



October 4, 2011

**Filed via [www.regulations.gov](http://www.regulations.gov)**

Donald W. Eiss  
Acting Chair, Trade Policy Staff Committee  
Office of the U.S. Trade Representative  
Washington, DC 20508

Re: IIPA Written Submission in Response to: Request for Public Comments To Compile the National Trade Estimate Report on Foreign Trade Barriers and Reports on Sanitary and Phytosanitary and Standards-Related Foreign Trade Barriers, 76 Fed. Reg. 50287 (August 12, 2011) Docket: USTR-2011-0008

To the Trade Policy Staff Committee:

In response to the August 12, 2011 Federal Register notice referenced above, the International Intellectual Property Alliance (IIPA)<sup>1</sup> takes this opportunity to provide the Trade Policy Staff Committee (TPSC) with written comments to “assist it in identifying significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment for inclusion in the [National Trade Estimate Report on Foreign Trade Barriers] NTE” (the “2012 NTE Report”).

**IIPA’s Observations for the 2012 NTE Report**

IIPA is pleased to provide its public comments on significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment for inclusion in the *2012 NTE Report*. As has been noted in IIPA’s many submissions over the years, inadequate copyright protection, inadequate enforcement systems against piracy, and market access barriers or other restrictions to trade, combine to harm the economic interests of U.S. copyright owners. The failure adequately to protect and enforce intellectual property rights, or to afford market access, poses

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<sup>1</sup> The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. IIPA comprises seven trade associations, each representing a significant segment of the U.S. community. These member associations represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world — business software (operating systems, Internet enabling software, browsers, search engines, office productivity software, database management software, green technology enabling software, security software and mobile technologies); entertainment software (interactive games for video game consoles, handheld devices, personal computers, and the Internet); theatrical films, television programs, home videos and digital representations of audiovisual works; musical compositions, recorded music, CDs, and audiocassettes; and textbooks, trade books, reference and professional publications and journals, in both print and electronic media.

In July 2009, IIPA released the latest update of our economic report, *Copyright Industries in the U.S. Economy: The 2003-2007 Report*, prepared by Stephen Siwek of Economists Inc. This is the twelfth report in a series detailing the economic impact and contributions of U.S. copyright industries to U.S. Gross Domestic Product, employment, and trade. The *2003-2007 Report* indicates that the core copyright-based industries<sup>1</sup> in the U.S. continued to be major contributors to the U.S. economy, accounting for an estimated \$889.1 billion or 6.44% of the U.S. gross domestic product (GDP) in 2007. Also according to the Report, the “core” copyright industries employed 5.6 million workers in 2007 (4.05% of U.S. workers) in 2007. The Report provides data on the estimated average annual compensation for a worker in the core copyright industries: \$73,554 in 2007, amounting to a significant 30% “copyright premium” compared with average annual wages in the rest of the economy. Finally, estimated 2007 foreign sales and exports of the core copyright industries increased to at least \$126 billion, leading other major industry sectors.



significant barriers to copyright owners' abilities to grow jobs and revenues here at home and export their legitimate goods and services in countries around the world. In the 2011 Special 301 process, IIPA made a broad submission identifying 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, as required by the Special 301 statute (19 U.S.C. §2242). Our 2011 submission has been distributed or otherwise made available to the TPSC and to many U.S. government officials who work on the countries' issues and who contribute to preparing the NTE.<sup>2</sup> In the main Special 301 submission, IIPA also describes the key challenges and initiatives that define the copyright industries' agenda. As an easy reference, attached please find IIPA's one-page summary of the "Copyright Industries' Initiatives or Challenges for 2011."<sup>3</sup>

IIPA's many public submissions in 2010 and 2011 address issues pertinent to topics on which the TPSC seeks information for the 2012 NTE Report in the Federal Register Notice. Most prevalent have been our discussions of point 6, "[I]ack of intellectual property protection (e.g., inadequate ... copyright ... regimes)," but our submissions have also addressed various "[s]ervice barriers," "[i]nvestment barriers," "[i]mport policies," "[g]overnment procurement policies," "[t]rade restrictions affecting electronic commerce," and "[o]ther barriers" which commonly affect one or more copyright industry sectors in important foreign markets. The Federal Register Notice also expressly asks that comments "place particular emphasis on any practices that may violate U.S. trade agreements," and IIPA's submissions have addressed such practices as well. From mid-2010 forward, IIPA has made the following public submissions, all of which, in addition to the 2011 Special 301 Report, pertain to this docket:

- IIPA submitted comments to the IP Enforcement Coordinator on the development of a **Joint Strategic Plan** for intellectual property enforcement.<sup>4</sup>
- IIPA submitted comments to USTR on the IPR-related eligibility criteria of the Andean Trade Preferences Act (ATPA) and the four countries (**Peru, Colombia, Ecuador, and Bolivia**) participating in that trade program.<sup>5</sup>
- IIPA submitted a pre-hearing brief to the USITC in its two investigations regarding **China's** intellectual property infringement, indigenous innovation policies and measuring the effects of such on the U.S. economy.<sup>6</sup>
- IIPA submitted written comments to the USITC on its investigation entitled "**China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy.**"<sup>7</sup>

<sup>2</sup> IIPA's 2011 Special 301 Report is available to the public via [www.regulations.gov](http://www.regulations.gov) as well as our website, at [www.iipa.com/2011\\_SPEC301\\_TOC.htm](http://www.iipa.com/2011_SPEC301_TOC.htm). IIPA plans to participate in the 2012 Special 301 process and will submit its filing in February 2012. As in prior years, IIPA will provide the TPSC with a courtesy copy of our 2012 Special 301 submission in February 2012 for its consideration in this NTE docket (we realize that the TPSC considers this docket "final" in November of each year). In years past, the NTE report published in March often has incorporated the most current IIPA information and statistics, even though our Special 301 submission arrives later in the NTE production process. IIPA appreciates the Committee's efforts in that regard.

<sup>3</sup> This global initiatives paper is also posted on the IIPA website at [www.iipa.com/pdf/IIPAInitiatives&Challenges2011021711.pdf](http://www.iipa.com/pdf/IIPAInitiatives&Challenges2011021711.pdf).

<sup>4</sup> See IIPA, *Comments of the International Intellectual Property Alliance to the Office of the Intellectual Property Enforcement Coordinator (IPEC)*, 75 Fed. Reg. 8137 (Feb. 23, 2010), March 24, 2010, at [www.iipa.com/pdf/IIPASubmissionToIPEC032410.PDF](http://www.iipa.com/pdf/IIPASubmissionToIPEC032410.PDF).

<sup>5</sup> See IIPA, *USTR Report on Operation of the Andean Trade Preferences Act (ATPA) – Request for Public Comments Regarding Beneficiary Countries*, 75 Fed. Reg. 19669 (April 15, 2010), May 12, 2010, at [www.iipa.com/pdf/IIPAAAndeanATPAfilingtoUSTR051210.pdf](http://www.iipa.com/pdf/IIPAAAndeanATPAfilingtoUSTR051210.pdf).

<sup>6</sup> See IIPA, *China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy, Pre-Hearing Brief and Statement*, Investigation No. 332-514, 75 Fed. Reg. 25883 (May 10, 2010); and *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy, Pre-Hearing Brief and Statement*, Investigation No. 332-519, 75 Fed. Reg. 30060 (May 28, 2010), June 3, 2010, at [www.iipa.com/pdf/IIPACHinaITCPreHearingBriefStatement.pdf](http://www.iipa.com/pdf/IIPACHinaITCPreHearingBriefStatement.pdf).



- IIPA requested to testify at the October 2010 hearing to be held by the Trade Policy Staff Committee on **China's** compliance with its WTO commitments (and submitted its testimony).<sup>8</sup>
- IIPA filed comments on the 2010 annual review of country eligibility for benefits under the African Growth and Opportunity Act (**AGO**A).<sup>9</sup>
- IIPA filed comments with the Department of Commerce on Government Programs to Assist Businesses Protect Their Intellectual Property Rights in Foreign Markets.<sup>10</sup>
- IIPA filed comments with USTR on the 2010 Special 301 Out of Cycle Review of Notorious Markets.<sup>11</sup>
- IIPA requested to testify at the November 2010 hearing held by the Trade Policy Staff Committee on “Negotiating Objectives With Respect to **Malaysia's** Participation in the Ongoing Negotiations of a Trans-Pacific Partnership (TPP) Trade Agreement.”<sup>12</sup>
- IIPA submitted comments in the **Philippines** and **Thailand** Out-of-Cycle Review proceedings.<sup>13</sup>
- IIPA filed written comments with USTR on the Anti-Counterfeiting Trade Agreement.<sup>14</sup>
- IIPA submitted testimony to the U.S.-China Economic and Security Review Commission on “**China's** Intellectual Property Rights and Indigenous Innovation Policy.”<sup>15</sup>
- IIPA filed public comments on the Interim Review of Eligibility of **Côte d’Ivoire, Guinea, and Niger** for Benefits Under the African Growth and Opportunity Act (**AGO**A).<sup>16</sup>
- IIPA filed public comments to Trade Policy Staff Committee on **CBERA** and **CBTPA**.<sup>17</sup>
- IIPA requested to testify at the October 2011 hearing held by the Trade Policy Staff Committee on **China's** compliance with its WTO commitments (and submitted its testimony).<sup>18</sup>

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<sup>7</sup> See IIPA, *China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy*, Written Submission, Investigation No. 332-514, 75 Fed. Reg. 25883 (May 10, 2010), July 9, 2010, at [www.iipa.com/pdf/IIPAChinaITCWrittenSubmission070910.pdf](http://www.iipa.com/pdf/IIPAChinaITCWrittenSubmission070910.pdf).

<sup>8</sup> See IIPA, *China's WTO Compliance: (1) Request to Testify at October 6, 2010 Hearing and (2) Notice of Testimony Regarding China's Compliance with its WTO Commitments*, 75 Fed. Reg. 45693 (August 3, 2010), September 22, 2010, at [www.iipa.com/pdf/ChinaWTOrequesttotestifyandtestimonytoTPSCFinal092210.pdf](http://www.iipa.com/pdf/ChinaWTOrequesttotestifyandtestimonytoTPSCFinal092210.pdf).

<sup>9</sup> See IIPA, *African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee: Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act*, 75 Fed. Reg. 61239-40 (October 4, 2010), October 20, 2010, at [www.iipa.com/pdf/IIPAAGOAFilingtoUSTRFinal102010.pdf](http://www.iipa.com/pdf/IIPAAGOAFilingtoUSTRFinal102010.pdf).

<sup>10</sup> See IIPA, *Government Programs To Assist Businesses Protect Their Intellectual Property Rights (IPR) in Foreign Markets: Request of the International Trade Administration's Office of Intellectual Property Rights, Department of Commerce*, 75 Fed. Reg. 60408 (September 24, 2010), October 29, 2010, at [www.iipa.com/pdf/IIPAGovernmentProgramstoAssistBusinessesProtectTheirIntellectualPropertyRightsinForeignMarketsFINAL102910.pdf](http://www.iipa.com/pdf/IIPAGovernmentProgramstoAssistBusinessesProtectTheirIntellectualPropertyRightsinForeignMarketsFINAL102910.pdf).

<sup>11</sup> See IIPA, *2010 Special 301 Out of Cycle Review of Notorious Markets: Request for Public Comment*, 75 Fed. Reg. 60854 (October 1, 2010), November 5, 2010, at [www.iipa.com/pdf/IIPAOCRNotoriousMarketstoUSTRFINAL110510.pdf](http://www.iipa.com/pdf/IIPAOCRNotoriousMarketstoUSTRFINAL110510.pdf).

<sup>12</sup> See IIPA, “Participation of Malaysia in the Trans-Pacific Partnership Trade Negotiations” IIPA Request to Testify and Testimony Regarding “Negotiating Objectives With Respect to Malaysia's Participation in the Ongoing Negotiations of a Trans-Pacific Partnership (TPP) Trade Agreement” (75 Fed. Reg. 64778, October 20, 2010), November 10, 2010, at [www.iipa.com/pdf/IIPAMalaysiaFTARequesttoTestifyandTestimony111010.pdf](http://www.iipa.com/pdf/IIPAMalaysiaFTARequesttoTestifyandTestimony111010.pdf).

<sup>13</sup> See IIPA, *Submission of the IIPA in Docket No. USTR-2010-0035 2010: Special 301 Out-of-Cycle Reviews of the Philippines and Thailand: Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment*, 75 Fed. Reg. 69519 (November 12, 2010), December 10, 2010, at [www.iipa.com/pdf/IIPAThailandandthePhilippinesOCRfinal121010.pdf](http://www.iipa.com/pdf/IIPAThailandandthePhilippinesOCRfinal121010.pdf).

<sup>14</sup> See IIPA, *Written Comments on Anti-Counterfeiting Trade Agreement: Request for Comments From the Public*, 75 Fed. Reg. 79069 (December 17, 2010), February 15, 2011, at [www.iipa.com/pdf/IIPAACTAFiling021511.pdf](http://www.iipa.com/pdf/IIPAACTAFiling021511.pdf).

<sup>15</sup> See IIPA, *Hearing on “China's Intellectual Property Rights and Indigenous Innovation Policy”*, 76 Fed. Reg. 22945 (April 25, 2011), May 4, 2011, at [www.iipa.com/pdf/USCCSubmission.pdf](http://www.iipa.com/pdf/USCCSubmission.pdf).

<sup>16</sup> See IIPA, *Request for Public Comments on Interim Review of Eligibility of Côte d’Ivoire, Guinea, and Niger for Benefits Under the African Growth and Opportunity Act*, 76 Fed. Reg. 50284 (August 12, 2011), August 29, 2011, at [www.iipa.com/pdf/2011\\_Aug29\\_AGOA.PDF](http://www.iipa.com/pdf/2011_Aug29_AGOA.PDF).

<sup>17</sup> See IIPA, *Re: CBI Report to Congress Caribbean Basin Economic Recovery Act and Caribbean Basin Trade Partnership Act: Report to Congress*, 76 Fed. Reg. 48202 (August 8, 2011), September 16, 2011, at [www.iipa.com/pdf/2011\\_Sep16\\_CBERA\\_CBTPA\\_Submission.pdf](http://www.iipa.com/pdf/2011_Sep16_CBERA_CBTPA_Submission.pdf).



In previous years, IIPA submitted recommendations regarding the Special 301 out-of-cycle-reviews (OCRs) of the **Philippines**,<sup>19</sup> **Poland**,<sup>20</sup> **Israel**,<sup>21</sup> and **Saudi Arabia**<sup>22</sup> out-of-cycle review proceedings, and commented on the Trans-Pacific Partnership Free Trade Agreement (TPP FTA) with **Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam**.<sup>23</sup> Furthermore, throughout the year we have worked with the interagency on developments (both legal reform and enforcement concerns) in dozens of countries as well as in regional initiatives (such as **APEC, ASEAN**) and related to implementation, ratification, and negotiation of existing, pending, and evolving Free Trade Agreements.

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IIPA and its members appreciate the opportunity to provide the Committee with information pertaining to the 2012 NTE Report.

Sincerely,

Michael Schlesinger  
International Intellectual Property Alliance

Attachment

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<sup>18</sup> See IIPA, *China's WTO Compliance - Notification of Intent to Testify and Testimony Re: "Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments"* (76 Fed. Reg. 50286, August 12, 2011), September 21, 2011, at [www.iipa.com/pdf/2011\\_Sep21\\_IIPA\\_China\\_WTO\\_Compliance\\_Request\\_to\\_Testify\\_and\\_Testimony.pdf](http://www.iipa.com/pdf/2011_Sep21_IIPA_China_WTO_Compliance_Request_to_Testify_and_Testimony.pdf).

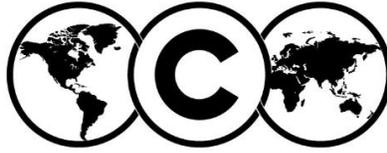
<sup>19</sup> See IIPA, *Philippines: Special 301 Out-Of-Cycle Review IIPA Comments on the Status of Copyright Protection and Enforcement*, 74 Fed. Reg. 51215 (October 5, 2009), November 9, 2009, at [www.iipa.com/pdf/IIPAPhilippinesOCRsubmissionFINAL110909.pdf](http://www.iipa.com/pdf/IIPAPhilippinesOCRsubmissionFINAL110909.pdf).

<sup>20</sup> See IIPA, *Poland: Special 301 Out-Of-Cycle Review IIPA Comments on the Status of Copyright Protection and Enforcement*, 74 Fed. Reg. 51215 (October 5, 2009), November 9, 2009, at [www.iipa.com/pdf/IIPAPolandOCRsubmissionFINAL110909.pdf](http://www.iipa.com/pdf/IIPAPolandOCRsubmissionFINAL110909.pdf).

<sup>21</sup> See IIPA, *Israel: Special 301 Out-Of-Cycle Review IIPA Comments on the Status of Copyright Protection and Enforcement*, 74 Fed. Reg. 51215 (October 5, 2009), November 9, 2009, at [www.iipa.com/pdf/IIPAIsraelOCRsubmissionFINAL110909.pdf](http://www.iipa.com/pdf/IIPAIsraelOCRsubmissionFINAL110909.pdf).

<sup>22</sup> See IIPA, *Saudi Arabia: Special 301 Out-Of-Cycle Review IIPA Comments on the Status of Copyright Protection and Enforcement*, 74 Fed. Reg. 51215 (October 5, 2009), November 9, 2009, at [www.iipa.com/pdf/IIPASaudiArabiaOCRsubmissionFINAL110909.pdf](http://www.iipa.com/pdf/IIPASaudiArabiaOCRsubmissionFINAL110909.pdf).

<sup>23</sup> See IIPA, *Public Comment Concerning the Proposed Trans-Pacific Partnership Free Trade Agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam*, 74 Fed. Reg. 66,720 (December 16, 2009), January 25, 2010, at [www.iipa.com/pdf/IIPAWrittenStatementonProposedTransPacFTA012510.pdf](http://www.iipa.com/pdf/IIPAWrittenStatementonProposedTransPacFTA012510.pdf).



## COPYRIGHT INDUSTRIES' INITIATIVES OR CHALLENGES FOR 2011

### REDUCE COPYRIGHT PIRACY § OPEN MARKETS TO LEGITIMATE U.S. COPYRIGHT BUSINESS § STRENGTHEN LAWS

- **The Need for Deterrent Enforcement Responses to Copyright Piracy:** The overarching objective for the copyright industries remains securing effective legal frameworks capable of providing deterrent enforcement against copyright piracy.
- **Internet and Mobile Piracy:** While developments on the Internet and mobile networks have opened up opportunities for faster, more efficient and more cost-effective distribution of information, products and services across the globe, they have also, unfortunately, resulted in massive infringement of music, movies, games, software, published materials and other copyright materials, either through online sites or services, or by pre-loading or loading illegal content onto mobile devices.
- **End-User Piracy of Business Software:** The unauthorized use of software within businesses, also referred to as “enterprise end-user software piracy,” stands as the principal and most damaging form of infringement to the business software industry today, with the preliminary estimates of the commercial value of unlicensed U.S. software in 2010 exceeding \$32 billion.
- **Implementation of the WCT and WPPT, Including Outlawing Circumvention of Anti-Piracy Measures:** Effective implementation of the global legal minimum standards embodied in the WCT and WPPT is critical in the fight against online piracy. 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.
- **Illegal Camcording of Theatrical Motion Pictures:** One of the most damaging forms of piracy of motion pictures today occurs during theatrical release with the illegal camcording of movies off the screen. These illegal copies are then illegally distributed on the Internet or on pirate discs in direct competition with the legitimate theatrical, DVD and online offerings.
- **Cartridge-based Videogame Piracy:** Factory piracy of entertainment software in cartridge format (mainly out of China) remains a serious problem, with such cartridges finding their way into numerous countries around the world.
- **Piracy of Books and Journals:** The book publishing industry continues to be plagued by 1) large scale unauthorized photocopying of books, principally on and around university campuses, 2) sophisticated infringing print versions of books (essentially akin to counterfeiting), 3) unauthorized translations of popular books, and 4) the marked growth of online piracy.
- **Optical Disc Piracy:** Pirate product in optical disc formats (e.g., CDs, VCDs, DVDs, CD-ROMs, “burning” to order on recordable discs) has long caused enormous harm to copyright owners.
- **Pay TV Piracy and Signal Theft:** The unauthorized broadcast, cablecast or satellite delivery of motion pictures, as well as other content (music and sound recordings) causes significant losses to the motion picture and broadcast industries.
- **Market Access:** The U.S. copyright industries suffer from myriad market access barriers, investment barriers, and discriminatory treatment, making it difficult to compete in some foreign markets on a level playing field.

#### **Solutions:** Concrete actions that can make a commercial difference include

- 1) dedicating enforcement resources to provide for “effective action” and “remedies that constitute a deterrent” to infringement as the minimum required by the TRIPS Agreement, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), through civil, administrative, and criminal action, and effective adjudication in the courts
- 2) training and empowering enforcement authorities to investigate and prosecute copyright offenses
- 3) updating laws and enforcement tools to meet the current piracy challenges, as the nature of these challenges changes, including recognizing the connection between piracy and organized crime
- 4) issuing orders or directives to government agencies, entities, contractors, and educational institutions to set an example by using only legal software, legal copies of textbooks and other educational materials, and other copyright materials
- 5) directing government agencies and educational institutions to take appropriate steps to ensure that their networks or computers are not used for infringing purposes
- 6) ratifying and fully implementing the WCT and the WPPT
- 7) encouraging cooperation by Internet service providers with all content owners, including notice and takedown systems and effective and fair mechanisms to deal with repeat infringers
- 8) enacting and enforcing 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
- 9) dismantling existing market access barriers and refrain from establishing market access conditions based on the nationality of owner of intellectual property.