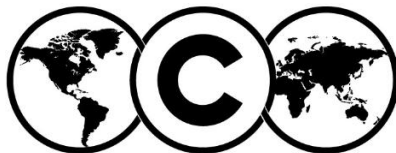


INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



2101 L STREET NW, SUITE 1000 · WASHINGTON, DC 20037 · TEL (202) 833-4198 · FAX (202) 331-3101 · WWW.IIPA.COM · EMAIL: INFO@IIPA.COM

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

Re: Special 301: Post-Hearing Submission Regarding the Identification of Countries Under Section 182 of the Trade Act of 1974 (cf. 75 Fed. Reg. 82424 (December 30, 2010))

Dear Mr. McCoy:

The International Intellectual Property Alliance (IIPA) hereby submits post-hearing comments on the 2011 Special 301 process. We do so principally at the request of the Committee at the March 2, 2011 hearing to provide further information regarding IIPA's recommended changes in country rankings for this year's review.

IIPA RECOMMENDED CHANGES FROM PREVIOUS YEAR FOR THE 2011 SPECIAL 301 LISTS

In this year's Special 301 submission, IIPA surveys problems and developments in 40 countries, recommending that 33 of them be placed on the USTR list of countries that fail to adequately or effectively protect IPR or that do not afford creators with adequate market access. Of these, IIPA recommends that 13 countries be placed on the Priority Watch List in 2011: **Argentina, Canada, Chile, China, Costa Rica, India, Indonesia, the Philippines, Russia, Spain, Thailand, Ukraine, and Vietnam**. IIPA recommends that Spain, Ukraine, the Philippines, Vietnam, and Costa Rica be elevated to this list.

Spain should be elevated to the Priority Watch List in light of the explosion of online piracy in recent years and the failure of the Spanish Government to address it effectively. Internet piracy has decimated the Spanish market for many copyright industries. Spain's efforts in the adoption of the Law on the Sustainable Economy mark an important first step toward combating Internet piracy. Further actions are greatly needed, such as adoption of implementing regulations ensuring the application of the new Law to linking sites and trackers in line with representations made by the Spanish government, addressing consumption of infringing materials, removing the protective cloak of anonymity for infringers, and securing greater cooperation on the part of Internet service providers with respect to the use of their proprietary networks and platforms for infringing purposes.

Ukraine should be elevated to the Priority Watch List in 2011, as a result of numerous longstanding legal deficiencies and a weak overall enforcement environment. Both hard copy and digital copyright piracy in Ukraine are rampant, leaving piracy rates among the highest in Europe. All of the copyright industries report very weak enforcement, especially criminal enforcement. P2P infringements in Ukraine are on the rise, Ukraine hosts websites offering pirate pay-for-downloads of music and film, and Ukraine is the source of some of the world's top BitTorrent index sites and trackers used for piracy. Ukraine's many open air markets and street stalls remain replete with illegal copies of recorded music, films, entertainment and business software. Various ministries within the Government of Ukraine blatantly use unlicensed software, and in the business sector, illegal software use (i.e., end-user piracy) is practically the norm. Ukraine remains a global hot spot for high-quality illegal camcords of films that are uploaded to top sites and distributed



across the Internet. The Government of Ukraine must re-double its efforts on the ground, work to fix the investigative and prosecutorial systems, and take steps to improve criminal enforcement against digital and hard-copy pirates.

The Philippines should be elevated to the Priority Watch List. Copyright piracy phenomena abound, including growing P2P and other Internet and mobile piracy, enterprise end-user software piracy, illegal camcording of movies in theaters, book and journal piracy, retail shop and mall piracy, Pay TV theft, and pirate optical discs being imported or produced for export. The authorities have not, however, 1) prosecuted any cases involving illegal camcording of movies under the new anti-camcording statute despite requests and interdictions by cinema security staff, 2) taken steps to significantly reduce Internet-based infringements (under the leadership of any Philippine agency), 3) run surprise and transparent inspections on all optical disc plants and CD-R burning operations in cooperation with industry despite repeated requests, 4) taken significant actions against book or photocopy piracy on or off university campuses, or 5) shut down some of the estimated 800 pirate cable systems, revoking their licenses or permits.

Vietnam should be elevated to the Priority Watch List. Physical piracy remains largely unchecked, and the increased uptake and capacity of broadband and mobile Internet in the country have led to a severe increase in the trade of illegal copyright files online. The Vietnamese Government has taken some enforcement actions, but has focused on non-deterrent administrative measures as opposed to implementing a strong criminal remedy. The Government of Vietnam also refuses to lift market access restrictions that are some of the most onerous in the world, and has even overlooked pay TV signal theft by the government-controlled system, VTC.

Costa Rica should be elevated to the Priority Watch List in 2011, primarily motivated by the unprecedented action on the part of Costa Rica to roll back existing protection for performers and record labels. The Government should withdraw Bill No. 17,719, which implements reservations to international obligations that would result in denying compensation to U.S. performers and record labels, and would create a new exception to performance rights for commercial broadcasters.

IIPA also asks USTR to place or maintain 19 countries on the Watch List: **Belarus, Brazil, Brunei, Greece, Israel, Italy, Kazakhstan, Kuwait, Lebanon, Malaysia (OCR), Mexico, Poland, Romania, Saudi Arabia, Singapore, Tajikistan, Turkey, Turkmenistan, Uzbekistan**. IIPA again recommends that USTR continue to monitor developments in **Paraguay** under Section 306 of the Trade Act of 1974. Of these, IIPA recommends that Kazakhstan, Poland, Saudi Arabia, and Singapore be re-listed on the Watch List. IIPA recommends that USTR agree to conduct an Out-Of-Cycle Review with respect to Malaysia.

Kazakhstan should be re-listed on the Watch List due to several needed legal reforms tied to improving enforcement and to a “moratorium” on government anti-piracy activity, leading to a noticeable decline in the past several years for at least one industry sector in the number of enforcement actions, such as raids by the financial police, the regular police forces, and the Justice Ministry officials.

Poland should be re-listed on the Watch List due to continuing hurdles to effective protection and enforcement of copyrighted content, specifically: lack of progress on the previously announced IPR strategic plan, no announcement of a new three-year plan or to move forward with a Ministry of Culture Interministerial Team in 2011 (leaving Poland with no national strategy to address ongoing piracy), the reluctance of prosecutors to conduct copyright cases generally or of courts to issue deterrent sentences, and lack of actions to address a growing problem of the markets along the Polish-German borders.

Saudi Arabia should be re-listed on the Watch List due to failure to make continuing and comprehensive progress to reduce high piracy rates through the imposition of deterrent penalties and other actions, specifically: the failure to conclude the Video Mesfir case; the failure to reduce piracy; the lack of transparency in all actions, including press statements by high-level government officials that piracy will no longer be tolerated; and the lack of progress in legalizing government software use.



Singapore should be re-listed on the Watch List due to several significant shortfalls (some of which raise serious FTA compliance issues) that must be addressed, namely: the refusal to bring public prosecutions including against online music pirates; the Government of Singapore's failure to bring Internet Service Providers into a cooperative stance with rights holders; unabated corporate end-user piracy of business software; and a recent "cross-carriage" requirement that threatens to distort the pay TV market by eliminating the ability of copyright owners to enter into exclusive licensing arrangements.

Mexico should be retained on the Watch List in 2011, in line with USTR's current placement. In 2010, IIPA recommended the Priority Watch List for Mexico. Our members report a number of positive developments, including good cooperation between right holders and many of the Mexican authorities, notably the Attorney General's Office and IMPI, plus the long sought legal reform adopted in 2010 (effective June 28, 2010) amending the Criminal Code to provide ex officio authority in copyright infringement cases. Of course, very serious piracy problems persist, and we encourage continued active dialogue, law enforcement coordination and technical assistance between the U.S. and Mexico to address these major problems in both the physical and online environments.

Other Key Markets of Concern

While IIPA recommends no change from the current Special 301 ranking, the following key markets are also worth noting:

China should remain on the Priority Watch List. China's many notorious online piracy sites and services, its failure to effectively address end-user piracy of software and publications by enterprises (including government agencies and state-owned enterprises (SOEs)), and myriad market access barriers, all remain serious irritants to the U.S. content industries. This year's IIPA Special 301 report highlights measures that would help in the fight against online and physical piracy, including the need for deterrent civil and criminal actions, and notes key commitments the Chinese Government has made (and must follow through on) regarding liability for those who facilitate online infringement, legalization of software by government agencies and SOEs, strengthening copyright protection in China's libraries, and non-discriminatory market access for products with IP owned or developed outside of China.

Canada merits continued placement on the Priority Watch List, standing virtually alone among developed economies in failing to bring its laws up to global minimum standards for the digital networked environment. Pending Canadian legislation was introduced with sound objectives, but its overall approach to the role of service providers in combating online piracy and excessively broad proposed exceptions to copyright protection need amendment to ensure the legal framework is effective. Canada's enforcement record also falls short, with ineffective border controls, insufficient enforcement resources, inadequate enforcement policies, and a seeming unwillingness to impose deterrent penalties on pirates.

Russia should remain on the Priority Watch List to reflect continuing serious concerns about Russia's legal and enforcement regime related to all aspects of piracy—on the Internet and the streets, in corporations and government offices, as well as the current chaotic situation with respect to the collective administration of the rights of performers and record companies. Of particular importance is ensuring that present consideration of regulations to address Internet piracy by various ministries, under the lead of the Ministry of Culture, produces a robust response to the problem, and that it clearly prohibits entities like vKontakte from operating businesses based on providing access to infringing materials. We note a decline in the number of criminal actions undertaken, very little action taken against Internet piracy, and stalled progress in addressing illegal use of software by corporations and government agencies. The independent film and music industries report piracy has reached disastrous levels.

Thailand should remain on the Priority Watch List due to insufficient progress over the past year on key concerns, both legislative and enforcement, notwithstanding the dedicated efforts over the past year on the part of many



officials and departments. We recommended Watch List for Thailand last year, but did not see the level of concrete results we expected to address the serious piracy problems in the market, including physical and online markets, and the rapidly growing problem of illegal camcording. We hope that 2011 will produce results that will foster Thailand's creative economy by providing a more robust response to all forms of piracy that currently undermine the Thai market.

Conclusion

We once again thank you for the opportunity to provide you with information in the Special 301 process, and we remain available to answer other questions. We look forward to our continued work with USTR and other U.S. agencies on meeting the goals identified in the IIPA's 2011 Special 301 Submission, discussed at the hearing on March 2, 2011, and as described in this post-hearing submission.

Respectfully submitted,

/Eric H. Smith/
/Steven Metalitz/
/Michael Schlesinger/
/Eric Schwartz/
/Amanda Wilson Denton/

Counsel for
International Intellectual Property Alliance