

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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Stanford K. McCoy, Esq.

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Office of the U.S. Trade Representative

Washington, DC 20508

Re: **IIPA Written Submission Re: 2011 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments, 76 Fed. Reg. 58854 (September 22, 2011), Docket No. USTR-2011-0012**

Dear Mr. McCoy:

In response to the September 22, 2011 Federal Register notice referenced above, the International Intellectual Property Alliance (IIPA)<sup>1</sup> is pleased to provide the Special 301 Subcommittee with written comments “to highlight the problem of marketplaces that deal in infringing goods and which help sustain global piracy and counterfeiting” by “identifying potential Internet and physical notorious markets that exist outside the United States and that may be included in the 2011 Notorious Markets List.”

We congratulate the Office of the United States Trade Representative (USTR) for beginning in 2010 to publish a notorious markets list as an “Out of Cycle Review” separately from the annual Special 301 report. This list has successfully identified key online and physical marketplaces that are involved in intellectual property rights infringements, and has led to positive developments with respect to these and like markets. Such developments include closures of some Internet websites whose businesses were built on illegal conduct, the establishment of voluntary mechanisms for easier takedowns of infringing materials from identified “notorious” and other suspect sites, and the facilitation of licensing agreements for legitimate distribution of creative materials. The list has heightened awareness of the extreme harm being caused by those whose business models are fashioned on providing access to infringing materials. The list has also reemphasized the continued importance of dealing with physical markets where piracy remains open and blatant and where pirates have been able to operate with relative impunity. In such markets, law enforcement and governments have often

<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.



overlooked IP theft, making it a high-profit, low-risk endeavor, which often is organized criminal behavior in itself as well as being linked to other organized criminal activity.

## **I. INTEREST OF THE IIPA IN THE NOTORIOUS MARKETS LIST**

In this year's filing, IIPA takes the opportunity to note a few examples of egregious notorious markets in which intellectual property rights are not respected and which merit further investigation for intellectual property rights infringements. We also refer the Subcommittee to the filings of some members of the IIPA – the Business Software Alliance, the Entertainment Software Association, the Motion Picture Association of America, and the Recording Industry Association of America. Together with their filings, an illustrative (but non-exhaustive) list of notorious markets emerges. It is critical to note that any group of “notorious markets” lists is, by its very nature, non-exhaustive. It is not to be viewed by the Subcommittee or by foreign governments, therefore, as a finite set of geographic locations or URLs which, if subject to enforcement, would resolve the problem of global piracy and market access restrictions. Rather, these lists of markets notorious for their connection to IP infringing activity are symptomatic of a larger struggle creators face to overcome years of lax attitudes and enforcement actions against piracy, as well as market access barriers.

The IIPA members' “notorious markets” lists of physical locations or online spaces also does not capture all forms of piracy creators face today. For example, the unauthorized use of software within businesses – organizational end-user piracy of business software – is the principal and most damaging form of piracy to the business software industry, which represents a more than \$34 billion global problem for U.S. software companies (almost \$59 billion including non-U.S. firms). This form of piracy is not captured directly in a list of notorious marketplaces.<sup>2</sup>

While our submission and those of several IIPA members are not intended to identify countries in particular, we and they do take the opportunity in most cases of noting the country locations of the business operations of the notorious markets listed since governments must play a critical role in addressing such notorious market activity, and indeed, have international obligations imploring them to take effective action. It must also be noted that the issue of addressing Internet notorious sites in particular, but physical markets as well, will increasingly require cross-border cooperation. In many instances, several countries may be involved in relation to a single notorious market. For example, the domain registrant for a particular notorious website may be from one country, but the ISP hosting the site may be located in another. Thus, it is incumbent upon governments to consider ways to address such transnational activity. Examples are growing of law enforcement working together across borders to address piracy which involves cross-border activities, and the situation will be no different with respect to these notorious markets.

Addressing IP theft successfully inures to the benefit of the U.S. economy. With the competitiveness of the U.S. economy in the balance in the wake of the 2008-2009 financial crisis,

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<sup>2</sup> We do not here recount the kinds of piracy or market access barriers IIPA members face across the globe, but refer the Subcommittee to our many public filings, including our 2011 Special 301 Submission. See International Intellectual Property Alliance, *Special 301: Written Submission Regarding the Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment (“Special 301”), and Request to Testify at the Public Hearing*, 75 Fed. Reg. 82424 (December 30, 2010), February 15, 2011, available at [www.iipa.com/2011\\_SPEC301\\_TOC.htm](http://www.iipa.com/2011_SPEC301_TOC.htm), at <http://www.iipa.com/rbc/2011/2011SPEC301COVERLETTER.pdf>.



it is notable that the U.S. copyright industries continue to outpace the rest of the economy in producing new jobs and returning revenue to our country when it needs it most.<sup>3</sup> The degree to which this capability is sustained depends upon the extent to which piracy and market access barriers can be reduced. Today, one out of every twenty-five workers is employed in the “core” copyright industries, and more than one in ten workers are employed either in the “core” or in those industries dependent upon copyright in some manner. Many of the “core” industries generate over half their revenue from outside the U.S. and that revenue contributes to the creation of more U.S. jobs. The copyright industries also contribute significantly to our innovation economy and to national productivity and competitiveness as a whole. Notwithstanding these successes, the copyright industries suffer enormous losses around the world as a result of the theft of their works or lost opportunities due to market access impediments in a number of key markets. This substantially reduces their revenue, directly impacting U.S. GDP and employment. Notorious markets – egregious examples of open and blatant piracy in countries having the obligation to effectively enforce – play a disproportionate role in harming the creative industries, and thus, have a disproportionately negative impact on the U.S. economy and on U.S. employment.

## **II. ILLUSTRATIVE LIST OF A FEW PHYSICAL AND ONLINE PIRACY “NOTORIOUS MARKETS”**

The Special 301 Subcommittee has requested examples of Internet and physical “notorious markets,” i.e., markets where “counterfeit or pirated products are prevalent to such a degree that the market exemplifies the problem of marketplaces that deal in infringing goods and help sustain global piracy and counterfeiting.” As noted, this filing discusses types of piracy being carried out within the notorious markets, but only lists a few illustrative examples. The Subcommittee should therefore refer, in addition to our filing, to several IIPA members’ submissions for a more complete (though still not exhaustive) list of their notorious markets and for greater detail on the specific markets listed therein.<sup>4</sup> The sites and markets identified by IIPA in this filing and by its members in their filings are well known, often have been the subject of ongoing investigations, and are markets for which there is significant evidence of infringing activity. In many instances these sites and markets have been the subject of investigations by local law enforcement officers. In other instances, local courts have considered and ruled on the activities of these sites. We also note that in identifying “notorious markets,” IIPA and its members focus on the bad behavior of specific individuals and enterprises dedicated to promoting piracy, and do not intend to single out any specific technology or type of service used by the pirates.

### ***Illustrative and Non-Exhaustive List of a Few Internet Piracy Notorious Markets***

IIPA and IIPA members’ filings in this year’s docket list many websites notorious for their involvement in infringing copyright content, leading to massive amounts of illegal activity across the globe. The following are a few illustrative examples of the kinds of bad actors we are

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<sup>3</sup> See the 2009 economic report prepared for the IIPA by Stephen Siwek of Economists Incorporated, *Copyright Industries in the U.S. Economy: the 2003 - 2007 Report*, available at <http://www.iipa.com/pdf/IIPASiwekReport2003-07.pdf>.

<sup>4</sup> Some markets listed herein for the Subcommittee will not be found in the other IIPA members’ filings, however, such as KJMed.



seeing, and we refer you to the IIPA members' filings for a more examples and greater detail on their activities.

- **Sohu/Sogou** (China), **Xunlei** (China) (which operates an unauthorized deep linking service called “**Gougou**”), **Zing.vn** (Vietnam), and others are examples of sites that collect links to infringing content and provide users the ability to engage in piracy through “**deep linking**” – by which they bypass the homepage of the other site and link to the illegal content directly. **Xunlei’s “Gougou”** service allows users to search for deep links to music files and BitTorrent links. There are Gougou buttons embedded in the software client that provide easy access to the deep linking service. Xunlei also provides a software plug-in called “Xunlei Ting Ting” which provides music charts and allows users to stream and/or download the music files through this unauthorized service. A court case brought against Xunlei in Shenzhen remains pending.
- **ThePirateBay.org** (Sweden), **Isohunt** (Canada), **Demonoid** (Ukraine), **BTJunkie** (Sweden ISP), **Kat.ph (formerly Kickasstorrents.com)** (Canada), **Torrentz.eu** (Canada), **Rutracker.org** (Russia), and others are examples of sites that employ or facilitate the use of the BitTorrent file sharing protocol to enable pirated content to be quickly located and downloaded, and in particular, allowing for extremely fast downloads of the largest pirate files of all kinds of copyright content, including music, movies, software, games, and published materials. **OpenBittorrent**, **PublicBT**, and others are noted as examples of BitTorrent trackers. BitTorrent trackers are servers that facilitate transfers between peers using the BitTorrent protocol. BitTorrent trackers play an indispensable role in directing the traffic of users who are attempting to participate in the P2P transfer of content via BitTorrent.
  - **The Pirate Bay** is a BitTorrent site with a global scope. The site remains hosted in Sweden, despite having obtained criminal convictions against the four founding individuals there in April 2009 (appeal upheld in November 2010). The site is still active and one of the most popular BitTorrent site in the world, with over 30 million users and access to pirate versions of the world’s most popular films and music for instant download. Right holders have turned to ISPs for cooperation, obtaining blocking orders through the courts in Denmark, Italy and Ireland to block subscribers’ access to the site. Earlier this year, the Governments of Belgium and Malaysia blocked access to ThePirateBay.org and more than ten of its alternate domains based on copyright infringement. The operators recently responded by creating a domain to bypass the block in Belgium.
  - **IsoHunt**, operating out of Vancouver, Canada, is now one of the largest BitTorrent sites in the world, with millions of users monthly, providing most of the world’s most 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 un rebutted evidence that 95% of the files traded through IsoHunt’s sites are likely infringing. In May 2010, the court issued a criminal injunction that IsoHunt ignored, and criminal contempt proceedings were initiated. The website continues to operate through servers operated by Isohunt in Canada.



- **Megaupload/Megavideo** (Netherlands), **Putlocker.com** (United Kingdom), **Wupload.com** (Netherlands), **Simdisk.co.kr** (and other “webhards” in Korea), **Gogobox.com.tw** (Taiwan), and others are examples of “one-click hosting sites,” colloquially referred to as cyberlockers, which provide access to infringing files. **Megaupload/Megavideo** used to entice users to infringe by offering “reward” schemes for numbers of uploads, the volume of which now is estimated to exceed 26 petabytes.
- **Vkontakte** (Russia), the most popular online social network in Russia (though it is available to a wider international audience in many languages including English), has 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. The site currently ranks in the top 40 most visited sites in the world. With roughly 93 million registered members the scale of damage to right holders is significant. In addition, third party software developers have distributed apps that enable non-Vkontakte members to search and download the content available on the site. The developer of the Mulve app has been subject to criminal action in the United Kingdom, but similar apps remain available and appear not to be blocked by VKontakte, which takes no proactive measures to prevent copyright infringement on its service.
- **KJ Med** (China) is an example of a site which provides and delivers unauthorized digital copies of medical and scientific journal articles on an illegal subscription basis to customers in libraries and hospitals throughout China, with neither the consent of nor payment of subscription fees to the actual rights holders.
- **Letmewatchthis.ch** (Germany), **Video2k.tv** (Russia), **Movie2k.to** (Romania), and others are examples of audiovisual “linking” sites, which aggregate, organize, and index links to files stored on other sites (which themselves are often user-generated). Some offer bonuses or premium memberships as an enticement to users who provide the most “links” to infringing content located on third party servers. **Seriesyonkis.com** (Spain) and **3000filmes.com** (Brazil) are two examples of a growing number of sites, including the ones listed just above, that provide “streaming” of infringing first-run movies and television content.
- **TaoBao** (China), **Eachnet.com** (China), and others are examples of auction sites, business-to-business (B2B), and business-to-consumer (B2C) sites which have been found to specialize in certain types of illegal merchandise (in addition to any legitimate offerings). The distribution and sale of illicit hard goods through online markets is a growing concern affecting several of the copyright industries including the business software, book publishing, and audiovisual industries. **Alibaba.com** is noted for offerings of counterfeit business software products. Well-constructed sites and services fool consumers, selling well-packaged but poor quality counterfeit copies of everything from language-learning software to movie and television programming at retail prices. Online marketplaces, such as **Modchip.ca** (Canada) and **ConsoleSource.com** sell circumvention devices into countries where such trafficking is illegal.



- **UseNext.de** (Germany) is an example of a “Usenet” service that markets to P2P users much more heavily and directly than do traditional subscription Usenet services. High-quality Blu-ray rips of motion picture content can be found on UseNext. UseNext provides a free trial period to users and then subscription plans start at approximately US\$10.90 a month and go up based on the quantity of content users wish to download. Usenext is operated and hosted in Germany.
- **Allofmp3.com clones (Russia, Ukraine):** Although allofmp3 (formerly the world’s largest server-based pirate music website) was shut down in 2007, many nearly identical sites in both Russia and Ukraine have taken its place and continue illegally distributing copyrighted materials. These illegal pay-per-download sites operate without interference from government, despite the fact that they are commercial operations that claim patently bogus licenses from rogue collecting societies. These sites are organized to operate in the same fashion as legitimate sites such as iTunes, are often serviced by major credit card companies such as Visa or MasterCard, and claim to have legitimate licenses from known rogue collecting societies who have no authority to issues such licenses.
- **Warez-bb.org** (currently hosted in Luxembourg), **BaixedeTudo** (Brazil), and others are examples of forum sites, forum index sites, or blog sites dedicated to distributing infringing content, and also allow for the distribution of hacked or cracked software codes and programs. **Warez-bb.org** is an illustrative example. It is one of the world’s largest forum sites offering illegal material including music, films, TV shows, videogames, and business software. There are tens of thousands of postings on the site offering the latest pre-release music albums and back catalogue titles. For the more popular titles, there will be multiple postings to ensure users can download the content. The content is stored on one-click download sites like Rapidshare.com. The site operators have ‘scripts’ which check the status of the download links, if the links are removed the user is prompted to post new download links. The music industry reports on occasion removing multiple copies of the same album as the user has re-posted new links within minutes of the links being taken down. The site has 2.6 million registered users and there are 3.8 million postings within the music section of the site. This web site and similar sites, forums, blogs, social networking sites, also allow for the distribution of hacked or cracked software codes and programs. The site is currently hosted in Luxembourg and the hosting company refuses to shut down the site.

### *Illustrative and Non-Exhaustive List of Physical Piracy Notorious Markets*

Unfortunately, physical notorious markets remain extremely active, and IIPA’s filing and the filings of IIPA members list many notorious markets involved in physical piracy and/or other illegal activities, including hard-disk loading of software, mobile device piracy, and circumvention of technological protection measures (TPMs). The following are a few illustrative examples of such markets.

- **Ukraine – Barabashovo Open Market (Kharkov):** This market houses 20,000 kiosks and is located near a railway cross point from Russia, selling pirated movies most of which are replicated in Russia.



- **Indonesia – Harco Glodok, Ratu Plaza, Pinangsia Plaza, and Ambassador Mall, Mangga Dua Mall:** Indonesia’s markets remain replete with retail piracy in kiosks and malls, including factory and burned-to-order CDs, VCDs, DVDs, and CD-ROMs of music, movies (including pirate movies in or claiming to be in BluRay format), business software, videogames, and published materials. Also problematic are mobile device piracy (loading illegal copyrighted files onto various mobile devices or carriers) and hard disk loading, in which computers are loaded with the latest software – all of it unauthorized – at the point of sale of the hardware. Enforcement officials are reportedly reluctant to conduct regular enforcement actions because of the presence of organized criminal gangs.
- **Canada – Golden Horseshoe Area, Pacific Mall (Toronto):** The Toronto area flea markets are a hot bed for illegal activities related to copyright materials. **Golden Horseshoe Area** is notorious for pirated films available for purchase on optical disc. **Pacific Mall** is notorious for specializing in the circumvention of TPMs through modification devices (including installation services) for videogame consoles.
- **Thailand – “Red Zones,” including Panthip Plaza, Klong Thom, Sapan Lek and Baan Mor Shopping Areas, Patpong and Silom Shopping Areas, the Mah Boon Krong (MBK) Center, the Sukhumvit Road area (Thailand) etc.:** These locations in Thailand are notorious for openly selling pirated and counterfeit goods, with the government even designating the areas as “red zones,” which are markets targeted for increased raids due to their high piracy and counterfeiting rates, and “yellow zones,” which are targets to be aware of for possible piracy activities.
- **The Philippines – Quiapo (Manila), Binondo, Baclaran, Makati Cinema Square, Metrowalk, 168 Mall and other nearby malls in Divisoria, Manila, including Juan Luna Plaza and New Divisoria Mall (Philippines):** Several areas of the Philippines are plagued by retail pirate trade. For example, Manila’s Quiapo district remains a center for pirate trade in optical discs.
- **Mexico – Tepito, San Juan de Dios in Guadalajara, Other Street Piracy Markets (Mexico):** Mexico has widespread, and well-entrenched, street piracy. The record industry estimates 100 million pirate music CDs per year are sold through an estimated 50,000 pirate sales points. With Tepito as the main warehousing and distribution center for infringing products in the country, these informal markets sell pirated and counterfeit goods connected to or purchased from organized crime syndicates. The software industry is also harmed significantly by these markets, and with the upcoming presidential election and possible turnover among public officeholders, it will be important to maintain pressure on the Mexican government to enforce intellectual property rights in these markets.
- **Malaysia – Malaysian Street and Night Markets, including Petaling Street, Chinatown (Kuala Lumpur, Malaysia); Holiday Plaza (Johor Bahru, Malaysia):** Numerous Malaysian markets reportedly offer for sale a substantial number of pirated products, including business software, videogames, music, motion pictures, etc. Reductions in piracy in malls has coincided with an increase of such activities in the night markets. The local governmental authorities need to step up efforts to shut down piracy activities there,



especially in light of good information and cooperation being offered by right holders, and in view of the presence and involvement of organized crime. **Holiday Plaza** in Johor Bahru is a three-story shopping mall located directly across the strait from Singapore, and is well-known for the offering of counterfeit merchandise, pirated business software, videogames, DVDs and counterfeit electronics products.

- **Paraguay, Argentina, Brazil – Tri-Border Region including Ciudad del Este:** This region, with Ciudad del Este (CDE) forming the focal point between the three countries, remains a focus of street piracy full of burned copies of CD-Rs/DVD-Rs full of copyrighted content, pirated music and film products, copies of business software, and illegal copies of pirated videogame software. Of particular concern to the entertainment software industry is the large number of game systems modified in the Tri-Border region that are later sold in Brazil. All can easily be found at the wholesale and retail levels, such as the San Blas municipal market at the foot of the Friendship Bridge. Brazil's extensive border makes it very vulnerable to smuggling of all sorts of goods, from drugs to DVDs.
- **Brazil – Brazil Markets, including Galeria Pagé (São Paulo), Camelódromo Uruguai (Rio De Janeiro), Feira Do Paraguai (Brasília):** These markets in some of Brazil's largest cities are replete with pirate materials, and particularly notorious for game piracy and console modifications.
- **India – Richie Street and Burma Bazaar (Chennai); Bada Bazaar (Kolkata), Palika Bazaar (underground market in Delhi); Manish Market, Lamington Road, Fort District, Andheri Train Station, Thane Train Station, Borivli Train Station, and Dadar Train Station (Mumbai), SP Verma Road (Patna), GS Road (Guwahati), Sahid Narag (Bhubaneswar), CG Road (Ahmedabad), and Retailers on leading streets in Gugarat** contain clusters of street vendors attracting significant pedestrian traffic, and are known for their high volume of pirated DVDs, pirated software, and other counterfeit products. **Kerala (Calicut), Karnataka (Belgaum), Karnataka (Gulbarga), Dhantoli (Nagpur), Tilak Road (Pune), Canada Corner (Nasik), Golani Market (Jalgaon), Nehru Place (Delhi), Naza Market (Lucknow), Agra, Ludhina Market (Ludhiana) (India)** contain a tremendous number of computer resellers, retailers and assemblers selling tens of thousands of computers pre-loaded with pirated operating system software. It has been estimated that between 70-90% of all computers sold in these markets have infringing software on their hard drives.

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IIPA appreciates this opportunity to provide input to the Special 301 Subcommittee in this out-of-cycle review regarding notorious markets for copyright piracy.

Respectfully submitted,

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