

Testimony of David Johnson
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On behalf of the
Entertainment Industry Coalition
for Free Trade (EIC)
Before The
Senate Finance Committee

on

“U.S.-Chile and U.S.- Singapore Free Trade
Agreements:
Benefits to America’s Entertainment Industries”

June 17, 2003

Mr. Chairman and Members of the Committee, on behalf AOL Time Warner, the Warner Music Group and the Entertainment Industry Coalition for Free Trade (EIC), I appreciate the opportunity to testify about the economic benefits that the US-Chile Trade Agreement, along with the US-Singapore Free Trade Agreement, will provide for America's entertainment industries, including the men and women who work in our field. The Entertainment Industry Coalition represents the interests of those men and women who produce, distribute and exhibit many forms of creative expression, including theatrical motion pictures, television programming, home video entertainment, recorded music, and video games. Our members are multi-channel programmers and cinema owners, producers and distributors, guilds and unions, trade associations and individual companies.

Our members include AFMA; AOL Time Warner; BMG Music; Directors Guild of America; EMI Recorded Music; Interactive Digital Software Association; The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO, CLC (IATSE); Metro-Goldwyn-Mayer Studios Inc.; Motion Picture Association of America; National Association of Theatre Owners; New Line Cinema; the News Corporation Limited; Paramount Pictures; Producers Guild of America; Recording Industry Association of America; Sony Music Entertainment Inc.; Sony Pictures Entertainment Inc.; Television Association of Programmers (TAP) Latin America; Twentieth Century Fox Film Corporation; Universal Music Group; Viacom; Universal Studios; the Walt Disney Company; Warner Bros.; and Warner Music Group; and The Writers Guild of America, west (WGAW). Additional information regarding our membership can be found in the attached document: "*The Entertainment Industry Coalition for Free Trade: WHO WE ARE.*"

The goal of the EIC is to educate policymakers about the importance of free trade for the US economy, the positive economic impact of international trade on the entertainment community, and the role of international trade negotiations in ensuring strong intellectual property protections and improved market access for our products and services.

International markets are vital to our companies and workers. For the record and motion picture industries, for example, exports account for forty to sixty percent of revenues. This strong export base has been significant for sustaining countless US jobs for America's creative talent and workers.

Unfortunately, America's creative industries are under attack. Piracy of copyrighted materials has had a devastating impact. The impact has grown in recent years with the advance of digital technology. While the digital revolution has created new ways for all of us to reach consumers with compelling content, and for consumers in turn to access it from almost anywhere, this same technology has also facilitated the efforts of those who steal the innovation and creativity of others. Market access barriers also plague segments of the entertainment industries.

All of this increases the importance of international trade agreements. In addition to updating traditional copyright protections, our industry needs new agreements that keep pace with changes in technology.

The EIC, therefore, is committed to the passage of the U.S.-Chile, as well as the U.S. Singapore, Free Trade Agreements. These agreements include numerous commitments that are vital to the members of the Coalition such as: (1) providing strong protection of intellectual property in the digital age; (2) strengthening intellectual property rights enforcement; (3) securing market access for the goods and services produced and distributed by our members whether in physical form or over digital networks; and (4) demonstrating that trade agreements can incorporate commitments that open services markets while simultaneously addressing countries' specific socio-cultural concerns. The Coalition firmly believes that these FTAs, once implemented, will promote our economic interests and contribute to a strengthened U.S. economy.

The FTAs Update and Improve Intellectual Property Standards:

The entertainment industries, and the livelihoods of the Americans who work in these industries, are dependent for their success, indeed for their survival, on defending their rights to the intellectual content they have created. Achieving enhanced global standards of copyright protection and enforcement, ensuring meaningful market access, and developing trade disciplines that keep pace with technological development are all central to the Coalition members' ability to remain competitive and to continue to ensure good jobs for America's creative community.

Piracy of our works represents the single largest trade barrier we face in markets outside the United States. Growing levels of physical piracy, online piracy and inadequate enforcement of copyright laws internationally are challenging the competitiveness of our industries worldwide. These two FTAs succeed in addressing these challenges in ways that bode well for high levels of protection in Chile and Singapore and for setting critical, essential precedents for future Free Trade Agreements. Both the Chile and Singapore agreements provide effective standards of copyright protection for the modern digital age, and ensure that protection is meaningful in practice through strong enforcement. Let me quickly highlight as an example a few key areas in the Chile FTA.

The agreement creates clear and binding rules for the protection of intellectual property in the digital economy. It ensures that copyright holders have the *exclusive right* to control the digital transmission of their works, including sound recordings. As you may know, the record industry is undergoing a seismic change in the manner in which recorded music is, and will be, delivered to the consumer. Ensuring that record companies and performers have an adequate legislative basis for the licensing of music services, and that such rights are enforceable in law and practice, will determine whether the digital revolution in communications technologies will advance, or erode, the production and distribution of recorded music. Much is at stake here-- for my company, for copyright industries generally, and for all members of society interested in having

access to the many products of cultural expression that will only exist if copyright protection is respected and investments in cultural, educational and other creative endeavors rewarded.

The agreement builds upon and improves in significant ways existing international copyright agreements, including the provisions in the WTO TRIPS Agreement. The agreement implements the obligations of the 1996 WIPO Internet Treaties. In addition to ensuring that copyright owners, including record companies, have the exclusive right to control digital transmissions, the agreement includes strong prohibitions against the provision of goods and services that circumvent technological measures used to protect copyrighted works from unauthorized access and copying. In addition, the agreement extends the term of protection for copyrighted works in line with emerging international trends.

Enforcement is essential to meaningful intellectual property protection, and the Chile Agreement contains important new enforcement provisions. It provides strong deterrence against piracy and counterfeiting. It also mandates statutory and actual damages—based on the value of the legitimate goods—for IPR violations under Chilean law. Chile also agreed that its customs and criminal authorities will be able to act “*ex officio*”, without the need for a rightholder complaint. This is a critical element of effective enforcement.

The Government of Chile guaranteed that its authorities will be empowered to seize, forfeit, and destroy both pirated goods *and the equipment* used to produce such goods. Chile, like Singapore, will also enforce these tough laws against goods-in-transit, meaning that these countries will not serve as a conduit for pirated goods produced in other countries.

It is critical that these issues continue to be addressed in each free trade agreement negotiated by the United States.

Creating Market Opportunities for the Entertainment Industry

Services: The US entertainment industry will also benefit from the provisions relating to cross-border trade in services. The Chile FTA ensures that all US audiovisual services will enjoy national treatment and MFN status, with limited reservations. Chile took a minor reservation that limits their obligations for television content broadcast, but its obligations are excellent in other types of audiovisual services where US commercial interests are strongest. For example, recorded music, cinema exhibition, even television and cable transmission services enjoy full market access and national treatment under these agreements. Home video rental and leasing, and the on-demand delivery of all forms of entertainment content are also fully covered. Chile also agreed to grant national treatment to U.S. providers for any cultural cooperation agreements it enters with third countries.

The Chile agreement is a good example of how trade agreements can accommodate cultural concerns, while providing solid market opening commitments. The agreement should serve as a model for future agreements, by proving that cultural interests can be promoted without significant restrictions on international trade. The Chile agreement – just like the Singapore agreement – also ensures continued openness in sectors including advertising, distribution, and computer related services which are all critical for both traditional and as well as digital commerce.

Digital Products: Chile, and Singapore, offer groundbreaking provisions with respect to the treatment of digital products. The Entertainment Industry Coalition is committed to bringing compelling content to consumers both online and through digital downloads; we are pleased, therefore, with both agreements' e-commerce provisions. Chile and Singapore have committed to non-discriminatory treatment of digital products, and have also agreed not to impose customs duties on such products.

Customs Valuation: Both agreements also establish very valuable rules for customs valuation. Specifically, they require that valuation for content-based products (e.g., films or videos or music CDs) be based on the value of the carrier media – not on an artificial projection of the value of the content. Because Chile and Singapore will eliminate their tariffs, the true significance of this provision will be as a precedent for future negotiations with other trading partners in other bilateral and regional negotiations.

Goods: EIC members are interested in reduction of tariffs on the physical products created by this industry and on zero duties for inputs to our various industries, from sound and projection equipment and state of the art seating for cinemas to promotional materials and the equipment used in the production of films and music. Chile has committed to zero duties on all of the products essential to our industry.

Chile is not a major exporter of entertainment products to the United States. Moreover, the United States already has zero import duties on most entertainment products; elimination of the few remaining low US tariffs on entertainment products are not expected to affect the volume of imports of entertainment products from Chile or cause any harm to any US industries.

Call for Support

On behalf of the Entertainment Industry Coalition, I want to praise the work of Ambassador Zoellick and his staff in concluding both the Chile and Singapore FTAs. Congressional support for these agreements will help promote one of our economy's most vital sectors and largest exporter.

More broadly, we strongly support the Administration's continuing efforts to pursue simultaneous liberalization through bilateral, regional, and multilateral trade negotiations. Each of these avenues offers significant prospects.

In addition, we urge Members to join the newly forming Congressional Anti-piracy caucus. Congressmen Goodlatte and Schiff co-chair the House Caucus. Senators Biden and Smith co-chair the Senate Caucus. This caucus will help to reinforce the critical importance of IP protection globally.

For decades, the expansion of trade and the protection of intellectual property have been cornerstones of a bipartisan economic policy. The ability of our country to lead – and the ability of our *companies* to lead – will depend upon our continued success through passage of the Chile and Singapore FTAs and beyond.



*Entertainment Industry Coalition
For Free Trade*

WHO WE ARE

AFMA

AFMA is the worldwide trade association of the independent film and television industry. Our Members represent all facets of the independent film and television industry including sales, production, distribution and financing. AFMA also hosts the American Film Market, the world's largest film market, where more than \$500 million dollars in film license transactions are concluded annually. International exports of film, television and video/DVD rights are a major aspect of the business of AFMA Members and constitute about \$2.6 billion dollars in annual sales.

DGA

The Directors Guild of America (DGA) represents 12,500 directors and members of the directorial team who work in feature film, filmed/taped/and live television, commercials, documentaries, and news. DGA members include Film and Television Directors, Unit Production Managers, Assistant Directors, Associate Directors, Technical Coordinators, Stage Managers and Production Associates. DGA seeks to both protect and advance directors' economic and artistic rights and preserve their creative freedom.

IATSE

The International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, Its Territories and Canada, AFL-CIO, CLC (IATSE) is an International Union that represents over 100,000 members employed in the stage craft, motion picture and television production, and trade show industries throughout the United States, its Territories and Canada.

IDSA

The Interactive Digital Software Association is the U.S. association exclusively dedicated to serving the business and public affairs needs of companies that publish video and computer games for video game consoles, personal computers, handheld devices and the Internet. IDSA members collectively account for more than 90 percent of the \$6.9 billion

in entertainment software sales in the United States in 2002, and billions more in export sales of American-made entertainment software.

MPAA

The Motion Picture Association (MPAA) is a trade association representing seven of the largest producers and distributors of theatrical motion pictures, home video entertainment and television programming: Walt Disney Company; Metro-Goldwyn-Mayer Studios Inc.; Paramount Pictures; Sony Pictures Entertainment Inc.; Twentieth Century Fox Corporation; Universal Studios; and Warner Bros.

NATO

The National Association of Theatre Owners (NATO) is the largest trade association in the world for the owners and operators of motion picture theatres. NATO represents over 500 movie cinema companies located in the United States and in 40 countries around the world. These companies range from large national and international circuits with thousands of movie screens, to hundreds of small business operators with only a few movie screens. NATO maintains its main office in North Hollywood, California, and a second office in the Washington, D.C. area.

PGA

The Producers Guild of America represents nearly 2,000 producers and members of the producing team in film, television and new media. Under the leadership of Kathleen Kennedy, the PGA strives to provide employment opportunities for its members, combat credit proliferation within film and television, and represent the interests of the entire producing team. The producing team consists of all those whose interdependency and support are necessary for the creation of motion pictures and television programs. The producing team includes Producers, Executive Producers, Co-Executive Producers, Supervising Producers, Co-Producers, Associate Producers, Segment Producers, Production Managers, Post-Production Supervisors and Production & Post-Production Coordinators.

RIAA

The Recording Industry Association of America is the trade group that represents the U.S. recording industry. Its mission is to foster a business and legal climate that supports and promotes our members' creative and financial vitality. Its members are the record companies that comprise the most vibrant national music industry in the world. RIAA® members create, manufacture and/or distribute approximately 90% of all legitimate sound recordings produced and sold in the United States. In support of this mission, the RIAA works to protect intellectual property rights worldwide and the First Amendment rights of artists; conduct consumer industry and technical research; and monitor and review - - state and federal laws, regulations and policies. The RIAA® also certifies Gold®, Platinum®, Multi-Platinum®, and Diamond sales awards, Los Premios De Oro y Platino®, and award celebrating Latin music sales.

TAP

The Television Association of Programmers (TAP) Latin America is a trade association comprising 35 pan-regional subscription programming suppliers serving Latin America and the Caribbean. The Association, founded in 1995, provides a voice in the region for its members and facilitates the exchange of ideas and information on issues affecting the Latin American marketplace. TAP's headquarters are in Miami, and it maintains a network of legal counsel and industry representatives throughout the region.

WGAW

The Writers Guild of America, west (WGAW) is a labor union that represents writers in the motion picture, broadcast, cable and new technologies industries. Our 8,500 members write for news, entertainment, animation, informational, documentary, interactive on-line services, CD-ROM and other new media technologies. We represent writers in a variety of arenas in addition to traditional bargaining. With representatives in Washington D.C. - as well as other countries - the WGAW furthers the interest of writers through legislation, international agreements and public relations efforts.