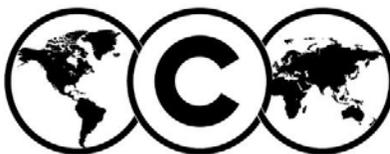


INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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October 4, 2010

Filed via www.regulations.gov

Ms. Carmen Suro-Bredie
Chair, Trade Policy Staff Committee
Office of the U.S. Trade Representative
Washington, DC 20508

Re: Request for Public Comments To Compile the
National Trade Estimate Report on Foreign
Trade Barriers, 75 Fed. Reg. 47675 (August 6,
2010)
Docket: USTR-2010-0022

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) takes this opportunity to provide the Trade Policy Staff Committee (TPSC) with written comments to assist the Committee “in identifying significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment” for inclusion in the “2011 National Trade Estimate Report on Foreign Trade Barriers” (“2011 NTE Report”).

About the IIPA

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.

In July 2009, IIPA released the latest update of our economic report, *Copyright Industries in the U.S. Economy: The 2003-2007 Report*, prepared by Stephen Siwek of Economists Inc. This report details the economic impact and contributions of U.S. copyright industries to U.S.



Gross Domestic Product, employment, and trade. The core copyright-based industries¹ in the U.S. continue to be major contributors to the U.S. economy. For example, this data show that the “core” U.S. copyright industries accounted for an estimated \$889.1 billion or 6.44% of the U.S. gross domestic product (GDP) in 2007. These “core” industries also were responsible for 22.74% of the growth achieved in 2006-2007 for the U.S. economy as a whole. In addition, the “core” copyright industries employed 5.6 million workers in 2007 (4.05% of U.S. workers) in 2007. The report also provides data on the estimated average annual compensation for a worker in the core copyright industries: \$73,554 in 2007. Finally, estimated 2007 foreign sales and exports of the core copyright industries increased to at least \$126 billion, leading other major industry sectors. The report also details results for the “total” copyright industries, which includes the core industries along with additional sectors involved in distribution.

IIPA’s Observations for the 2011 NTE Report

IIPA is pleased to provide its public comments on significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment for inclusion in the 2011 NTE Report. As has been noted in IIPA’s many submissions over the years, inadequate copyright regimes, coupled with market access barriers or other restrictions to trade, harm the economic interests of U.S. copyright owners, posing significant barriers to right holders’ abilities to export their copyright materials and impeding their ability to provide legitimate goods and services in countries around the world. IIPA participates in the annual Special 301 process, and in its 2010 submission, IIPA identified countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property, as required by the Special 301 statute (19 U.S.C. §2242). Our 2010 submission has been distributed to the TPSC and many U.S. government officials who work on the countries’ issues and who contribute to preparing the NTE.² In the cover letter to that report, IIPA also described the key challenges and initiatives that define the copyright industries’ agenda and discussed the types, levels, and costs of copyright piracy. As an easy reference, attached please

¹ The “total” copyright industries include the “core” industries plus those that, under conservative assumptions, distribute such products or other products that depend wholly or principally on copyrighted materials. The “core” copyright industries are those that create copyrighted materials as their primary product. *The 2003-2007 Report* is posted on the IIPA website at <http://www.iipa.com>.

² IIPA’s 2010 Special 301 Report is available to the public via www.regulations.gov as well as our website, www.iipa.com. The direct link to our report, which includes the table of contents as well as descriptions of our methodology, is available at http://www.iipa.com/2010_SPEC301_TOC.htm. Please note that IIPA has also updated the “estimated trade losses” in June 2010 to reflect final Business Software Alliance data, and can also be found at <http://www.iipa.com/pdf/IIPA2010USTRDecisionsSpecial301TableofEstimatedTradeLossesandPiracyLevels061110.pdf>. IIPA plans to participate in the 2011 Special 301 process and will submit its filing in February 2011. As in prior years, IIPA will provide the TPSC with a courtesy copy of our 2011 Special 301 submission in February for its consideration in this NTE docket (we realize that the TPSC considers this docket “final” in November of each year). In years past, the NTE report published in March often has incorporated the most current IIPA information and statistics, even though our Special 301-related submission arrives later in the NTE production process. IIPA appreciates the Committee’s efforts in that regard.



find IIPA’s one-page summary of the “Copyright Industries’ Global Challenges and Solutions for 2010.”³

IIPA’s submissions since the previous NTE filing by IIPA address many issues pertinent to topics on which the TPSC seeks information for the 2011 NTE Report. Most prevalent have been our discussions of point 6, “Lack of intellectual property protection (e.g., inadequate ... copyright ... regimes),” but our various submissions have also addressed “Services barriers,” “Investment barriers,” “Trade restrictions affecting electronic commerce,” “Import policies,” “Other barriers” (including irregularities in enforcement and judicial processes in several countries), and “Government procurement restrictions.” The Federal Register Notice also expressly asks commenters to “place particular emphasis on any practices that may violate U.S. trade agreements,” and IIPA’s submissions have addressed such practices as well.

Just before and since the previous NTE filing in November 2009, IIPA has made the following public submissions, all of which, in addition to the 2010 Special 301 Report, pertain to this docket:

- IIPA submitted recommendations regarding the Special 301 out-of-cycle-reviews (OCRs) of the **Philippines**,⁴ **Poland**,⁵ **Israel**,⁶ and **Saudi Arabia**⁷ out-of-cycle review proceedings.
- IIPA commented on the Trans-Pacific Partnership Free Trade Agreement (TPP FTA) with **Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam**.⁸
- IIPA submitted comments to the IP Enforcement Coordinator on the development of a Joint Strategic Plan for intellectual property enforcement.⁹

³ This global challenges paper is also posted on the IIPA homepage at www.iipa.com.

⁴ IIPA, *Philippines: Special 301 Out-Of-Cycle Review IIPA Comments on the Status of Copyright Protection and Enforcement*, 74 Fed. Reg. 51215 (October 5, 2009), November 9, 2009, at <http://www.iipa.com/pdf/IIPAPhilippinesOCRsubmissionFINAL110909.pdf>.

⁵ IIPA, *Poland: Special 301 Out-Of-Cycle Review IIPA Comments on the Status of Copyright Protection and Enforcement*, 74 Fed. Reg. 51215 (October 5, 2009), November 9, 2009, at <http://www.iipa.com/pdf/IIPAPolandOCRsubmissionFINAL110909.pdf>.

⁶ IIPA, *Israel: Special 301 Out-Of-Cycle Review IIPA Comments on the Status of Copyright Protection and Enforcement*, 74 Fed. Reg. 51215 (October 5, 2009), November 9, 2009, at <http://www.iipa.com/pdf/IIPAIsraelOCRsubmissionFINAL110909.pdf>.

⁷ IIPA, *Saudi Arabia: Special 301 Out-Of-Cycle Review IIPA Comments on the Status of Copyright Protection and Enforcement*, 74 Fed. Reg. 51215 (October 5, 2009), November 9, 2009, at <http://www.iipa.com/pdf/IIPASaudiArabiaOCRsubmissionFINAL110909.pdf>.

⁸ IIPA, *Public Comment Concerning the Proposed Trans-Pacific Partnership Free Trade Agreement with Singapore, Chile, New Zealand, Brunei Darussalam, Australia, Peru and Vietnam*, 74 Fed. Reg. 66,720 (December 16, 2009), January 25, 2010, at <http://www.iipa.com/pdf/IIPAWrittenStatementonProposedTransPacFTA012510.pdf>.

⁹ IIPA, *Comments of the International Intellectual Property Alliance to the Office of the Intellectual Property Enforcement Coordinator (IPEC)*, 75 Fed. Reg. 8137 (Feb. 23, 2010), March 24, 2010, at <http://www.iipa.com/pdf/IIPASubmissionToIPEC032410.PDF>.



- IIPA submitted comments to USTR on the IPR-related eligibility criteria of the Andean Trade Preferences Act (ATPA) and the four countries (**Peru, Colombia, Ecuador, and Bolivia**) participating in that trade program.¹⁰
- IIPA submitted a pre-hearing brief to the USITC in its two investigations regarding **China's** intellectual property infringement, indigenous innovation policies and measuring the effects of such on the U.S. economy.¹¹
- IIPA submitted comments to the USITC on its investigation entitled “**China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy.**”¹²
- IIPA requested to testify at the October hearing to be held by the Trade Policy Staff Committee on **China's** compliance with its WTO commitments (and submitted its testimony).¹³

In previous years, IIPA participated in ongoing GSP IPR reviews involving **Russia, Lebanon and Uzbekistan.**¹⁴

Furthermore, throughout the year we have worked 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 on issues related to ratification and implementation of the existing Free Trade Agreements. Issues surrounding proper in-country implementation of the

¹⁰ IIPA, *USTR Report on Operation of the Andean Trade Preferences Act (ATPA) – Request for Public Comments Regarding Beneficiary Countries*, 75 Fed. Reg. 19669 (April 15, 2010), May 12, 2010, at <http://www.iipa.com/pdf/IIPAAAndeanATPAfilingtoUSTR051210.pdf>.

¹¹ IIPA, *China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy, Pre-Hearing Brief and Statement*, Investigation No. 332-514, 75 Fed. Reg. 25883 (May 10, 2010); and *China: Effects of Intellectual Property Infringement and Indigenous Innovation Policies on the U.S. Economy, Pre-Hearing Brief and Statement*, Investigation No. 332-519, 75 Fed. Reg. 30060 (May 28, 2010), June 3, 2010, at <http://www.iipa.com/pdf/IIPACHinaITCPreHearingBriefStatement.pdf>.

¹² IIPA, *China: Intellectual Property Infringement, Indigenous Innovation Policies, and Frameworks for Measuring the Effects on the U.S. Economy, Written Submission, Investigation No. 332-514*, 75 Fed. Reg. 25883 (May 10, 2010), July 9, 2010, at <http://www.iipa.com/pdf/IIPACHinaITCWrittenSubmission070910.pdf>.

¹³ IIPA, *China's WTO Compliance: (1) Request to Testify at October 6, 2010 Hearing and (2) Notice of Testimony Regarding China's Compliance with its WTO Commitments*, 75 Fed. Reg. 45693 (August 3, 2010), September 22, 2010, at <http://www.iipa.com/pdf/ChinaWTOrequesttotestifyandtestimonytoTPSCFinal092210.pdf>.

¹⁴ See IIPA, *GSP Country Practices Review, 007-CP-08, Lebanon: Notice of Intent to Testify, Hearing Statement & Pre-Hearing Brief*, 74 Fed. Reg. 11141-3 (March 16, 2009), April 2, 2009, at <http://www.iipa.com/pdf/IIPALebanonGSPRequesttoTestifyTestimonyApril2009Hearings.pdf>; IIPA, *GSP Annual Review – Case: 008-CP-08, Russian Federation Notice of Intent to Testify at the GSP Public Hearing and Pre-Hearing Brief*, April 2, 2009, at <http://www.iipa.com/pdf/RussiaGSPNoticeofIntenttoTestifyPre-HearingBrief.PDF>; and IIPA, *GSP Annual Review – Case: 009-CP-08, Uzbekistan Notice of Intent to Testify at the GSP Public Hearing and Pre-Hearing Brief*, April 2, 2009, at <http://www.iipa.com/pdf/UzbekistanGSPPre-hearingbrief-noticeofintntotestify.PDF>.



IPR elements in the Caribbean Basin Economic Recovery Act (**CBERA**)¹⁵ and the African Growth Opportunity Act (**AGOA**)¹⁶ have been the subject of IIPA filings in prior years.

IIPA and its members appreciate the opportunity to provide the Committee with information pertaining to the 2011 NTE Report. We appreciate the Administration’s and this Committee’s continued strong support for copyright protection, and the reduction of significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment, such as market access barriers, “Services barriers,” “Investment barriers,” “Trade restrictions affecting electronic commerce,” “Import policies,” “Other barriers,” and “Government procurement restrictions,” as well as “practices that may violate U.S. trade agreements,” as described in the Federal Register Notice.

Sincerely,

Michael Schlesinger
International Intellectual Property Alliance

¹⁵ See IIPA, *CBI Report to Congress Caribbean Basin Economic Recovery Act and Caribbean Basin Trade Partnership Act: Report to Congress*, 74 Fed. Reg. 41482 (August 17, 2009), September 30, 2009, at <http://www.iipa.com/pdf/IIPACBERAfilintotheTPSCUSTRon093009.pdf>.

¹⁶ See IIPA, *African Growth and Opportunity Act Implementation Subcommittee of the Trade Policy Staff Committee; Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act*, 74 Fed. Reg. 48622-23 (September 23, 2009), October 19, 2009, at <http://www.iipa.com/pdf/IIPAAGOafilingtoUSTR101909.PDF>.



COPYRIGHT INDUSTRIES' GLOBAL CHALLENGES AND SOLUTIONS FOR 2010

REDUCE COPYRIGHT PIRACY ■ REMOVE MARKET ACCESS BARRIERS ■ STRENGTHEN LAWS

- **Internet-based Piracy:** Internet piracy in all its forms continues to grow rapidly, hindering legitimate electronic commerce opportunities for the copyright industries and putting at stake the ability to establish and sustain legitimate online offerings. It has caused mounting losses that have been particularly devastating to the music, movie and videogame industries.
- **Corporate and Government Piracy of Business Software:** Unauthorized use of software by businesses and government entities resulted in the vast majority of the over \$31 billion of loss to the U.S. business software industry in 2009.
- **Optical Disc Piracy:** Pirate product in optical disc formats (e.g., CDs, VCDs, DVDs, CD-ROMs, recordable discs) has long caused enormous harm to copyright owners. Illegal commercial burning locally has largely eclipsed centralized industrial production and distribution of pirate discs.
- **Piracy of Books and Journals:** The publishing industry continues to face severe challenges, predominantly unauthorized commercial photocopying in shops on and around university campuses. Other forms of piracy affecting the publishing industry include, unauthorized translations/adaptations, offset print piracy, and the marked growth of online piracy.
- **Illegal Camcording of Theatrical Motion Pictures:** Some of the most damaging piracy of motion pictures today occurs during theatrical release, with illegally camcordered copies made in movie theaters illegally distributed on the Internet, and in direct competition with the legitimate theatrical, DVD and online offerings.
- **Mobile Device Piracy:** The pre-loading or loading of illegal copyright content onto mobile devices, such as phones, MP3 players, or memory sticks or drives has become a growing new problem, particularly for the music industry, and is becoming a growing problem for the motion picture industry.
- **Cartridge-based Videogame Piracy:** Factory piracy of entertainment software in cartridge format remains a serious problem, with such cartridges finding their way into numerous countries around the world.
- **Circumvention of Anti-Piracy Measures:** The demand for pirated copies creates financial incentives for people and organizations to develop “circumvention devices” – software and hardware applications to unscramble, decrypt, bypass or deactivate technological protection measures without the authority of the copyright holder.
- **Pay TV Piracy and Signal Theft:** Unauthorized transmission of pay TV or satellite signals causes increasing losses to the audiovisual content industries and legitimate broadcasters.
- **Market Access:** There exists a strong connection between a country's willingness to open its market to legitimate copyright businesses and its ability to combat piracy effectively. Where there are unjustifiable impediments to the introduction or distribution of legitimate products, or to the commercial establishment of companies involved in the creation, manufacture or distribution of such products, illegal operations fill the void with piratical product.

Solutions: The copyright industries look to governments to:

- Ratify and fully implement the WIPO Treaties;
- Make sustained governmental efforts to enforce copyright laws, protect rightsholders and reduce piracy levels;
- Dedicate enforcement resources commensurate with the scale of the piracy problem;
- Train and empower enforcement authorities to investigate and prosecute copyright offenses;
- Update laws and enforcement tools to meet the current piracy challenges, as the nature of these challenges changes;
- Encourage cooperation by Internet service providers with all content owners, including workable and fair notice and takedown systems and graduated response mechanisms to deal with repeat infringers;
- Issue orders or directives to government agencies, entities, contractors, and educational institutions to use only legal software and legal copies of textbooks and other educational materials;
- Direct government agencies and educational institutions to take appropriate steps to ensure that their networks or computers are not used for infringing purposes;
- Enact and enforce measures to make it illegal to use or attempt to use an audiovisual recording device to make or transmit a copy of a motion picture; and
- Dismantle existing market access barriers and refrain from establishing market access conditions based on the nationality of owner of intellectual property.