February 8, 2013

Submitted via regulations.gov Docket No. USTR–2012–0022
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


Dear Mr. McCoy:

The International Intellectual Property Alliance (IIPA) submits this response to the Federal Register notice that invites “written submissions from the public concerning foreign countries’ acts, policies, or practices that are relevant to deciding whether a particular trading partner should be identified as a priority foreign country under Section 182 of the Trade Act or placed on the Priority Watch List or Watch List.” Under Section 182, more commonly referred to as “Special 301,” the Office of the U.S. Trade Representative leads an interagency process to identify countries that deny adequate and effective protection of intellectual property rights or that deny fair and equitable market access to U.S. persons who rely on intellectual property protection (19 U.S.C. §2242). This year’s notice also makes two additional requests: 1) that submissions include specific references to laws, regulations, policy statements, executive, presidential or other orders, administrative, court or other determinations, and any other measures relevant to the issues raised in the written submission or hearing testimony; and 2) that, where relevant, submissions mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention.¹

IIPA has participated in every Special 301 cycle since the 1988 Trade Act created this process, providing public comments on acts, practices and policies regarding copyright law, piracy, enforcement and market access in selected foreign countries and territories. In this year’s filing, including this Submission Letter and appendices, IIPA reports on 42 countries/territories noted in the chart in Section C of this Submission Letter, mentions 3 countries for positive achievements (two of which also appear as country reports), and mentions 6 countries for issues related to bilateral, regional, or multilateral IPR obligations worthy of discussion.

IIPA requests that Ukraine be designated as a Priority Foreign Country in this year’s review. IIPA also requests that 32 other countries appear on the Special 301 Priority Watch List or Watch List. IIPA has also recommended that USTR conduct an out-of-cycle review (OCR) later in 2013 on Thailand. IIPA will also file under separate cover a Notice of Intent to Testify at the February 20, 2013 public hearing on Special 301.

¹With regard to both of these requests, we note that all of the country appendices contain specific references to laws, regulations, policy statements, executive, presidential or other orders, administrative, court or other determinations, and any other measures relevant to the issues raised in this written submission, and that the country appendices mention particular regions, provinces, states, or other subdivisions of a country in which an act, policy, or practice is believed to warrant special attention, where relevant.
A. THE IIPA’S INTEREST IN THIS FILING AND THE SPECIAL 301 PROCESS

The IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve international protection and enforcement of copyrighted materials and to open foreign markets closed by piracy and other market access barriers. IIPA’s seven member associations represent over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world—all types of computer software, including operating systems, systems software such as databases and security packages, business applications, and consumer applications such as games, personal finance, and reference software, free software, open source software, and software as a service, entertainment software including interactive games for videogame consoles, handheld devices, personal computers and the Internet, and educational software; motion pictures, television programming, DVDs and home video and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and fiction and non-fiction books, education instructional and assessment materials, and professional and scholarly journals, databases and software in all formats. Members of the IIPA include Association of American Publishers, BSA | The Software Alliance, Entertainment Software Association, Independent Film & Television Alliance, Motion Picture Association of America, National Music Publishers’ Association, and Recording Industry Association of America.

In November 2011, IIPA released the latest update of the comprehensive economic report, Copyright Industries in the U.S. Economy: The 2011 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 (GDP), employment, and trade. The “core” copyright-based industries in the U.S. continue to be major contributors to the U.S. economy, accounting for an estimated $931.8 billion or 6.36% of the U.S. GDP in 2010. These industries provide nearly 5.1 million U.S. jobs, which is 4.75% of the entire private sector labor force in 2010, and pay on average over $78,000, 27% higher than the overall workforce average. Estimated 2010 foreign sales and exports of key sectors of the core copyright industries amounted to $134 billion, a significant increase over previous years, and more than foreign sales of other major U.S. industry sectors such as aircraft, automobiles, agricultural products, food, and pharmaceuticals. Linkages between copyright protection and economic development in other countries are documented by the World Intellectual Property Organization’s 2012 study, Copyright + Creativity = Jobs and Economic Growth: WIPO Studies on the Economic Contribution of the Copyright Industries, compiling similar studies in 30 countries. WIPO reports the completion of a total of 39 country studies, with more in the pipeline. Other studies have measured the contribution of certain sectors to national economies, or the multiplier effects of reducing piracy on contribution to GDP, job growth, and tax revenues.

While these studies amply demonstrate the contribution of copyright-based industries to the economy, they do not reveal the massive costs imposed by overseas piracy and market access barriers to U.S. copyrighted products and services. Content industries are forced to face unfair competition from those who engage in piracy as a high-profit, low risk enterprise. Today, legitimate businesses built on copyright are facing increased threats, as they must compete with

See Stephen E. Siwek, Copyright Industries in the U.S. Economy: The 2011 Report, November 2, 2011. The entire report as well as summaries can be accessed at http://www.ipa.com/copyright_us_economy.html. Core copyright industries are those whose primary purpose is to create, produce, distribute or exhibit copyright materials. These include books, journals, newspapers, and periodicals; motion pictures; recorded music; radio and television broadcasting; and computer software. See, e.g., BSA (now BSA | The Software Alliance) and IDC, Piracy Impact Study: The Economic Benefits of Reducing Software Piracy: Israel, 2010, at http://portal.bsa.org/piracyimpact2010/cps/cp_israel_english.pdf.
the massive proliferation of illegal services unencumbered by costs associated with either producing copyrighted works or obtaining rights to use them. An independent study released by BASCAP (Frontier Economics), *Estimating the Global Economic and Social Impacts of Counterfeiting and Piracy* (February 2011), estimated the value of digitally pirated music, movies and software (not losses) at $30-75 billion in 2010, and growing to $80-240 billion by 2015. Others have issued reports on the economic consequences of piracy for specific industry sectors. In many countries in this submission, rampant piracy is not only impeding the evolution of legitimate channels for distribution, but also threatens to damage permanently or displace existing and authorized distribution channels which are unable to compete with infringing business models.

### B. SUMMARY OF THE IIPA 2013 SPECIAL 301 SUBMISSION

The IIPA 2013 Special 301 Submission provides information intended to assist the U.S. government in defining plans of action for the year ahead, to reduce global piracy levels, and to open markets to U.S. works protected by copyright in the identified countries/territories. Section C of this Submission Letter provides the IIPA recommendations for the 2013 Special 301 lists. Section D summarizes 12 major cross-cutting initiatives and challenges involved in improving copyright law and enforcement and lowering market access barriers to U.S. copyrighted materials. Appendix A to the Submission includes all the country surveys. Appendix B describes IIPA members' methodologies for estimating the scope of piracy in various countries. Appendix C provides a chart of countries/territories' placement on Special 301 lists by USTR since 1989. Information about the Special 301 histories of countries/territories on which IIPA has filed in the past, whether recommended for placement on a list this year, deserving of Special Mention, or appearing on past lists, is available as an Additional Appendix on the IIPA website, at [http://www.iipa.com/pdf/2013SPECM301HISTORICALSUMMARY.pdf](http://www.iipa.com/pdf/2013SPECM301HISTORICALSUMMARY.pdf).

### Countries Deserving of Recognition for Progress Made in 2012 in Copyright Protection and Enforcement

IIPA recognizes and welcomes important steps taken by the following countries in 2012:

- **Brunei**: Law enforcement authorities continued to cooperate with rights holders, including a raid in December 2012 against a large retail chain engaged in piracy. The owner of the company was found guilty and sentenced to six weeks in jail in Brunei’s first criminal copyright case. This action followed the cleaning up of the retail market in May 2012 as a result of a Municipal Department directive to empty shelves of pirated DVDs, music and software or face closure. Notwithstanding challenges in the Internet environment, physical piracy of music is now reportedly roughly 30%, which marks a general decline. With software piracy remaining at 67% in 2011 and some remaining enforcement hurdles, Brunei will need to take steps (highlighted in previous reports), both in terms of legislative

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6. Country surveys were prepared by counsel to the IIPA, Michael Schlesinger, Amanda Wilson Denton, Steven Metalitz, and Eric Schwartz, and are based on information furnished by IIPA’s seven member associations. We thank Pamela Burchette for her contribution in preparing, producing and distributing this submission. The country reports contain information which should not be construed as providing legal advice.

7. 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 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.” Uruguay Round Agreements Act Statement of Administrative Action, reprinted in H.R. Doc. No. 103-316, vol. I, at 362 (1994). Under these criteria, these 15 countries/territories named by IIPA are particularly vulnerable.


reforms and enforcement, to continue progress. Brunei’s participation in the Trans-Pacific Partnership (TPP) negotiations signals its commitment to further enhance its copyright protection and enforcement capacity.

- **Malaysia:** In 2012, Malaysia passed major amendments to its Copyright Act, joined the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) effective December 27, 2012, and appeared on the road to address copyright protections in the digital and online environment and to protect against unlawful camcording of motion pictures effectively. These changes in Malaysia are already having a positive commercial effect on some local copyright-based businesses. Remaining concerns, including the need for sustained enforcement efforts, are discussed in greater detail in a Special Mention report appended to this Submission. Malaysia’s participation in the TPP negotiations signals its commitment to further enhance its copyright protection and enforcement capacity.

- **Philippines:** The Intellectual Property Office of the Philippines, the Optical Media Board, and the Philippine National Police have closed several once-notorious piracy markets in Metro Manila, and appear poised to make more progress in Manila and beyond. The creative and innovative approach to addressing piracy and transforming an illegal market for the long term marks a positive success story and a hopeful path forward. Certain issues remain to be addressed, which are discussed in greater detail in a Special Mention report appended to this Submission.

### C. IIPA RECOMMENDATIONS FOR THE 2013 SPECIAL 301 LISTS

This year IIPA has recommended 42 countries/territories for designation as a Priority Foreign Country, for placement on the Priority Watch List or Watch List, or as deserving of Special Mention for copyright, enforcement, and/or market access-related concerns.

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D. INITIATIVES OR CHALLENGES FOR 2013: REDUCE COPYRIGHT PIRACY, REMOVE MARKET ACCESS BARRIERS, STRENGTHEN LAWS

This Submission and its Appendices aim to define and seek implementation of solutions to significant commercial hurdles faced by the copyright industries of the U.S. The following list of cross-cutting initiatives and challenges summarizes actions governments must execute to reduce copyright piracy, open markets to legitimate U.S. copyright exports, and ensure that adequate legal structures are in place to lower piracy levels.

1. The Need for Deterrent Enforcement Responses to Copyright Piracy

Copyright piracy increasingly occurs in ways more sophisticated than the mere duplication and sale of content on physical media. Piracy also includes:

- the unauthorized use of software or other copyright materials by enterprises or governments;
- the illegal copying, uploading, downloading, making available, communicating, and streaming of copyright materials on the Internet or mobile networks, or contributing to, benefitting from, promoting, or otherwise inducing the same, including, for example, rogue sites often cloaking themselves under the guise of legitimacy with advertising and payment methods recognized by consumers as authentic;
- the illegal camcording of movies from theater screenings;
- the illegal photocopying or pirate offset printing of books;
- the illegal public performance or broadcast of audiovisual works or sound recordings; and
- hard-disk loading of software or other copyright content onto computers, laptops, tablets, phones, or other mobile devices without authorization or license.

Related to piracy are activities such as:

- the development, manufacture, or distribution of circumvention technologies, devices, or components used to access, copy, or otherwise use copyright materials protected by technological protection measures;
- the development, manufacture, or distribution of “media boxes” including “HD players,” in which multiple gigabytes of storage space can accommodate 200 high definition movies and other content, and boxes that can directly link to websites providing illegal downloads of content to the boxes or pirated movie lists for customers to pre-select for delivery on the box, e.g., through the mail or a courier service.
- the trafficking in counterfeit software packaging, labels, holograms, certificates of authenticity, or documentation; and
- the development, manufacture, or distribution of pay-TV decryption technologies, devices, or components, or the unauthorized decryption of, or line-tapping to illegally obtain access to, pay-TV signals.

Too often, whether due to lack of political will or inadequate rule of law, countries fail to address piracy effectively. The overarching objective for the copyright industries therefore remains: 1) to secure globally effective legal frameworks capable of providing deterrent enforcement against copyright piracy; and 2) to ensure that enforcement authorities robustly use these legal frameworks to combat copyright infringement. To do so, countries should:

- dedicate enforcement resources commensurate with the scale of the piracy problem, to provide for “effective action” and “remedies that constitute a deterrent” to infringement as the minimum required by the TRIPS Agreement, through civil, administrative, and criminal action, and effective adjudication in the courts;\(^{12}\)

\(^{12}\)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. Recidivism is endemic in many countries. Deterrence requires substantial prison sentences in these cases.

\(^{13}\)In many countries, specialized IP courts have been established, in addition to IP- or cybercrime-intensive investigative units with police and prosecutors. In the most successful examples, such specialized courts or divisions are starting to make a difference in their localities.
• train, build capacity, and empower enforcement authorities to investigate and prosecute copyright offenses;
• update laws and enforcement tools to meet the current piracy challenges;\(^\text{14}\)
• direct government agencies, state-owned as well as privately held enterprises, contractors, and educational institutions to use only legal software, legal copies of textbooks, educational materials and professional and scholarly publications, and other copyright materials, and to ensure their networks or computers are not used for infringing purposes;
• ratify and fully implement the WCT and the WPPT and enforce resulting prohibitions as a means of reducing piracy;
• encourage cooperation by Internet service providers (ISPs) with all content owners, including notice-and-takedown systems for the hosted environment, and effective and fair mechanisms to deal with repeat infringers in the non-hosted environment and infringements on foreign websites; and
• enact and enforce measures to make it illegal to use or attempt to use an audiovisual recording device to make or transmit a copy of a motion picture.

2. Internet Piracy

Transformative developments on the Internet and mobile (WAP, 3G, Wi-Fi) networks have created opportunities for faster, more efficient and more cost-effective distribution of information, products and services across the globe. The world boasts 2.4 billion Internet users as of June 2012, with an estimated 35% having fixed broadband,\(^\text{15}\) and 1.1 billion mobile broadband users by the end of 2011.\(^\text{16}\) This connectivity has had a positive transformative effect on many economies, but has also unfortunately led to massive infringement of music, movies, games, software, books and other reading materials, and other copyright materials. A January 2011 study by Envisional concluded that an astonishing 23.76% of all worldwide Internet traffic is copyright infringing, broken down by the following technologies: 11.4% illegal BitTorrent downloading; 5.1% illegal downloading from infringing distribution hubs; 1.4% illegal video streaming; and 5.8% other peer-to-peer (P2P) file sharing (eDonkey, gnutella) or Internet protocols, such as Usenet, that are used for file sharing.\(^\text{17}\) Research also indicates there is a correlation between addressing online piracy through legislation or shutting down a major suspected piracy service (as in the case of MegaUpload) and increases in legitimate distribution of copyright materials.\(^\text{18}\)

Although there are many commonalities, each industry sector has its own unique experience with online piracy most harmful to them:

• The motion picture industry’s distribution patterns (including theatrical, on-demand, pay-TV, home video, and legitimate online services) have been decimated by the availability of Internet downloads or streaming of their films. To give just one example, the motion picture, The Grey, which was released on January 27, 2012 in the United

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\(^\text{14}\)Piracy (both online and offline) has been taken over in many countries by organized crime syndicates, linked across national boundaries, that control large amounts of capital, and exploit complex distribution networks. The private sector does not possess the tools, nor usually the legal authority, to investigate and fight organized crime. In addition, such organized groups or other commercial pirates can become violent, and company representatives and counsel have in some countries experienced threats on their lives, physical intimidation, or attacks leading to injury when doing their jobs to investigate piracy, and this has prevented enforcement activity by the private sector in many instances. Governments can step up to this challenge, including encouraging countries by applying their organized crime laws, like Hong Kong’s Organized and Serious Crimes Ordinance and the United Kingdom’s Serious Crimes Act 2007, to bring enhanced remedies to bear against syndicate operations involved in piracy, including, inter alia, disclosure of information being used to commit piracy and seizure or freezing of assets. Since 2000, INTERPOL has recognized the need for national and international enforcement authorities to coordinate their efforts and cooperate with IP right holders to fight IP crimes including piracy.


States and Canada, was reportedly already available for illegal download on the *isoHunt* BitTorrent site the next day. By mid-afternoon on January 30, 2012, *isoHunt* itself reported that 3,000 people were downloading *The Grey*, or better said, a 1.2 gigabyte pirated version of *The Grey*.

- Online piracy is by far the greatest priority issue for the music industry, which faces a global Internet piracy problem estimated at 95%. To effectively address this problem, it is essential for governments to attack both the supply and demand sides of the piracy equation, through education, criminal and administrative actions where appropriate, a sound framework for civil actions, and legislation that creates incentives for network service providers to address the use of their networks and services for infringing purposes. Mobile device piracy (e.g., stores that offer, often as an after-service to the sale of a mobile device, unlimited unauthorized downloading of content, and the use of “apps” to illegally download content onto a mobile device) is also becoming more prominent, especially in countries with significant mobile penetration and mobile broadband.

- Online piracy of entertainment software continues to be overwhelmingly international, as reflected in ESA vendor monitoring of P2P and direct download activity. Data drawn from ESA’s online vendor monitoring of P2P activity during 2012 indicates that the vast majority of peer connections participating in the unauthorized file sharing of ESA member titles were undertaken by Internet subscribers in foreign countries. ESA vendors identified Russia, Brazil, Italy, Spain, and Ukraine as the top five leading countries in overall numbers of detected connections to select ESA member titles on public P2P networks. Other countries moving up in terms of detections compared with 2012 include India (6th place), Romania (10th place), Chile (11th place, up from 18th in 2011), Argentina (12th place, up from 21st in 2011), Turkey (13th place), and Mexico (14th place, a dramatic increase from its 28th place finish in 2011). This monitoring also highlighted that the vast majority of sites that facilitate web-based game piracy are hosted on facilities outside of the United States.

- Book and journal publishers are plagued by sites that provide and deliver unauthorized digital copies of medical and scientific journal articles on an illegal subscription basis. With the rapid adoption of electronic reading devices (e-readers) and tablets, online piracy affecting trade books (fiction and non-fiction), and academic textbooks continues to increase significantly.

- Counterfeit software products remain prevalent on certain auction and e-commerce sites, as well as on well-constructed sites and services that fool consumers, selling well-packaged but poor quality counterfeit copies of language-learning and other software.

- Internet cafés continue to provide opportunities, particularly in developing countries, for getting access to infringing software, music, motion pictures, videogames, and published materials.

IIPA’s filing and those of its members to the U.S. Trade Representative in its 2012 Special 301 Out-of-Cycle Review of Notorious Markets present non-exhaustive but illustrative lists of examples of notorious online piracy markets and services.19 Based on our filing and those of others in that docket, USTR named its list of “notorious markets” on December 13, 2012.20 Many of the online “notorious markets” listed in the IIPA filing are discussed in detail in the country reports appended to this Submission.21 These include:

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21 The online “notorious markets” list demonstrates that many bad actors are abusing various technologies – all of which have legitimate uses – in order to foster widespread copyright piracy.
• ThePirateBay.se (Sweden); Kat.ph (formerly Kickasstorrents.com); IsoHunt.com (Canada); Extratorrent.com (Ukraine); Torrentz.eu; and Rutracker.org (Russia) are examples of sites that employ or facilitate the use of the BitTorrent file sharing protocol to enable pirated content – including very large files – to be quickly located and downloaded.

• Putlocker.com (United Kingdom); Netload.in (Germany); Simdisk.co.kr (and other “webhards” in Korea); Turbobit (Germany); 4Shared.com (registered in the British Virgin Islands); Ex.ua (Ukraine); and Depositfiles are examples of “one-click hosting sites,” colloquially referred to as cyberlockers, which provide access to large libraries of infringing files.

• vk.com (vKontakte) (Russia) is a Russian social networking site that features search functionality specifically designed and operated to enable members to upload music and video files, hundreds of thousands of which contain unlicensed copyright works, which other members search and stream on computers and mobile devices.

• 1channel.ch (formerly letmewatchthis) (Estonia); Movie2k.to (Romania); Zing.vn (Vietnam); Seriesyonkis.com (Spain); Sohu/Sogou (China); Warez-bb.org (currently hosted either in Russia or hidden

22Swedish-based ThePirateBay.se is ranked as the 73rd most visited site in the world according to Alexa.com, the 14th most visited site in Sweden, and the 18th most visited site in the Philippines; it is one of the top 50 websites visited in 17 countries. ThePirateBay is a BitTorrent site with a global scope. The site remains hosted in Sweden, despite criminal convictions against the four founding individuals in April 2009 (appeal upheld in November 2010). The site has over 30 million users and access to pirated versions of the world’s most popular films and music for instant download. Right holders have turned to ISPs in other countries for cooperation in respect to enforcement, and have received some good cooperation. However, the operators of the site have practiced evasive tactics to ensure the site remains open for its illegitimate business.

23Kat.ph is currently ranked as the 119th most visited site in the world by Alexa.com, and the 30th most visited site in the Philippines.

24IsoHunt, operating out of Vancouver, Canada, is one of the largest BitTorrent sites in the world, with millions of users monthly, providing popular music and films available for instant download illegally. In December, 2009, a U.S. federal district court found IsoHunt liable for massive copyright infringement, finding that its business model “depends on massive infringing use,” and citing unrebutted evidence that 95% of the files traded through IsoHunt’s sites are likely infringing. In May 2010, the court issued an injunction that IsoHunt ignored, and criminal contempt proceedings were initiated. The website has shown only isolated signs of cooperation, and continues to operate through servers operated by Isohunt in Canada.

25Ukraine-based ExtraTorrent.com claims it is “The World’s Largest BitTorrent System,” and claims, “Any torrents for FREE download. Download music, movies, games, software, iPod, anime, porn, adult, books, pictures and other torrents.” It is particularly popular in South Asia, coming in, for example, as the 76th most visited site in all of India, according to Alexa.com.

26Torrentz.eu is ranked the 175th most popular site in the world, according to Alexa.com. The Pirate Bay was subject to criminal action and was temporarily shut down in January 2012, it is now back up and running and the criminal case has been closed without explanation. According to Alexa.com rankings, the site is the 13th most popular website in Ukraine. There are approximately 1,160,000 visitors to the site every day and approximately 386,300 new uploads every day. Notice and takedown is ineffective because within days after an infringing link is taken down, a new link with the same content reappears.

27Depotfiles.com is currently the 190th most visited site in the world, and is in the top 100 sites visited in seven countries, including Russia (65), Egypt (68), Chile (75), and Mexico (77). The domain is registered by a company in Seychelles; Alexa.com indicates the site is located in Cyprus. Depotfiles generates revenue from advertising and by offering “premium accounts.” Users are also able to pay for premium access allowing them to download files more quickly and further to download up to 250 files simultaneously. The site also offers bonus or affiliate programs rewarding users whose friends download their files. Depotfiles has been subject to legal action for infringement, but remains in operation.

28Ex.ua is the parent company of Ex.ua; it is ranked the 73rd most visited site in the world according to Alexa.com Internet traffic rankings. The site is in the top 25 most visited sites in Brazil (25), Indonesia (17), Saudi Arabia (24) and throughout the Middle East, and is very highly ranked in terms of visits in Thailand (34th most visited site), Egypt (35), and United Arab Emirates (37).

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31V.K.com (vKontakte) is currently the 25th most visited site in the world, according to Alexa.com rankings, the number one site visited in Belarus, the 2nd most visited site in Russia and Ukraine, and the 4th most visited site in Kazakhstan. It has in excess of 80 million registered users and web monitoring companies report that 35 million unique Russian users visit the site every month. The site was found civilly liable for copyright infringement in early 2012 in a case brought by a Russian record label, Gala Records, but this has had no impact on the way that vKontakte conducts business, and the site continues to enable members to infringe on a massive scale.

321channel.ch (previously Letmewatchthis) is a particularly popular linking site in Canada (62), the UK (73), Ireland (77), and Denmark (97) according to Alexa.com.

33Movie2k.to is particularly popular in Germany (20), Austria (35), Switzerland (61), and the Philippines (61).

34Zing.vn remains an extremely damaging site in Vietnam, ranking as the 6th most visited site in that country, and is often visited from South Korea and elsewhere in the Asia-Pacific, giving it a strong global ranking.

35Seriesyonkis moved up to the 49th most visited site in Spain and is strong generally (in the top 200) in many Spanish-speaking countries. It is a dedicated linking/streaming site for infringing first-run movies and television content.

36Sogou, which is the parent company of Sogou, continues to operate an unlicensed deeplinking service called “Sogou MP3” (mp3.sogou.com). According to Alexa.com rankings, Sogou is now the 9th most accessed site in China, the 54th most visited site in South Korea, the 55th most visited site in Hong Kong, and the 54th most accessed site globally; Sogou is not far behind, ranking 17th in China, 20th in South Korea, 30th in Hong Kong, and 153rd in Taiwan; it ranks 88th globally. Sogou MP3 provides users with access to deep links of music files from unauthorized sources for streaming and download. Despite court judgments against the search service in 2010, Sogou has not taken meaningful steps to remedy the infringement. Sogou has a built-in Sogou search field in a prominent position on Sogou’s
behind a proxy server); and Baixe de Tudo (Brazil), are linking sites that aggregate, organize and index links to infringing files stored on other sites (so-called deeplinking). Linking sites typically organize illegal copies by title or genre. Depending on the website, users are commonly presented with the option to either stream the content in a video-on-demand format or download a permanent copy to their computer. Coca-Cola and Samsung stopped advertising on Zing.vn in October 2012.

- Xiami (China) and Blubster (Spain), are examples of sites operating P2P file sharing services encouraging infringement, especially of music files (but increasingly these are multi-platform sites).

- Usenet.com (Germany) is an example of a “Usenet” service, but with the difference that its proprietors offer search functionality which encourages infringement and offers significant speeds of download for large files like infringing motion pictures. Even though Usenet notices result in takedown from the global usenet, infringing content remains on the “closed” Usenet system.

- Extabit.com (Netherlands) is a download hub (hosting unauthorized copyright material for download) particularly popular in Southeast Asia and South Asia. Earlier this summer, payment provider PayPal stopped handling payments for the company.

The significant challenges of online piracy require a multi-faceted approach, but some of the solutions are quite straightforward. Governments must recognize the need for proportionate and effective steps to curb online piracy, and provide adequate legal frameworks for the protection of copyright online, including: provisions in line with the two treaties adopted by the World Intellectual Property Organization (WIPO) in December 1996, the WCT and the WPPT; provisions recognizing online piracy as a form of cybercrime; and provisions that foster cooperation among the stakeholders (including ISPs) involved in the online supply chain to combat online infringements. Effective enforcement is critical to ensure the healthy development of a legitimate online market, and it must take place before it is too late to recover markets that are severely damaged by widespread and persistent piracy in all its forms. Increasingly, the role of advertising and networks in sustaining notorious piracy websites has come under scrutiny.
Some companies have made the right choice and decided to take affirmative steps to terminate such practices—at least in part. However, more often than not, such companies are entirely unaware that their advertisements appear on sites that facilitate access to infringing content. It is imperative that the ad networks that contract with site operators to feed ads on their sites make ethical business decisions. We applaud those who have already done so, and urge all the responsible participants in the online advertising ecosystem to act to ensure that such websites do not benefit from their advertising activities.

3. Enterprise (Including Government) End-User Piracy of Software and Other Copyright Materials

The unauthorized use of software within enterprises, also referred to as “enterprise end-user software piracy,” remains a highly damaging form of infringement to the software industry today. In the most typical examples, a corporate (or governmental) entity either uses pirated software exclusively, or else purchases one or a small number of licensed copies of software and installs the program on multiple computers well beyond the terms of the license. Client-server overuse, another common example of end-user piracy, occurs 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. In whatever way this piracy is carried out, it gives the enterprises involved the productivity benefits that the software provides, while foregoing the expense of licensed copies of the software, thus allowing them to enjoy an unfair commercial advantage over their competitors who pay for their software. The unfair advantage can be understood on a macroeconomic level as well, since this means countries with high piracy levels compete unfairly with countries which have lower rates. Sometimes enterprise end-user software piracy is attributable to negligence and poor software asset management (SAM) practices. In many cases, however, enterprise end-user piracy is undertaken willfully, with management fully aware and supportive of the conduct.

Adequate laws prohibiting the unauthorized use of software in a business setting must be enacted and enforced, including, in appropriate cases, through criminal prosecutions, in order to reduce piracy of software. The adoption of pre-established (statutory) damages for copyright infringement is also needed in many countries to provide predictability, encourage settlements, and provide “remedies which constitute a deterrent to further infringements,” as required by TRIPS Article 41.

Enterprise end-user software piracy by government agencies remains a serious and widespread problem. In addition, in many countries, governments are using a high volume of unlicensed software in their own operations. Since the government is often a major, and in some cases the largest, buyer of software in many countries, this has a tremendous impact on sales of legitimate software. It also undermines the credibility of government enforcement efforts against software piracy and sets a bad example for private enterprises to follow. Moreover, the use of unlicensed software creates security vulnerabilities and risks for government agencies. Government software legalization problems are documented in the accompanying reports for many countries. China and Ukraine are notable examples:

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48The Vietnam website zing.vn, a notorious marketplace for online piracy as identified by IIPA and USTR, enjoys advertising from major Fortune 500 corporations, but some have chosen to divest, a move which IIPA applauds. Chris Brummitt, APNewsBreak: Coke, Samsung Pull Vietnam Site Ads, Associated Press, October 3, 2012, at http://bigstory.ap.org/article/coke-samsung-pull-ads-vietnam-website-citing-concerns-over-unlicensed-music-downloads. In deciding to divest from Zing, Samsung said, "We highly respect and value intellectual property rights, and stand against acts of infringement, such as the unauthorized copying and distribution of copyrighted material. ... Accordingly, our advertisements on Zing.vn have been withdrawn." Coca-Cola said it had stopped advertising on the site and would “investigate their practices before making further decisions.” Other multinationals that have advertised on Zing include Canon, Yamaha, Intel, and Colgate Palmolive.

49Jonathan Taplin, Director of the USC Annenberg Innovation Lab, released the first study on Online Ad Networks’ support of the major pirate movie and music sites around the world. See USC Annenberg Innovation Lab, Annenberg Innovation Lab Research Study Demonstrates Relationship Between Online Advertising & Pirated Film, Music and Video Content, January 3, 2013, at http://www.annenberglab.com/adminfiles/files/USCAnnenbergLab_AdReport_Jan2013.pdf. In part, the data on ad sites of infringing sites was compiled by reviewing Google’s list of sites which, anecdotally, were the subject of the most takedown requests by stakeholders using its notice and takedown protocol. Data regarding those sites can be found at http://www.google.com/trajectory/reports/copyright/domains/?r=last-month.

50For example, China’s 77% PC software piracy rate means that Chinese enterprises competing with U.S. firms pay on average for just over one out of five copies of software they use, while their U.S. counterparts (the US has a 19% PC software piracy rate) pay on average for more than four out of five copies.

51TRIPS Art. 61 requires that this remedy be available against corporate end-user piracy.

52The 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 can avail themselves of statutory damages.
• **China:** The Chinese government has made numerous bilateral commitments to the U.S. and issued directives to ensure legal software use in government agencies at all levels (central, provincial, municipal, county). This has led to incremental progress in terms of software sales to the government. We urge the Chinese government to build on these initial efforts and implement a comprehensive legalization program for government agencies that encompasses all types of software and utilizes software asset management best practices.

• **Ukraine:** The Ukrainian government has also made bilateral commitments to the United States and issued directives to combat unlicensed software use in the government but to date has taken woefully inadequate steps toward this result. This is one reason IIPA has recommended designation of Ukraine as a Priority Foreign Country.

Government software legalization is also a problem in countries not covered by the IIPA Special 301 report. For example, in Korea, the government agreed to specific obligations on government software legalization in the Korea-U.S. Free Trade Agreement (KORUS), yet as noted in a later section, there remains a significant problem with particular Korean government ministries not taking steps to resolve the issue of substantial unlicensed software use.

The principal way to address unlicensed software use in the government is through comprehensive government software legalization programs that utilize software asset management best practices. In countries having significant state-owned enterprise sectors (China being just one example), this problem is compounded. Therefore, it is also critical that governments vigorously pursue legalization of software within state-owned enterprises as well. Governments should also take steps to ensure that businesses that provide goods and services under government contracts do not use unlicensed software.

End-user piracy is not limited to software but affects other copyright sectors as well. For example, in some government, school and university facilities, photocopy machines are routinely used for commercial-scale book piracy. Use of networks, computers, or other equipment owned by a government or public institution to carry out infringement is particularly objectionable. Governments have an opportunity and responsibility to engage in best practices with respect to the handling of intellectual property issues in the operation of government services, and they should be encouraged to lead by example.

4. **Unauthorized Loading onto PCs (Hard-Disk Loading), Mobile Devices (Mobile Device Piracy) and “Media Boxes”**

Not all retail piracy takes place at the point of sale of illegal merchandise. One example is “hard-disk loading” performed 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. A similar problem involves mobile devices. A cottage industry has emerged in which pirates operating from stalls or kiosks, or masquerading as “repair” shops, offer (either at the point of sale of the mobile device, or afterwards) the illicit downloading onto any device of virtually any kind of copyrighted material.

Another relatively recent phenomenon involves the manufacture, distribution, and use of “media boxes” which facilitate massive infringement. These media boxes are generally manufactured in China and exported to overseas markets, particularly throughout Asia. These media boxes can be pre-loaded with 200 HD motion pictures prior to shipment, loaded upon delivery, or plugged directly into Internet-enabled TVs, facilitating easy access to remote online sources of unauthorized entertainment content including music, music videos, karaoke, movies, TV dramas, and other creative materials. Such media boxes are available in China, Malaysia, Singapore, and Taiwan. Enforcement authorities must take effective action against these forms of piracy or losses will mount out of control.

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53 Mobile penetration is over 100% in 97 countries, and had reached 70% in the developing world, according to International Telecommunications Union (ITU), Newsroom • ITU StatShot, August 7, 2011, at www.itu.int/net/pressoffice/stats/index.aspx?lang=en.

54 Cell phones, mp3 players, external hard disks, thumb drives, flash drives, or USB drives are all illegally loaded in this fashion.
5. **Circumvention of Technological Protection Measures (TPMs)**

Today, more consumers enjoy authorized access to more copyright works in more diverse ways, and at more affordable price points, than ever before. A major contributor to this progress is the widespread use of technological protection measures (TPMs) to control and manage access to copyright works. Myriad innovative products and services are currently made available in connection with works protected by TPMs, and new business models that depend on such controls are emerging and being extended to new markets constantly. TPMs also ensure that works made available in the digital and online environments are not easily stolen. For example, game consoles contain TPMs so that infringing copies of games cannot be played. DVDs are protected by “content scramble system” (CSS) to prevent second-generation copying and subsequent distribution or play, directly or over the Internet. Pay-TV, premium cable and satellite services, and Internet services providing legitimate downloads or streaming of motion pictures similarly employ access and copy controls. Many software packages are licensed with some type of technological protection measure (encryption, passwords, registration numbers). EBooks employ access and copy controls as well.

Unfortunately, just as content owners would use TPMs that play an increasingly large role in the dissemination of creative content, or take such self-help measures to protect their content in the face of enormous technological challenges, there are those who build their entire business models around providing devices, tools or technologies to fill demand for gaining unlawful access to the content or copying it. The “mod chip,”55 “game copier,”56 and software and technologies used for “soft modding” facilitate piracy on game console platforms and require strong legal measures and enforcement to make space for the sale of legitimate games.

While implementation of TPMs protections has given rise in those countries properly implementing them to effective enforcement actions against distributors of unlawful circumvention technologies, these efforts are critically undermined by countries that have yet to implement or do so adequately. Countries that lack TPM provisions not only fail to afford domestic protections for legitimate online business models, but also serve as a source of circumvention devices for consumers who live in countries where such devices and technologies are rightly prohibited.

6. **Illegal Camcording of Theatrical Motion Pictures**

One of the greatest concerns to the motion picture industry involves illegal recordings of movies from theaters, especially immediately after a title’s theatrical exhibition window opens. An unauthorized recording may include a video capture, an audio capture, or both. Approximately 90% of newly released movies that are pirated can be traced to thieves who use a digital recording device in a movie theater to steal the audiovisual work (whether image or sound or both) from the theater screen. The increase in the severity of this problem in recent years tracks the development of camcorder technology that makes detection difficult and copies nearly perfect. All it takes is one camcorder copy to trigger the mass reproduction and distribution of millions of illegal Internet downloads and bootlegs in global street markets just hours after a film’s theatrical release and well before it becomes available for legal home entertainment rental or purchase from legitimate suppliers.57

A multifaceted approach is needed including: (1) educating the public about the problems posed to businesses and the consumer by unauthorized camcording; (2) working with the private sector to identify and prevent unauthorized camcording in cinemas; and (3) developing and implementing legal measures to effectively deter unauthorized camcording. In 2012, MPAA identified 791 total illegal recordings of its member company titles from cinemas around the world, including 280 video captures and 511 audio captures. This number does not include the numerous independent or local country films illegally camcorded, and these producers also suffer gravely from illegal camcording.

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55There 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.
56“Game copier” devices also bypass TPMs to allow for uploading, copying, and downloading of games for handheld platforms.
57Independent film producers who coordinate release patterns with dozens of national distributors may be especially vulnerable to this type of piracy.
Anti-camcording legislation—outlawing the use of an audiovisual recording device to make or attempt to make a copy of a motion picture in a theater, or to distribute or transmit such a copy—is critical to stopping the rapid increase in camcording, and effective anti-camcording laws have now been adopted in Canada, Japan, Korea, Malaysia, the Philippines, and the United States. The 21 members of the Asia-Pacific Economic Cooperation (APEC) grouping committed, in November 2011, to “developing and implementing legal measures to effectively deter unauthorized camcording,” as well as working with the private sector and educating the public.\textsuperscript{58} It is clear that if laws creating a separate offense for camcording are not adopted and deterrent penalties are not applied, this crippling source of piracy will continue, migrating to territories where enforcement is weak.

7. Piracy of Books and Journals

The book publishing industry continues to be plagued by large scale unauthorized photocopying of academic, scientific, technical and medical books, principally on and around university campuses,\textsuperscript{59} sophisticated infringing offset print versions of books (essentially akin to counterfeiting); and unauthorized translations of popular books.\textsuperscript{60} Photocopy piracy in most countries involves unauthorized commercial copying of entire textbooks by copy shops on and around university campuses, often undertaken on a “copy-on-demand” basis to avoid stockpiling. Book pirates have shifted tactics and are increasingly electronically storing digitized files of books (academic or otherwise) and fulfilling customer requests on a “print-to-order” basis. Authorities need to recognize this shifting pattern and tailor enforcement efforts accordingly (e.g., by including cyber forensics in their investigations). 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, printing more copies of a title than permitted by their license. While many pirated copies are rife with errors or obviously of inferior quality, in some cases sophisticated scanning and printing technologies result in extremely high-quality pirate editions of books, making it difficult for users to distinguish between legitimate and pirate products.

Book and journal piracy calls for aggressive action by law enforcement authorities. Universities and educational institutions (especially those which are state-funded or operated) should do more to promote and adopt appropriate use and copyright policies, in particular the use of legitimate books and journal publications. IIPA urges the U.S. government to ensure that such acts of piracy are fully covered in all bilateral, regional, and multilateral engagements.

8. Optical Disc and Game Cartridge Piracy

While piracy is migrating to the online space for most of the content industries, physical piracy, including optical disc (OD) products,\textsuperscript{61} and game cartridges, continues to inflict serious losses, especially in markets with low Internet penetration, or where pirate console- or cartridge-based videogames are popular. In response, programs such as regularized surprise production plant inspections and exemplar (sample) disc collection should continue, and where unlicensed illegal activity is detected, copyright laws and specialized OD laws or regulations should be enforced. Similarly, unauthorized factory production of entertainment software in cartridge format persists in China, for export

\textsuperscript{58} Effective Practices for Addressing Unauthorized Camcording, 2011/AMM/014app05, adopted at 23rd APEC Ministerial Meeting, Hawaii, United States, November 11, 2011. APEC members include Australia; Brunei Darussalam; Canada; Chile; People’s Republic of China; Hong Kong, China; Indonesia; Japan; Republic of Korea; Malaysia; Mexico; New Zealand; Papua New Guinea; Peru; The Philippines; Russia; Singapore; Chinese Taipei; Thailand; The United States; and Vietnam. Asia-Pacific Economic Cooperation, Member Economies, at \url{http://www.apec.org/About-Us/About-APEC/Member-Economies.aspx}.

\textsuperscript{59} Pirate photocopying takes place in a variety of venues, including commercial photocopy shops located on the perimeters of university campuses and in popular shopping malls, at on-campus copy facilities located in academic buildings, libraries and student unions, and in wholly illicit operations contained in residential areas or other underground establishments. Some of these operations are highly organized and networked, and technological advances are making the problem worse, since the shift from physical copy machines to electronic files means shops can print infringing books on demand. Publishers also suffer from unauthorized institutional or business-related photocopying for commercial research (often accompanied by failure to compensate right holders through collective means or otherwise for copies made).

\textsuperscript{60} This problem affects books and journals of all kinds and genres. 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.

\textsuperscript{61} OD 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 high-definition formats such as Blu-ray.
globally. Without sustained enforcement actions against these factories, and the prosecution of their owners and financiers, there will be little progress in curtailing this piracy problem.

In recent years, factory production of optical discs has waned as technological developments have meant fewer large-scale factories, replaced by smaller, more agile operations that “burn” music, books and reference publications, games, movies, and business software onto recordable media. Nonetheless, high-quality counterfeit DVDs, Blu-ray discs, and elaborate box sets continue to be manufactured in China and find markets in Southeast Asia, with unlikely entry points such as into Thailand from Cambodia and even Myanmar. CD-R or DVD-R “stack” bays (of ten or twenty discs when “daisy-chained”) are lightweight and can produce multiple discs in minutes. They are being set up anywhere, including in factories but also in shops where vendors can “burn to order,” blurring any distinction between retail piracy and pirate production.

9. Pay-TV Piracy and Signal Theft

The unauthorized broadcast, cablecast or satellite delivery of motion pictures, television content, and music and sound recordings, costs right holders dearly. Three key problems are identified by the industry. The first is unauthorized cable access, when individuals or groups illicitly tap into the lines of legitimate cable TV companies. This occurs mostly in major metropolitan areas, and may use circumvention or hacking techniques, codes, or devices. The second involves unauthorized operators who take broadcast signals by unauthorized means (hacked set-top boxes or “overspill” boxes from neighboring countries), replicate the signal and sell it to hundreds or even thousands of consumers, without paying for any of the content, a problem of growing severity in several countries in the Caribbean region. The third is subscriber under-declaration, when cable companies do not pay for all the channels they use, or all the subscribers they serve.

Regulations imposing licensing on distributors of signals have been effective in some countries in weeding out unlicensed television distributors and consolidating the market into legitimate options (Lebanon is one example of this). In countries still experiencing major pay-TV theft, governments must take active steps to curtail it. Pay-TV signals are almost always encrypted; so in addition to strong copyright laws securing all the necessary exclusive rights, signal theft laws should prohibit the decryption of encrypted cable or satellite signals, as well as the onward use of the signals already decrypted (whether lawfully or not), without the authorization of the right holder of the content of the signal (and, if any, of the signal itself).

10. Implementation of IPR Provisions in Trade Agreements

The negotiation of multilateral trade agreements (such as the WTO TRIPS Agreement), as well as regional and bilateral free trade agreements (FTAs) or Trade Promotion Agreements (TPAs) over the past two decades, has proven to be of great value to the U.S. economy, and has included the introduction and implementation of enforceable obligations for our trading partners to modernize their copyright law regimes and improve enforcement procedures. These 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 all parties. In addition to TRIPS implementation, which has been completed in virtually all countries/territories that are members of the WTO, at the time of this submission, FTAs with 20 countries had entered into force. On March 15, 2012, the U.S.-Korea FTA (KORUS) entered into force. On May 15, 2012, the U.S.-Colombia TPA entered into force. On October 31, 2012, the U.S.-Panama FTA entered into force.

The pending negotiations for a TPP FTA present an opportunity to expand the benefits of existing FTAs to a broader range of markets around the Pacific Rim. The governments of Canada and Mexico officially joined the TPP negotiations during the 15th round in Auckland, New Zealand in December 2012, bringing the total number of countries
negotiating the agreement to eleven. IIPA members believe that the TPP IP text should use the now-in-force KORUS as a baseline. Enhancement of copyright standards and enforcement consistent and co-extensive with those agreed to by current FTA partners, Australia, Singapore, Chile and Peru, and an expansion of these protections to other TPP negotiating countries, will contribute to U.S. job growth, increased exports, and economic recovery in line with the Administration’s goals.

IIPA takes notice of the following countries for issues related to their bilateral, regional, or multilateral obligations in the area of intellectual property rights.

- **Colombia:** On May 15, 2012, the United States-Colombia TPA went into force. This agreement contains a comprehensive chapter on intellectual property rights that will raise the level of copyright law and enforcement obligations in Colombia to the benefit of both Colombian and U.S. creators. Colombia should be encouraged to take effective steps in 2013 to implement its TPA obligations and to increase the focus of law enforcement officials on needed anti-piracy actions on the streets of Colombia and online.

- **Korea:** IIPA members were strong supporters of KORUS due to the strong commitments made in the IP chapter on which industry believes the U.S. government can further build in the TPP and other new, 21st century trade agreements. One important aspect of the IP chapter was the commitment Korea made to ensure that its central government agencies would utilize legitimate software. However, software industry representatives have raised concerns about significant under-licensing of software by certain ministries, and the Korean government has to date not taken sufficient action in response to these concerns. For example, auditing appears not to follow best practices in many circumstances and to be nonexistent in others. Korea also fails to provide adequate funding for at least some Korean agencies to purchase the software they actually use. U.S. industry has tried to work with individual ministries, such as Korea’s Ministry of Defense, to address problems of substantial under-licensing, but so far without success, despite Korea’s KORUS obligations and the value of eliminating piracy to advance public security. IIPA will be closely monitoring this issue in Korea and will consult closely with the US government on means to address it. In addition, industry looks forward to working with the U.S. government to ensure that trade agreement obligations related to government software legalization are further strengthened, in the TPP and other future trade agreements, to give industry enhanced protection and recourse to deal with shortfalls in meeting these obligations.

- **Peru:** The United States-Peru Trade Promotion Agreement (PTPA) entered into force on February 1, 2008. Peru was afforded transition periods to come into compliance with some provisions of the PTPA, but those transition periods have expired as to Peru’s outstanding obligation to provide statutory damages (which expired September 1, 2009, per TPA Article 16.11.8) and obligations related to service provider liability (which expired February 1, 2009, per TPA Article 16.11.29). Meanwhile, Peru now has the worst problem of unauthorized camcording of U.S. motion pictures in all of Latin America. IIPA appreciates the cooperation of the Peruvian government in trying to address the camcording problem, and calls upon the government to work to effectuate changes to fully implement its PTPA obligations.

- **Singapore:** While the copyright law and enforcement provisions of Singapore’s FTA with the United States, which came into force in 2005, have been largely successful, several significant shortfalls remain. Online piracy continues to threaten Singapore’s market for copyright works, especially music, movies, and television programs. The government has thus far refused to bring public prosecutions of online music pirates or to bring Internet service providers into a cooperative stance with right holders to combat online piracy. Both these shortfalls, in addition to

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62TPP negotiating countries now include Australia, Brunei Darussalam, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam.

63Article 16.9.21.b of the FTA provides that “Each Party shall ensure that non-private criminal actions are the primary means by which it ensures the effective enforcement of its criminal law against willful copyright or related rights piracy. In addition, each Party shall ensure that its competent authorities bring criminal actions, as necessary, to act as a deterrent to further infringements.”
some others (e.g., Singapore law still makes no provision for agents or authorized representatives acting on behalf of copyright owners to apply for pre-trial discovery in order to identify online copyright infringers) raise FTA compliance issues. Singapore should also join the global trend and outlaw camcording in its cinemas, before a festering problem becomes more serious, and should consider upgrading to deterrent levels its criminal penalties for trafficking in circumvention devices and services.

• **Antigua and Barbuda:** In January 2013, the government of Antigua and Barbuda sought and obtained from the World Trade Organization (WTO) approval to cross-retaliate against U.S. intellectual property rights worth $21 million a year as a remedy in an unrelated trade dispute. IIPA is of the firm view that suspending intellectual property rights is not the right solution, and that state-sanctioned theft is an affront to any society. Should the government of Antigua and Barbuda determine to move forward in this manner, it would be in violation of its obligations under international instruments not administered by the WTO (e.g., the Berne Convention), and would – by definition – fail to provide adequate and effective IPR protection as required under U.S. trade laws governing unilaterally-granted trade benefits such as CBI. In the event that Antigua and Barbuda proceeds in this manner, we believe that the U.S. should take appropriate, immediate and robust action to uphold U.S. trade laws.

11. **Implementation of the WCT and WPPT, and Ongoing Work at WIPO to Promote Robust Intellectual Property Protection**

The WCT and WPPT, in force since 2002, provide a basic legal framework for the protection of online copyright. The WCT now has 90 adherents, while the WPPT now has 91 adherents. 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 for the online world, and prohibiting through civil and criminal remedies the production of or trafficking in tools that circumvent technological protection measures used by right holders to prevent access to content or the exercise of exclusive rights. A number of key trading partners, including New Zealand and Israel among developed countries, and Thailand among developing countries, have not yet either ratified or implemented these treaties. The United States, 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.\(^6\)

One of the key aspects of WCT and WPPT implementation involves adequate and effective protection against the circumvention of TPMs. In order for such protection to be “adequate and effective,” as required by the WIPO treaties, countries must address acts of circumvention, trafficking in circumvention devices, tools, and technologies, and the provision of circumvention services (such as the installing of “mod chips” into game consoles). Countries must also ensure that both TPMs that control access to content as well as TPMs that prevent the unauthorized copying or other exercise of exclusive rights are covered. Exceptions to protection in this area must be narrowly tailored to ensure that prohibitions on circumvention are not rendered ineffective. Civil and criminal (and where available, administrative) remedies should be provided.

In the more than 16 years since the adoption of the WCT and WPPT at WIPO in Geneva, WIPO has taken some steps to encourage its members to join and implement the treaties, but more should be done, particularly in light of the conclusion of a Diplomatic Conference on the adoption in June 2012 of the Beijing Treaty on Audiovisual Performances (BTAP). The U.S. government should now take all steps to urge WIPO to encourage its members to adopt the WCT and WPPT as essential forerunners to the newly concluded BTAP. WIPO should also be encouraged to continue its important work in the Copyright Infrastructure Division to measure the contribution of copyright industries to national economies, and in addition, to commence measuring the impact of piracy in WIPO members.

12. Market Access Barriers

The U.S. copyright industries suffer from myriad market access barriers, investment barriers, and discriminatory treatment that make it difficult to compete in some foreign markets on a level playing field. All efforts to crack down on piracy will be unavailing if legitimate products and services cannot be brought into a market to meet consumer demand. Thus, the reduction of market access impediments is a key component of ongoing efforts to combat piracy. Among other forms, the market access barriers include:

- ownership and investment restrictions on copyright-related businesses;
- discriminatory or onerous content review/censorship systems;\textsuperscript{65}
- discriminatory restrictions including on the ability to fully engage in the development, creation, production, distribution, promotion, and publication of copyright materials;
- the maintenance of quotas including screen time and broadcast quotas or complete bans on broadcast of foreign programming or advertising;
- periods during which governments prevent U.S. producers from opening their films, or onerous restrictions on the window for theatrical distribution (including booking competing motion pictures simultaneously or unfairly shortening the run of a theatrical motion picture);
- local print requirements;
- onerous import duties or the improper assessment of duties on an \textit{ad valorem} basis;\textsuperscript{66} and
- government procurement preferences for domestic products or those with locally-owned or locally-developed IP.\textsuperscript{67}

Whatever form they take, whenever such market access restrictions impede the entry of legitimate products, they make it easier for pirate operations to fill the void, become de facto “exclusive” distributors of the products, and cement strong loyalties with their consumer base that make them even harder to dislodge.

U.S. officials should continue to strive to open markets and to eliminate or phase out market access barriers including those identified in this year’s IIPA submission.

\textbf{E. CONCLUSION}

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 high levels of protection for copyright, more effective policies and tools to enforce that protection, and freer, more open markets. To meet the constantly evolving threats to copyright worldwide, our country should remain committed to a flexible and innovative response to this threat. Special 301 remains one cornerstone of the U.S. response, and we urge USTR and the Administration to use Special 301 and other trade tools available to encourage the countries identified in our recommendations this year to make the political commitments, followed by the necessary

\textsuperscript{65}In China, for example, music and entertainment software companies continue to face lengthy delays in the censorship approval process, wiping out the very short viable window for legitimate distribution of their music and videogame products. Further, while piracy enters freely in these markets, countries like China and Vietnam impose content review processes which clear the way for further piracy and, adding insult to injury, are discriminatory to foreign content, further skewing the playing field.

\textsuperscript{66}Ad \textit{valorem} duties are based on potential royalties generated from a film rather than the accepted practice of basing duties on the value of the carrier medium (i.e., the physical materials which are being imported). This is a growing, dangerous, and very costly phenomenon to the film industry. The International Chamber of Commerce recognized in a policy statement, \textit{The Impact of Customs Duties on Trade in Intellectual Property and Services}, that such a practice distorts markets, increases costs for suppliers and buyers, depresses commercial activity, and impedes the availability of intellectual property in the country imposing the tariffs.

\textsuperscript{67}As an example, over the past several years, China has been rolling out a series of policies aimed at promoting “indigenous innovation.” The apparent goal of many of these policies is to develop national champions by discriminating against foreign companies and compelling transfers of technology. These include policies providing government procurement preferences for goods or services with locally-owned or locally-developed IP. The Chinese government has made a series of commitments in bilateral negotiations with the United States, including at the U.S.-China Joint Commission on Commerce and Trade (JCCT) and the U.S.-China Strategic and Economic Dialogue (S&ED), to eliminate such policies that link government procurement to where IP is owned and developed.
actions, to bring real commercial gains to the United States through strengthened copyright and enforcement regimes worldwide.

We look forward to our continued work with USTR and other U.S. agencies on meeting the goals identified in this Submission.

Respectfully submitted,

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