



TESTIMONY
of
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GENERAL COUNSEL AND SVP, INTELLECTUAL PROPERTY
for the
SOFTWARE & INFORMATION INDUSTRY ASSOCIATION
on
H.B. 6619
FRIDAY MARCH 25, 2011

Good Morning Co-Chairmen Coleman and Fox, Ranking Members Hetherington and Kissel and members of the Committee. For the record my name is Keith Kupferschmid. For the past eleven years I have been the head of Anti-Piracy's division for the Software & Information Industry Association, the largest association of software publishers in the country. I am appearing on behalf of SIIA and the other 13 member organizations listed in our letter being distributed to you to share our concerns – and in particular those of the software industry -- with H.B. 6619, a bill relating to unfair business practices that occurs when stolen or misappropriated information technology is used to manufacture products sold or offered for sale in this state.

SIIA is home to over 500 members that develop and market software and electronic content for business, education, consumers and the Internet. One of SIIA's primary missions is to protect the intellectual property of our member companies through enforcement and education, and advocate a legal and regulatory environment that benefits the software industry.

We have been fighting software piracy for over 20 years – longer than any other trade association in the world. We work diligently to ensure that licensees of computer software products are using those products in compliance with federal

copyright laws. Since 1994, SIIA has also been teaching companies about software asset management and compliance procedures through our globally-recognized education seminar called the Certified Software Manager seminar.

One would think that an organization such as SIIA, whose primary mission is to combat software piracy and promote good software asset management practices, would support the bill if we thought it would be helpful to our mission. *However, we do not support this bill.* In fact, we oppose this bill because we believe that the bill will not accomplish its intended goal of reducing software piracy and could lead to unintended consequences that will produce opportunities for harassment of legitimate businesses and fuel business uncertainty.

There is quite a bit of misinformation about this bill. This bill is being pushed as some magical elixir to combat the problem of software piracy. It has been touted as one that would stop the sale of pirated software in retail stores or prevent the importation of pirated software. The bill does not do this. If it did, I might be standing before you testifying in support of the bill.

Software compliance and asset management can be a difficult and complex process. It is difficult enough for a company to monitor and ensure its own compliance. But the bill goes much further by making companies liable for the inadequate compliance procedures of their suppliers and others they do business with. SIIA supports businesses taking steps to ensure that their business partners are observing good software asset management practices, but making them liable for their business partners' missteps goes much too far.

Even companies that have effective software compliance programs in place can find themselves out of compliance. It is for this reason that companies like Microsoft and others have "true-up" agreements that allow companies to use unlicensed software for as long as a year before taking steps to become compliant. Under the bill, companies using software before the true-up date could find themselves liable under this law.

The bill is also flawed because it includes many provisions that contain broad or undefined language which could lead to unintended consequences and uncertainty. At a time when businesses are struggling to regain their footing from a lagging economy, this is an especially inopportune time to add uncertainty.

We want to be encouraging innovation, new business models and competition. However, this bill would do the opposite by encouraging businesses to locate their operations in states where this misappropriation legislation is not the law. Likewise, it will discourage out-of-state businesses from partnering with businesses located in any state where this misappropriation legislation is the law for fear of being held liable.

State budgets would also be adversely affected by this bill. At a time when state budgets are being squeezed it is essential that states spend their limited dollars wisely. SIIA would prefer to see state resources spent combating the wide-spread problem of online piracy and on anti-piracy education, rather than implementing and enforcing this legislation.

Lastly, SIIA fails to see why this bill is necessary. Existing copyright law requires businesses to be software compliant; otherwise they are subject to damages of as much as \$150,000 per software title infringed. These damages create a significant incentive for businesses to be software compliant. This bill fails to provide any additional incentives beyond those already found in the federal copyright law.

In sum, SIIA strongly believes that this bill will not effectively address the software piracy problem and will create much unnecessary uncertainty and complexity. No amount of revision to the bill can put it in a shape where we would find it acceptable. For these reasons, on behalf of the 500 plus software companies represented by SIIA, we urge you to oppose this bill.

You already have received the letter from 14 well known high-tech organizations, including SIIA. In addition I will be submitting copies of my testimony for your consideration.

Thank you for your time here today and for permitting me to share the views of SIIA and the software industry.