



November 1, 2005

*Via electronic filing to ntecomments@ita.doc.gov*

Ms. Carmen Suro-Bredie  
Chairman, Trade Policy Staff Committee  
c/o Office of Trade and Economic Analysis  
U.S. Department of Commerce, Room H-2815  
Washington, DC, 20230

Re: The 2006 National Trade Estimate Report  
on Foreign Trade Barriers, 70 Fed. Reg. 55204  
(September 20, 2005)

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) takes this opportunity to provide the Trade Policy Staff Committee (TPSC) with our continuing efforts toward identifying significant market access barriers to U.S. goods and services for inclusion in the preparation of the 2006 National Trade Estimate Report.

We are providing you with the public materials previously provided to the U.S. government interagency, all taken from our February 2005 "Special 301" submission to USTR. We also include our final 2004 estimated trade losses due to piracy in over 50 countries.

### **The International Intellectual Property Alliance (IIPA)**

The 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. The IIPA is comprised of seven trade associations: the Association of American Publishers (AAP), the Business Software Alliance (BSA), the Entertainment Software Association (ESA), Independent Television and Film Alliance (IFTA), the Motion Picture Association of America (MPAA), the National Music Publishers Association (NMPA), and the Recording Industry Association of America (RIAA). These member associations represent over 1,900 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 (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media). The copyright-based industries alone contributed an estimated 6% of the U.S. gross domestic product.<sup>1</sup>

<sup>1</sup> See Stephen Siwek, *Copyright Industries in the U.S. Economy: The 2004 Report*, prepared for the International Intellectual Property Alliance (October 2004). This report shows that in 2002, the U.S. "core" copyright industries accounted for an estimated 6% of U.S. Gross Domestic Product (GDP), or \$626.6 billion and the "total" copyright industries accounted for an estimated 12% of U.S. GDP or \$1.25 trillion. The "core" copyright industries employed 4% of

## Our Submission for the 2006 NTE

In February 2005, IIPA provided USTR and all its interagency colleagues with our detailed report on copyright legislation, piracy and certain other market access barriers in over 60 countries. Our 2005 Special 301 submission has been distributed to the TPSC and many U.S. government officials who work on these country issues and who contribute to preparing the NTE. Our 2005 Special 301 submission is available to the public in the USTR Reading Room and on our website, [www.iipa.com](http://www.iipa.com).<sup>2</sup> Of the ten categories of issues identified by the TPSC for the 2006 NTE, IIPA's 2005 Special 301 submission addresses at least three of them: (1) lack of intellectual property (copyright) protection; (2) trade restrictions affecting electronic commerce; and (3) discussion of intellectual property rights practices which violate existing U.S. trade agreements as well as multilateral obligations under the WTO TRIPS Agreement.

Since our February 2005 Special 301 submission, IIPA and its members have kept USTR and other interagency officials, both in the States and abroad, informed of legislative, enforcement and related developments which have taken place in the scores of countries appearing in the NTE 2005 Report. Examples of actions we have publicly taken include:

- Submitting our Special 301 out-of-cycle recommendations calling for **Ukraine** to remain at its current designation as a "Priority Foreign Country" and that GSP benefits continue to be withheld<sup>3</sup>;
- Submitting our Special 301 out-of-cycle recommendations calling for **Saudi Arabia** to be elevated to Special 301 "Priority Watch List" status<sup>4</sup>;
- Participating in public hearings before Congress regarding copyright problems in **Russia**<sup>5</sup>;
- Participating in congressional hearings<sup>6</sup> as well as interagency hearings<sup>7</sup> regarding copyright and market access problems in **People's Republic of China**;

IIPA intends to file comments on the Special 301 out-of-cycle reviews due on December 2, 2005, for **Russia, Canada, Indonesia and the Philippines**. We and our members also intend to participate in the November 30 hearings involving the ongoing GSP IPR investigations of **Russia, Lebanon, Pakistan, Kazakhstan and Uzbekistan**.

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U.S. workers in 2002 or 5.48 million persons. Factoring out the difficult economic year of 2002, from 1997-2001 the "core" copyright industries' employment grew at an annual growth rate of 3.19% per year, a rate more than double that of the annual employment rate achieved by the U.S. economy as a whole (1.39% per year). Finally, in 2002, the U.S. copyright industries achieved foreign sales and exports estimated at \$89.26 billion, leading other major industry sectors such as: chemicals and related products, motor vehicles, equipment and parts, and aircraft and aircraft parts. The entire report is posted on the IIPA website at [http://www.iipa.com/pdf/2004\\_SIWEK\\_FULLL.pdf](http://www.iipa.com/pdf/2004_SIWEK_FULLL.pdf).

<sup>2</sup> To reach the main page of IIPA's 2005 Special 301 filing and the table of contents of all the countries discussed in our 2005 submission, as well as descriptions of our methodology, go to [http://www.iipa.com/special301\\_TOCs/2005\\_SPEC301\\_TOC.html](http://www.iipa.com/special301_TOCs/2005_SPEC301_TOC.html).

<sup>3</sup> IIPA, Submission to USTR regarding Ukraine's Out-of-Cycle Review, October 14, 2005, posted at <http://www.iipa.com/pdf/IIPA%20Ukraine%202005%20OCR%20and%20GSP%20Comments%20101405.pdf>.

<sup>4</sup> IIPA, Submission to USTR regarding Saudi Arabia's Out-of-Cycle Review, October 14, 2005, posted at <http://www.iipa.com/pdf/SAUDI%20ARABIA%202005%20OCR%20submission%20FINAL%20101405.pdf>.

<sup>5</sup> IIPA, Testimony of Eric H. Smith on May 25, 2005 before the Senate Subcommittee on Courts, Internet and Intellectual Property (available at [http://www.iipa.com/rbi/2005\\_May25\\_China\\_Russia\\_Testimony.pdf](http://www.iipa.com/rbi/2005_May25_China_Russia_Testimony.pdf)).

<sup>6</sup> Thus far in 2005, IIPA has testified three times before Congressional entities on China matters: (1) IIPA, Testimony of Eric H. Smith on May 16, 2005, before the Congressional-Executive Commission on China (CECC) (available at [http://www.iipa.com/rbi/2005\\_May16\\_China\\_CECC\\_Testimony.pdf](http://www.iipa.com/rbi/2005_May16_China_CECC_Testimony.pdf)); (2) IIPA, Testimony of Eric H. Smith on May 17, 2005 before the U.S. House of Representatives' Subcommittee on Courts, Internet and Intellectual Property (available at [http://www.iipa.com/rbi/2005\\_May17\\_China\\_IP\\_Theft\\_Testimony.pdf](http://www.iipa.com/rbi/2005_May17_China_IP_Theft_Testimony.pdf)); and (3) IIPA, Testimony of Eric H. Smith on May 25, 2005 before the Senate Subcommittee on Courts, Internet and Intellectual Property (available at [http://www.iipa.com/rbi/2005\\_May25\\_China\\_Russia\\_Testimony.pdf](http://www.iipa.com/rbi/2005_May25_China_Russia_Testimony.pdf)).

<sup>7</sup> IIPA's September 1, 2005 Request to Testify before the Trade Policy Staff Committee on China is posted at <http://www.iipa.com/pdf/IIPA%20China%20WTO%20Filing%20to%20TPSC%2009012005.pdf>. IIPA's September 9, 2005 written submission on China's WTO commitments to the TPSC is posted at <http://www.iipa.com/pdf/IIPA%20China%20TPSC%20WTO%20compliance%20Written%20Comments%20FINAL%2009092005.pdf>.

Furthermore, we have worked closely with the interagency on developments (both legal reform and enforcement concerns) in dozens of countries as well as in regional initiatives (such as APEC) and in the ongoing Free Trade Agreement negotiations. Issues surrounding initiatives such as the Andean Trade Preferences Act (**ATPA**)<sup>8</sup>, the Caribbean Basin Economic Recovery Act (**CBERA**)<sup>9</sup> and the African Growth Opportunity Act (**AGOA**)<sup>10</sup> are of special concern to IIPA members. Many nations, while receiving the benefits of such initiatives, have failed to follow through on commitments to reduce pirate activities by passing updated IPR laws, encouraging legitimate markets and implementing effective enforcement regimes.

IIPA and its members are gathering information for our February 2006 Special 301 submission. Our 2006 submission will contain detailed developments in numerous countries, including trade loss and piracy level estimates for the year 2005. As in prior years, IIPA will provide the TPSC with a courtesy copy of our 2006 Special 301 submission to the TPSC in February for its consideration in the NTE process (we realize that the TPSC considers today's filing deadline "final" for NTE purposes). In years past, the NTE report published in March often has incorporated the most current IIPA information and statistics, even though our submission arrives later in the NTE production process.

### **Final Notes**

Please be aware that at least one of IIPA's member associations will be submitting a report for the 2006 NTE. The submission of the Motion Picture Association of America (MPAA) will include trade barriers related to the export of U.S. filmed entertainment, including piracy as well as other tariff and non-tariff trade barriers. That report will include estimated piracy losses due to motion picture piracy and other trade barriers during 2005. MPAA's 2005 estimates will appear in IIPA's 2006 Special 301 submission, along with additional industry estimates provided by the other IIPA member associations. IIPA and its members appreciate the opportunity to continue to provide the TPSC with our views on the significant barriers to trade faced by the U.S. copyright-based industries around the world. Thank you for your consideration.

Sincerely,



Maria Strong  
Vice President and General Counsel  
International Intellectual Property Alliance (IIPA)

Attachments

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<sup>8</sup> IIPA, Submission to the U.S. International Trade Commission regarding the Andean Trade Preferences Act, June 8, 2005, is posted at

<http://www.iipa.com/pdf/IIPA%20Andean%20USITC%20ATPA%20Investigation%20Final%2006082005.pdf>.

<sup>9</sup> IIPA, Submission to the Trade Policy Staff Committee on the Caribbean Basin Economic Recovery Act and the U.S.-Caribbean Trade Partnership Act, November 1, 2005, is posted at

<http://www.iipa.com/pdf/IIPA%20CBERA%20CBTPA%20filing%20to%20TSPC%2011012005.pdf>.

<sup>10</sup> IIPA, Submission to the Trade Policy Staff Committee on AGOA and SACU FTA, October 13, 2005, available at <http://www.iipa.com/pdf/IIPA%20AGOA%20filing%20to%20USTR%20FINAL%2010132005.pdf>

## USTR 2005 "SPECIAL 301" DECISIONS

*IIPA's 2004 FINAL ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY (in millions of U.S. dollars)  
and PIRACY LEVELS IN-COUNTRY*

	Motion Pictures		Records & Music		Business Software <sup>1</sup>		Entertainment Software <sup>2</sup>		Books	TOTAL LOSSES
	Losses	Piracy Levels	Losses	Piracy Levels	Losses	Piracy Levels	Losses	Piracy Levels	Losses	
<b>PRIORITY FOREIGN COUNTRY</b>										
Ukraine (OCR)	45.0	90%	115.0	65%	63.0	91%	NA	NA	NA	223.0
<b>PRIORITY WATCH LIST</b>										
Argentina	30.0	45%	41.5	55%	63.0	75%	NA	80%	4.0	138.5
Brazil (GSP)	120.0	30%	343.5	52%	359.0	64%	120.4	74%	18.0	960.9
Egypt	NA	NA	7.5	40%	28.0	65%	NA	90%	30.0	65.5
India	80.0	60%	67.3	50%	239.0	74%	59.5	86%	38.0	483.8
Indonesia (OCR)	32.0	92%	27.6	80%	100.0	87%	NA	NA	32.0	191.6
Israel	30.0	40%	34.0	40%	30.0	33%	12.4	88%	1.0	107.4
Kuwait	12.0	95%	8.0	65%	26.0	68%	NA	NA	1.0	47.0
Lebanon (GSP)	10.0	80%	3.0	70%	15.0	75%	NA	75%	3.0	31.0
Pakistan (GSP)	12.0	NA	70.0	100%	14.0	82%	NA	NA	52.0	148.0
People's Republic of China	280.0	95%	202.9	85%	1488.0	90%	510.0	90%	50.0	2530.9
Philippines (OCR)	33.0	85%	20.0	40%	38.0	71%	NA	90%	48.0	139.0
Russian Federation (OCR +GSP)	275.0	80%	411.9	66%	800.0	87%	255.8	73%	42.0	1784.7
Turkey	50.0	45%	15.0	70%	107.0	66%	NA	NA	23.0	195.0
Venezuela	25.0	NA	31.0	80%	39.0	79%	NA	NA	NA	95.0
<b>WATCH LIST</b>										
Azerbaijan	NA	NA	12.0	83%	NA	NA	NA	NA	NA	12.0
Bahamas	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Belarus	NA	NA	26.0	71%	NA	NA	NA	NA	NA	26.0
Belize	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Bolivia	2.0	NA	16.0	90%	5.0	80%	NA	NA	NA	23.0
Bulgaria	4.0	35%	6.5	75%	18.0	71%	NA	50%	NA	28.5
Canada (OCR)	NA	NA	NA	NA	560.0	36%	NA	NA	NA	560.0
Chile	2.0	40%	24.8	50%	49.0	64%	37.9	70%	1.0	114.7
Colombia	40.0	75%	51.6	71%	46.0	55%	NA	NA	6.0	143.6
Costa Rica	2.0	40%	NA	NA	9.0	67%	NA	NA	NA	11.0
Croatia	2.0	25%	NA	NA	27.0	58%	NA	50%	NA	29.0
Dominican Republic	2.0	20%	10.3	75%	2.0	77%	NA	NA	1.0	15.3
Ecuador	NA	NA	20.0	95%	7.0	70%	NA	NA	2.5	29.5
European Union (OCR)	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Guatemala	2.0	40%	NA	NA	6.0	78%	NA	NA	NA	8.0
Hungary	20.0	35%	11.5	38%	65.0	44%	21.5	59%	4.0	122.0
Italy	160.0	15%	45.0	23%	779.0	50%	NA	34%	23.0	1007.0
Jamaica	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Kazakhstan (GSP)	NA	NA	23.0	68%	NA	NA	NA	NA	NA	23.0
Latvia	NA	NA	12.0	85%	10.0	58%	NA	80%	NA	22.0
Lithuania	1.5	65%	15.0	80%	11.0	58%	NA	85%	NA	27.5
Malaysia	36.0	50%	55.5	52%	73.0	61%	12.9	91%	10.0	187.4
Mexico	140.0	70%	326.0	60%	222.0	65%	132.2	76%	42.0	862.2
Peru	4.0	75%	68.0	98%	22.0	73%	NA	NA	8.5	102.5
Poland	30.0	35%	36.0	37%	197.0	59%	109.3	94%	5.0	377.3
Romania	8.0	55%	18.0	78%	32.0	74%	NA	65%	2.0	60.0
Saudi Arabia (OCR)	20.0	40%	15.0	35%	73.0	52%	NA	68%	14.0	122.0
Slovakia	2.0	25%	NA	NA	26.0	48%	NA	NA	NA	28.0
South Korea	40.0	20%	2.3	16%	276.0	46%	349.0	43%	42.0	709.3
Taiwan	40.0	40%	49.4	36%	88.0	43%	123.0	63%	20.0	320.4
Tajikistan	NA	NA	5.0	81%	NA	NA	NA	NA	NA	5.0
Thailand	30.0	60%	24.9	45%	100.0	78%	NA	76%	30.0	184.9
Turkmenistan	NA	NA	7.0	85%	NA	NA	NA	NA	NA	7.0
Uruguay	2.0	35%	NA	NA	7.0	71%	NA	NA	NA	9.0
Uzbekistan (GSP)	NA	NA	31.0	81%	NA	NA	NA	NA	NA	31.0
Vietnam	10.0	NA	NA	NA	30.0	92%	NA	NA	16.0	56.0
<b>306 MONITORING</b>										
Paraguay <sup>3</sup>	2.0	95%	127.8	99%	6.0	83%	NA	NA	2.0	137.8
	1635.5		2437.8		6155.0		1743.9		571.0	12543.2

Endnotes:

<sup>1</sup> BSA's 2004 piracy statistics were preliminary at the time of IIPA's February 11, 2005 Special 301 filing. These numbers have now been revised and final losses and piracy levels are reflected above. BSA's 2004 statistics reflect the U.S. publishers' share of software piracy losses in each country. These figures follow the methodology found in the BSA/IDC July 2004 Global Software Piracy Study, and cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software.

<sup>2</sup> ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses." The methodology used by the ESA is described in Appendix B of IIPA's February 2005 report.

<sup>3</sup> Paraguay: RIAA reports that its estimated losses to the records and music industry include both domestic piracy in Paraguay and estimated losses caused by transshipment.

\*GSP\* means that the U.S. government is reviewing this country's IPR practices under the Generalized System of Preferences trade program.

\*OCR\* means out-of-cycle review to be conducted by USTR.