of known optical disc plants in operation: IFPI estimated that number at over 700 by the end of 2000, compared with 660 a year earlier. Territories where capacity far outstrips legitimate demand include Taiwan, Hong Kong, Singapore, Macau and Malaysia. Shipments of pirate CD-Rs (from wholesale to retail) in both audio and non-audio formats grew by 80% in 2000, while blank CD-R prices have plummeted, with retail prices now as

low as \$0.15 to \$0.20 in some regions. CD-R use has been felt particularly in several of the major European markets; German research has found that over 100 million copies were made through CD-R burning in 2000, while legitimate CD sales in that market declined by 3%. Similar problems have been reported in such countries as France, Spain, Italy, Holland and Sweden.

As part of its international anti-piracy effort, IFPI now has in place a network of over 50 regional and local investigators. Most of the large-scale enforcement successes of 2000 came at the manufacturing source rather than during shipment. Following a string of large-scale seizures of pirate CDs en route from Southeast Asia to Latin America in 1998-99, the biggest actions of 2000 were at plant sites in Southeast Asia. All together, IFPI assisted in cases that led to the closure of 20 CD plants, with a total capacity of more than 70 million CDs, in 2000. For the first four months of 2001, 27 CD production sites were shut down, with annual production capacity of more than 100 million CDs.

IFPI and IIPA also named China, Russia, Mexico, Brazil, and Italy as the top five countries on the its priority list in terms of domestic piracy, while Eastern Europe, particularly Ukraine, tops the list of manufacturers and exporters of pirate product.

In addition, IFPI figures show sales of illegal music outnumbering those of legal music in 21 countries, up from 19 in 1999, with the problem growing worse in Malaysia, Taiwan, Indonesia, Mexico, Spain, Holland, Greece, the Czech Republic, and Croatia. In regard to the Internet, actions taken by IFPI and its 46 national affiliates led to 15,000 websites containing 300,000 files being taken down in 2000.

In the United States, the Recording Industry Association of America (RIAA) reported that in 2001 its physical-product anti-piracy campaign resulted in

raids on over 230 distribution operations (up from 100 in 2000) and on 145 manufacturing facilities (up from approximately 50). Some 2.8 million illicit CD-Rs were seized during these raids, up from 1.6 million in 2000, while search warrants increased by 74%, arrests and indictments by 113%, and guilty pleas and convictions by 203%. The group indicated that it would redouble its anti-piracy efforts in 2002.

Meanwhile, on April 30, 2002, the U.S. Trade Representative (USTR) released its “Special 301” trade list, finding that 51 nations are handling the issue of intellectual property protection inadequately. Ukraine again headed the list, being cited by USTR as a highest-level priority for its manufacture of pirate CDs. USTR had, on January 23, removed Ukraine’s benefits as a favored trade nation and imposed \$75 million in economic sanctions. The report noted that the territory’s continued failure to adequately protect intellectual property rights could ultimately prevent its joining the World Trade Organization (WTO). Ukraine has since passed a law regulating CD plants, which USTR commended, saying it would continue to monitor developments there.

Poor copyright protection enforcement was also cited in a wide-ranging list of second-tier priority countries, which included Brazil, Colombia, India, Hungary, Taiwan, the Dominican Republic, Kuwait, the Philippines, Russia, Egypt, Turkey, Saudi Arabia, Uruguay, and members of the Andean Community. While Mexico was not included in the list, USTR said continued improvements must be seen, and promised an out-of-cycle review of that country’s enforcement policies later this year. Bulgaria, which also did not make the list, is being watched closely due to reports of rapidly rising levels of piracy there.

The USTR said it would also continue to monitor China and Paraguay. The Chinese government has actively been

UPDATE ON THE MUSICCITY LITIGATION

Late last year, a group of songwriters and music publishers – Jerry Leiber, Mike Stoller, Peer International Corporation, Criterion Music Corporation, and Famous Music Corporation – filed a class action lawsuit in a Los Angeles federal court on behalf of themselves and a class of music publishers represented by HFA against the owners and operators of three online services – Morpheus, Kazaa, and Grokster. The defendants operate Napster “copycat” services that have facilitated and encouraged millions of users to engage in the unauthorized distribution and downloading of sound

recordings on the Internet, thereby infringing songwriters’ and music publishers’ copyrights and profiting from those infringements. NMPA is supporting the litigation.

In February 2002, the publishers sought to consolidate their action with a parallel action commenced a month earlier by several record companies and motion picture studios, and additionally, moved for certification of the class. At around the same time, the defendants filed a motion for partial summary judgment on the issue of whether they would be immune from liability based upon the claim that they were just dis-

tributing software programs to the general public. On March 4, 2002, all the parties convened in Los Angeles for a hearing on the motions and a status conference. The court denied the defendants’ motions as premature; granted the publishers’ motion for consolidation with the other lawsuit; and set a trial date for later this fall. The publishers achieved another milestone on May 14, 2002 when the court certified the class of music publishers – a result the publishers first achieved in the Napster litigation. The publishers are currently working in earnest to pursue discovery against the defendants.

UPDATE ON AIMSTER LITIGATION

A number of different lawsuits nationwide were filed against the owners and operators of the Aimster online service, another Napster “copycat.” One of them was the NMPA-supported litigation involving a group of songwriters and music publishers – Famous Music Corporation, The Rodgers and Hammerstein Organization, Jerry Leiber, Mike Stoller, and Criterion Music Corporation. In late November 2001, a panel of federal judges ordered all of

these actions transferred to, and consolidated before, one court in Chicago.

Shortly thereafter, the publishers and the major record companies filed a motion for a preliminary injunction against the Aimster service. The court scheduled a hearing in Chicago for March 19, 2002. On the eve of that hearing, the defendants and the founder of Aimster, John Deep, filed for bankruptcy. The bankruptcy filings automatically stayed the copyright actions in Chicago

pending further proceedings.

Undeterred, the publishers and the record companies jointly filed a motion in the bankruptcy court requesting that they be permitted to litigate the preliminary injunction motion in Chicago. On June 18, 2002, the bankruptcy court granted that motion, and the publishers and record companies are currently making arrangements to bring the preliminary injunction motion before the court in Chicago again.

AUDIOGALAXY UPDATE

The recording industry, music publishers and songwriters announced June 17, 2002 that they have reached an out-of-court settlement with Audiogalaxy.com, the Napster-like clone, which requires Audiogalaxy to stop the infringement of copyrighted works on their peer-to-peer network.

The agreement follows a lawsuit filed in late May accusing Audiogalaxy of facilitating and encouraging widespread copyright infringement – a last resort step after repeated efforts to warn the company of their its liability were ignored or resulted in ineffective

attempts to resolve the problem. The suit was brought by the Recording Industry Association of America (RIAA), on behalf of its member labels, and the National Music Publishers’ Association (NMPA), on behalf of the music publisher principals of its licensing affiliate, The Harry Fox Agency, Inc.

The settlement reached would allow Audiogalaxy to operate a “filter-in” system, which requires that for any music available, the songwriter, music publisher, and/or recording company must first consent to the use and sharing of the work. The other key provision of the

agreement is for Audiogalaxy to pay the music publishers and recording industry a substantial sum based on Audiogalaxy’s assets and interest in resolving this case quickly.

“We are pleased to settle this case quickly. This is a victory for everyone who cares about protecting the value of music,” said Hilary Rosen, Chairman and CEO of the RIAA. “This should serve as a wake-up call to the other networks that facilitate unauthorized copying. The responsibility for implementing systems that allow for the authorized use of copyrighted works rests squarely

ICMP/CIEM UPDATE**Helsinki Meetings: election of new officers and directors**

At its recent Helsinki meetings in May, the International Confederation of Music Publishers (ICMP/CIEM) elected Ralph Peer, CEO of Peermusic, as its new Chairman and Arnold Broido, CEO of the Theodore Presser Company, as President. Newly elected to the Board were Nicolas Galibert, MD of Sony Music Publishing France, Andrew Potter, Director of Music & Bible Publishing for Oxford University Press, and Frans de Wit, Secretary General of VMN.

The remaining incumbent directors are: Stephen James, Chairman & MD of Dejamus Limited; Johann Juranek, member of the Vorstand of Universal Edition AG; Michael Karnstedt, President Peer Music Europe; Karl-Heinz Klempnow, CEO of Transcontinent Musikverlag GmbH; and Jean-Manuel de Scarano, Vice President Serious Music of BMG Music Publishing International. Newly elected to the popular publishers' bureau was Lars Karlsson, Managing Director of BMG Music Publishing Sweden.

Helsinki Meetings: by-laws modification

In addition, ICMP/CIEM modified its By-Laws to allow for membership and board positions for international music publishers' associations. The change reflects the globalization of the music publishing industry and will allow ICMP/CIEM greater reach while the objectives of the organization remain unchanged.

Objectives

ICMP/CIEM works to ensure greater awareness of the interests and activities of music publishers and of the composers and songwriters which they represent among European Union and international policy makers. These must have a better understanding of the need

for strong copyright and efficient enforcement to reward musical creation.

ICMP/CIEM also offers a useful forum for information sharing on industry issues, which allows it to relate the lobbying issues back to the licensing practices and the rights' management options. For example, ICMP/CIEM continues to maintain a dialogue with BIEM through meetings organized on a regular basis and has provided a forum to review new uses and models, such as the development of ringtones and of services on the Internet.

Licensing and control of works on the internet

The focus of ICMP/CIEM remains on the licensing and the control of copyrighted works on the Internet.

The adoption of the Copyright Directive in Europe was not completed without controversy and the European Member States are now going through analogous difficulties in drafting and implementing legislation. The European States have not found common ground yet on the level of the protection required against the circumvention of technical measures. Neither have they agreed on the scope of intervention by Member States to prevent technical measures from disallowing users of copyrighted works to benefit from those copying privileges listed by the Directive and included in existing or pending national legislation.

The Directive provides that several of these privileges, and specifically the privilege to copy privately, must be in consideration for compensation. Although most Member States have private copying regimes providing for some form of remuneration, the U.K., Ireland and Luxembourg do not have private copying schemes, nor do they intend to compensate for private copying.

Furthermore, the basis and the level of the private copying compensation is not harmonized between States and these remain free to move forward as

they deem appropriate. It is likely, however, that the levies in most Member States in Europe will be adjusted to cover digital uses, with the basis in certain countries to include computer centric items, such as hard disks.

The development and role of Digital Rights Management ("DRM") tools have come to the forefront of discussions in Europe, just as they have in the United States. These are the technologies which describe and identify content protected by intellectual property rights and which enforce usage rules established by rights holders or prescribed by law for digital content.

Two questions monitored by ICMP/CIEM have priority. The first is whether standards for DRM should be set by the market or through legislation ("mandate" or "no-mandate"). A second question is whether levies should not be viewed as an alternate solution to DRM. In addition, some argue that DRM could replace collective management since DRM would facilitate individual management. All of these policy developments relate to the scope and management of the rights of composers, songwriters, and music publishers.

Drafts of the Copyright Directive implementing legislation are available for Belgium, Austria, The Netherlands, and Germany, which contrary to expectations had chosen a minimal approach for the implementation in order to go forward before the elections in the autumn of 2002. However, after an April 26 hearing organized by the German Ministry of Justice, the process now seems to have come to a halt again and implementation may well be postponed until after the elections.

It is to be noted that libraries, researchers, and schools are lobbying to include exceptions in Member States' legislations where these do not exist. In the U.K., separate legislation is proposed to introduce an exception for visually impaired persons. ICMP/CIEM is mobilized against these initiatives.

As a reminder, the deadline for all Member States to comply with the E-Commerce Directive was January 17, 2002. Many States have not yet implemented the Directive, including the U.K., France, Sweden, Belgium, Italy, Spain, Ireland, Denmark, the Netherlands, Portugal, and Greece.

This Directive contains the rules applicable in Europe on the liability of on-line servers, including their liability for copyright infringement on networks. A related issue for legislators is whether the implementing legislation should include provisions regarding notice and takedown, or whether this should be left to private negotiations. ICPM/CIEM has been involved in several discussions relating to this difficult issue, which has not made much progress to date. Most parties involved in the discussions appear to support procedures through local bodies and national procedures.

Contracts and rights management

Other areas of attention in Europe for ICPM/CIEM have included the modifications brought to the German law on copyright contracts and the related attention of both European and international forums to copyright contracts generally.

The European Commission's initiative on collective management has also been monitored carefully by ICPM/CIEM. It is likely that the initiative will only be in the form of a Communication, which will not be binding on Member States and will not compel Member States to change their legislation.

Santiago de Compostelle

ICMP/CIEM will be present at the forthcoming Santiago de Compostele Conference, which is one of the European copyright events of the year, organized by the Commission's Internal Market Directorate to define the new orientations towards further harmonization of copyright in Europe. DRM, country of origin v. territoriality, updating and con-

solidation of the European legal "acquis," rights ownership, contracts, rights management, and areas for further legislative initiatives will be discussed. Music publishers will contribute to a major panel thanks to the ICMP/CIEM.

UNESCO and WSIS

ICMP/CIEM has been on the alert with regard to UNESCO initiatives, which point at copyright as one of the barriers against access to the Internet. These are trying to gain momentum for the World Summit on the Information Society (WSIS), which will be held in Geneva in 2003. The Civil Society will be represented at this Summit, and ICMP/CIEM with other groups is working towards having a specific representation for content interests.

WIPO and WTO

ICMP/CIEM is also monitoring the WIPO program and the WTO action, and reports regularly back to its members on progress made. ICMP/CIEM specifically contributed to the WIPO E-Commerce Conference at the end of 2001 and since then has followed the developments on proposed international guidelines for the protection of traditional knowledge and folklore and on related proposals for a paying public domain.

ICMP/CIEM jointly with a group of rights holders recommended that there be more clarity on the scope and the purpose of a possible new Treaty for Broadcasters discussed in Geneva in the fall of 2001 and again in May 2002.

ICMP/CIEM finally has been listed on the list of NGOs monitoring the discussions on the Hague Convention which generated so much controversy when service providers attempted to limit the international reach of courts against them.

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WTO DECISION ON MUSIC LICENSING LEGISLATION

In December 2001, the U.S. and the European Union ("E.U.") reached a settlement of the trade dispute arising from the limitations placed on music performing rights in the U.S. "Fairness in Music Licensing Act." Under the terms of the settlement, the U.S. is to pay \$1.1 million to the E.U. each year for the next three years. If, by the end of the three-year period, the U.S. has not remedied its violation through repeal of the Fairness in Music Licensing Act, presumably a further settlement will have to be reached. U.S. trade officials are considering options for securing funding to compensate the E.U., including the pending FY02 supplemental appropriations bill and the FY03 appropriations measure.

GLOBAL WIPO TREATY IMPLEMENTATION

NMPA has been among the industry leaders in encouraging governments worldwide to accede to the World Intellectual Property Organization Copyright Treaty ("WIPO Copyright Treaty"), which establishes international rules strengthening protection for works in digital form and in connection with Internet uses. The WIPO Copyright Treaty and its companion agreement, the WIPO Performances and Phonograms Treaty, have attracted the 30 accessions necessary to come into force. The existence of the WIPO Treaties as "live" agreements binding parties to their terms is expected to speed the rate of accession and establish a more meaningful framework of international rules governing copyright and the Internet.

PUBLISHER PROFILE: HELENE BLUE MUSIQUE LTD.

Helene Blue, founder and president of music publishing firm Helene Blue Musique Ltd., has enjoyed a career working with everyone from musical theatre composers Charles Strouse, Frank Loesser and Jerry Herman to classical music figures Loren Maazel, Placido Domingo and Joan Sutherland to pop and rock acts Paul McCartney, Chuck Berry and Van Morrison.

The one constant in such a diverse career, she says, is an appreciation for the craft of composing. "Working with composers, I find that it is almost always a person to person thing: how a composer senses you as a publisher or administrator will take care of his or her babies, which are their songs," she remarks. "I am able to convey a genuine sense of the love I have for songs; part of me remains awed by the talent of composers, and I'm not ashamed to show that. The ability to hone and put a song together in a way that becomes a popular success is, I believe, an extraordinary craft."

Blue's career in the music business began shortly after graduation. "I was very fortunate, in that the second interview I had was at London Records," she recalls. There she met Mimi Trepel, who at that time was one of the few female corporate officers in the business, running London's copyright, publishing and foreign distribution divisions.

Blue was hired in the copyright office, taking on extra jobs such as proofreading liner notes and researching long-term projects as the need arose. Once Trepel retired she began running the department, working with everyone from the Rolling Stones, Van Morrison and ZZ Top to Mantovani, Margaret Whiting, Luciano Pavarotti and Joan Sutherland.

After nine years, however, it became obvious to Blue that she could not rise any further at London, and she found a job in music publishing at European American Music, based at that time in Clifton, N.J. (and now in Miami) as director of copyright. At this post she

worked solely with classical composers, including Kurt Weill and Carl Orff, and represented the European catalogs of Schott and Universal Edition.

After her stint at EAM, Blue soon joined Belwin Mills Publishing Corp. as director of copyright and licensing. "They had the most wonderfully diverse catalog," she recalls. "I was working with Rachmaninoff, Fats Waller, Duke Ellington, Dorothy Fields...and they had a fabulous print catalog as well."

Five years later she became managing director of the Arc Music Group catalogs, where she was able to work the catalog of Benny Goodman and meet Benny himself, who was a principal of Arc along with his brothers Gene and Harry. During this time she would thrill to stories of the heyday of Goodman's big band, working with players like Charlie Christian and "learning about the whole lifestyle of the Big Band era." At the same time she was working such cornerstone rock 'n' roll catalogs as Chuck Berry's and Bo Diddley's, "which was like living my youth all over again."

Blue spent nine years at Arc, believing that she had found a permanent home. "I was very happy working at the company and with such a great catalog," she says. "But there is something about being offered a job by Paul McCartney that will leave you very seriously considering making a change."

McCartney's publishing concern, MPL Communications Inc., was looking for its first general manager. Though she hadn't previously met the McCartneys, Blue did have business relationships with Linda's father, music attorney Lee Eastman, and with MPL's chief operating officer Tom McCabe, who had worked with her at Belwin Mills. "Tom apparently put my name forward for the position, knowing my abilities, and the rest of it fell into place."

At MPL she was able to work with what she calls "a tremendous catalog which literally spans the 20th century – it has copyrights by everyone from Jelly

Roll Morton and Bessie Smith to those great music theater copyrights by Hoagy Carmichael, Frank Loesser, Harold Arlen, Jerry Herman and Jack Lawrence. Then you have the Buddy Holly catalog, and Paul's own catalog from Wings onward, which is certainly one of the great rock catalogs of all time."

Blue has nothing but praise for McCartney. "I must say he could not have been nicer. It was such a rewarding experience – he was always open to suggestions and eager to hear about new ways to promote the catalog."

After a few years, however, Blue felt the urge to strike out on her own. "I was getting ready to renegotiate my contract with MPL, and I started thinking about what I wanted for myself and what the next step should be," she recalls. "I decided that if I didn't try to do my own thing at that stage, I probably never would. Paul's reaction was absolutely perfect – when I told him I was not going to renew my contract and why, he said, 'Helene, if you had said you were going to work for somebody else I would have argued with you until doomsday, but there is no way that Linda and I could ever tell you not to try and do your own thing.'"

On top of that, the McCartneys hired Blue to do consulting work for them during her new company's first two years, 1995 and '96. "It was such a typically generous thing for him to do something like that," she says. "As it turned out, the business did, and happily still is doing, fine, and I will always be extremely grateful to him for his support."

Naming her new company was fairly simple. "When it came time for me to start my own business, I felt that I had made my reputation by my name. I had worked for a lot of different companies but it was always me that people knew. It was not an egotistical thing as much as it was letting people know whom they were getting involved with. Over the years my name came to represent a name in the industry that people knew they could rely upon."

Her name and track record have served her well. The company's signing of composer Charles Strouse occurred almost by happenstance. "I had seen him at a Supper Club event we were both attending, and I went to his table to introduce myself because I had admired his music for such a long time," she recounts. "At that time he was represented by the Songwriters' Guild of America, but I felt his catalog could be much more heavily promoted if it was represented by a publisher. I was working for MPL at the time, and we met soon after for lunch and he agreed to join MPL. But at that time he put into his contract a 'key person' clause, so when I resigned from MPL and started my own company, he came with me. That was an extraordinary statement, and I'm extremely proud of the very good relationship we have built over the years."

Today Helene Blue Musique Ltd. represents an impressive array of veteran composers, including Maazel, Lee Adams, Arthur Siegel, Paul Winter, and Lesley Gore, and such rising composers as Annie Dinerman, Man-yea Lam, John Califra, Barry Ennis, and Arline Udis. In addition, the company represents licensing clients such as The Joffrey Ballet of Chicago, The Franklin Mint, Swarovski, ABC Television, 101 Productions and Asset Pictures.

While pleased with the progress her company has made in seven years, Blue is distressed by some major issues facing the music industry at large, beginning with the matter of music's availability on the Internet. "More than the mere fact of the Internet's existence is the public's inability to understand and respect intellectual property as something that a creator has a right to own and charge a royalty for the use of," she says. "The Internet has made it very difficult for intellectual property to remain standing – we are facing a very major test case in *Eldred vs. Ashcroft*, and we are all sort of holding our breath to see if the Supreme Court will continue to

respect the right of Congress to pass legislation regulating the Copyright Act, or if some or all of that will be overturned. That is certainly the #1 problem on any music publisher's – or even any book publisher's – list of concerns."

In addition, she says, "I ache for the return of good melodies in songs. It's not that I don't listen to what's out there in the Top 40 marketplace, but a lot of it doesn't reach me. Occasionally there will be something there; there's a reason that Celine Dion sells as well as she does, and others of that ilk do release songs with original, incredible melodies and beautiful words.

"But it's sad that radio does not support the broader spectrum of music today – I can hear the rap, pop and rock, but I also want to hear classical, jazz and New Age. I don't want radio to dictate to me in quite the same way as it does."

In addition to her work as a music publisher, Blue serves on the Boards of Directors of the NMPA (as member of the Legislative and Membership committees), The Copyright Society of the U.S.A., Merkin Concert Hall and the ASCAP Board of Review. She is a founding member of the New York chapter of the Association of Independent Music Publishers, and served on its Board of Directors for five years. In December 1998, AIMP presented Helene with its first ever "Indie" Award, recognizing her abilities as an independent publisher. In March 1999, Women In Music presented Helene with its Touchstone Award for Distinguished Service to the Music Industry.

In addition to Blue, other key Helene Blue Musique staff includes Peter Poulos (director of copyright and licensing); Susan Berlowitz (director of promotions); Bert Schuchat (personal assistant) and Carmen Capper (assistant).

For more information, contact Helene Blue Musique Ltd. at 205 West End Ave., Suite 4M, New York, NY 10023; phone 212-724-5900; fax 212-501-0360.

PIRACY UPDATE

CONTINUED FROM PAGE 4

combating pirated CD exports, but internal piracy reportedly still stands at about 90%. Paraguay has introduced stricter laws, but enforcement and border patrols remain in adequate, according to USTR.

Progress was also noted in South Korea and Macau, with the latter being removed from the U.S. watch list.

On the digital side, unauthorized downloads of music onto hard drives, MP3 players and other devices continue. (Please see separate stories on Music City and Aimster.)

SOLUTIONS

Besides the continued introduction of strong copyright-protection laws, and stringent compliance with and enforcement of existing laws, the use of copy-protected CDs and digital-rights management technologies may also soon prove to be effective weapons in the fight to diminish piracy.

AUDIOGALAXY UPDATE

CONTINUED FROM PAGE 5

on the shoulders of the peer-to-peer network."

"The message is clear – there is no place on the Internet for services that exploit creators' work without fair compensation," added Edward P. Murphy, President and CEO, NMPA. "Such services hurt creators and hurt the legitimate Internet businesses that wish to comply with the law and compensate the creators. The swift resolution of this matter is thus a double victory that creators and legitimate Internet businesses should join in hailing."

Audiogalaxy.com, based in Austin, Texas, was one of the more heavily trafficked file-sharing websites.

THE STORY BEHIND THE SONG

(If You Happen to See) The Most Beautiful Girl in the World

The route taken by Charlie Rich's "(If You Happen to See) The Most Beautiful Girl in the World" to become a multi-format smash was a particularly circuitous one. As Al Gallico, head of Mainstay Music Publishing, recalls, the song began its life with a different title and lyrics ... and ended up in the hands of an executive who didn't even want to release it as a single.

"These two kids, Norro Wilson and Rory Bourke, had written a song called 'Hey Mister,' which was a good tune and had been released on Mercury," Gallico recounts. The single failed to make an impression on the public, however, and the song's brief life seemed to have come to an end.

Still, Gallico maintained his belief in the tune. "One night I was having dinner with [famed producer] Billy Sherrill in Nashville, and we got to talking. Billy mentioned that he liked the song, and was particularly taken with the melody, and we both agreed that it was too bad it hadn't been a hit. Then he got to wondering if Norro and Rory would mind if he rewrote the lyrics. I agreed that he should take a shot at it, and the boys did as well, and when he did rewrite it, it came out as 'The Most Beautiful Girl in the World.'"

Sherrill's own Nashville career had taken off in 1961, when Sun Records owner Sam Phillips purchased Sherrill's Seventh Avenue studio in Nashville and hired Sherrill as an engineer. Sherrill began working with Rich that same year, serving as engineer on such cornerstone Rich hits as "Who Will The Next Fool Be," "Sittin' And Thinkin'," and "Finally Found Out." Rich soon left to pursue other partnerships, and Sherrill became a staff producer with CBS Nashville, working on hits with David Houston and Tammy Wynette.

Rich and Sherrill paired up again in 1967 on CBS' Epic label, with the results including the Sherrill-produced albums *Set Me Free*, *The Fabulous Charlie Rich* and *Boss Man*.

It was 1973's "Behind Closed Doors," however, that turned Rich into a superstar, earning him a Grammy for Country Male Vocal Performance and three Academy of Country Music Awards, for single, album and male vocalist of the year. The country smash even crossed over to the pop charts, where it spent 12 weeks and crested at #15.

The search for an immediate follow-up single began, and Gallico had just the tune in mind. "I told him 'The Most Beautiful Girl' would make for a terrific follow-up, but Billy wasn't so sure," he says. "'We've got to get a song that's really a killer, because 'Behind Closed Doors' was such a giant,' he told me. I let it go for awhile, but later I heard Charlie do it in a club, and the reaction was just fantastic – people were just knocked out by it."

Sherrill still wasn't convinced, but Gallico persisted, and eventually the song was released as a single ... a scant four months after "Behind Closed Doors." If anything, it was even more successful than its predecessor, dominating the country chart and again crossing over to pop, where it spent 17 weeks and ultimately went to #1.

"You have to give Norro and Rory a lot of credit," Gallico says. "They had no problem with somebody like Billy Sherrill coming along and rewriting the lyric. In fact, they were very happy to let him take a shot at it – and they were certainly more than happy with the final result." Those results included sales of 4.5 million singles and 5 million albums, and according to BMI has achieved five million United States radio and television performances, one of only a handful of songs to do so.

"Billy always told me, if it hadn't been for you, we would never have released that as a single," Gallico recalls with a chuckle. "That, to me, makes a great story."

NOTE: AS A NEW FEATURE, IN EACH ISSUE NEWS & VIEWS WILL PRESENT A BRIEF HISTORY OF HOW MUSIC PUBLISHERS HELPED SOME OF OUR MOST POPULAR SONGS ACHIEVE THEIR SUCCESS.

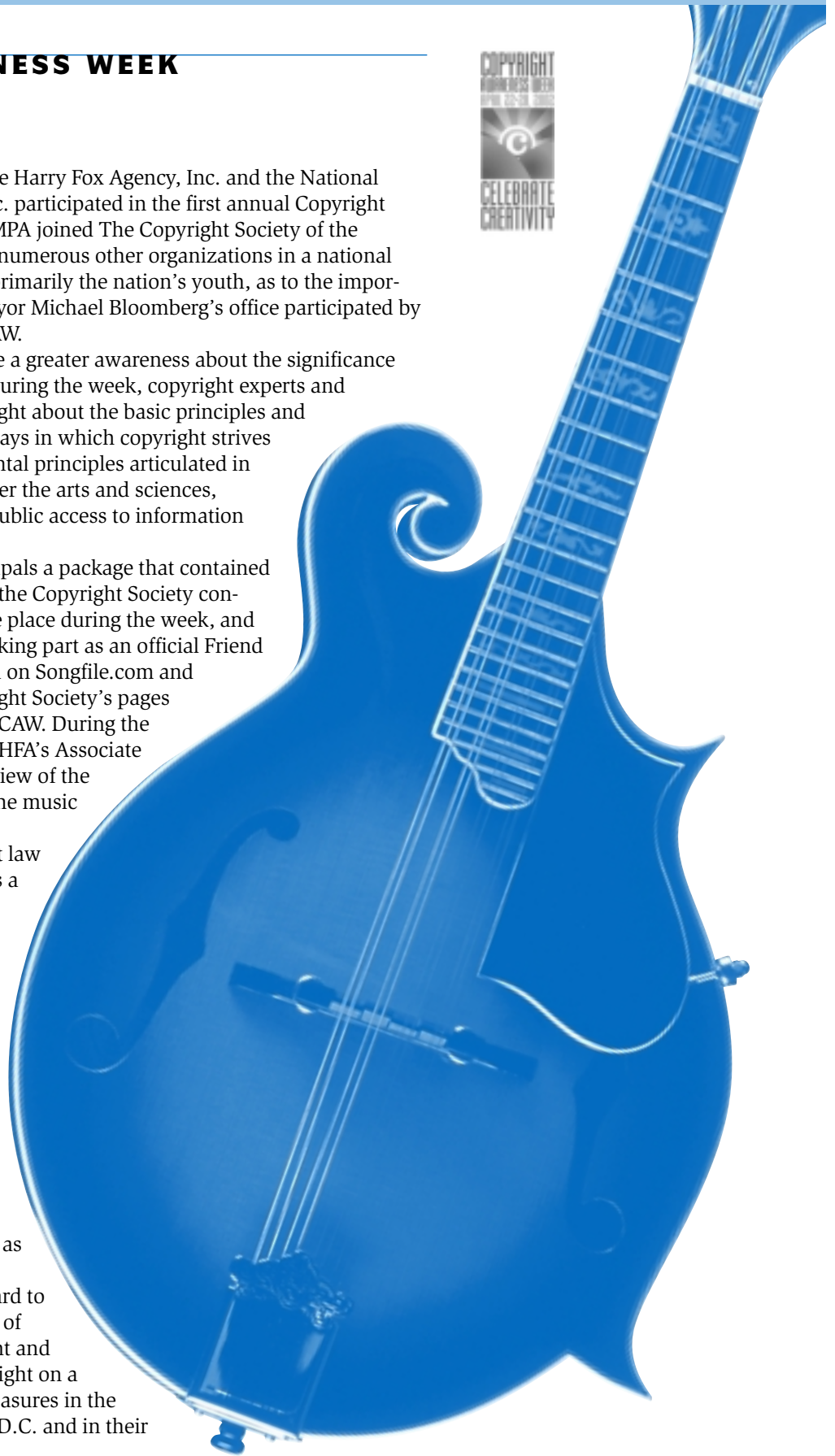
COPYRIGHT AWARENESS WEEK

During the week of April 22-28, The Harry Fox Agency, Inc. and the National Music Publishers Association, Inc. participated in the first annual Copyright Awareness Week (CAW). HFA and NMPA joined The Copyright Society of the U.S.A., the U.S. Copyright Office and numerous other organizations in a national endeavor to educate the nation, and primarily the nation's youth, as to the importance of copyright. New York City Mayor Michael Bloomberg's office participated by issuing a Proclamation celebrating CAW.

The mission of CAW was to create a greater awareness about the significance and necessity of U.S. copyright law. During the week, copyright experts and educators throughout the country taught about the basic principles and purpose of copyright, as well as the ways in which copyright strives to achieve balance between fundamental principles articulated in our Constitution — the desire to further the arts and sciences, while at the same time ensuring the public access to information and ideas.

HFA mailed to its publisher principals a package that contained information created and compiled by the Copyright Society concerning the activities that were to take place during the week, and explained that NMPA and HFA was taking part as an official Friend of CAW. The logo for CAW was posted on Songfile.com and nmpa.org, which linked to the Copyright Society's pages containing further information about CAW. During the week of April 22nd, Elissa D. Hecker, HFA's Associate Counsel, gave a comprehensive overview of the Copyright Act, and how it applies to the music industry, to HFA staffers. The course explained the importance of copyright law and how every employee at HFA plays a role in its protection. The sign-up list was so long that the initial class that was offered had to be expanded into two overflowing classes, both with waiting lists. Almost everyone attended and participated, from CEO Gary Churgin and senior management to members of all of HFA's departments. The course fostered heated and interesting discussions. There was a great deal of interest in making this a regularly offered course to HFA employees, and HFA may offer a more advanced class as well in the future.

HFA and NMPA are looking forward to participating in next year's CAW, and, of course, to continuing the advancement and promotion of the importance of copyright on a daily basis through their proactive measures in the licensing realm, both in Washington, D.C. and in their educational initiatives.



NICHOLAS FIRTH PROMOTED TO CHAIRMAN, BMG MUSIC PUBLISHING WORLDWIDE



NEW YORK June 5, 2002 - Nicholas Firth, who has built BMG Music Publishing into one of the world's top four music publishers, has been promoted to Chairman.

NEW YORK June 5, 2002 – Nicholas Firth, who has built BMG Music Publishing into one of the world's top four music publishers, has been promoted to Chairman. The announcement was made by Rolf Schmidt-Holtz, Chairman and CEO, BMG. The appointment is effective immediately.

Firth, who has served as President of BMG Music Publishing since its formation in 1987, will continue to direct all of the company's global operations in 31 countries. He is based in New York and reports directly to Schmidt-Holtz.

Under Firth's direction, BMG Music Publishing has become the world's fourth largest music publisher, the third largest publisher of classical music and is one of the top three production music library businesses worldwide. The company is currently riding high on the global music charts with multiplatinum releases from direct signings Nelly (nearly nine million copies of his Universal Records debut *Country Grammar* sold worldwide) and Robbie Williams (nearly six million copies of his latest EMI album *Swing When You're Winning* sold worldwide). BMG also publishes current global hits from The Calling ("Wherever You Will Go" on RCA), U.K. Pop Idol winner Will Young ("Evergreen" on S Records/BMG) and, in a recent chart week, published four of the top 10 singles in the U.K.

In its 15-year history, BMG Music Publishing has made over 200 catalogue and corporate acquisitions in 15 countries, most notably Italy's G. Ricordi, France's Éditions Durand and Éditions Salabert as well as the catalogues of Santana, Fleetwood Mac, B.B. King, Bryan Ferry, Barry Manilow, Peter Cetera (Chicago) and Gilbert Becaud. The company's roster includes some of the world's biggest recording artists such as Nelly, Robbie Williams, Coldplay, the Bee Gees, Peter Maffay, Rammstein, Elvis Costello, Beck, Erykah Badu, The Cure, The Eurythmics, Annie Lennox and Wu-Tang Clan.

"Nick has built BMG's music publishing arm into one of the largest and most profitable in the world," said Schmidt-Holtz. "I am confident that with his creativity, efficient management and business savvy he will guide BMG Music Publishing to even newer heights of success."

"The last 15 years have been immensely rewarding," said Firth. "Growing BMG Music Publishing from its modest roots to a global competitor has been a lot of fun. With the support of BMG, Bertelsmann and my Music Publishing colleagues worldwide, I look forward to continuing our expansion during this challenging time."

Prior to joining BMG in 1987, Firth spent more than 20 years with Chappell & Company (then a division of PolyGram BV) culminating with simultaneous positions as President of Chappell International and Vice President of the PolyGram Publishing Division, which he held from 1981-1985. Subsequently, he was a shareholder and CEO of Music Theatre International.

Firth currently serves on the Board of ASCAP, the Board of NMPA and the Board of Third Street Music School in New York City.

With wholly owned offices in 31 countries around the world, BMG Music Publishing is among the top four multinational music publishing groups. BMG Music Publishing is a unit of BMG, the global music division of Bertelsmann AG, one of the world's leading media companies with annual revenues of \$17.86 billion. BMG has more than 200 record labels in 42 countries including Arista Records, RCA Records, RCA Label Group-Nashville and Ariola. In addition, BMG owns one of the world's largest music publishing companies.

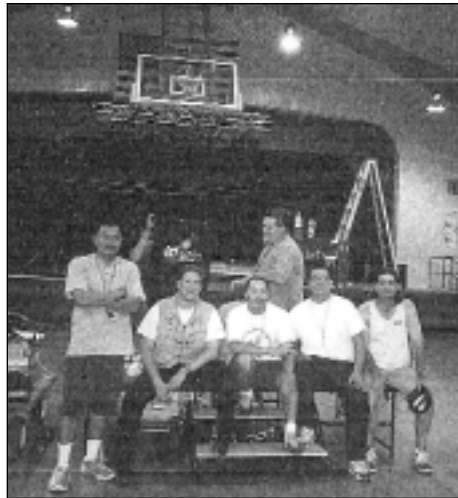
NMPA JOINS WITH NATIVE AMERICAN MUSIC ASSOCIATION ON FORUMS

NMPA is continuing its longstanding relationship with the Native American Music Association in 2002 by helping to coordinate various programs to assist young American Indian songwriters and musicians living on Reservations to learn more about the business side of the music industry. International recognition of the unique qualities of indigenous American Indian tribal music, especially as incorporated into current genres of music by young Native American musicians and songwriters, has recently made it one of the fastest growing segments of the music industry.

This past year, NMPA Counsel and Senior VP Charles Sanders journeyed to the Rosebud Reservation of central South Dakota to speak to young members of the Lakota (Sioux) Tribe about the opportunities for employment in the music industry as creators, performers, technicians and business people. He joined with local music teacher and NAMA Board Member James Bordeaux in stressing to local musicians the importance of ensuring the protection of their musical compositions through copyright registration, and stressed the importance of continuing their education while striving to succeed as creators and entrepreneurs. Mr. Bordeaux, an accomplished songwriter and musician, currently oversees a sophisticated computer and electronic music laboratory at the Rosebud Reservation school that enables local youth to learn about technology as well as music theory.

The South Dakota forum marked the fourth such joint effort by NAMA and NMPA since 1999; the others took place near the Navaho (Dine'), Apache and Hopi Reservations of south central New Mexico as part of the annual NAMA Music Awards Show known as "The Nammy's."

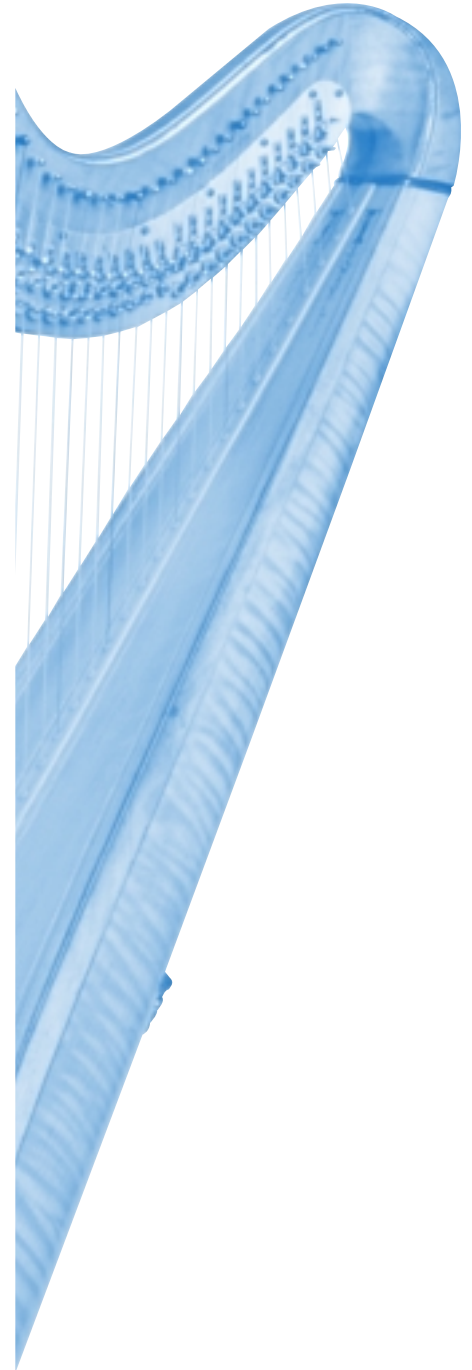
"The Native American community has an incredibly rich tradition of musical creativity," states the NMPA's Sanders. "It is quite unfortunate that for



NMPA Counsel Charles J. Sanders (2nd from left) and Recording Artist and NAMA board member James Bordeaux (3rd from left), flanked by members of Bordeaux's group WAKINYAN at the Lakota School on the Rosebud Reservation, South Dakota, following NMPA education program.

reasons of geographic remoteness, poverty and prejudice, past generations of Native American songwriters have gone undiscovered and under-appreciated by the public. It is one of NAMA's goals, which NMPA enthusiastically supports, to help American Indian youth fulfill their potential as creators through education and access."

NAMA founder and director Ellen Bello has enlisted the active support of such Native American musical luminaries as Joanne Shenandoah, Robbie Robertson, Robert Mirabal and Doors drummer John Densmore to work with local tribal leaders on music education and other programs to serve Reservation youth across the nation. "We really thank NMPA and HFA for their support in this very worthy program," she said, "and look forward to our continuing association." One joint project currently being pursued by NMPA and NAMA is the establishment of a pilot program, in tandem with New York Volunteer Lawyers for the Arts, to provide pro bono legal assistance to songwriter and musician members of the Native community who cannot afford or otherwise locate experienced counsel to represent them.



calendar

Joint MPA/MCPS/PRS and NMPA/HFA meeting at the NMPA/HFA Leon Brettler Memorial Boardroom in New York City, April 15, 2002.

Persons from left to right: Edward P. Murphy, Crispin Evans, Charles J. Sanders, Andy Heath, Ralph Peer II, John Hutchinson, Arnold Broido, Stuart Hornall, Peter Callander, Irwin Robinson, Chris Parker, Gary Churgin, Jonathan Simon, Jacqueline Charlesworth, Sarah Faulder, David Lester, Peter Felcher



August

Aug. 29

MTV Video Music Awards
Radio City Music Hall, New York.
212-258-8000

September

Sept. 18

Third Annual Latin Grammy Awards
Kodak Theatre, Los Angeles.
310-392-3777.

Sept. 18-21

*Muscle Shoals Music Assn.
Songfest Seminar*
Various venues, Muscle Shoals, Ala.
800-941-6762

Sept. 22-25

CISAC World Congress
Queen Elizabeth II Conference Center,
London, England.
33-15562-0850

October

Oct. 10-12

*Hollywood Reporter/Billboard Film
& TV Music Conference*
Renaissance Hollywood Hotel,
Los Angeles.
646-654-4660

Mid Oct. TBA

*Joint NMPA/SGA Forum on
Internet Music*
Vanderbilt University Nashville, Tenn.

Oct. 14-20

*International Bluegrass Music Assn.
World of Bluegrass convention*
Galt House and Kentucky Center
for Arts, Owensboro, Ken.
270-684-9025

Oct. 24

*MTV Video Music Awards
Latinoamerica*
Jackie Gleason Theater,
Miami Beach, Fla.
305-535-3700

Oct. 26

*Gospel Music Hall of Fame 2002
Induction Ceremony*
Detroit Marriot Renaissance Center,
Detroit.
313-592-0017

November

Nov. 5

Christian Country Music Assn. Awards
Ryman Auditorium, Nashville.
615-742-9210

Nov. 6

*6th Annual Country Music Association
Awards*
Grand Ole Opry House, Nashville.
615-244-2840

Nov. 12

Billboard Music & Money Symposium
The St. Regis, New York.
646-654-4660

December

Dec. 11

*NY Heroes Awards, presented by the
New York chapter of NARAS*
Roosevelt Hotel, New York.
212-245-5440

new members

Among Friends Publishing, Inc.	Midget Porn
Big Willie Music	Milan Music Co.
Bishop Gabig Music	MLE Music
Black Shadow Publishing	Music Management
Brain Chemistry Music	Nash Vegas Music
Bully Music, LLC	Native Drum Music
C. Duboc Publishing	Nos Nizzir Publishing
Celebrity Status Entertainment	Oji Music Company
Columbia River Music	Paramax Music Partners
Contrapunctus	Randol Bass Music
Crowded Air Music	Raphy Leavitt Music Publishing
Diamondback Music Co.	Rick Plester Music
Dobles Productions, Inc.	Savannah Street Music
Dover Publications, Inc.	Seven Eyes Music Publishing Company
Drala Music	Sharloe Publishing
Dreamtower Music Publishing	Silent Dreams Production
Duncan-Ellis Publishing	Steve Wariner Music
Graham Entertainment Corporation	Trade Martin Music, Inc.
Hokenoke Music Company	Travel Gunson Music
Henry Jerome Music, Inc.	Troup-London Music
J.G. Plotkin & Son	Western Soul Publishing Inc.
JMR Enterprise	Wilder Kingdom Music
Kioko Music Publishing	Willow Creek Association
Kumi Na Tatu Music	Wordfarmer Music
Left Handed Compliment	Ytalianna Music Publishing
Leon Russell Music	

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