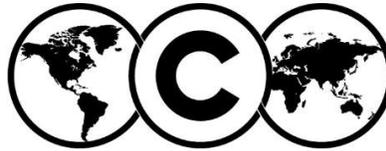


# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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May 10, 2013

## VIA REGULATIONS.GOV (Docket No. USTR-2013-0019)

Douglas Bell  
Chair, Trade Policy Staff Committee  
Office of the U.S. Trade Representative  
600 17th Street, NW  
Washington, DC 20508

Re: Request for Comments Concerning Proposed  
Transatlantic Trade and Investment Partnership, 78 Fed. Reg. 19566 (Apr. 1, 2013)

Dear Mr. Bell:

The International Intellectual Property Alliance (IIPA)<sup>1</sup> submits these comments in response to the Request for Comments Concerning Proposed Transatlantic Trade and Investment Agreement, issued by the Office of the United States Trade Representative, 78 Fed. Reg. 19566 (Apr. 1, 2013). Of the areas identified by the Trade Policy Staff Committee (TPSC), these comments focus mainly on “relevant trade-related intellectual property rights issues that should be raised with the EU.”

The Transatlantic Trade and Investment Partnership (TTIP) is a welcome opportunity to underscore the importance of copyright and related rights as drivers for innovation and economic prosperity. As the U.S.-EU High Level Working Group on Jobs and Growth stated in its Final Report published on February 11, 2013, “[b]oth the EU and the United States are committed to maintaining and promoting a high level of intellectual property protection, including enforcement, and to cooperating extensively” and “[t]he two sides will sustain and enhance their work on IPR issues.” Moreover, the Report also called on the parties to address intellectual

<sup>1</sup> The IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve international protection and enforcement of copyrighted materials and to open 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 operating systems, systems software such as databases and security packages, business applications, and consumer applications such as games, personal finance, and reference software, free software, open source software, and software as a service, entertainment software including interactive games for videogame consoles, handheld devices, personal computers and the Internet, and educational software; motion pictures, television programming, 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. Members of the IIPA include Association of American Publishers, BSA | The Software Alliance, Entertainment Software Association, Independent Film & Television Alliance, Motion Picture Association of America, National Music Publishers’ Association, and Recording Industry Association of America.



property rights issues in a way that would be “relevant to bilateral commerce, but would also contribute to the progressive strengthening of the multilateral trading system.” We commend and support these goals.

The United States and the European Union are leaders in the innovative and creative industries. Their growth is at least in part fostered by common traditions of robust domestic copyright regimes and active roles on the forefront of the development of international norms in the area of copyright protection and enforcement. The unique trade relationship between our two economies in copyright matters is built upon decades of positive cooperation, in both bilateral and multilateral settings. Bilaterally, the U.S.-EU IPR Working Group has been an important platform to affirm the importance of strong IPR protection and enforcement in the United States, in the European Union, and in third countries. Multilaterally, including before the WTO and WIPO and alongside many other key trading partners, the United States Government and the European Commission have made important advances to establish international norms that provide the level of protection needed to promote the creative industries in the modern era.

Despite these robust achievements, the creative and knowledge-based industries, and our economies as a whole, face significant challenges from global copyright piracy. U.S. and EU copyright sectors have huge growth potential as technologies for efficient global distribution expand. Unfortunately, too much of this potential remains unrealized due to the extent of unfair competition resulting from the activities of unlicensed sources. An independent study released by BASCAP (Frontier Economics), *Estimating the Global Economic and Social Impacts of Counterfeiting and Piracy* (February 2011),<sup>2</sup> estimated the value of digitally pirated music, movies and software (not losses) at \$30-75 billion in 2010, and growing to \$80-240 billion by 2015. And according to a January 2011 study by Envisional, over 23% of all worldwide Internet traffic is copyright infringing.<sup>3</sup> And significantly, research has shown a correlation between addressing online piracy through legislation or shutting down a major suspected piracy service (as in the case of *MegaUpload*) and increases in legitimate distribution of copyright materials.<sup>4</sup>

Additional efforts to demonstrate that our governments stand behind the legitimate sources of creative products and services continue to be crucially needed. Both the United States and the European Union should set an example to all of our trading partners of the need to continually evolve the types of enforcement tools and levels of protection available, to ensure

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<sup>2</sup> Frontier Economics, *Estimating the Global Economic and Social Impacts of Counterfeiting and Piracy: A Report Commissioned by Business Action to Stop Counterfeiting and Piracy (BASCAP)*, February 2011 (on file with IIPA). The report builds on a previous OECD study (*The Economic Impact of Counterfeiting and Piracy* (2008)).

<sup>3</sup> Envisional, *Technical Report: An Estimate of Infringing Use of the Internet*, January 2011 (on file with IIPA).

<sup>4</sup> See, e.g., Brett Danaher, Michael D. Smith, Rahul Telang, Siwen Chen, *The Effect of Graduated Response Anti-Piracy Laws on Music Sales: Evidence from an Event Study in France*, January 21, 2012, available at SSRN: <http://ssrn.com/abstract=1989240> or <http://dx.doi.org/10.2139/ssrn.1989240> (increased consumer awareness of HADOPI caused iTunes song and album sales to increase by 22.5% and 25% respectively relative to changes in the control group); Dianna Dilworth, *How to Stop Piracy: Carnegie Mellon Professor Michael Smith at DBW*, January 16, 2013, at [http://www.mediabistro.com/appnewser/how-to-stop-piracy-carnegie-mellon-professor-michael-smith-at-dbw\\_b31162](http://www.mediabistro.com/appnewser/how-to-stop-piracy-carnegie-mellon-professor-michael-smith-at-dbw_b31162) (Carnegie-Mellon Economist Michael D. Smith indicates his research demonstrates that every 1% reduction in Megaupload usage translated into a 2.6-4.1% increase in legitimate digital sales).



that these tools continue to work effectively against changing forms of illegal activities. Widespread online and physical piracy of copyright materials undermines the vitality and vibrancy of the creative industries around the world. Those who traffic in unauthorized access to online resources undermine the very business models from which they illicitly profit. The various economic reports noting the significant contribution of copyright to the economies of the United States and select EU members states underscore what is at stake, and provide a compelling argument for more effective legal, enforcement, and market access regimes to promote and foster the growth of the content-based industries in the United States, and in national economies around the world.<sup>5</sup>

Having adopted sophisticated but still evolving domestic frameworks for the protection and enforcement of copyright and related rights within our respective economies, the United States and the European Union should use the TTIP to achieve important goals in the area of intellectual property, including (1) more effectively combating online piracy by examining implementation of existing obligations under the international copyright framework, and (2) enhancing collaborative efforts to promote best practices and to address copyright infringement in third markets.

**Objective #1: More effectively combat online piracy by examining implementation of existing obligations under the international copyright framework.** The TTIP should include an affirmation of existing international obligations in the area of copyrights and related rights, including TRIPS and the WIPO Internet treaties. Recognizing that these obligations represent just the minimum standards for protection and enforcement, and do not prescribe exact methods of implementation, U.S. and European Union officials should identify key obligations among these that could benefit from more efficient execution, and open those subject areas to informal dialogues to include information sharing, best practices, and comparative legal review. Most importantly, any agreement should reaffirm the well-established principle of national treatment and the importance to strive for more extensive protection for, and enforcement of, intellectual property rights.

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<sup>5</sup> The IIPA-sponsored economic report *Copyright Industries in the U.S. Economy: The 2011 Report*, by Stephen Siwek of Economists Inc., details 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. The report notes a 27% “compensation premium” for workers in the core copyright industries, amounting to \$78,128 per year. Estimated 2010 foreign sales and exports of key sectors of the core copyright industries amounted to \$134 billion, exceeding foreign sales of other major U.S. industries such as aircraft, automobiles, agricultural products, food, and pharmaceuticals. Some European countries have likewise conducted studies that 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*. Studies have been conducted in Bulgaria (2011), Croatia (2010) (which will become the 28th member of the European Union on July 1, 2013), Finland (2011), Hungary (2006), Latvia (2006), Netherlands (2011), Romania (2010), and Slovenia (2011).



**Objective #2: Collaborate multilaterally to address weak copyright protection and enforcement in mutually important third markets.** Cooperation between the U.S. and EU on third country concerns has been an important element of the U.S.-EU IPR Working Group, permitting major piratical trade hubs to become the focus of shared Transatlantic enforcement expertise and resources with important results. The TTIP can help put in place new mechanisms to ensure closer cooperation and collaboration between the United States and European Union to address these third market concerns.

The International Intellectual Property Alliance appreciates the opportunity to have provided its input into the proposed Transatlantic Trade and Investment Agreement, and looks forward to further opportunities to weigh in.

Respectfully submitted,

/Amanda Wilson Denton/

Counsel

International Intellectual Property Alliance (IIPA)

CC: David Weiner  
Deputy Assistant U.S. Trade Representative for Europe