

**HEARING BEFORE
THE U.S. SENATE COMMITTEE ON FINANCE**

**RUSSIA'S WTO ACCESSION –
IMPLICATIONS FOR THE UNITED STATES**

**STATEMENT OF PAUL WILLIAMS,
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THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND
PUBLISHERS (“ASCAP”)**

**THURSDAY, MARCH 15, 2012
10:00 AM**

DIRKSEN SENATE OFFICE BUILDING

March 13, 2012

Members of the Senate Finance Committee,

It is an honor and a privilege to speak to your Committee in my capacity as President and Chairman of the Board of ASCAP, the American Society of Composers, Authors and Publishers, and on behalf of ASCAP's over 427,000 songwriter, composer, and music publisher members, living throughout America.

I submit this testimony not to address problems of piracy or corruption in Russia which have been historically addressed by other U.S. copyright groups.¹ Rather, I submit it to bear witness to the challenges U.S. songwriters, composers, and music copyright owners face in having their public performance rights in music represented through "normal" legal channels in Russia.

¹ See International Intellectual Property Alliance ("IIPA"), 2012 Special 301 Report on Copyright Enforcement and Protection, available at: <http://www.iipa.com/rbc/2012/2012SPEC301RUSSIA.PDF> (advocating that Russia remain on the USTR's Priority Watch List)("IIPA 2012 Special 301 Report").

Why ASCAP?

ASCAP members are overwhelmingly the owners of the smallest of American businesses. Along with other creators, they make an enormous contribution to our economy. Music creators and owners depend on the efficiencies of performing rights organizations (“PROs”) to license their rights and distribute royalties to them.

For example, I have been blessed with the gift of having written many popular songs, but how am I, a songwriter living in California, to collect royalties for performances of my songs throughout the United States, much less in Russia?

This is why I love ASCAP. It exists to ensure music creators and owners receive fair payment for the public performance of their musical works. To do this, ASCAP grants public performance licenses to a wide range of music users in the U.S., such as television and radio broadcasters, hotels, nightclubs, universities, municipalities, and Internet services.

Foreign PROs

In order to collect overseas, ASCAP relies on a network of reciprocal relationships with foreign PROs in countries throughout the world. ASCAP collects and passes on to those PROs the royalties for public performance of their members' music in the U.S. Similarly, the foreign PROs collect royalties for performances in their territories, and distribute those royalties to affiliated PROs, including the U.S. PROs. The good news is that American music is extremely popular around the world. We have a positive trade balance in the export of the product we create.

Due to changes in the music industry and, of course, piracy, certain forms of royalties, particularly for the reproduction of music, have declined. As a consequence, ASCAP members and those of our U.S. sister PROs are increasingly reliant on public performing royalties for their livelihoods. An ever increasing share of those royalties is from overseas; last year, foreign PROs paid U.S. songwriters and composers nearly two-thirds of a billion dollars in royalties.²

² Foreign PROs' payments flowing into the U.S. are distributed almost entirely to individual songwriters and composers. U.S. music publishers tend to have affiliated foreign publishers based in the territory of the foreign PRO and thus, collect directly from the foreign PRO in the territory of the foreign publisher.

These foreign royalties account for well over a third of the money ASCAP distributes to its members. For many American songwriters and composers, performance royalties now make the difference between being a professional music creator as opposed to a plumber with a music-writing hobby. Indeed, it is not a stretch to say that the future of professional songwriting and composing, so central to American culture, depends on ensuring that our rights are enforced around the world.

The Russian Authors Organization (RAO)

Here, I am sad to report that Russia's PRO, the Russian Authors Organization or RAO – falls short, and it is our belief that it is largely due to the Russian legal system. RAO's collections are remarkably low. While the French and Italian economies are roughly the same size as Russia's, performance royalties collected in 2009 in France are 11.3 times greater, and in Italy, 8.75 times greater, than in Russia. Denmark, with only 4% of Russia's population, and an economy one-tenth the size of Russia, collects nearly twice as much for public performances as Russia in dollar terms; 18 times as much per dollar of GDP; and 42 times as much per capita. Based on these comparisons, and on the Russian population's passion for

American music and movies, it is clear that U.S. music creators are being grossly underpaid for performances of their music in Russia.

Russian Legal & Court System

While ASCAP depends on RAO to collect Russian performance royalties, the Russian legal system handicaps RAO's efforts. Russian courts have in recent years demanded extraordinary documentation of RAO's rights to represent ASCAP members' rights or worse yet, simply refuse to recognize the standing of RAO to represent the rights of ASCAP members.

In one instance, ASCAP's Legal Department received an email inquiry directly from a Russian judge who did not believe that RAO had standing to represent ASCAP – this despite the fact that we had previously sent documentation to RAO confirming RAO's authority in this regard; and, despite the fact that RAO is fully qualified under Russian law to act as a collecting society for the rights of U.S music creators. RAO is not some newly created “self-appointed” representative, as some other U.S. industry sectors have unfortunately experienced in Russia.

Further, ASCAP receives royalties from societies all over the world

for the public performance of music in movies, exhibited in movie theaters – with the exception of China. Even RAO has sent such royalties to ASCAP in the past. And there is no doubt that American movies are enormously popular and widely distributed in Russia.³ For the month of January 2012, 3 of the top 5 grossing movies in Russia were American movies; including the movie Hugo, the musical score for which was composed by ASCAP member, Howard Shore.⁴ However, in recent years, due to meritless legal challenges, RAO’s authority to collect for this important use of U.S. music has been threatened.⁵

VAT

Finally, Russian fiscal authorities require RAO to collect a “Value Added Tax” or VAT at a statutory rate of 18% from its royalty

³ “According to ‘Film Business Today’ (Russia), box office receipts in Russia and the other Commonwealth of Independent States (excluding Ukraine) set a new record in 2011 – US\$1.16 billion (an 11.74% increase from 2010).” See IIPA 2012 Special 301 Report, *supra*, at note 1, page 97.

⁴ See http://www.sras.org/russia_top_movies_jan_2012.

⁵ See page 18 of the IIPA 2010 Special 301 Report on Copyright Enforcement and Protection, available at <http://www.iipa.com/rbc/2010/2010SPEC301RUSSIA.pdf> (advocating that numerous provisions of Russia’s Civil Code, Part IV, be amended to enable better enforcement of copyright owners’ rights; this would include confirmation of the public performance right of music contained in audiovisual works and exhibited in theaters).

distributions. No other PRO in the world deducts a VAT in this manner from the royalties sent to the U.S. or elsewhere. Since 2008, this amounts to a loss of approximately \$1.5 million that might have otherwise gone primarily to U.S. songwriters and composers, thus, hurting them as well as the American economy and our culture. Although Russia grants a VAT exemption for some intellectual property rights, this exemption is not extended to copyrights. This is just plain unfair. U.S. songwriters and composers cannot recover the Russian VAT, nor can they take a foreign tax credit to compensate for this large deduction. This is a kind of “rancid icing on the cake” issue for us, insult to injury if you will.

Closing Comment

We know there is no magic wand that our Government can waive to ensure American music creators and copyright owners are fairly compensated for public performances of music in Russia. However, regardless of what happens with whether to grant permanent normal trade relations (“PNTR”) and Russia’s entry into the WTO, we do think the U.S. Government should work with the Russian Government to better train judges and lawyers in the handling of foreign copyrights, change its law

regarding the VAT, and clarify its law regarding performance rights in music in theatrical exhibitions of movies.

If the Congress decides to grant PNTR, the US Government must aggressively use all available WTO tools to protect American songwriters, composers, and publishers. Based on our ongoing problems with China, we are under no illusions that Russia's entry into the WTO, by itself, will improve the predicament of ASCAP members. Agreements without enforcement may be worse than no agreements at all.

Thank you again for granting me the privilege to address your Committee.