



FOR IMMEDIATE RELEASE
February 10, 2012

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IIPA Releases New Report Documenting Global Copyright Piracy and Market Access Barriers; Calls on U.S. Government to Address These Obstacles to U.S. Job and Export Growth

IIPA Report Documents How Piracy and Market Access Barriers Harm U.S. Creators and Distort Online & Physical Markets for Creative Materials in 41 Countries

Washington — The International Intellectual Property Alliance (IIPA)¹ today submitted recommendations to the U.S. Trade Representative (USTR) in its annual “Special 301” review. The IIPA report documents rampant online and physical piracy of copyrighted works and severe market access barriers, surveys problems and developments in 41 countries/territories, and recommends that 32 of them be placed on the USTR list of countries/territories that deny adequate and effective IPR protection or that deny fair and equitable market access. IIPA also advocates concrete solutions to address “Copyright Industries’ Initiatives and Challenges for 2012.”² The report calls for urgent U.S. government action to address these concerns that undermine U.S. job and export growth.

IIPA Counsel³ released this joint statement:

“The Special 301 process is an important trade tool for achieving improvements to protect our nation’s creative industries, reduce piracy abroad, and topple market access barriers to U.S. copyrights. In this year’s IIPA report, we highlight the severe harm caused by piracy in the online and physical environments and market access barriers in many of the United States’ key trading partners. We also note the need for swift action to address these concerns in order to foster legitimate commerce in copyright materials to the benefit of creators and consumers worldwide, boost U.S. exports, create good high-wage jobs here at home, and contribute to U.S. economic growth. The U.S. core copyright industries – those that produce and provide business software, entertainment software, motion picture, television and home video entertainment, music, and book and journal publishing – remain important drivers of the U.S. economy, contributing mightily to domestic growth and employment, including roughly 6.4% to the U.S. economy, nearly 5.1 million workers or 5% of all U.S. private sector jobs, and \$134 billion annually in revenue from foreign sales and exports. Increasing exports by reducing trade barriers like piracy and market access barriers is essential to our country’s economic well-being and long term growth.”

IIPA Counsel Steven J. Metalitz added: “We thank the U.S. Government, the many senior officials at USTR, Commerce, State, USPTO, the Copyright Office, the Office of the IP Enforcement Coordinator and Members of Congress, along with their staffs, who have worked steadfastly over the years to ensure that our trading partners respect U.S. intellectual property and open their markets to our products and services. We also applaud the Administration and Congress for ratification and implementation of Free Trade Agreements (FTAs) with Korea, Colombia, and Panama, and express our hopes for a robust Trans-Pacific Partnership FTA. These initiatives with strong IP chapters are critical vehicles to open foreign markets, encourage free and fair trade for America’s most productive companies, and boost U.S. jobs and exports.”

¹IIPA is a coalition of seven member associations comprising more than 3,200 companies, representing significant segments of the U.S. copyright industries.

²The “Initiatives and Challenges” include: 1) The Need for Deterrent Enforcement Responses to Copyright Piracy, 2) Internet Piracy, 3) Enterprise (Including Government) End-User Piracy of Software and Other Copyright Materials, 4) Unauthorized Loading Onto PCs (Hard-Disk Loading) and Mobile Devices (Mobile Device Piracy), 5) Circumvention of Technological Protection Measures (TPMs), 6) Illegal Camcording of Theatrical Motion Pictures, 7) Piracy of Books and Journals, 8) Optical Disc and Game Cartridge Piracy, 9) Pay TV Piracy and Signal Theft, 10) Using FTAs to Improve Global Standards of Copyright Protection and Enforcement, 11) Implementation of the WCT and WPPT, and 12) Market Access Barriers.

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Background on the IIPA 2012 Special 301 Country Recommendations⁴

IIPA recommends that 10 countries be placed on the Priority Watch List in 2012: **Argentina, Canada, Chile, China (306), Costa Rica, India, Indonesia (GSP), Russia, Thailand, and Ukraine (OCR) (GSP).**

China should continue to be on the Priority Watch List and monitored under Section 306 of the Trade Act. There were some positive developments in 2011, including the Special Campaign on IP enforcement which resulted in closures of piracy websites, and China's commitments to: make "permanent the leadership structure under the ... Special IPR Campaign"; take additional measures to ensure that the government at all levels and other enterprises use only legitimate software; and hold local officials accountable for lax enforcement. Nonetheless, high copyright piracy levels persist in China, from widespread online piracy of music, films, television programming, and books and journals, to pervasive use of unlicensed software by businesses, pre-installation of unlicensed software and other copyright materials at the distribution level, and physical piracy including the online sale of hard goods pirated materials. It is critical that China follow through on its high-level commitments to address physical and online piracy, including issuing a Judicial Interpretation "that will make clear that those who facilitate online infringement will be equally liable for such infringement." The market is also characterized by significant market access barriers to the products of U.S. copyright industries. The Chinese market remains mostly closed to U.S. copyright-based companies, as barriers to creative content – such as the 20 film quota (and onerous master contract) and discriminatory censorship regime for foreign music – remain in place, some of which violate China's WTO commitments, and "indigenous innovation" policies that discriminate against foreign products continue to be developed.

Canada merits continued placement on the Priority Watch List, standing virtually alone among developed economies in the OECD (and far behind many developing countries) in failing to bring its laws into compliance with the global minimum world standards embodied in the WIPO Internet Treaties and in legislative best practices worldwide. Bill C-11, tabled in September 2011, is the fourth copyright reform proposal in 6 years. Like its predecessors, the Bill's laudable objectives include taking some critical steps forward toward Treaties compliance. It includes robust protections for access and copy control technologies, and a new (though incomplete) provision targeting online services that primarily enable infringement. However, its approach to the role of service providers in combating online piracy is insufficient and deeply flawed, and it would add a host of new exceptions to copyright protection, many of which are inconsistent with Canada's international obligations under the Berne Convention and TRIPS, and significantly broader than those found in other jurisdictions. Canada should be encouraged to enact the Bill this year, but only after the Bill's major flaws are corrected. Canada's enforcement record also falls far short of what should be expected of our neighbor and largest trading partner, with ineffective border controls, insufficient enforcement resources, inadequate enforcement policies, and a seeming inability to impose deterrent penalties on pirates. Canada's Parliamentary leadership and Government, at the highest levels, have acknowledged many of these deficiencies, but have done little to address them. While we are encouraged by a few examples of improved enforcement responsiveness against physical piracy and by some improvements in the business software sector, overall the piracy picture in Canada is nearly as bleak as it was a year ago. The country is cementing its reputation as a haven where technologically sophisticated international piracy organizations can operate with virtual impunity.

Ukraine should be elevated to the Priority Watch List because of very weak enforcement and very high piracy rates (among the highest in Europe) for both hard copy and digital copyright piracy. Ukraine is a key country in the region because it exports digital piracy around the world, including several notorious pay-for-download websites and some of the world's top BitTorrent sites. Use of unlicensed software by large and small enterprises and even within the Government administration is rife. The Government must take stronger measures against large-scale illegal software

⁴IIPA's full submission is posted on the IIPA website at www.iipa.com.



use by enterprises, and needs to take all necessary steps to ensure that only authorized copies of software are used on computers in Government agencies. The Government also needs to resolve the dire situation with “rogue” collecting societies and take enforcement steps against these unauthorized societies. IIPA calls for the full implementation of the 2010 Action Plan, targeting digital piracy, which was adopted by the Government of Ukraine, in consultation with the U.S. Government. The current lack of effective criminal enforcement or a proper legal framework has allowed Ukraine to establish itself as a “safe haven” for copyright pirates of business and entertainment software, recorded music, films (including through illegal camcording), and books. In December 2011, IIPA filed a petition with the U.S. Government recommending the eligibility of Ukraine as a GSP beneficiary country be reviewed, and that its benefits be suspended or withdrawn absent immediate IPR and market access improvements. IIPA also recommends that the U.S. Government conduct an Out-of-Cycle Review (OCR) of Ukraine no later than mid-2012 in order to accelerate the implementation of the Action Plan.

Russia should remain on the Priority Watch List to reflect continuing serious concerns about Russia’s legal and enforcement regime related to many areas of copyright theft, as well as the current non-transparent situation with respect to the collective administration of the rights of performers and record companies. Priorities for the Government should include: the adoption of legal norms to clearly prohibit the operation of services based on providing access to infringing materials (such as the one operated by *vKontakte*, already identified by USTR as a Notorious Market); enhanced cooperation by Internet service providers with right holders in addressing infringements taking place over ISP networks or platforms; enforcement actions to take down unlicensed streaming services and pay-per-download websites and other digital infringers; and prosecution of offenders. Additionally, for the motion picture industry, the problem of illegal camcording remains a very serious one, with 60 detections of in-theater theft of major U.S. motion pictures of the MPAA in the first nine months of 2011. The rapid rise of unauthorized access to professional and scientific journals online is stunting the growth of legitimate markets and investment. Russia will complete its accession to the World Trade Organization in 2012, after the Duma ratifies a final package of legislative measures, which means that Russia will, at that time, be obligated to be in full compliance with the TRIPS Agreement (along with the detailed obligations spelled out in the Working Party Report). IIPA believes there are many additional steps Russia must take to meet these obligations, particularly related to enforcement against digital piracy.

India merits continued placement on the Priority Watch List. Its market is stifled, and the potential of its creative industries suppressed, by problems such as physical, online, and mobile piracy (through both mobile uploading/downloading, and mobile applications being used to infringe); circumvention of technological protection measures, e.g., through the use of mod chips and game copiers; illegal camcording of movies from cinema screens; print and photocopy piracy; Pay TV theft; and unlicensed use of business software. Market access and related barriers in India also affect the copyright industries and impede market growth. There were some signs of progress over the past year. Enforcement activities and court improvements in 2011 helped curb piracy in certain states, including having ISPs block certain notorious piracy websites, and some court cases were successfully concluded. Nonetheless, the courts remain backlogged and other problems continue to hinder the effectiveness of judicial processes, especially outside Delhi, thus new IP courts with expert judges and trained prosecutors need to be established. The business software industry partnered with the central and select state governments, and with Indian industry groups, to promote adoption of software asset management (SAM) best practices by government agencies and private enterprises, a key tool for ensuring licensed software use.

Indonesia belongs on the Priority Watch List, as it remains a market dominated by pirated material in physical form and supplied or distributed online, and also retains some of the most restrictive market access barriers in the region, closing off opportunities to the creative industries to supply legitimate product into the country. Unfortunately, the situation did not improve in 2011. Raiding was down across the board, the court system remains largely non-deterrent and non-transparent, and Internet and mobile piracy are on the rise. Market access restrictions remain significant. As a result of deficiencies in its IPR regime and ongoing market access issues, on December 30, 2011,



IIPA submitted a request that the eligibility of Indonesia as a GSP beneficiary country be reviewed, specifically, to determine whether Indonesia is providing adequate and effective copyright protection for U.S. copyright owners as well as equitable and reasonable access to its market. IIPA requests that the U.S. Government work with the Indonesian Government on means to address deficiencies in its IPR and market access practices, and suspend or withdraw GSP benefits if Indonesia fails to adequately address these concerns.

IIPA asks USTR to place or maintain 22 countries on the Watch List: **Belarus, Brazil, Brunei, Colombia, Egypt, Greece, Israel, Italy, Kazakhstan, Lebanon, Malaysia, Mexico, Philippines, Romania, Saudi Arabia, Spain,⁵ Switzerland, Tajikistan, Turkey, Turkmenistan, Uzbekistan, and Vietnam.** IIPA again recommends that USTR continue to monitor developments in **Paraguay** under Section 306 of the Trade Act of 1974.

We take a moment to highlight **Spain.**⁶ We want to salute the Rajoy Administration for its prompt implementation of the Law on the Sustainable Economy (LES). The Spanish market for copyright materials has been decimated by piracy over the past few years. The Rajoy Administration, in one of its first official acts, adopted long-stalled implementing regulations for the LES. This gives us tremendous hope that this Government will take the kind of robust action needed to effect meaningful changes in online and physical markets. We will be watching the implementation of this law and the impact on the marketplace very closely. While much work remains to reverse the effect of years of failed government policies, we are buoyed by this Administration's understanding of the gravity of the problem. We look forward to working closely with the Government to continue to drive progress in the fight against all forms of online and other forms of copyright theft.

IIPA 2012 SPECIAL 301 COUNTRY RECOMMENDATIONS

PRIORITY WATCH LIST	WATCH LIST	SECTION 306	COUNTRIES DESERVING SPECIAL MENTION
Argentina	Belarus	Paraguay	Albania
Canada	Brazil		Bulgaria
Chile	Brunei		Hong Kong
China (306)	Colombia		Hungary
Costa Rica	Egypt		Latvia
India	Greece		Moldova
Indonesia (GSP)	Israel		Singapore
Russian Federation	Italy		Taiwan
Thailand	Kazakhstan		
Ukraine (GSP) (OCR)	Lebanon		
	Malaysia		
	Mexico		
	Philippines		
	Romania		
	Saudi Arabia		
	Spain ⁷		
	Switzerland		
	Tajikistan		
	Turkey		
	Turkmenistan		
	Uzbekistan		
	Vietnam		
10	22	1	8

⁵Some IIPA members were of the view that Spain should be removed from the Watch List at this time. However, other IIPA members believe that removal would be premature given the perilous state of the Spanish market at the time of this filing.

⁶Id.

⁷Id.



About the IIPA: The IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries in bilateral and multilateral efforts working to improve international protection and enforcement of copyrighted materials and open up foreign markets closed by piracy and other market access barriers. IIPA's seven member associations represent over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world—all types of computer software, including business applications software and entertainment software (interactive games for videogame consoles, handheld devices, personal computers and the Internet); theatrical films, television programs, 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. Visit www.iipa.com. Members of the IIPA include [Association of American Publishers](#), [Business Software Alliance](#), [Entertainment Software Association](#), [Independent Film & Television Alliance](#), [Motion Picture Association of America](#), [National Music Publishers' Association](#), and [Recording Industry Association of America](#).

The economic report *Copyright Industries in the U.S. Economy: The 2011 Report*, is the thirteenth study written by Stephen Siwek of Economists Inc. to detail the economic impact and contributions of U.S. copyright industries to U.S. Gross Domestic Product, employment, and trade. The “core” copyright-based industries in the U.S. continue to be major contributors to the U.S. economy, accounting for an estimated \$931.8 billion or 6.36% of the U.S. gross domestic product (GDP) in 2010, and nearly 5.1 million workers in 2010, which is 3.93% of all U.S. workers and 4.75% of all private workers in 2010.⁸ The report notes a 27% “compensation premium” for workers in the core copyright industries, amounting to \$78,128 per year. Finally, estimated 2010 foreign sales and exports of key sectors of the core copyright industries amounted to \$134 billion, a significant increase over previous years, and exceeding foreign sales of other major U.S. industries such as aircraft, automobiles, agricultural products, food, and pharmaceuticals. Other countries’ studies similarly show the significant linkage between copyright protection and economic development, as documented by the World Intellectual Property Organization’s 2012 study on the *Copyright + Creativity = Jobs and Economic Growth: WIPO Studies on the Economic Contribution of the Copyright Industries*.⁹

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⁸See Steven E. Siwek, *Copyright Industries in the U.S. Economy: The 2011 Report*, November 2, 2011. The entire report as well as summaries can be accessed at http://www.iipa.com/copyright_us_economy.html. Core copyright industries are those whose primary purpose is to create, produce, distribute or exhibit copyright materials. These include books, journals, newspapers, and periodicals; motion pictures; recorded music; radio and television broadcasting; and computer software. Total copyright industries include the “core” industries and those whose revenues are dependent on the “core”. These encompass industries whose reliance on copyright is “partial;” “non-dedicated support” industries, that distribute copyright and non-copyrighted material; and “interdependent” sectors such as manufacturers of equipment primarily used with copyright materials.

⁹In 2003, the World Intellectual Property Organization (WIPO) published a guidebook on the economic parameters to develop such studies entitled *Guide on Surveying the Economic Contribution of the Copyright-Based Industries* (WIPO Publication No. 893) (2003), at http://www.wipo.int/copyright/en/publications/pdf/copyright_pub_893.pdf. The guidelines have been implemented in over 40 countries around the world, and 30 studies have been completed and published, including: Australia (2007), Bhutan (2011), Brunei (2011), Bulgaria (2011), Canada (2004), Colombia (2010), Croatia (2010), Hungary (2006), Jamaica (2008), Kenya, Korea, Latvia (2006), Lebanon (2008), Malaysia (2007), Mexico (2008), the Netherlands (2008), Panama, People’s Republic of China, Peru, the Philippines (2008), Romania (2010), Russia (2010), Singapore (2006), Slovenia, and Ukraine (2010).