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Submitted Electronically via EDIS and in Copies to the Commission, Investigation Nos. 332-531 and 332-540

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Re: IIPA Supplemental Post-Hearing Written Submission Related to: *International Trade Commission, Digital Trade in the U.S. and Global Economies, Part 1; Institution of Investigation and Scheduling of Hearing, Investigation No. 332-531*, 78 Fed. Reg. 2690, January 14, 2013; and *International Trade Commission, Digital Trade in the U.S. and Global Economies, Part 2; Institution of Investigation and Scheduling of Hearing, Investigation No. 332-540*, 78 Fed. Reg. 12787, February 25, 2013.

To the International Trade Commission:

The International Intellectual Property Alliance (IIPA) hereby submits this Supplemental Post-Hearing Written Submission Related to: *International Trade Commission, Digital Trade in the U.S. and Global Economies, Part 1* and *International Trade Commission, Digital Trade in the U.S. and Global Economies, Part 2*. This Supplemental Submission follows on our Pre-Hearing Brief (and Appendices) and Statement previously submitted in this docket, as well as our oral testimony at the March 7, 2013 hearing on these two investigations.

Specifically, the Commission asked for some further examples demonstrating harm to local producers of creative content, and the affect therefore on digital trade. IIPA has already provided detailed materials, including links to its 2013 Special 301 report,¹ which contains information on piracy and market access barriers in 48 markets around the world. From that report, it is clear that local creators are often shut out of their own or international markets due to trade barriers or impediments, most notably, due to piracy of their content or restrictions on access to their own market for both the creation and dissemination of their content. As a general matter, piracy does not discriminate between foreign and local content. Just as piracy and market access barriers constitute impediments to digital trade in U.S. copyrights, local authors, right holders, and businesses related to the creation or dissemination or creative content, are negatively affected. Some examples drawn from our report include the following anecdotes, which are non-exhaustive and merely illustrative:

¹ The full IIPA Special 301 report for 2013 can be accessed at <http://www.iipa.com/special301.html>.



- In 2012, MPAA identified 791 total illegal recordings of its member company titles from cinemas around the world, including 280 video captures and 511 audio captures. This number does not include the numerous independent or local country films illegally camcordered, and these producers also suffer gravely from illegal camcording. For example, virtually all of the 57 Thai movies released in 2010 were pirated, and such pirated goods were made available only a day or two after the release date.
- In India, the country continues to produce the greatest number of films in the world (estimated at nearly 1,000 full-length feature films per year), but revenues remain low, with India coming in only 6th place in revenues in 2011. Unfortunately, content theft negatively impacts the profitability of creators, as a recent study highlighting the film industry² and piracy's effects the livelihoods of the professionals and workers involved demonstrates.³ Illegal camcords of major U.S. motion pictures from India were globally redistributed through release groups at least 32 times in 2012, and paired with audio tracks globally in 12 different languages. There was a significant rise in the number of camcording incidents in India in 2012 (67 detections of U.S. major motion pictures), with India accounting for 53% of all forensic matches of pirate U.S. major motion pictures in the Asia Pacific region in 2012. Increased camcording incidents were observed from Ahmedabad (Gujarat), Indore (Madhya Pradesh), and Ghaziabad. These statistics due not include numerous other independent and local Indian films being stolen right off the screen. The effects on digital trade are considerable.
- Egregious examples of harm against local content occur in countries having the most onerous market access barriers, e.g., China and Vietnam.
 - In China, for example, the music market is dominated by Chinese-language music, the rights for which often are held by foreign companies. Such foreign companies continue to face an onerous and discriminatory censorship review process that differs from Chinese right holders with respect to online music. China's discriminatory regime is unfair and highly suspect under WTO rules. Promulgation of the September 2009 Circular on Strengthening and Improving Online Music Content Examination only exacerbated and complicated the issue by putting into place a censorship review process premised on an architecture ruled to be in violation of China's GATS commitments, namely, that only wholly-owned Chinese digital distribution enterprises may apply for censorship approval. The Circular violates China's WTO commitments under GATS to provide nondiscriminatory market access for foreign suppliers of sound recording distribution services; it violates China's commitments on trade in goods under the General Agreement on Tariffs and Trade 1994 (GATT); and it violates China's Accession Protocol

²A report issued by KPMG in March 2012 indicated India's film industry grew by 11.5% in 2011, to US\$1.85 billion (Rs93 billion). Liz Shackleton, *India's Film Industry Revenues Up 11% in 2011*, Screen Daily, March 13, 2012, at <http://www.screendaily.com/news/asia-pacific/indias-film-industry-revenues-up-11-in-2011/5039184.article>.

³A separate Ernst and Young study concluded that the Indian Film Industry lost US\$959 million and 571,896 jobs due to film piracy in 2008.



commitment to authorize trade in goods by any entity or individual. A set of newly amended Measures on the Administration of Importation of AV Products (2011), introduced a new definition for the term “publication of audio-video product” to include “dissemination via Information Network.” As a result, the Measures impose an additional, duplicative, and possibly confusing layer of censorship on online music.

- Various market access barriers exist in Vietnam today, the most serious of which are limitations and prohibitions on foreign companies setting up subsidiaries to produce or distribute “cultural products,” including IIPA members’ products. These restrictions contribute to the lack of a robust and competitive marketplace for content, and limit investment in the creation of new Vietnamese cultural materials. Thus, the vicious cycle of high piracy rates and little to no market access continues. To facilitate commercial development of Vietnam’s cultural sector, Vietnam should look to internationally accepted standards and practices which are premised on the understanding that constraining market access for legitimate products complicates efforts to effectively combat piracy. The Vietnamese have indicated they prioritize preserving cultural diversity and strengthening Vietnam as a producer and provider, not just as a consumer, of creative products. Unfortunately, Vietnam’s restrictive policies on foreign investment operate as a limitation on investment in cultural production, thus, undermining this objective.
- The local Egyptian film market is marred by the duopoly of the Arabic Company for Production and Distribution Group and El Mottahida, which has fueled piracy, cultural burdens, narrow theatrical windows, and a dearth of screens in the country, all perils for local creators. *See* Abdallah Alaa El Aswany, *Egypt Today*, August 2004, Volume No. 30 Issue 02.
- Piracy remains a significant constraint for independent producers and distributors in Spain, the majority of which are small- to medium-sized businesses that rely on local distributors in Spain to form partnerships for the finance and distribution of independent films. When legitimate Spanish distributors and businesses must compete with “free” illegal copies (digital or hard good), they can no longer afford to partner with independent producers to provide minimum guarantees toward licensing fees which assist the producer in financing the production. Once part of a flourishing marketplace where an independent producer could receive as much as 10% of a production budget from a minimum guarantee of a license fee, surviving Spanish distributors may now be able to guarantee only 2 to 3% of the film’s budget, if any.
- We note the damaging effect piracy has had on local Thai creators and creative industry. Two giant local music companies, RS and GMM Grammy, have shifted resources away from music and explored new opportunities in media and broadcasting. According to public records, GMM Grammy, once almost entirely devoted to music, is now only a 40% music company, instead making plans to license sports events like UK Premier League and sell satellite set-top boxes for exclusive broadcasting of football matches. Anecdotally, for the first half of 2012, revenues were flat/slightly down once again for both physical and digital sales.



Related more generally to the harm caused to the U.S. economy (and therefore also of harm to digital trade), the Commission, in May 2011, found that copyright infringement was the largest category of reported IP infringement in China in 2009 and that overall IP infringement in China costs the U.S. economy as much as \$107 billion and upwards of 2.1 million jobs. United States International Trade Commission, *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy*, Investigation No. 332-519, USITC Publication 4226, May 2011, available at www.usitc.gov/publications/332/pub4226.pdf. That report reviews many of the barriers and impediments to digital trade, including an entire section on “IPR Infringement in China and the Role of the Internet,” including “Counterfeiting and Piracy on the Internet,” “Online Marketplaces for Counterfeits.”⁴ There is also a section on “Survey Results: Type of IPR Infringement,” which includes a subsection devoted to “Digital Copyright Piracy.” References to digital and online infringement are replete throughout the report, and the data indicates that much of the cost of Chinese infringement of copyright is due to digital or online piracy.

We thank the Commission for its ongoing work in the two “Digital Trade” investigations, and will, as indicated in prior briefs and testimony, be weighing in during the investigations as appropriate. We also invite any further questions from the Commission and are pleased to engage in the process.

Respectfully submitted,

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⁴ We note there is also a section on “IPR Infringement and the Internet: Information Gaps.”