

July 6, 2009

The Honorable John F. Kerry
Chairman
U.S. Senate Committee on Foreign Relations
Dirksen Senate Office Building
Washington, DC 20510-6225

Re: The Word "Piracy" in H.R. 2410, the Foreign Relations Authorization Act

Dear Chairman Kerry:

The undersigned organizations write to highlight our concern with the repeated use of the word "piracy" in Section 329 of H.R. 2410, the Foreign Relations Authorization Act. The purpose of the relevant section is to protect intellectual property rights. We support this purpose. Unfortunately, the use of the term "piracy" as a synonym for copyright infringement creates a false equivalence between the violation of an economic right and a dangerous crime involving physical violence. Consequently, we respectfully request that the term "piracy" be replaced with the more appropriate term of art "copyright infringement."

Section 329 authorizes the appointment of ten intellectual property attaches in embassies and other diplomatic missions to support enforcement actions against intellectual property infringements and cooperation with host governments to reform their intellectual property laws. Section 329 directs these intellectual property attaches pay special attention to combating "counterfeiting and piracy." The definition of "counterfeiting" in section 329 (h)(1)(A) is consistent with the definition of "counterfeit" in the Lanham Act, 15 U.S.C. § 1127. Moreover, prosecutors and courts have applied the term "counterfeiting" for decades.

In contrast, Section 329 uses the term "piracy" to apply to copyright infringement, yet the U.S. Copyright Act does not once use the term "piracy" to describe infringing activity. On the contrary, existing references to "piracy" in the U.S. Code principally concern the seizure of ships and aircraft. For example, the Title 49 of the U.S. Code defines aircraft piracy as "seizing or exercising control of an aircraft in the special aircraft jurisdiction of the United States by force, violence, threat of force or violence, or any form of intimidation, and with wrongful intent." 49 U.S.C. § 46502(a)(1)(A).

The U.S. Code, as far as we can tell, never uses "piracy" in the context of copyright infringement. Indeed, Article I, section 8, clause 10 of the Constitution authorizes Congress "to define and punish Piracies and Felonies committed on the high Seas...."

Some copyright owners advocate the use of the term "piracy" instead of "copyright infringement" in an effort to create a false equivalence between the violation of an economic right and a universally condemned crime that involves "force, violence" and "intimidation," in the words of the U.S. Code.

We respectfully suggest that use of the term "piracy" is not only technically incorrect but also highly prejudicial. Such a provocative term prevents reasoned discourse on an often complex topic. Copyright infringement cases typically involve narrow legal questions, such as whether a retailer infringes copyright by importing a lawfully acquired shampoo bottle that has a copyrighted label, or a user publicly performs a ringtone she paid for when her cell phone rings in a public place.

It is true that previous Administrations agreed to use the term "piracy" in executive agreements such as TRIPS and the free trade agreements. Congress—whose authority over copyright is based in the Constitution's Intellectual Property Clause—has resisted efforts to use the term "piracy." Last year, for example, Congress replaced "piracy" with "copyright infringement" in the Promoting Resources and Organization for Intellectual Property (PRO-IP) Act.

We note that in the House Report that accompanies H.R. 2410, the relevant provision that describes the purpose of Section 329 does not use the term "piracy." This underscores our belief that not only is the use of the term "piracy" inappropriate, it is unnecessary to the larger goal in the section of protecting intellectual property rights. In fact, we believe that this goal can be better served by replacing "piracy" with "copyright infringement."

Thank you for your consideration of our views.

Sincerely,

Association of American Law Libraries
American Library Association
Association of Research Libraries
Computer & Communications Industry Association
Consumer Electronics Association
EFF-Austin
Electronic Frontier Foundation
Entertainment Consumers Association
Home Recording Rights Coalition
Medical Library Association
NetCoalition
Public Knowledge

Copy: The Honorable Richard G. Lugar
The Honorable Howard L. Berman

The Honorable Ileana Ros-Lehtinen
The Honorable Patrick J. Leahy
The Honorable Jeff Sessions
The Honorable John Conyers
The Honorable Lamar Smith