February 6, 2015

Submitted via regulations.gov Docket No. USTR–2014–0025
Susan F. Wilson
Director for Intellectual Property and Innovation
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508


Dear Ms. Wilson:

The International Intellectual Property Alliance (IIPA) provides this response to the above-captioned Federal Register Notice requesting written submissions from the public concerning intellectual property protection and market access regimes in U.S. trading partners, in the “Special 301” review.¹

The ultimate goal of Special 301 is not to catalogue trade barriers as such, but rather to enhance the ability of U.S. creators to reach foreign markets through legitimate channels in competitive and growing marketplaces, physical and online. Many of the changes needed in foreign markets in order to advance this goal – higher standards of copyright protection, efficient copyright enforcement, sound legal structures for licensing, and elimination of market access barriers – also help our trading partners to develop, nurture, and enjoy the benefits of their own local cultural and creative output. The real beneficiary is the consumer, who will have greater access, through more avenues than ever before, to increasingly diverse creative output – the literary works, music, movies and TV programming, video games, software, and other products and services that depend on or are protected by copyright.

With this broad vision in mind, IIPA has participated in every Special 301 review since the 1988 Trade Act created this process. This year, as in the past reviews, we provide public comments on acts, practices and policies of our key trading partners that present obstacles to achieving this goal. Over the years, we have witnessed enormous opportunities afforded by changing market conditions and new technologies, with huge potential to expand economic growth and cultural activity in key foreign markets. Unfortunately, much of this potential for economic and creative growth has gone unrealized due to the impacts of inadequate copyright protection and market access barriers. IIPA’s recommendations therefore also discuss emerging best practices to address these issues.

This year’s IIPA Submission focuses on markets where IIPA members are actively engaged, and/or where we believe active engagement by the U.S. government will reap positive results for creators and the industries that support them. IIPA identifies opportunities and challenges facing creative industries in these key foreign markets, which, if met and addressed, will promote job creation and economic growth, increased foreign direct investment, increased exports, and other benefits flowing from adequate intellectual property protection and effective enforcement systems. We

¹The Federal Register notice invites “written submissions from the public concerning foreign 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.” IIPA will file under separate cover a Notice of Intent to Testify at the February 24, 2015 public hearing on Special 301.
applaud USTR for making the Special 301 process a positive catalyst for change to address our creative industries' challenges in key markets around the world.

The Special 301 process has yielded significant progress in a number of countries, which is clearly documented by the Special 301 historical record. For instance, Korea, which appeared on the Priority Watch List in the original 1989 USTR “Fact Sheet,” and which figured in USTR lists for the next 19 years, no longer appears on any Special 301 list. This is because Korea has transformed its copyright law and enforcement regime into one which now serves as a model for Asia. There are many other countries in which, although some problems remain, there have been similar improvements in their intellectual property regimes and/or market access rules, so that they no longer appear on a Special 301 list. Such countries include: Australia, Bahrain, Brunei, Cyprus, Czech Republic, Denmark, Germany, Hungary, Ireland, Japan, Jordan, Latvia, Lithuania, Macau, Malaysia, New Zealand, Oman, the Philippines, Poland, Qatar, Singapore, and Slovakia.

In this year's IIPA Submission (which includes this letter and appendices), IIPA recommends that 15 countries appear on the 2015 Special 301 list, that two markets be subject to an Out-of-Cycle Review (OCR), and that the U.S. commit to “special engagement” with two additional countries. These recommendations can be summarized in the following chart:

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<tr>
<th>IIPA 2015 Special 301 Recommendations</th>
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<tr>
<td><strong>No Change</strong></td>
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<tr>
<td>Ukraine</td>
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<tr>
<td>China (306)²</td>
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<tr>
<td>Indonesia (OCR)</td>
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<td>Russia</td>
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<td>Thailand</td>
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While IIPA does not provide a separate report on Hong Kong this year, we recommend an Out-of-Cycle Review (OCR) to monitor whether Hong Kong has enacted long-overdue copyright modernization legislation for the digital networked environment, while rejecting proposals to insert a broad and ill-defined exception to the exclusive rights of copyright owners, modeled on the user-generated content exception recently adopted in Canada. In the case of certain other countries, including Argentina, Costa Rica, Ecuador, Peru, Venezuela, and Turkey, which still appear on USTR’s 2014 Special 301 list, IIPA is not providing any new information in this filing. This reflects the fact that IIPA is not aware of any information that would have a bearing on such countries’ status under Special 301, and is not aware of information to indicate any substantial change in the problems previously identified. Thus, we do not propose any change in their status.

A. ABOUT IIPA; IIPA’S INTEREST IN SPECIAL 301

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. Members of the IIPA include Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesa.org), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association of America (www.mpaa.org), and Recording Industry Association of America (www.riaa.com). IIPA's five member associations represent over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world. These include entertainment software including interactive video games for consoles, handheld devices, personal computers and the Internet, and

²The notation “306” refers to monitoring of a country’s compliance with trade agreements with the U.S. under Section 306 of the Trade Act.
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.

In December 2014, IIPA released the latest update of its comprehensive economic report, Copyright Industries in the U.S. Economy: The 2014 Report, prepared by Stephen E. Siwek of Economists Inc. According to the report, the “core” copyright industries in the U.S. generated over $1.1 trillion dollars of economic output in 2013, accounting for 6.71% of the entire economy. The core copyright industries also employed nearly 5.5 million workers in 2013, accounting for over 4% of the entire U.S. workforce, and nearly 5% of total private employment in the U.S. These workers earn on average 34% higher wages than other U.S. employees. The core copyright industries also outpaced the U.S. economy, growing at 3.9% between 2009 and 2013, while the U.S. economy grew by 2.25%. When factoring in other industries that contribute to the copyright economy (which together make up the “total” copyright industries), the numbers are even more compelling. Finally, the report highlights the positive contribution of selected copyright sectors to the U.S. overall trade balance. In 2013, these sectors contributed $156 billion in foreign sales and exports, exceeding that of many other industry sectors, including: chemicals, aerospace products and parts, agriculture, and pharmaceuticals and medicines.\(^3\) Studies such as this amply demonstrate the contribution of creators, and the copyright-based industries that support them, to the economy. They also highlight what is at stake if those creators and industries – which rely on high standards levels of copyright protection and open markets – have to face the additional hurdles and costs associated with obstacles such as copyright piracy and market access or discriminatory trade barriers.\(^4\)

Content industries and their legitimate distributors continue to explore new modalities of delivering content to consumers, launching new legitimate businesses, services, or apps, to make movies, music, video games, and published materials available to more people in more countries in more diversified and flexible ways than ever before.\(^5\) Unfortunately these innovative new services are confronted with unfair competition from those who engage in piracy as a high-profit, low risk enterprise, unencumbered by the considerable costs associated with either producing copyrighted works, obtaining rights to use them, or protecting them against theft. Market access or discriminatory barriers imposed by governments further harm creators and discourage investment in legitimate services.\(^6\) In this way, piracy and market

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access barriers not only damage existing authorized distribution channels, but also impede the evolution of new legitimate channels.

B. SUMMARY OF THE IIPA 2015 SPECIAL 301 SUBMISSION

The IIPA 2015 Special 301 Submission provides information intended to assist the U.S. government in defining plans of action for the year ahead to improve copyright protection and open markets to U.S. materials protected by copyright in key countries. Section C follows the lead of USTR in providing a section on “Developments in Intellectual Property Rights Protection and Enforcement,” which discusses broad global trends and issues in IPR protection and enforcement. Section C is divided into the following sections:

1. Positive Developments
2. Key Challenges for Copyright Industries
3. Implementation of Treaties and Trade Agreements
4. Market Access Barriers

Within these sections, IIPA takes the opportunity to comment on the acts, policies, or practices in some countries not covered in a full country survey but deserving of mention to illustrate a specific concern. Appendix A to the Submission includes all the country surveys. Appendix B to the Submission provides a chart of countries/territories’ placement on Special 301 lists by USTR since 1989.

C. DEVELOPMENTS IN INTELLECTUAL PROPERTY RIGHTS PROTECTION AND ENFORCEMENT

1. Positive Developments

IIPA notes positive developments in the following markets:

- **China** – While China remains one of the most difficult markets in the world for creators and copyright holders, there have been several positive actions over the past year or so that warrant mention. Major online piracy services such as QVOD, Baidu, SiluHD, HDStar, DY161, and FunShion, were subject to deterrent enforcement actions in Chinese courts. The first criminal conviction was obtained against a defendant engaging in, and profiting from, illegal camcording of a movie in an exhibition facility. Market opening measures (highlighted in greater detail in the country report in Appendix A) suggest that China’s market is becoming more accessible to U.S. entities. There remain concerns over lack of full market access for many sectors, and a new provision imposing onerous censorship and quotas for the online distribution of audiovisual materials raises further concerns. Much more needs to be done to allow U.S. copyright industries to compete in an open and transparent manner in China, and to ensure that actions taken by the Chinese government translate into legitimate sales. For instance, Chinese per capita spending on music from legitimate sources remains among the lowest in the world, reducing that country’s music market to a small fraction of what it should be.

- **The Philippines** – The Philippines, under the leadership of outgoing Intellectual Property Office (IPO PHL) Director General Ricardo Blancoflor and Optical Media Board (OMB) head Ronnie Ricketts, has found innovative ways to improve copyright protection in the archipelago. With limited resources, the IPO PHL and OMB have sought ways...
to eradicate hard goods piracy in malls. Strong copyright provisions were added to Philippine law to address third party liability and provide IPO PHL with enhanced enforcement authority. A law outlawing camcording resulted in a reduction of detections. While concerns remain, including unauthorized on-demand photocopying and the use of social media platforms to sell unauthorized books, mobile device "repair" shops doubling as piracy portals, and weak provisions on technological protection measures (TPMs), Philippine aspirations to join the Trans-Pacific Partnership (TPP) no longer appear as unrealistic as in the past.

- **Spain** – IIPA is encouraged that Spanish policymakers have adopted important reforms to the Intellectual Property Law and Civil Procedure Law in 2014, which could allow for meaningful action against online piracy. The success of these amendments will rest on the will of the government to vigorously enforce its provisions, the interpretation of the courts and administrative bodies charged with copyright enforcement, and the strength of further amendments to the Criminal Code that Spain’s Congress could adopt as early as mid-2015. The copyright industries seek evidence that cases before the Spanish Copyright Commission and civil and criminal actions can proceed effectively against infringing linking sites, peer-to-peer piracy, and circumvention devices. Spain’s Internet piracy problem remains one of the most acute in the world, and decimates the market for local and international music, independent films and their authorized distributors, and other copyright materials in the country.

2. **Key Challenges for Copyright Industries**

   In this section we summarize some of the overarching trends and challenges confronting the U.S. copyright industries seeking to compete in overseas markets.

   a. **The Need for Deterrent Enforcement Responses to Copyright Infringement**

   As an overarching objective for the copyright industries, IIPA supports activities to secure globally effective legal frameworks capable of providing deterrent enforcement against copyright infringement, and to ensure that enforcement authorities employ these legal frameworks to combat such infringement. To advance these goals, countries should —

   — dedicate enforcement resources (and provide training and capacity building) commensurate with the scale of the piracy problem;

   — provide for "effective action" and "remedies that constitute a deterrent" to infringement, as the minimum required by the World Trade Organization’s TRIPS Agreement, through civil, administrative, and law enforcement channels, and effective adjudication in the courts;

   — update laws and enforcement tools to meet current infringement challenges, including organized crime and cybercrime syndicates; and

   — implement (and accede to) the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

   b. **Internet and Mobile Network Piracy**

   IIPA members’ companies are leaders in the new online and mobile economy. The remarkable growth of new fully licensed and legitimate channels for consumers around the world to access creative content in a variety of new and innovative ways is one of the most encouraging trends in global markets for copyright material. Unfortunately, widespread Internet and mobile network piracy, often by services that profit from enabling others to infringe copyright, hampers the growth of legitimate services in global markets, and limits their market opportunities.9 Online and mobile

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9 According to a NetNames study in late 2013, an astonishing 23.8% of all Internet bandwidth in North America, Europe, and the Asia-Pacific is devoted to copyright infringement. David Price, *Sizing the Piracy Universe*, NetNames, September 2013 (available to registered users). A 2011 study by Envisional concluded that nearly half of all infringing activity occurred using BitTorrent, with the rest divided among cyberlockers, peer-to-peer (P2P) downloading and uploading, forums or bulletin boards, and streaming. Envisional, *Technical Report: An Estimate of Infringing Use of the Internet*, January 2011 (on file with IIPA).
network piracy threatens the viability of licensed platforms, and erodes the capacity of authors, artists, musicians, filmmakers, video game developers, and performers and songwriters to earn a living from their craft. To address these concerns, IIPA supports approaches such as:

- USTR’s “Special 301” “Out-of-Cycle Review of Notorious Markets,” identifying key marketplaces that are involved in intellectual property rights infringements. This initiative has led to closure of Internet websites or mobile apps whose businesses were built on illegal conduct, greater cooperation from identified “notorious” and other suspect sites, and the facilitation of licensing agreements for legitimate distribution of creative materials. IIPA members identified 86 notorious markets in the most recent filing in October 2014, with Canada, China, Brazil, Russia, and Switzerland accounting for roughly half of the sites nominated. Ukraine, Spain, Vietnam, Argentina, Hong Kong, Indonesia, Mexico, Peru, and Thailand are among the other countries with which such sites are associated.
- Establishing a framework that creates incentives for network service providers to work with right holders to curb the use of their networks and services for infringing purposes, and removes impediments to such cooperation, including by implementing the WCT and WPPT, recognizing online piracy as a form of cybercrime, and fostering cooperation among all industry stakeholders (including ISPs) in the online supply chain to combat online infringements. Some governments – for instance, in South Korea and Singapore – are embracing more proactive solutions, such as legislation to provide more effective remedies against online infringements, both those hosted within and outside their borders.
- Inter-industry cooperation to combat systematic online infringement of copyright. This effort must involve all participants in the online advertising ecosystem (advertisers, ad agencies, ad networks, and the providers of advertising placement and related services), the payment processing industry, and search engines.

c. Media Boxes/Set-Top Boxes (STBs)

In a growing and troubling trend, devices intended to enable consumers to stream and/or download copyrighted content from online sources without authorization or license have proliferated in markets around the world, particularly in China, Taiwan, Indonesia, Thailand, and Vietnam, as well as Malaysia, Hong Kong, and Singapore, and as far away as Spain and UAE. Called Media Box, Set Top Box (STB), or Over-The-Top (OTT), these boxes are primarily manufactured in China and Ukraine (although some are sourced from Spain). Unlike legitimate boxes, these: 1) enable users to decrypt without authorization encrypted pay television programming; 2) facilitate easy access to remote online sources of unauthorized entertainment content including music, music videos, karaoke, movies, published materials and TV dramas; and 3) permit storage of unauthorized content. The boxes can be hooked up to smart TVs, facilitating easy access to all kinds of unauthorized entertainment content. Enforcement authorities must take effective action against these forms of piracy, or losses will mount.

d. Illegal Camcording of Theatrical Motion Pictures

One of the greatest concerns to the motion picture industry involves illegal recordings of movies from theaters, especially during theatrical exhibition. Approximately 90% of newly released movies that are pirated can be traced to use of a digital recording device in a movie theater to record the audiovisual work (whether image or sound or both) from the theater screen and/or sound system. One digital (camcorder) copy can trigger the upload, making available...
and mass reproduction and distribution of millions of illegal Internet copies instantly destroying whole markets or the ability to recoup production investment. For example, two days after a major U.S. motion picture was released in the U.S., someone sitting in a theater in Puebla, Mexico camcorded it and put it online. In less than one week, that illegal copy was downloaded in 25 different countries. Over two months, it was downloaded in 172 countries more than 558,000 times. In 2014, the Motion Picture Association of America identified 543 total illegal recordings of its member company titles from cinemas around the world, including 282 video captures and 261 audio captures. These films do not include numerous independent or foreign films that were illegally camcorded.

A multifaceted approach is needed to tackle this problem, including educating the public about how unauthorized camcording harms both businesses and the consumer; working with the private sector to identify and prevent unauthorized camcording in cinemas; and enacting and enforcing anti-camcording legislation to outlaw the possession of an audiovisual recording device in a theater with the intent to copy or transmit all or part of a motion picture, as has been done in many foreign markets (including Canada, Japan, Korea, and the Philippines). Indonesia and Thailand have also acknowledged the problem in recent legislative reforms.

e. **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; sophisticated infringing offset print versions of books (essentially akin to counterfeiting); and unauthorized translations of popular books. Book and journal piracy calls for aggressive action by law enforcement authorities. Government agencies, 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 textbooks and journal publications, and to discourage the use of unauthorized copies of all literary, educational and professional works. The U.S. government should ensure that such acts of infringement are fully covered in all bilateral, regional, and multilateral engagements. In addition to discussion of these issues in various country surveys in Appendix A, publishers note significant problems in Malaysia and Egypt with respect to book piracy. While unauthorized photocopying of educational materials continues to be problematic, in Malaysia, publishers must also deal with entities that engage in large scale unauthorized reproduction of academic textbooks for export. Over the last two years, publishers have found numerous online vendors selling and exporting counterfeit copies of academic textbooks into the U.S.

f. **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 reason for this progress is the widespread use of TPMs. TPMs foster many of the innovative products and services available online by allowing creators to control and manage access to copyrighted works and to diversify products and services. New business models depend on such controls. TPMs also ensure that works made available in hard goods (DVDs and Blu-ray discs), in the online or mobile environment (including E-books), or through on-demand or conditional access (e.g., pay-TV, PPV) are not easily stolen. Unfortunately, there are business models built entirely around manufacturing and distributing technologies, software, devices, components, or tools, or around providing services, to gain unlawful access to the content or to copy it without authorization. While TPM legal protection, where properly implemented, enables effective enforcement actions against distributors of unlawful circumvention technologies, these efforts are critically undermined by countries that have yet to implement any or adequate protections, including (among other countries in the country surveys) India, Thailand, and Mexico. IIPA also notes Israel as the only OECD country that has failed to adopt any protection whatsoever in this field.

g. **Pay TV Piracy and Signal Theft**

The unauthorized broadcast, cablecast or satellite delivery of motion pictures, television content, and music and sound recordings, including the unauthorized retransmission of broadcast signals over the Internet, costs right holders dearly. Related problems include: unauthorized tapping into the lines of legitimate cable TV companies;
operators who take broadcast signals by unauthorized means (hacked STBs or stealing “overspill” signals from neighboring countries) and sell them to consumers without paying for any of the content. The latter is a problem of growing severity in several countries in the Caribbean and Central and South America, including Trinidad and Tobago, Barbados, Jamaica, Guatemala, Honduras, and Ecuador. In most of these cases, the signals are encrypted, and pirates must circumvent or hack in order to access the content. Regulations and enforcement must therefore focus on prohibiting the trafficking in pay-TV or signal theft devices or technologies; the unlawful decryption of encrypted cable or satellite signals; and the onward use of the signals already decrypted (whether lawfully or not) without the authorization of the right holder of the content or of the signal. Such laws can help foster licensing of broadcasters and cablecasters, and the weeding out of unlicensed television distributors. In addition, the problem of rogue pirate TV channels that create their own broadcasts by playing a DVD and airing the signal on their system is re-emerging in Egypt and the broader Middle East and North Africa region.

**h. Hard Goods Piracy (Including Pirate Optical Discs)**

Hard goods piracy, including optical disc (OD) products, continues to inflict losses, especially in markets with lower Internet penetration. Small agile operations “burn” music, books and reference publications, video games, and movies onto recordable media. Producers/vendors set up production or distribution operations in a wide variety of locations, including old factories, warehouses, or “burn to order” shops. As an example of the harm caused, high-quality DVDs, Blu-ray discs, and box sets of music or audiovisual materials continue to be manufactured in locales such as China and find markets throughout Asia, the Middle East, and Africa. Where unlicensed or illegal activity is detected, copyright laws or specialized OD laws or regulations should be enforced. Programs such as surprise OD plant or shop inspections and exemplar (sample) disc collection should continue. In the most recent filing cycle, IIPA members identified “notorious” physical markets for the distribution of pirate hard goods in Mexico and India (making up over half the markets cited), as well as in China, Thailand, Brazil, Ukraine, Peru, Russia, Canada, Ecuador, and Indonesia.

**i. Mobile Device Piracy/Hard-Disk Loading**

Not all retail piracy involves the sale of illegal copies directly. One example is mobile device or hard-disk loading piracy, performed by unscrupulous dealers who install copies of copyright materials without authorization from the copyright holder into the memory of devices they sell. Many pirates operate stalls or kiosks, or “repair” shops, offering to load unauthorized copyright material onto any device, cell phone, smart phone, tablet, mp3 player, external hard disk, pen, thumb, flash, USB drive, or computer. Others provide an illegal “app” for a smart phone or tablet to illegally download content, especially in countries with significant mobile penetration and mobile broadband. Mobile device piracy and hard-disk loading occur in many markets, with concentrations in Asia including China, Taiwan, Indonesia, and Thailand.

3. **Implementation of Treaties and 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. These agreements feature enforceable obligations for our trading partners to modernize their copyright law regimes and improve enforcement procedures. They 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 the TRIPS agreement, to which 160 countries have now acceded, U.S. FTAs or TPAs with 20 countries have entered into force, most recently with Korea, Colombia and Panama in 2012.

The pending negotiations for a Trans-Pacific Partnership (TPP) FTA present an opportunity to expand the benefits of existing FTAs to a broad range of markets around the Pacific Rim, representing 40% of global GDP.\(^\text{14}\) IIPA

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\(^{14}\) TPP negotiating countries now include Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam.
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has long called for using the TPP to enhance copyright protection and enforcement standards in these markets, building upon those agreed to by current FTA partners Australia, Singapore, Chile, and Peru, as well as by Korea. Such an outcome would contribute to U.S. job growth and increased foreign sales and exports of U.S. copyright materials in these key markets. IIPA also urges USTR to seek through the TPP negotiations opportunities to address the range of market access impediments identified in various TPP negotiating countries.\textsuperscript{15} The TPP E-Commerce chapter and market access provisions for services and investment should require our partners not only to eliminate discriminatory taxes and policies, but also to open markets to foreign competition, including in the creative and cultural sectors.

In this year’s Submission, IIPA discusses issues related to countries’ bilateral, regional, and multilateral copyright obligations in several country surveys in Appendix A. In particular, USTR, the Department of Commerce, U.S. Embassies abroad, and all interagency members of the Special 301 Subcommittee should sustain close monitoring of trade agreement compliance. IIPA specifically notes Colombia, Chile, and Peru as examples of three trade agreement partners of the United States that have allowed deadlines for the implementation of important copyright-related commitments to lapse. Chile’s obligations regarding TPMs legislation, effective ISP liability provisions, deterrent-level civil and criminal sanctions for copyright infringement, and statutory damages are now eleven years past due. Similarly, Colombia has failed to meet its obligations regarding effective ISP liability and the bulk of its remaining copyright commitments, and its obligation to provide civil liability for the circumvention of TPMs will be overdue this May if not implemented promptly. IIPA also notes that Peru has not met its TPA obligations with respect to ISP liability and statutory damages for copyright infringement, which are more than four years past due.

Finally, we note that in early 2014, the government of Antigua and Barbuda announced plans to commence revisions to its intellectual property laws to “invoke” a WTO-approved remedy (in an unrelated trade dispute) to cross-retaliate against U.S. intellectual property rights worth $21 million a year. While bilateral discussions continue, IIPA’s firm view has not changed: suspending intellectual property rights is not the right solution, and 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 trade benefits such as those offered under the Caribbean Basin Initiative. In that event, we believe that the U.S. should take appropriate, immediate and robust action to uphold U.S. trade laws.

5. Market Access Barriers

The U.S. copyright industries suffer from various market access barriers, investment restrictions, and discriminatory treatment that make it difficult to compete on a level playing field in some crucial foreign markets. All efforts to address copyright infringement 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, market access barriers include:

- discriminatory restrictions on the ability to fully engage in the business of development, creation, production, distribution, promotion, and publication of copyright materials;
- high tariffs, taxes, or fees on core copyright businesses and their products and services;
- the maintenance of quotas on audio-visual programming, including screen time and broadcast quotas, or complete bans on broadcast of foreign programming or advertising;
- ownership and investment restrictions on copyright-related businesses;
- discriminatory, onerous, and/or dilatory content review/censorship systems;
- periods during which foreign governments prevent U.S. producers from opening their films, or impose onerous restrictions on the window for theatrical distribution (including unfairly shortening the run of a theatrical motion picture);

\textsuperscript{15}As an example, IIPA notes that Vietnam has some of the most restrictive market access barriers in the world for copyright materials.
• local print requirements; and
• onerous import duties or the inclusion of royalties in the calculation of the duties.

While market access barriers like those above are discussed in a number of the IIPA country surveys, including Brazil, Vietnam, China, Indonesia, Thailand, and India, other countries also employ them to the detriment of U.S. copyright industries. Notably, Malaysia imposes a broad array of harmful barriers, including investment prohibitions or restrictions on broadcasting, cable and satellite services; excessive box office taxes and imposition of fees for Digital Cinema Packs transmitted electronically; and screen and broadcast quotas.

Whatever form they take, all market access restrictions that impede the entry of legitimate products make it easier for pirate operations to fill the void, and to become de facto “exclusive” distributors who can 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.

E. CONCLUSION

The health and competitiveness of the U.S. economy depends on a thriving copyright sector that creates revenues, jobs, and exports. Likewise, the health and competitiveness of our trading partners also depends on promoting and respecting intellectual property rights and opening markets to products and services that depend on copyright. Open markets foster local jobs in creative industries, increase cultural diversity, promote international trade and exports, increase tax revenues from legitimate cultural industries, and attract more foreign direct investment. It is essential to the continued growth and future competitiveness of creative industries around the world that our trading partners provide modern levels of protection for copyright; more effective policies and tools to enforce that protection; and freer, more open markets. Our country must remain committed to flexible and innovative responses to the constantly evolving threats to copyright worldwide. Special 301 remains one cornerstone of the U.S. response. We urge USTR and the Administration to use the Special 301 review and other trade tools to encourage the countries and territories identified in our Submission make the political commitments, followed by the necessary actions, to bring real commercial gains to the U.S. creative industries 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,

/Steve Metalitz/
/Michael Schlesinger/
/Eric Schwartz/
/Amanda Wilson Denton/

Counsel for
International Intellectual Property Alliance