

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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February 18, 2010

*Submitted via regulations.gov*

Mr. Stanford McCoy  
Assistant U.S. Trade Representative  
for Intellectual Property and Innovation  
Office of the U.S. Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20508

Re: Special 301: Comments regarding the Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment ("Special 301"), and Request to Testify at the Public Hearing, 75 Fed. Reg. 2578 (January 15, 2010)

Dear Mr. McCoy:

The International Intellectual Property Alliance (IIPA) submits this response to the Federal Register notice which invites "written submissions from the public concerning foreign countries' acts, policies or practices that are relevant to the decision whether a particular trading partner should be identified under Section 182 of the Trade Act [of 1974]." That section of the Trade Act is more commonly referred to as "Special 301," and involves the process, led by the Office of the U.S. Trade Representative, of identifying countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection (19 U.S.C. §2242).

IIPA has participated in every Special 301 cycle since the 1988 Trade Act created this process. We have provided public comments on the acts, practices and policies regarding copyright law, piracy, enforcement and market access issues in selected foreign countries for more than two decades. In this year's filing (which includes this cover letter and several appendices), we report on 39 countries or territories, including 35 of which we believe should be ranked on the Special 301 Priority Watch List or Watch List, and monitored under Section 306 of the Trade Act. IIPA has also recommended that out-of-cycle reviews (OCRs) be conducted in five countries. We have found OCRs to be extremely effective in focusing governments' attention on specific shortfalls.

In this cover letter, we also describe the key challenges and initiatives that define the copyright industries' agenda for the coming year and discuss the types, levels, and costs of copyright piracy.

IIPA will also be submitting our request to testify at the March 3, 2010 public hearing on Special 301. We will formally file our "Notice of Intent to Testify" and "Hearing Statement" under separate cover to [www.regulations.gov](http://www.regulations.gov).

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## IIPA AND THE COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. IIPA comprises seven trade associations, each representing a significant segment of the U.S. copyright



community. These member associations represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world — business software (operating systems, Internet enabling software, browsers, search engines, office productivity software, database management software, green technology enabling software, security software and mobile technologies); entertainment software (interactive games for video game consoles, handheld devices, personal computers, and the Internet); theatrical films, television programs, home videos and digital representations of audiovisual works; musical compositions, recorded music, CDs, and audiocassettes; and textbooks, trade books, reference and professional publications and journals, in both print and electronic media.

This past July, IIPA released the latest update of our economic report, *Copyright Industries in the U.S. Economy: The 2003-2007 Report*, prepared by Stephen Siwek of Economists Inc. This report details the economic impact and contributions of U.S. copyright industries to U.S. Gross Domestic Product, employment, and trade. The core copyright-based industries<sup>1</sup> in the U.S. continue to be major contributors to the U.S. economy. For example, this data show that the “core” U.S. copyright industries accounted for an estimated \$889.1 billion or 6.44% of the U.S. gross domestic product (GDP) in 2007. These “core” industries also were responsible for 22.74% of the growth achieved in 2006-2007 for the U.S. economy as a whole. In addition, the “core” copyright industries employed 5.6 million workers in 2007 (4.05% of U.S. workers) in 2007. And the report provides data on the estimated average annual compensation for a worker in the core copyright industries: \$73,554 in 2007. Finally, estimated 2007 foreign sales and exports of the core copyright industries increased to at least \$126 billion, leading other major industry sectors. The report also details results for the “total” copyright industries, which includes the core industries along with additional sectors involved in distribution.

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## OVERVIEW OF THE IIPA 2010 SPECIAL 301 SUBMISSION

**Piracy of U.S. Creative Content Differs by Sector But is a Global Problem:** This report highlights the ways in which U.S. intellectual property is infringed all over the world. While all the copyright industries are united in the global fight against piracy, each industry – business software, motion pictures, music, book publishing, and entertainment software – is confronted with very different types of piracy, often requiring different tools and different strategies. In this submission we highlight and define all these different forms of piracy, their scope, the strategies each industry has chosen to fight them, and the overarching need for increased focus on appropriate enforcement generally by all governments to address the different problems faced.

“Piracy” as we know it today is increasingly occurring in more sophisticated ways of using or supplying to users copyright materials without authorization, rather than simply the duplication and sale of content on physical media in retail shops or on the streets. An example of this is the unauthorized use of software within businesses – organizational end-user piracy of business software – the principal and most damaging form of piracy to the business software industry, causing losses to U.S. software companies that exceed \$31 billion per year globally. While Internet and mobile networks have transformed the way we work, learn and play, they have also, unfortunately, been used by a large number of users to steal music, movies, games, software and other copyrighted works. Such piracy comes in myriad forms, from P2P file sharing, deeplinking sites, BitTorrent sharing, cyberlockers, web bulletin boards, and other similar services.

One of the greatest concerns to the motion picture industry is camcording piracy, in which movies are stolen right off the screen, often just as they open or prior to their opening theatrically. Once the illegal camcord copy is made, “release groups” employ the Internet to move the pirate camcorded copies onto the Internet for onward distribution or for

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<sup>1</sup> The “total” copyright industries include the “core” industries plus those that, under conservative assumptions, distribute such products or other products that depend wholly or principally on copyrighted materials. The “core” copyright industries are those that create copyrighted materials as their primary product. *The 2003-2007 Report* is posted on the IIPA website at <http://www.iipa.com>.

factory or recordable disc duplication to get the product to consumers who do not want to wait, or pay, for the legitimate version. The book publishing industry's biggest piracy problem continues to be the illegal photocopying of books, principally on and around university campuses and with a focus on scientific, technical and medical textbooks, although they too suffer increasingly from illegal digitizations of their works and online piracy. The entertainment software industry suffers from a myriad of issues of increasing sophistication, including the manufacture and sale of circumvention devices used to make and play infringing copies of games, the establishment of pirate online servers for popular multiplayer games, and end-user piracy of their products in Internet café settings.

Traditional forms of physical piracy are still major problems for many of the copyright industry sectors. Factory production of optical disc products, CDs, DVDs, CD-ROMs containing pirated software, movies, games, music and books, is still prevalent in many markets although over time it has been overtaken by local "burning" of CDs, DVDs, and CD-ROMS, often with content obtained from the Internet. The software and music and recording industries continue to suffer from the unauthorized loading of software or music on computers, phones or other mobile devices at the point of sale, (in the software context known as "hard disk loading"). Factory piracy of entertainment software in cartridge format, primarily in Asia, afflicts the entertainment software industry.

The preceding paragraphs describe a non-exhaustive list of various types of piracy which copyright owners face around the world. Piracy harms U.S. right holders, but it also hurts local economies as well. Examples abound and it is well-documented that failure to reduce piracy costs local economies dearly and eliminates high-paying jobs, tax revenues, and contributions to GDP. As piracy in all its forms, the many countries in which it occurs, and the means to combat it, are described in this report, it is important to take into account the enormous economic harm caused to local right holders and their support network as well as to the U.S. economy.

**Economic Challenges and the Copyright Industries as the Driver of Growth:** With the health and competitiveness of the U.S. economy in dire straits, the U.S. copyright industries remain one of the few industry sectors capable of outpacing the rest of the economy in producing new jobs and returning revenue to our country when it needs it most. The degree to which we reach this capability is dependent upon the extent to which piracy is reduced. Through the 1990s and these first few years of the 21<sup>st</sup> century, the "core" U.S. copyright industries were adding new workers to our economy at two to three times the rate of the economy as a whole. Today, one out of every 20 workers is employed in the copyright industries, and more than one in 10 workers are in jobs that are in, or depend on, the "core" copyright industries. Most of these industries generate over half their revenue from outside the U.S. and that revenue contributes to the creation of U.S. jobs. Notwithstanding this success, the copyright industries suffer enormous losses around the world as a result of the theft of their works. This substantially reduces their revenue, directly impacting U.S. employment.

The copyright industries also contribute significantly to our innovation economy and to national productivity and competitiveness as a whole. In 2007, these industries contributed over 22% of the economic growth in the economy, leaving no doubt that the creative industries are a key driver of growth and productivity in the U.S. economy.

**U.S. Trading Partners Must Improve their Enforcement Systems:** The primary challenge faced by these industries globally is that many of our trading partners have not yet established and employed effective and deterrent enforcement mechanisms to combat these various types of piracy. The key contributing factors to massive copyright piracy losses and high piracy levels include: (1) the failure to provide expeditious, non-burdensome, and non-costly enforcement procedures, (2) the failure to provide deterrent remedies and sanctions, whether civil, administrative, or criminal; (3) the failure to provide modern legal structures to provide tools to law enforcement and the judiciary to effectively enforce their laws in order to deter piracy; and, in some cases; and (4) the denial of effective market access for copyright products on an open and non-discriminatory basis.

**The Bottom Line:** The health and competitiveness of the U.S. economy depends on a thriving copyright sector that creates jobs and exports. It is essential to the continued growth and future competitiveness of these industries that

our trading partners provide not only free and open markets, but also high levels of protection for copyright, and significantly more effective policies and tools to enforce that protection. To meet the constantly evolving threats to copyright worldwide, our country's response must remain flexible, innovative and committed.

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## A. DEFINING THE TYPES AND SCOPE OF PIRACY BY COPYRIGHT INDUSTRY SECTOR

In this submission we refer to many different types of piracy. Here we briefly explain how each type of piracy relates to each industry sector.

### Piracy of Business Software

- End-User Piracy by Businesses and Governments: The business software industry's most harmful piracy problem traditionally has involved large and small corporate, government and other enterprises that pirate its members' products by making additional copies of software for their own internal usage without authorization. We commonly refer to this activity as "organizational end-user piracy." End-user piracy occurs when someone makes the simple decision to use software (or any other type of protected content) without paying for it. This decision, when repeated millions of times throughout the world by consumers, businesses and, all too often, governments, has a staggering cumulative effect. Globally, four of every ten copies of PC software in use is stolen. That translates into losses to the U.S. software industry of \$31 billion in 2009. Organizational end-user piracy occurs in many different ways. In what is perhaps the most typical example, a corporate entity will purchase one licensed copy of software, but will install the program on multiple computers. Other forms of end-user piracy include copying disks for installation and distribution, in violation of license terms; taking advantage of upgrade offers without having a legal copy of the version to be upgraded; acquiring academic or other restricted or non-retail software without a license for commercial use; and swapping disks in or outside the workplace. Client-server overuse – when too many employees on a network have access to or are using a central copy of a program at the same time, whether over a local area network (LAN) or via the Internet – is another common form of end-user piracy. Organizational end-user piracy goes on in enterprises large and small, public and private. These enterprises receive the productivity benefits that the software provides, while foregoing the expense of licensed copies of the software. Not only do they steal from software producers, these enterprises enjoy an unfair commercial advantage over their law-abiding competitors who must make a choice between paying for software or doing without. This unfair commercial advantage operates at an international level as well. On average, enterprises in countries with high rates of software piracy are competing unfairly with enterprises from countries with low rates of software piracy. To give a particularly stark example, China's 80 percent software piracy rate means essentially that 4 out of 5 enterprises in China can compete unfairly with the 80 percent of enterprises in the US that are paying for the software they use to run their businesses and improve productivity. In many cases, organizational end-user piracy is attributable to negligence and poor asset management practices. Enterprises can also be victimized by unscrupulous computer manufacturers and dealers who install copies of software onto the internal hard drive of the personal computers they sell without authorization from the copyright holder. In some cases, however, organizational end-user piracy is undertaken willfully, with management fully aware and supportive of the conduct.

- Internet Piracy: The Internet is an indispensable part of global communication and commerce. It has opened up opportunities for faster, more efficient and more cost-effective distribution of information, products and services across the globe. Unfortunately, in addition to creating significant social and economic opportunities, the borderless and anonymous character of the Internet makes it an ideal forum to engage in a broad variety of unlawful conduct, including copyright piracy. The business software industry faces all the forms of Internet piracy highlighted below for movies and music, but the primary problems tend to be auction sites, websites (including business-to-business sites for bulk or large-scale distribution of counterfeit software) and P2P file sharing. Auctions sites like eBay, UBid, Mercadolibre in Latin America, Taobao and Eachnet in China,



and QXL in Europe sell hard copies of legitimate products but many pirate products (very often software because of the large price differential) are found there as well. Piracy is also finding its way into the cloud computing/software-as-a-service business model where software is made available under license from very large remote data farms/fileservers and used on desktops or servers without a permanent copy ever being made. Since these services are always protected by technological protection measures, piracy involves not only acts of circumvention but unlawful reproduction (as either temporary or permanent copies) as well. In addition to harming right holders, Internet piracy exposes computer users to serious security risks. Globally, there is significant evidence to link software piracy with the frequency of malware attacks. This is not surprising, since those who use pirated, unlicensed software are typically unable to access or download essential patches and critical updates that ensure their systems remain as secure as possible. This makes them more susceptible to attack over the long term. Moreover, websites that offer access to pirated software often disseminate malware that infects visitors' computers. Compromised computers are much more than a nuisance for individual computer users. In today's connected environment a compromised computer becomes a gateway through which attacks on our vital networks are launched. Consider the case of Estonia a few years ago, when thousands of compromised computers were harnessed to bring down the Internet for the entire country. We may never know for certain how those computers came to be compromised, but we do know that cyber criminals and cyber terrorists exploit precisely the kinds of vulnerabilities created by the use of unlicensed software to launch these sorts of attacks.

- Hard disk loading: This type of piracy involves an OEM manufacturer or a retail computer store loading pirate copies of an operating system and applications software packages directly onto the hard disks of computers that they sell into the marketplace. These computers are then either sold to businesses in large quantities or to consumers directly. In the case of hard disk loading at the retail level, enforcement must occur via the criminal system in order to deter its continuance.

- Other hard goods piracy and counterfeiting: The software industry also experiences the same types of OD piracy at the manufacturing, wholesale and retail level suffered by all other copyright sectors (as described in more detail below) and the same tools must be used to combat it. Pirated software is also exported and imported, often in separate and discrete components (e.g. disks and counterfeit software packaging, labels, holograms, certificates of authenticity all in separate export/import occurrences (thus lowering the risk of detection) with final assembly accomplished in the country of import. Because of the higher cost of software packages (than for other copyrighted products) and the huge profits that can be generated, this pirate/counterfeit trade is a significant problem for the software industry.

- Circumvention of technological protection measures: Virtually all software packages are licensed with some type of technological protection measure (encryption, passwords, registration numbers). Pirates must circumvent these measures to be able to access or copy the software. Increasingly it is critical that countries have strong anti-circumvention legislation and effective remedies

## Piracy of Motion Pictures and Music and Sound Recordings

- Internet piracy: Internet piracy takes many different forms for the music and motion picture industries, threatening the online marketplace to the detriment of all stakeholders, content owners and delivery networks. As can be deduced from the following list, online infringement is constantly changing and evolving with the development of new technologies and consumer preferences. If we are to effectively combat online infringement, governments will need to ensure that content creators, working with ISPs, have the flexibility to use the most effective tools and policies capable of combating online piracy. Recognizing that there is no one silver bullet to eradicate online piracy, governments should encourage the development of dynamic, next generation content protection security technologies and encourage cooperation between ISPs and content owners on implementation of effective ways to combat piracy.

- *Cyberlockers* are sites allowing users to copy their personal music or movies onto a site operator's servers for easy access for viewing or listening at any time. RapidShare, Megaupload, and Hotfile are

examples of sites, where users can upload their content, receive a Web link for it, and then provide that link to others via direct e-mails or ads on other Web sites.

– *P2P file sharing* has become the most popular means of distributing pirate content. This technology connects individual computer users to each other directly, without a central point of management or server-hosting of copies of pirate content. Users download and install a P2P client application, enabling them to search for files on each other's computers and download the files they want. P2P protocols include BitTorrent, eDonkey, Gnutella, and FastTrack. P2P applications include eMule, Kazaa, BearShare, and Limewire. Currently, BitTorrent technology is now the most popular globally since it can easily and quickly allow downloading of large files, like movies, software and games. "Topsites" initially acquire pirate content (from camcords, obtaining pre-release copies) and make them available globally. Websites contain links to "torrent" files and the download process is controlled by tracker sites. Often, services providing the client application will also index the torrent files providing access to the content. P2P traffic in pirate content can consume anywhere between 49 percent and 89 percent of all Internet traffic during the day and up to 99% at night.

– *User-Generated Content (UGC)* sites are a particular problem for the motion picture industry where users upload their favorite feature films or TV programs to a site (like Youku and Tudou in China) which then become accessible to anyone in the world. So-called "leech sites" will contain links to these UGC sites (or to other sites) multiplying this accessibility.

– *Deeplinking* is a particular problem for the music industry, particularly in China (e.g. Baidu). Music services, such as the one operated by Baidu (which does not directly host any content — but may be indirectly associated with it) allow users to bypass another site and link directly to infringing music files for streaming or download. Services like Baidu will frequently create "top 100" charts and indexes making it easy for users to find their favorite (infringing) music and access it for download or streaming without permission or payment.

– *Streaming sites* allow, with or without the downloading client software, the viewing or listening to content directly without making a permanent copy as occurs in a download. This is an increasingly popular form of pirate site causing significant damage to both industries.

- Camcording piracy is the source of 90% of the pirate copies of motion pictures that are made available via topsites and then over the Internet or for hard copy distribution and sale. It involves the pirate copying the video and or audio over camcording devices directly from the screen in a theater. Camcording seriously undermines the theatrical as well as the home video market for motion pictures.

- Industrial optical disk piracy and "burning" continues to be a problem though piracy done in OD factories is declining partly due to the growth of internet piracy, and to some extent to improved enforcement of OD licensing laws in many countries. The "burning" of content on ODs is easy, and now almost as efficient as factory production. It is done in smaller venues and is more difficult to detect. Export of such ODs to other countries is sourced primarily in Asia and in Russia. All industries are affected by this means of producing pirate copies.

- Wholesale, retail and street vendors is a classic form of commercial piracy. Factory produced or "burned" disks are distributed, sold, exported, imported and hawked by street vendors at very low prices. China is a particularly good example of this type of piracy where rates approach 90% of the market or above.

- Bootlegging of music and sound recordings is the making a copy of a live performance of music on a digital device.

- Internet cafés are popular ways in many developing countries for getting access to infringing music, motion pictures and videogames.

- Public performance, broadcast, cable and satellite piracy involves the unlicensed performance or exhibition of music, music videos and motion pictures in restaurants, hotels etc, in video parlors and in Karaoke bars, and the unauthorized broadcast cablecast or satellite delivery of motion pictures, music and sound recordings. In the case of music and sound recordings (and in some cases of retransmission of broadcast signals of motion pictures), authorization and payment is usually accomplished via a collecting society.



- Circumvention of technological protection measures for the movie industry involves the hacking/bypassing of access controls on Pay-TV, premium cable and satellite services as well as the defeating of access controls on Internet services providing legitimate downloads or streaming of motion pictures. DVDs also use SCMS to prevent copying and subsequent distribution or play, directly or over the Internet.

### Piracy of Entertainment Software

- Internet piracy of entertainment software occurs in many of the same ways as described above for movies and music. P2P file sharing is the predominant enforcement concern for the industry, as is the availability of entertainment software via “one click” sites or “cyberlockers,” which continue to account each year for progressively greater volumes of infringing downloads.
- Industrial optical disk piracy and burning occurs in the same manner as with music movies and business software.
- Industrial piracy of cartridge based games is still a problem for developers and publishers of cartridge based games for handheld platforms. This form of counterfeiting occurs almost entirely in China, which exports this pirate product globally.
- Wholesale, retail and street vendors sell and hawk pirate videogames just as they do pirated music, sound recordings, motion pictures, and business software.
- Circumvention of technological protection measures occurs in a unique and very damaging way for the entertainment software industry. Console games are protected by TPMs which involve a “handshake” between the game and the console. There is a global market for modification chips (mod chips) sold on the Internet and in videogame outlets which, when easily installed into a console (by the user or by the pirate retailer) will bypass the handshake and allow the play of pirated games. “Game copier” devices also bypass TPMs to allow for uploading, copying, and downloading of games for handheld platforms. Ensuring that countries have effective legislation and enforcement regimes that make such circumvention, as well as the manufacture and distribution of circumvention devices, illegal and subject to both criminal and civil remedies is a very high priority for the industry.

### Piracy of Books and Journals

- Commercial print piracy is prevalent in many developing countries where unauthorized operations obtain masters or copies of books and run unauthorized editions, in English or via unauthorized translation, off a printing press. In other cases, licensed local distributors or publishers produce print overruns, where they print more copies of a title than permitted by their license.
- Commercial photocopying remains the primary mode of piracy causing the greatest losses to the publishing industry. In many countries, it involves large scale commercial photocopying of entire textbooks by copy shops in and around universities. This is often undertaken on a “print to order” basis, to avoid stockpiling. Orders from students are copied or printed immediately and distributed around campuses using vans or similar delivery vehicles.
- Internet piracy has taken the form of illegal downloads primarily of journals and textbooks. Also growing is the unauthorized digitization of books and journals, as well as the unauthorized sharing of academic textbooks and journal articles. Piracy of ebooks has also grown with the growing popularity of eBook readers.
- Industrial optical disk piracy and burning is not as prevalent as for other works but CD-ROMS and DVDs of reference and professional books are the usual target.
- Circumvention of technological protection measures involves the breaking of encryption or other protections on online journals and e-books.

## B. COPYRIGHT INDUSTRIES' INITIATIVES AND CHALLENGES IN 2010

IIPA's submission aims to provide information that will assist governments to improve copyright protection, reduce global piracy levels, and open markets to works protected by copyright. Strong and effective copyright protection benefits every country by providing incentives for creativity and innovation, promoting economic, cultural and scientific development, and fostering cultural diversity. Over the past quarter century, the U.S. government has effectively employed a panoply of trade policy tools that have stimulated many positive changes in the global environment for the protection of intellectual property. Today's challenge is to identify and strengthen the tools that will be most effective in meeting new threats to that environment.

In the early 1980's, many countries' laws did not protect U.S. works at all, and 90% to 100% piracy levels prevailed in much of the developing world. Since the first marriage of intellectual property and trade in the Trade and Tariff Act of 1984 and formation of the IIPA, the subsequent adoption of the "Special 301" provisions in the 1988 Trade Act, and the adoption or modification of the U.S. unilateral trade preference programs, such as GSP, CBERA, ATPA and others, U.S. government initiatives have helped produce significant legal and enforcement improvements. This largely untold success story has produced billions of dollars of increased revenue and millions of new jobs to both U.S. and local copyright industries. However, despite these successes, the threats to U.S. creators and the U.S. copyright industries remain grave and are growing. An effective response to these challenges requires a renewed and expanded commitment to use both the old and new tools available to industry and governments.

The copyright industries are extremely grateful for the U.S. government's efforts in promoting copyright reform and effective enforcement. But, as is clearly demonstrated in the country surveys included in this report, piracy on a commercial scale, whether digital or analog, tangible or over the Internet, combined with the failure of many foreign governments to effectively enforce their existing copyright and related laws, threatens to outpace the fight to combat it. The trade tools and enforcement expertise exist to make significant progress on the following objectives in 2010. What is needed is the political will for governments to take the actions necessary to address piracy meaningfully and to lower piracy rates locally and globally. The problem of copyright theft is more pervasive and more complex than it was just a few years ago. The term "piracy" does not even begin to capture the breadth of the problem. This problem has dire implications for America's future well-being.

The following initiative and challenges are not necessarily listed in order of priority, since different issues may demand priority attention in different countries.

### Securing Effective and Deterrent Enforcement Is the Copyright Industries' Overarching Challenge

U.S. copyright industries and the U.S. government have been engaged for over twenty years in many countries to try to bring piracy down to acceptable levels through more effective enforcement. But many other governments still have not meaningfully upgraded their enforcement systems to meet their international obligations or to address today's forms of piracy by adopting effective remedies and imposing deterrent penalties. In a growing number of countries, police agencies are more able, and often more willing, than in the past to conduct raids against pirate producers, wholesalers and retail sites. But all too often the legal system fails to follow through. For effective deterrence, prosecutors and judges (or, where applicable, administrative agencies) should impose penalties that remove the monetary incentives that drive the pirate trade. Small fines do not deter pirates who stand to gain hundreds of thousands to millions of dollars. Deterrence requires substantial prison sentences in these cases. Again and again, in country after country, major pirates either manipulate the system to evade conviction (often as a result of systemic delays or corruption), or suffer only small monetary fines that utterly fail to discourage them from continuing in their illegal business, or others from following their example. Again and again, raided stores reopen quickly with new pirate



product, online pirates move their servers or take on a new online identity, companies and some governments continue to evade their obligation to use only legal software, or major pirate producers continue their trade in a new guise to avoid the next enforcement action, which may never come, or may come only after infringers have lined their pockets with millions more in illegal income.

Ultimately countries undertake effective reform because they understand that it is in their own interest. It is essential that the U.S. government continue to take steps that will bring about such an understanding applied in non-discriminatory manner. Those steps should be supplemented by actions that increase the capacity of willing governments to take effective enforcement action. Among the strategies that could be employed are:

- Continuing to coordinate enforcement training, including localized training and capacity-building that demonstrates the benefits of deterrent enforcement.
- Fostering further coordination among and between U.S. agencies, industry, and international organizations with training resources.
- Creating “best enforcement practices” models, including legislative provisions and specific and practical reforms at the police, prosecutorial and judicial levels. These would be based on the TRIPS text and the U.S. FTA models, but with far greater detail to assist the enforcement authorities. These could include recommendations for “zero tolerance” policies against retail piracy and specific actions to be taken in the area of online piracy. These should also include model sentencing guidelines that would help the authorities assess what penalties will actually deter pirates.

These strategies have now become part of the effort by the U.S. government and other like-minded trading partners to forge an “Anti-Counterfeiting Trade Agreement” (ACTA) which, if concluded, we would want to contain all the elements mentioned above. This effort, announced on October 23, 2007, recognizes the critical importance that effective enforcement plays in improving the global trading environment in IPR-based products. The U.S. has been joined by key trading partners in the negotiations, including Japan, the EU, Mexico, Switzerland, Canada, South Korea, New Zealand, Singapore, Australia, and Morocco. Negotiations are ongoing and the goal is to conclude such an agreement by the end of 2010. These negotiations represent an important opportunity to clarify and update the enforcement text of the TRIPS agreement to take into account 20 years of technological development, as well as promote much-needed cooperation among its signatories to fight growing piracy, including Internet piracy. It is essential that such an agreement set out the very highest standards of effective enforcement in a manner not likely to be rendered obsolete as a consequence of technological developments.

IIPA and its member associations applaud the U.S. government for spearheading this effort to bring global attention to the crucial need to improve and coordinate enforcement globally. In recognition of these enforcement challenges, the U.S. Congress passed the PRO-IP Act in 2008.<sup>2</sup> That Act not only strengthened enforcement provisions in U.S. law, but created the position of Intellectual Property Enforcement Coordinator (IPEC) to work out of the White House to spearhead an effort to coordinate the activities of the relevant agencies of the Executive Branch in enforcement capacity building and training in conjunction with our trading partners.

The Special 301 process must specifically target enforcement in a direct and clear way. Many countries believe that Special 301 ranking decisions can be made on the basis of law reform, followed by enforcement “promises” alone. Experience has taught us that this simply has not worked. Countries should be made acutely aware that their Special 301 placement will not change unless they take the *specific* enforcement actions necessary to actually *reduce* piracy rates (and, conversely, that they will see a change in placement when such actions are in fact undertaken).

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<sup>2</sup> Public Law 110-403, 122 Stat. 4256 (Oct. 13, 2008).

## Internet Piracy, Electronic Commerce and the WIPO Internet Treaties

**The Scope of the Problem:** Electronic commerce is integral to the business models of the copyright industries and their continuous efforts to respond to diverse and evolving consumer demands. IIPA places a high priority on ensuring that this critical means of commerce is not undermined by the unauthorized distribution of content online or jeopardized by discriminatory regulations. Unfortunately, online and other forms of digital copyright piracy have exploded over the past several years. IIPA places a high priority on securing both the legal and practical tools necessary to protect intellectual property rights in the digital age thereby fostering legitimate electronic commerce.

All of the copyright industries are offering consumers exciting and diverse ways to access, use and enjoy their legitimate content and products. The software industry supplies the very technology that has allowed the Internet and e-commerce to function and grow. Software products have driven huge productivity gains in business and governments in the last 20 or more years, but piracy, including piracy of the very technologies that drive the Internet, threatens those gains.

The motion picture industry works with well over 375 legitimate video-on-demand websites around the world, providing high quality full-length films and television shows to consumers. There are sites that cater to every manner of consumer viewing including ad-supported viewing, rental viewing, download-to-own purchase, and subscription viewing. In the United States, there are over 60 such sites, including sites offering on-demand catch-up of television shows whether by streaming, rental and/or download-to-own. There are also numerous social networking sites, such as Bebo, Gaia, MySpace, peer-to-peer companies Bittorrent.com and Vuze, which provide movies legitimately. Over the past two years, we have seen major developments like the launch of Hulu, a video streaming aggregator, which increased its user base by 11% in 2009 to host the second most video streams – 257 million streams in November 2009 alone – after YouTube. Netflix announced recently that approximately 42% of its 11.1 million subscribers streamed at least one TV episode or movie in the third quarter of 2009 compared to only 22% in 2008. Long-term trends in video viewing from ComScore Video Metrix show that online videos viewed more than tripled between November 2007 and November 2009, while the number of unique video viewers increased to nearly 25%. The U.S. motion picture companies are continually seeking and launching exciting partnerships around the world. In November 2009, Sony launched its online PlayStation Video Store in France, Germany, Spain and the UK, providing High Definition films from MPAA studios and local studios for rental or download to own. Warner Bros launched an on-demand site in Japan, directly offering consumers Warner movies and TV shows for rent, download to own, viewing on PCs and mobile phones. Also, in December 2009, Voddler launched in Sweden, offering Disney and Paramount films to customers of ISP Bredbandsbolaget for streaming on an ad-supported and rental basis.

On-demand, full-length television shows and films from the major studios are now being provided to consumers by all the major mobile operators. Apart from streaming to mobile devices, studios are also working to make content available to load onto those devices through media like SD flash memory cards, similar to those used in digital cameras. These are sold pre-loaded, and may soon be used to download content from in-store kiosks. Moreover, there has been a marked increase in the international expansion of gaming device online video and the embedding of online services into consumer electronics devices.

For the music industry, growth in the market for digital sales of music is essential to an industry suffering significant declines in the overall market for recorded music due to piracy. In 2009 the legitimate online music market grew 12% to \$4.27 billion in revenues. The U.S. is the world leader in digital music sales, accounting for 50% of the legitimate global music market. Over 11 million music tracks have been licensed to more than 400 legitimate online and mobile music services. Sadly, legitimate online commerce in music only represents an estimated 5% of global music downloads, with an astonishing 95% of music downloaded without authorization.

More than a quarter of all recorded music industry revenues worldwide are now coming from digital channels, as music companies license music in partnership with ISPs and mobile operators, subscription services, streaming sites



and hundreds of download stores. However, despite the continuing growth of the digital music business, illegal file-sharing and other forms of online piracy are eroding investment and sales of local music in major markets.

Music companies are actively diversifying their revenue streams, offering new ways for consumers to buy and access music. These include: subscription services; music services bundled with devices and broadband subscriptions; streaming services with applications for mobile devices; advertising-supported services that offer premium services; and online music video services. In the last year, music companies have partnered with advertising-supported services such as Spotify, Deezer, MySpace Music and We7; ISPs such as TDC in Denmark, Terra in Brazil and Sky in the UK; mobile operators such as Vodafone; handset makers such as Nokia and Sony Ericsson; and online video channels such as Hulu and VEVO.

Sales of music downloads, the dominant revenue stream in digital music, are seeing steady growth. Single track download sales increased by an estimated 10%, while digital albums rose an estimated 20% in 2009. Recent innovations in this sector include the introduction of variable pricing, which has increased the conversion of track purchases to album sales, as well as the launch of the iTunes LP and the rollout of DRM-free downloads internationally.

Despite this progress, piracy is the major barrier to growth of the legitimate digital music sector and is causing severe damage to the music industry around the world. Providing new evidence of this, three of the world's biggest music markets, all heavily dependent on local repertoire - France, Spain and Brazil - have seen a sharp slump in the fortunes of their local music industries. In Spain, which has one of the highest rates of illegal file-sharing in Europe, sales by local artists in the top 50 have fallen by an estimated 65% between 2004 and 2009. France, where a quarter of the internet population downloads illegally, has seen local artist album releases fall by 60% between 2003 and 2009. The situation in culturally-rich Brazil is similar.

Book and journal publishers have exploded onto the electronic commerce scene in the last few years. Professional and scholarly journal publishers have largely led the way, offering electronic access to a wide variety of academic and professional journals for individual and institutional users worldwide. E-books of all kinds are growing by the day, including a proliferation of services offering electronic access to academic textbooks, reference materials and trade bestsellers. A recent independent study demonstrates clearly that the book industry is also seriously threatened by online piracy. That study shows that 9 million illegal downloads of copyright-protected books were documented during the closing months of 2009. Conducted by the online monitoring and enforcement service Attributor, the study looked at illegal downloads of 913 popular titles. On average, each of the titles tracked was downloaded approximately 10,000 times.

Notwithstanding the impressive efforts by the copyright industries to rapidly develop and roll-out new online business models, copyright theft continues to undermine, and in some cases prevent, the development of legitimate markets for electronic commerce in copyrighted materials. The Internet and other networks linking mobile devices are being employed as highly efficient, low-cost networks for infringing activity, reaching any part of the world with ease regardless of where infringing material first enters the system. Consequently, the U.S. copyright industries face the daunting task of trying to enforce their legal rights in an online world where borders and distances have decreasing practical significance.

Protection in this global online network is only as strong as its weakest link. In the United States, for example, access to pirated products is often facilitated through the operation of "tracker sites" or repositories of pirated content housed in other countries. To meet the challenge of online piracy, enhanced international norms, more effective enforcement of those norms, and law enforcement cooperation must be top priorities. Moreover, securing greater inter-industry cooperation in the fight against online and mobile piracy is imperative to curb the theft of online content.

To demonstrate the specific impact of P2P piracy on the industry, the Entertainment Software Association again undertook a study to estimate the number of copies made of select member game titles through popular P2P



networks during December, 2009. Results were compiled across four major P2P protocols (Ares, BitTorrent, eDonkey, and Gnutella), and involved activity on approximately 200 member titles. Results reflect a total of 9.78 million estimated infringing downloads of ESA member titles globally during the 1-month study period, with year-round impact obviously being many times greater.<sup>3</sup>

Countries with the heaviest unauthorized number of P2P game downloads by volume were Italy (20.3%); Spain (12.5%); France (7.5%); Brazil (6%); and China (5.7%). The heaviest pirate downloading countries per capita were Italy, Spain, Croatia, Portugal and Israel. Network resources provided by Telecom Italia (Italy) were implicated in 10.7% of these downloads, followed by Telefonica de Espana (Spain) (6.3%); France Telecom (France) (3.2%); IUnet (Italy) (2.5%); NIB (National Internet Backbone) (India) (1.7%); Neuf Cegetel (France) (1.7%); Free SAS (France) (1.6%); Jazz Telecom S.A. (Spain) (1.6%); Vodafone Omnitel N.V. (Italy) (1.5%) and Brasil Telecom S.A. (Brazil) (1.4%).

As noted above, IIPA and its members urge governments to adopt laws that will penalize and deter online piracy, and to enforce those laws vigorously. An environment that facilitates the growth of legitimate online delivery of copyrighted materials entails not only the establishment of adequate rights and remedies under copyright, but also rules that compel all entities involved in the transmission of copyright materials to implement reasonable practices. A focused and comprehensive strategy, as outlined below, is required.

**The Legal and Enforcement Solutions:** Well-established international norms such as the WTO TRIPS Agreement contribute valuable elements to the needed legal infrastructure to protect electronic commerce and combat Internet piracy. The WTO TRIPS Agreement contains a technology-neutral obligation to provide “expeditious remedies to prevent infringements and remedies which constitute a deterrent to future infringements” (Article 41). The enforcement tools described in TRIPS must be applied against online piracy.

The two treaties adopted by the World Intellectual Property Organization (WIPO) Diplomatic Conference in Geneva in December 1996 provide an additional and more tailored framework for what is needed to protect the transmission of content in the new e-commerce economy. These treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), have been in force since 2002. Effective implementation of the global legal minimum standards embodied in the WCT and WPPT is critical in the fight against online piracy, and is a key element of the “adequate and effective” copyright protection that is demanded under the Special 301 program. These standards include clarifying exclusive rights in the online world, and prohibiting the production of or trafficking in tools that circumvent technological protection measures (TPMs) used by right holders to protect copyrighted works, coupled with criminal prohibitions that effectively deter commercial circumvention activities.

Ever since the WIPO Treaties were adopted, IIPA and its members have joined with their counterpart copyright industries around the world to push for ratification and full implementation of the WCT and WPPT in all countries. Eighty-eight (88) countries and the EU now belong to the WCT, eight-six (86) are now members of the WPPT. With the December 2009 deposit by the remaining member states of the European Union, the momentum for further ratifications continues to build. In short, these treaties are now firmly part of the international legal infrastructure for protecting copyright. Ensuring that these standards are effectively embodied in national law is critical. If countries delay in making these needed changes, the prejudicial impact on electronic commerce and the protection of intellectual property online might be irreversible. The U.S., which was one of the first countries to implement these changes in its laws more than a decade ago, should continue to make it a priority to encourage other countries to follow this path.<sup>4</sup>

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<sup>3</sup> This figure is representative only of the number of downloads of a small selection of game titles. Consequently, this figure is under-representative of the overall number of infringing downloads of entertainment software made during the period. It is also important to note that these figures do not account for downloads that occur directly from hosted content, such as games found on “cyberlockers” or “one-click” hosting sites which continue to account each year for progressively greater volumes of infringing downloads.

<sup>4</sup> The U.S. implemented the WCT and WPPT by enacting Title I of the Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860 (1998). The United States deposited instruments of accession for both treaties on September 14, 1999.



There are a number of key trading partners that have yet to ratify and implement these treaties. Of particular concern, are Canada, New Zealand and Israel, among developed countries, and India, Malaysia, Indonesia, Thailand among developing countries that have yet to ratify and/or implement the obligations in the two treaties. IIPA has highlighted this issue in the surveys of each of these countries that follow.

In addition, the Free Trade Agreements between the US and a number of its trading partners specify and clarify the standards in the TRIPS Agreement and the WIPO Treaties, particularly with respect to protection of content online. The binding obligations that the FTAs create should form the underpinnings of the online enforcement systems in these countries, and eventually in all countries.

To protect the revenue streams and millions of new jobs created by the copyright industries, governments must be agile in dealing with a medium that is constantly evolving. Laws and practices of nations must be designed to secure broad cooperation among all relevant parties to prevent piracy in the first place; to quickly locate and bring down infringing Internet sites or content; and to pursue actions against offenders. Public education about the dangers of online infringement must be emphasized as well. As global boundaries continue to lose much of their practical relevance because of Internet growth, the usual lines separating the roles of industry and government in policy, enforcement and education must also evolve. Close coordination will be the key to success in this challenging new environment. Global adoption of the Council of Europe Cybercrime Convention, which requires countries to adopt effective remedies for online copyright infringement, and which facilitates law enforcement cooperation across borders, is another key element of a successful strategy.

Practical, fair and understandable regimes of secondary liability for online infringement are essential to motivate all participants to cooperate in implementing the reasonable practices that will make the online marketplace less hospitable to infringers. Voluntary arrangements among copyright owners, service providers and equipment manufacturers are a critical component of the fight against online piracy. The U.S. government should also urge all its trading partners to adapt and refine their secondary liability regimes to reflect the current technological realities, or to adopt modern, flexible systems where they do not exist. The goal must be to encourage responsible conduct on the part of all parties involved in the transmission of copyrighted materials. This includes swift and cost-effective ways to achieve takedowns of infringing content and services and mechanisms to ensure that repeat infringers find no safe harbor on the Internet.

Finally, we must find a global solution that discourages unauthorized peer-to-peer file sharing through aggressive enforcement against unauthorized uploaders of infringing product, whether of musical recordings, movies, business or entertainment software or literary material, as well as against services that enable such uploading for the purpose of encouraging infringement. As we know from our own experience here in the U.S., new legal online services for delivery of copyrighted material can succeed only if they are not undermined by unfair competition from unauthorized sources. In 2009, considerable progress was made in a number of countries to build bridges between right holders and ISPs resulting in voluntary agreements to put into place workable "graduated response" systems to deal with repeat infringers on P2P networks. In some cases, such as France, South Korea and Taiwan, legislation was adopted to mandate such systems or to establish the legal incentives necessary to encourage such mechanisms.

It is critical that governments, educational institutions and similar enterprises that provide broadband connections to their employees, students or others develop and enforce strong internal policies (such as official memoranda, decrees, or executive orders in the case of governments) to prevent illegal file sharing of copyrighted materials, including through the use of peer-to-peer technologies. When their networks transmit only authorized copyrighted material, they are also helping to ensure the security of their networks against unauthorized incursions or other potentially crippling interventions into their systems.<sup>5</sup>

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<sup>5</sup> In 2006, Ministers of the 21 Members of the Asia Pacific Economic Cooperation regional group recommended that "government entities" (which should include educational institutions funded by the State) should ensure that copyright usage, including on P2P networks, is legal. The APEC

Industry has been hard at work on these critical issues, but we need the help of the U.S. and foreign governments to make the Internet safe for e-commerce in copyrighted materials.

### End-User Piracy of Business Software

The unauthorized use and copying of software by businesses resulted in the vast majority of the over \$31 billion in estimated losses to U.S. software publishers in 2009. Losses to software developers outside the U.S. and those in the distribution chain that depend on such developers were also staggering. To safeguard the marketplace for legitimate software, governments must have in place both substantive standards of protection and adequate enforcement mechanisms.

For the business software industry, it is particularly critical, given the growing use of electronic networks to make software available commercially to corporate and other end users, to ensure that the reproduction right covers both temporary as well as permanent reproductions. It is likely that very soon, virtually all consumers will engage in the full exploitation of software they license and receive over a network without ever making a permanent copy on their hard drive. They will simply access the software, in accordance with mutually agreed license terms, then load it into the random access memory (RAM) of their workstation or server, use the software and, when finished, close the program or shut down the computer—all without the software ever being permanently stored on the computer's or server's hard drive. Failure to make clear that such temporary reproductions are covered by the exclusive reproduction right is a violation of the Berne Convention, the WTO TRIPS Agreement and the WIPO Copyright Treaty. Great progress has been made globally on this critical issue, and IIPA calls upon the U.S. government to continue to seek legislative changes and clarifications on this point. As of today, over 100 countries/territories provide protection for temporary copies as part of the reproduction right either explicitly or by interpretation, or had committed to do so, or had draft legislation pending which would provide such protection.

Enforcement is a critical part of reducing global piracy rates for business software, which exceed 50% of the market in the developing world. The biggest challenge to the business software industry is to persuade governments to take effective enforcement action against enterprises that use unlicensed software in their businesses. To effectively enforce against corporate end-user piracy, countries must provide an effective civil system of enforcement, provisional remedies to preserve evidence, and deterrent criminal penalties for piracy. More specifically, it is critical that countries provide *ex parte* search orders in an expeditious manner, deterrent civil damages and criminalization of corporate end-user piracy as required by Article 61 of TRIPS.

The software industry, along with all IIPA members, strongly supports the adoption of pre-established (statutory) damages by countries around the world. The U.S. has the lowest software piracy rate in the world and this is due in large part to the deterrent impact of infringers knowing that right holders will not have to go through the laborious and often impossible task of proving their actual damages resulting from surreptitious infringements. The knowledge that there will be significant financial consequences if these businesses infringe copyright is an essential element of an effective civil copyright enforcement system.

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Ministers specifically "Recommended that APEC Leaders should endorse the principle that government entities should not use illegal software or other content on their computer networks, especially pertaining to Internet usage," noting that "This keeps APEC at the forefront of addressing the growing problem of illegal file sharing on the Internet." Leaders cemented the understanding among the APEC Members in November 2006 in Hanoi, Vietnam that all "government agencies" should ensure that copyright usage is legal. The APEC Leaders stated the following:

We ... called on member economies to exercise appropriate oversight to achieve the objective that central government agencies use only legal software and other copyright materials; that such bodies implement effective policies intended to prevent copyright infringement on their computer systems and via the Internet, in accordance with relevant international conventions and domestic laws and regulations concerning copyright and related rights; and that central government funds are not used by contractors or recipient institutions to purchase illegal software or other illegal copyright materials.



Industry, along with USTR, has raised the need for strong procedural and remedial enforcement measures around the world. Although some countries have made attempts to improve enforcement through special enforcement periods and action plans, most of these proposals for action have not been sustained over time or have not resulted in deterrent criminal fines and jail terms. Additionally, many countries still do not criminalize corporate end-user piracy or provide civil *ex parte* measures in practice – even though their TRIPS obligations require both.

End-user piracy is not limited to business software but now affects other copyright sectors. For example, in government, school and university facilities, photocopy machines are routinely used for commercial-scale book piracy. Where the government is directly involved or directly responsible for the facilities and implements used, policies and decrees must be promulgated and strictly enforced to ensure that these facilities are not used for infringing conduct. In addition, internet café piracy in several countries continues to plague the entertainment software industry. While entertainment software publishers are increasingly making available specialized licensing terms for these establishments, the lack of government oversight or incentives for legitimizing use only emboldens internet café owners in their use of pirated or unlicensed product.

### Piracy of Books and Journals

The book and journal publishing industry faces not only the same challenges encountered by other entertainment and high-tech industries (optical disk and online piracy), but must contend with other methods of infringement as well. This piracy comes primarily in two forms — commercial photocopying and print piracy.

As described briefly at the outset of this letter, unauthorized commercial-scale photocopying of books and journals is responsible for the industry's biggest losses in most countries/territories worldwide. This photocopying takes place in a variety of venues — commercial photocopy shops located on the perimeters of university campuses and in popular shopping malls; on-campus copy facilities located in academic buildings, libraries and student unions; and wholly illicit operations contained in residential areas or other underground establishments. Some of these operations are highly organized and networked, and technology advances are making the problem worse. The shift from physical copy machines to electronic files—allowing shops to print infringing books on demand — complicates the enforcement process due to lack of infringing stock in hard goods form. Authorities must recognize this shifting pattern and tailor enforcement incentives and activities accordingly. Publishers also suffer from unauthorized institutional or business-related photocopying for commercial research (often accompanied by failure to compensate rights holders through collective means or otherwise for copies made).

In addition, the U.S. publishing industry continues to suffer from unauthorized printing of entire books, including academic textbooks, professional reference books and trade books. These printers come in two varieties. In some cases, they are licensed printers or distributors who are engaged in offset printing beyond the scope of a valid license granted by the publisher. Others are wholly illegal pirate operations that have no license from the copyright owner at all. While many pirated copies are rife with errors or obviously of inferior quality, in some cases sophisticated printing technologies result in extremely high-quality pirate editions of books, making it difficult for users to distinguish between legitimate and pirate products.

Publishers continue to suffer from unauthorized translations of books and journals of all kinds and genres, as well as trademark misuse. Unauthorized and unlicensed compilations abound in the academic context as well, in the form of course packs or even “original textbooks” that consist of sections of U.S. publishers' material, in English or in translation.

Book and journal piracy calls for the same kind of aggressive enforcement techniques discussed throughout this submission, accompanied by robust efforts that should be undertaken by universities and other educational institutions to promote the use of legitimate books and journal publications, especially those that are government-supported. Governments must recognize the serious damage done to economies, culture and the educational

environment by letting such infringements persist. IIPA urges the U.S. government to ensure that such acts of piracy are fully covered in all bilateral, plurilateral and multilateral engagements.

### Optical Disc Piracy

Piracy of optical disc (OD) products continues to cause major losses to most copyright industries. Increasingly, many sectors of the copyright industry use a common set of media to distribute their products worldwide. As noted above, these “optical disc” products include formats such as compact discs (CD), video CDs (VCD), CD-ROMs, CD-Recordables (CD-Rs), digital versatile discs (DVDs), DVD-Recordables (DVD-Rs), universal media discs (UMD), and newer, high definition formats such as BluRay. An explosion in the world’s capacity to produce optical disc products has been driven by the ever-growing worldwide demand for copyrighted high-tech, entertainment and educational products, but also by the potential for pirates to generate billions of dollars in illegal income. Optical disc production capacity has for years greatly exceeded the legitimate demand for such products, whether pre-recorded discs or blank media, with much of the difference inuring to the benefit of illegal pirate enterprises.

In recent years, the problem of industrial production of pirate OD product in factories has to a great extent been overtaken by more decentralized, smaller-scale operations that use blank recordable optical media and OD “burners” to make unauthorized copies on a commercial basis. Whether “burned” or factory-produced, pirate CDs, VCDs, CD-ROMs and DVDs, CD-Rs and DVD-Rs containing protected music, sound recordings, audiovisual works, business software, entertainment software and books and journals have decimated the market for legitimate U.S. products.

Optical Disc Piracy – Factory Production: For 2009, IIPA continues to identify the key optical disc piracy factory production trouble spots as: China, Russia and to a lesser extent Indonesia. These are markets where immediate actions should be taken by the governments to curtail pirate production. The optical disc factory piracy problem confronting the copyright sectors, now familiar to governments worldwide, has demanded new and creative legislative and enforcement solutions. As part of countries’ WTO TRIPS obligations to provide deterrent enforcement against piracy “on a commercial scale,” every country whose optical disc production facilities are producing significant pirate product should create and enforce a specialized regulatory framework for tracking the growth of optical disc production capacity, including the cross-border traffic in production equipment and raw materials, principally optical-grade polycarbonate. These regulatory regimes should include strict licensing controls on the operation of optical disc mastering and replication facilities, and the requirement to use identification tools that identify the plant in which production occurred and that help lead the authorities to the infringer. Such regimes have been established in Bulgaria, China, Hong Kong, Indonesia, Macau, Malaysia, Nigeria, Oman, the Philippines, Poland, Singapore, Taiwan, Thailand, Turkey, and Ukraine, and are under consideration in Bahrain, India, Vietnam, and other countries. Increasingly, pirate optical disc production is migrating from jurisdictions with optical disc production regulatory regimes to countries that have not adopted these regulatory tools or do not enforce them, such as Bangladesh, Nigeria, Vietnam, and many others mentioned in this submission.

Above all, the regulations put in place to combat OD piracy must be aggressively enforced. Governments must have the authority to conduct surprise inspections of optical disc production facilities – and they must use it. Deterrent penalties, including license revocation, confiscation of equipment and raw materials, and heavy fines and imprisonment, must be consistently and efficiently imposed.

IIPA and its members have developed a number of resources to help governments in fashioning an effective optical disc regulatory system. We also note that governments have recognized the importance of effective regulations. In October 2003, APEC leaders agreed on the need to “stop optical disk piracy” and endorsed a set of “Effective Practices.” We recommend these to all governments addressing this problem. We stand ready to work with USTR to assist governments in understanding, drafting and implementing these recommendations into national law.



Optical Disc Piracy – Commercial “Burning”: As regulatory regimes have been put into place and enforced, pirates have taken advantage of technological developments, and moved production increasingly from the “factory” locus to smaller, more mobile venues that are often more private and harder to police. Using cheaper and more portable consumer “recordable” technology, pirates with a very small investment can easily and cheaply burn thousands of CD-Rs and DVD-Rs of copyrighted material for commercial sale. We refer here not to individual consumers “burning” copies but to aggressive commercial exploitation – often by the very same syndicates that operated the factories, and sometimes even in the same locations as the factory equipment. Increasingly around the globe, seizures of pirate optical disc product in 2008 were overwhelmingly of “burned” product. Commercial “burning” has probably become the biggest piracy threat in the “hard goods” optical media market.

This development calls for innovative responses. Improved enforcement machinery must aim at implementing zero tolerance policies against the offer for sale of pirate product. If pirates have no place to sell their products, their ability to manufacture becomes superfluous. Some countries are already responding by enacting absolute bans on street sales, with some positive results. More countries should do the same.

### Piracy by Organized Crime Syndicates

Because of the immense profits that can be garnered by producing pirate optical disc products, this illegal business has been taken over in many countries by organized crime syndicates, making it even more difficult for local authorities to combat the problem. These criminal syndicates are highly organized, are linked across national boundaries, and have powerful friends within governments. They control large amounts of capital, and exploit complex distribution networks.

The kinds of large-scale piracy operations run by syndicates are a global threat, as the lucrative funds from piracy fund other illegal activities, like drug trafficking, gun running and even terrorism. Some of these syndicates operate worldwide. For example, syndicates with optical disc production facilities in Southeast Asia work with partners in South America to conduct a thriving trans-Pacific trade in pirate music CDs, entertainment software, and other optical disc products. These criminal networks are highly sophisticated and are becoming increasingly dangerous to deal with. Starting in 2003, many syndicates began moving their illegal trade into local CD-R and DVD-R “burning” and to the Internet in response to improved local enforcement against factory pirate production.

In an October 2005 study by MPA, it was reported that the estimated criminal revenue in 2004 for IPR theft was \$512 billion, while for drug trafficking it was \$322 billion.<sup>6</sup> The same study also demonstrated that the mark-up for DVD piracy is higher than that for cocaine and heroine, with the risk of getting caught and receiving deterrent punishment significantly less.<sup>7</sup> A March 2009 study by the RAND Corporation further explored the linkages between organized crime and film piracy detailing 14 case studies of film piracy, providing compelling evidence of a broad, geographically dispersed and continuing connection between piracy and organized crime. As well as documenting cases in North America and Europe, the report outlines the involvement of organized crime with film piracy in South America, Russia and many parts of Asia.<sup>8</sup>

Some recent examples of the involvement of organized crime on a global basis include:

- In November 2009, the anti-mafia District Attorney office (DDA) in Naples arrested more than 40 suspects at the conclusion of a three-year investigation into the counterfeiting of copyright protected goods by a major local mafia ring. The investigation was initiated by Fiscal Police (GdF) from Naples and Rome in 2006. During the following three years the GdF dismantled 32 illegal CD burning

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<sup>6</sup> Motion Picture Association, *Optical Disc Piracy v. Illegal Drug Trafficking*, October 2005, at 2. At about the same time, MPA released another study, *Organized Crime & Motion Picture Piracy*, from which some of the examples in the text are taken.

<sup>7</sup> *Id.*, at 3

<sup>8</sup> See [http://www.rand.org/pubs/monographs/2009/RAND\\_MG742.pdf](http://www.rand.org/pubs/monographs/2009/RAND_MG742.pdf)



laboratories, seizing 2,300 CD burners, arresting 121 people and prosecuting 173 individuals for copyright infringement.

- In September 2009, Thai police raided a disc manufacturing plant being used to produce counterfeit discs. A team from the Economic and Cyber Crime Division of the Thai Police ran the raid on LLI Technology Company Ltd in Nonthaburi province near Bangkok.
- In May 2009, Turkish police conducted major anti-piracy operations against four organized criminal syndicates. The first operation targeted 83 addresses in 17 cities throughout Turkey, resulting in the arrest of 29 people and the seizure of more than seven million pirate and counterfeit items. Police confirmed that much of this product was sold or distributed through internet sites requiring the use of codes and keywords. The second operation on 1st June saw 84 different sales points in Istanbul raided simultaneously. More than two million pirate or counterfeit items were seized and 46 people were suspected of infringing copyright law. 11 people, thought to be the gangs' leaders, were arrested by police. The total estimated value placed on the seizures by Turkish police is more than €75 million. As a result of these operations, the main pirate network was disrupted and its most important members were arrested. In addition, police believe the biggest pirate market, the Tahtakale, is finished.
- In March 2009, Mexican police and military personnel raided a home in Veracruz that was utilized as a major CD and DVD replicating center by a criminal cartel known as "Los Zetas". Police suspect "Los Zetas" of being part of the drug trafficking group known as the Mexican Gulf Cartel. It is alleged that besides providing protection and security to the Gulf Cartel, this group is now producing and distributing pirate music and films across Mexico. It is claimed the group controls distribution of the pirate products by threatening merchants who refuse to sell their branded music and films.
- In February 2009, Polish police raided an organized criminal syndicate that produced and distributed pirate music and films on an industrial scale. The pirate operation distributed an estimated nine million albums, making it what is believed to be the largest copyright infringing disc operation ever shut down by police action in Europe.
- In last quarter of 2009, a major operation was conducted by law enforcement authorities (in coordination with the publishing industry) in Delhi (India) against a printer, binder and distributor producing pirated academic and scientific, technical and medical (STM) books. The perpetrators were caught *in flagrante*, the printer having 80,000 prints and 124 negatives of a publisher's title on hand. Two warehouses owned by the distributor were also searched. A total of 135,000 pirated STM books (belonging to both foreign and domestic publishers) were seized during the raid operation. The distributor's operation appeared to be supplying pirated books to locations in Agra, Kanpur, Delhi, Gwalior, Bhopal, Indore, Kolkata, Cuttack, Bhubaneswar, Guwahati, Chennai, Hyderabad, Bangalore, Mumbai, Pune and Nagpur.
- In December 2008, Australian police executed five search warrants across South Western Sydney uncovering an estimated one million pirate Asian movie and music discs. The seizure is the largest ever of pirate music and Asian movies in Australia.
- In November 2008, Brazilian officials discovered a smuggling ring importing blank optical discs from Uruguay to sell in the pirate markets of Brazil. Investigators uncovered the blank discs in the duty free shops of the border town of Rivera in Uruguay. The smugglers sourced blank discs from the free port of Montevideo and used the duty free shops as distribution points.
- In November 2008, the Argentine coast guard raided the notorious La Salada market and seized enormous amounts of counterfeit product. The authorities have already identified some organized criminal syndicates that operate in the market.

The private sector is not equipped to fight organized crime. This is a job for law enforcement authorities. Company representatives and counsel have in some countries experienced threats on their lives or physical



intimidation, and have even been injured when their investigations began to make progress. In some cases, this has prevented any enforcement activity by the private sector.

To assist national governments, even INTERPOL has recognized that there is an urgent need for national and international enforcement authorities to coordinate their efforts and cooperate with the IP right holders in the private sector.<sup>9</sup> Back in 2000, the INTERPOL General Assembly approved the addition of IP crime to the Organization's official mandate. Later the INTERPOL Intellectual Property Action Group (IIPCAG) was formed as a public-private partnership.

The U.S. government should take a leadership role, both bilaterally and in multilateral fora, to place the issue of effective copyright piracy enforcement on the agenda of agencies dealing with organized economic crime. It should encourage countries with existing laws and special investigative procedures against organized crime to bring them to bear against syndicate operations involved in piracy. Where such laws and procedures are not in place, the U.S. government should encourage governments to adopt them and to include, among predicate offenses, intellectual property right violations.

### Camcorder Piracy

Camcording as "source piracy" has grown exponentially over the last few years, tracking the development of camcorder technology that makes detection difficult and copies near perfect. MPAA analysis of counterfeit copies seized throughout the world reveals that more than 90% of illicit recently released movies on DVDs can be sourced back to theatrical camcording. For example, in 2007, more than 530 cases of illegal camcording were detected from theaters around the world and most of these films were stolen within 24 hours of their theatrical release. They were then uploaded to the Internet, replicated in optical disc plants, and burned to discs, affecting markets around the world. This trend continued through 2009.

It is evident that camcorder piracy migrates to those markets where enforcement is weak. With the passage of the U.S. Family Entertainment and Copyright Act, which made camcording a federal offense, and similar state laws, as well as diligent efforts by local police, the U.S. is taking the necessary steps to provide adequate and effective remedies against camcorder piracy. Progress has also been made globally on this critical issue and IIPA calls upon the U.S. government to continue to seek legislative changes that make unauthorized camcording a criminal offense.

While the motion picture industry recognizes that anti-camcording legislation is critical to stopping the rapid increase in camcording, it also recognizes that there are critical steps that it and its business partners in the film industry must undertake on their own. As a result, it has and will continue to expend significant resources in undertaking various measures to mitigate the level of unauthorized camcording activity. Despite industry efforts, it is clear that if camcording is not made a criminal offense and deterrent penalties are not applied, this crippling source piracy will continue, migrating to territories where enforcement is weak.

### Game Cartridge Piracy and Circumvention Device Enforcement

In addition to optical disc piracy, factory piracy of entertainment software in cartridge format also afflicts the entertainment software industry. Pirate videogame cartridges easily find their way into numerous countries around the

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<sup>9</sup> See INTERPOL IPR page at <http://www.interpol.int/public/financialcrime/intellectualproperty/default.asp>. For more information on recent 2008 activities, see INTERPOL Intellectual Property Rights Programme Review 2008, posted at <http://www.interpol.int/Public/FinancialCrime/IntellectualProperty/Publications/IPNewsletter.pdf>. For example, in February 2008 INTERPOL launched its Database on International Intellectual Property (DIIP) Crime. The Third INTERPOL Intellectual Property Crime Training Course brought together participants from police forces and the private sector all over the world was held in Italy on October 2008. This was co-hosted by the Italian Guardia di Finanza in partnership with police and member organizations of the INTERPOL IP Crime Action Group. Numerous operations were conducted throughout the year, working with both public government agencies as well as private sector organizations.



world. Absent sustained enforcement actions against these factories engaged in illegal production and export, and the prosecution of their owners and financiers, there will be little progress in curtailing this piracy problem.

On other fronts, IIPA and ESA have seen successful implementation of WIPO Treaty obligations give rise to effective enforcement actions against distributors of unlawful circumvention devices, such as “mod chips” and “game copiers,” which are manufactured, marketed and purchased to enable use or copying of pirated games. Following critical legal reforms, Hong Kong initiated its first actions against purveyors of circumvention technologies in the Spring of 2008, followed by a series of significant actions in November, 2009. The year 2009 has also seen first-of-their-kind enforcement actions brought in Singapore and Paraguay against mod chip distributors and sellers. The industry is deeply concerned over recent decisions that have stood in the way of achieving effective enforcement against distributors of circumvention devices in Spain, France and Italy, and hope these cases do not contribute to the perception that those who profit from making circumvention devices available are beyond the reach of effective enforcement efforts. As each circumvention device functions as a gateway to multiple infringements, universal adoption and enforcement of effective anti-circumvention laws are a critical factor in preventing the download and/or sale of infringing copies of games.

### Using FTAs to Improve Global Standards of Copyright Protection and Enforcement

The negotiation of bilateral and regional free trade agreements (FTAs) over the past fifteen years has proven to be of great value to the U.S. economy. These negotiations have provided an important opportunity to persuade our trading partners to take on enforceable obligations to modernize their copyright law regimes and to improve enforcement procedures. The agreements have helped U.S. copyright industries to compete fairly in foreign markets, and have helped our trading partners develop their domestic copyright industries – a true win-win for both parties.

At the time of this submission, FTAs with Singapore, Chile, Australia, Jordan, Morocco, Bahrain, Oman, the six nations in the Central America-the Dominican Republic-U.S. FTA, and Peru, had entered into force. Negotiations with South Korea, Colombia and Panama have long ago been concluded, but Congress has failed to act to complete the ratification process. We urge the Administration to redouble its efforts to obtain Congressional approval of these FTAs.

IIPA commends the Administration for its determination, after a year of careful consideration, to commence the negotiation of a Trans-Pacific Partnership Free Trade Agreement with Singapore, Chile, New Zealand, Brunei, Australia, Peru and Vietnam. IIPA is also pleased that the Administration has indicated its objective to expand on this initial group to include additional countries throughout the Asia-Pacific region. In its public comments submitted on January 25, 2010, IIPA called for maintaining the high standards of protection and enforcement already in place for four of the U.S.’ potential TPP partners -- Australia, Singapore, Chile and Peru -- and extending those protections to the other potential TPP signatories.

The commencement of TPP negotiation this March offers the opportunity to address a number of deficiencies in the legal and enforcement regimes in place in New Zealand and Brunei. We have also highlighted continuing problems in our country surveys of Singapore, Chile, Peru, and Vietnam.

New Zealand is a good candidate for participation in a strong TPP FTA, but we highlight that its current copyright law falls short of standards adopted in existing FTAs that we assume will be replicated in the TPP FTA. In particular, technological protection measures (TPMs) used by copyright owners to control access to or use of their works receive largely inadequate protection under New Zealand law. Major deficiencies include unduly narrow definitions of TPMs; failure to prohibit the act of circumventing access controls; unworkable intent and knowledge requirements for even civil liability of those trafficking in circumvention devices or services; and overbroad exceptions. Such deficiencies may explain why New Zealand has not ratified the 1996 WIPO Internet Treaties, an omission that makes it an outlier among developed country economies. Copyright law amendments adopted by New Zealand in 2008 include provisions regarding ISP liability for online infringements, but the requirement that ISPs implement repeat



infringer policies has not yet been brought into force, due to disagreement about proposals for a “graduated response” system to deal with habitual P2P infringers. We hope that New Zealand will act expeditiously to close the gap between its outdated laws and the kind of accepted global minimum standards that we anticipate will be reflected in the TPP FTA.

Brunei is a member of the original TPP, and has already taken some steps to modernize its law, although more will need to be done to bring Brunei’s law up to the standards adopted in existing FTAs that should be replicated in the enlarged TPP FTA. The Emergency Copyright Ordinance addresses key Internet issues, including some of those needed to fully implement the WCT and the WPPT. These include protection of temporary copies, a WIPO Treaties-compatible definition of “communication to the public” including an interactive “making available” right, and prohibitions against trafficking in devices which circumvent technological protection measures (TPMs), although the TPMs provisions do not fully implement the WCT and WPPT requirements. Main shortcomings include inadequate coverage of copy controls and no apparent coverage of access controls; failure to prohibit the act of circumvention of a TPM; and overly narrow proof standards for a circumvention device (i.e., that it is specifically designed to circumvent). With respect to dealing with online infringements through the help of Internet service providers, unfortunately, the law in Brunei is weak. The Electronic Transactions Order, 2000 provides a near-total exemption from civil or criminal liability for a service provider that provides infringing materials over its services, and this explains ISPs’ relative inaction in taking down or blocking infringing websites. The government of Brunei Darussalam should take needed steps to ensure that this highly developed and prosperous nation is ready for what is anticipated will be the IP obligations of a TPP FTA.

### Market Access

In the experience of IIPA, its member associations and companies, there is a strong connection between a country's ability to foster the entry of legitimate product quickly and efficiently into the market, and its ability to combat piracy effectively. We call upon policymakers to recognize and draw on this relationship to help make the reduction of market access impediments as a key component of ongoing efforts to combat piracy. Identifying countries that deny effective market access for copyright industries is an integral part of the Special 301 process.

Our experience shows that where there are restrictions on the distribution of legitimate products, impediments to the establishment of companies involved in the creation, manufacture or distribution of such products, or the imposition of prohibitively high tariffs and taxes on legitimate products entering the country, illegal operations fill the void with piratical product. Pirates are thus able to become exclusive distributors of the prohibited content or the products that have been priced out of reach for most consumers due to high tariffs, and are rewarded accordingly by cementing strong loyalties with their dedicated consumer base.

Pirates also gain a stronger position when the introduction of new products to market is unreasonably delayed, whether through lengthy content review periods, specialized packaging or stickering requirements, or arduous licensing or registration protocols. Here again, illegal operations will move to take advantage of any temporary product voids by speeding pirated copies to market, maximizing the advantage provided by their informal but highly effective exclusive distribution windows. These delays can be particularly damaging to “hit-based” businesses that depend on strong initial sales of a relatively small number of highly popular products to recoup investments made in other, less immediately successful ones.

IIPA is increasingly concerned about policies that mandate particular technologies for government procurement (rather than allowing agencies to purchase the products in the global marketplace that best fit their needs) and policies that attempt to use market access leverage to compel transfers of IP. For example, China recently promulgated government procurement policies that provide significant preferences for “indigenous innovation” products. The criteria to qualify include requirements that the products contain IP that is owned and developed in China and have trademarks originally registered in China. These policies will effectively exclude many products of US and other foreign firms from

the significant China government market unless they transfer IP to Chinese ownership. These market access criteria undermine the IP development of U.S. and other foreign copyright industries.

We urge U.S. officials and overseas national policymakers to make elimination of market access barriers — whether such barriers are content or investment based — a priority in their discussions with relevant foreign governments. Specifically, foreign policymakers should:

- Reexamine the effectiveness of, and policy justifications underlying, market access prohibitions or impediments that restrict legitimate producers' ability to compete with pirates. Industries involved in the creation and distribution of content-based products stand willing to abide by reasonable and fairly applied content review processes. However, it is both legitimate and necessary to ask whether these measures serve their intended purpose, or whether alternative channels of distribution for these products (such as through authorized or unauthorized online delivery) render these policies ineffectual or less capable of achieving that purpose.
- Work with industry to consider ways of further streamlining those restrictions and/or processes that are deemed essential, including applicable content review, labeling or licensing requirements.
- Work with industry to promote greater understanding and transparency of applicable rules, regulations and procedures governing compliance. Greater transparency in governing regulations facilitates more rapid and more uniform compliance, and affords fewer opportunities for abuses of these processes.
- Enforce penalties for non-compliance with regulatory requirements (such as for health and safety) uniformly, including against vendors of piratical product, and consider the creation of enhanced penalties for non-compliance by pirate operations.
- Maintain technology-neutral procurement and other policies that avoid mandates or preferences based on the model of software development.
- Avoid using market access as leverage to compel transfers of IP to local ownership. This is not a fair or effective means for developing local industries.

The country reports we submit today highlight many of the most damaging market access barriers that copyright industries face. We urge USTR to continue to monitor these countries' progress along these lines. The U.S. government and foreign governments should consider market-opening policies as an additional tool to combat piracy, and to promote economic and technological competitiveness.

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## C. IIPA RECOMMENDATIONS FOR THE 2010 SPECIAL 301 LISTS

This year IIPA has analyzed the copyright law and enforcement problems in 39 countries/territories, and has recommended 35 of them for placement on the Priority Watch List or Watch List, or for monitoring under Section 306 of the Trade Act. We also mention specific issues in four additional countries/territories that deserve increased U.S. government attention. As in prior years, IIPA's submission contains several separate sections. Included in this year's submission are the following:

- This letter, which summarizes the submission and outlines IIPA's recommendations for cross-cutting initiatives to be undertaken by the copyright industries and the U.S. government for 2010.



- Appendix A, which compiles IIPA’s country placement recommendations, estimated trade losses due to piracy, and estimated levels of piracy. As indicated in the chart below, IIPA recommends that ten (10) countries be placed on the Priority Watch List and fourteen (14) be placed on the Watch List. We also recommend that out-of-cycle reviews be conducted later this year for Spain, Malaysia, the Philippines, Ukraine and Thailand, and that Paraguay remain under Section 306 monitoring.
- Appendix B, which describes IIPA members’ methodologies for calculating estimated trade losses and piracy levels.
- Appendix C, which includes all the country surveys.<sup>10</sup>

PRIORITY WATCH LIST	WATCH LIST	SECTION 306 MONITORING	OTHER COUNTRIES/ TERRITORIES DESERVING SPECIAL MENTION
Argentina Canada Chile Costa Rica India Indonesia Mexico People’s Republic of China Philippines (OCR) Russian Federation (GSP)	Belarus Brazil Egypt Greece Hungary Israel Italy Kazakhstan Kuwait Lebanon (GSP) Malaysia (OCR) Pakistan Peru Poland Romania Singapore Spain (OCR) Tajikistan Thailand (OCR) Turkey Turkmenistan Ukraine (OCR) Uzbekistan (GSP) Vietnam	Paraguay	Hong Kong Saudi Arabia Switzerland Taiwan
10	24	1	4

- Appendix D, which provides an historical chart of countries/territories’ placement on Special 301 lists by USTR since 1989, a year after the Special 301 legislation became effective. Fifteen of these countries/territories have appeared on a Special 301 list each year since 1989, and are recommended by IIPA to appear there again. A 1994 amendment to Section 182 of the Trade Act, dealing with identification of “priority foreign countries,” provides that

<sup>10</sup> Country surveys were prepared by counsel to the IIPA, Maria Strong, Michael Schlesinger, Eric H. Smith, Steven Metalitz, and Eric J. Schwartz, and are based on information furnished by IIPA’s seven member associations. We thank Kristen Schumacher for her contribution in preparing, producing and distributing this submission. The country reports contain information which should not be construed as providing legal advice.



the U.S. Trade Representative must take into account “the history of intellectual property laws and practices in the foreign country, whether the country has been identified as a priority foreign country previously, and U.S. efforts to obtain adequate and effective intellectual property protection in that country.”<sup>11</sup> Under these criteria, these 15 countries/territories named by IIPA are particularly vulnerable, having failed to correct their piracy and/or market access problems during the 20 years that Special 301 has been in existence.

- Appendix E, which contains the Special 301 histories of countries/territories that we have recommended for placement on a list this year, many other countries that have appeared on USTR’s lists in the past and are still candidates for monitoring intellectual property practices, and certain other countries that have never appeared on a USTR list but which deserve special attention.

Ongoing GSP IPR Reviews: IIPA also calls attention to ongoing intellectual property rights reviews under the Generalized System of Preferences (GSP) trade program. IIPA has been a strong supporter of the GSP program, and over the years has filed numerous petitions requesting the U.S. government to initiate GSP IPR reviews of copyright law and enforcement practices in targeted countries.<sup>12</sup> This submission details copyright developments in 8 of the top 12 countries that received benefits from the GSP program in 2009, specifically: Thailand (\$2.89 billion of U.S. imports under GSP), India (\$2.85 billion), Brazil (\$1.98 billion), Indonesia (\$1.45 billion), the Philippines (\$733 million) Turkey (\$644 million), Argentina (\$510 million), and Russia (\$252 million). As of this filing today, the U.S. government is continuing GSP IPR investigations on the copyright law and enforcement practices in three countries in which IIPA was the original petitioner: Russia, Lebanon, and Uzbekistan. It is imperative that the Administration use this program to hold beneficiary countries accountable to the IPR obligations in the statute.

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#### D. CONCLUSION

Special 301 remains a cornerstone of U.S. intellectual property and trade policy. We urge the Administration to use Special 301, and the tools available under the GSP, CBI, ATPA, CBTPA, and AGOA programs, and to consider IIPA’s proposals to amplify attention to ineffective and non-deterrent enforcement—to encourage the countries/territories identified in our recommendations this year to make the political commitments, followed by the necessary actions, to bring their enforcement (and where necessary their copyright) regimes up to international standards.

We look forward to our continued work with USTR and other U.S. agencies to bring about major improvements in copyright protection and enforcement worldwide.

Respectfully submitted,

Eric H. Smith  
International Intellectual Property Alliance

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<sup>11</sup> Uruguay Round Agreements Act Statement of Administrative Action, *reprinted in* H.R. Doc. No. 103-316, vol. I, at 362 (1994).

<sup>12</sup> Since 1999, IIPA (and in one case, a coalition of 6 of 7 IIPA members) has filed 18 GSP IPR petitions with USTR, requesting the initiation of IPR investigations against the following countries: Poland, Peru, Lebanon, Dominican Republic, Ukraine, Moldova, Uzbekistan, Armenia, Kazakhstan, Belarus, the Kyrgyz Republic, Brazil, Russia, Guatemala, Costa Rica, Uruguay, Thailand, and Pakistan. Of these 18 petitions, USTR initiated reviews in 10 countries: Dominican Republic, Ukraine, Moldova, Uzbekistan, Armenia, Kazakhstan, Brazil, Russia, Lebanon, and Pakistan. IIPA withdrew its request to initiate reviews in three cases (Peru, Uruguay and Thailand). Of these reviews, so far USTR has completed its investigations and terminated its reviews in 8 cases -- Brazil, Armenia, Moldova, Dominican Republic, Ukraine, Pakistan, Turkey (a case which IIPA petitioned for in 1993 and was closed in 2001), and Kazakhstan.