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## USTR Special 301 Report Highlights the Significant Global Challenges Facing the Copyright Industries

*USTR's Report recognizes the critical importance of staying ahead of the technological curve by promoting strong, modern copyright protections in both developed and emerging markets*

**Washington** — Today the International Intellectual Property Alliance (IIPA) – a coalition of seven member associations, each of which represents a significant segment of the U.S. copyright industries – commended the United States Trade Representative Ron Kirk for laying out the stark global challenges faced by U.S. copyright industries in this year's Special 301 report. USTR's report names 42 countries that fail to provide adequate and effective intellectual property rights protection and/or fair and equitable market access.

Regarding the USTR Special 301 Report, Eric H. Smith, counsel to IIPA, commented, "USTR, through this year's decisions, recognizes the devastating impact copyright piracy – both online and physical – has on the continued viability of creative industries in both developed and emerging markets. USTR's Report signals strongly the Administration's commitment to protect our nation's creative industries abroad through strong copyright protection, reducing piracy through more effective enforcement, and toppling market access barriers, steps that will help boost U.S. exports, create good jobs here at home, and contribute to U.S. economic growth, in line with the Administration's goals. In IIPA's February 2011 submission to USTR, we documented increasingly damaging online and physical piracy of copyrighted works in numerous countries throughout the world, advocating concrete solutions to address the 'Copyright Industries' Initiatives and Challenges for 2011.'<sup>1</sup> IIPA is particularly pleased that in today's announcement, USTR Ron Kirk commits to pay special attention to Internet piracy issues in the coming year. IIPA also notes that Ambassador Kirk calls upon governments to come forward to engage bilaterally to seek concrete solutions to piracy, enforcement, and market access concerns through the development of action plans going forward."

IIPA counsel Steve Metalitz added, "USTR's Report highlights the way some countries – including developed markets like Canada and Spain, and emerging markets, like those in Southeast Asia and Latin America – have fallen or are in danger of falling behind evolving international norms, leading to massive infringements, the proliferation of sophisticated circumvention tools, businesses and services, and legal deficiencies. We thank senior officials at USTR, Commerce, State, USPTO, the Copyright Office, the Office of the IP Enforcement Coordinator and others, along with their staffs, for continuing to engage bilaterally and regionally, working to ensure that all our trading partners are taking steps in the right direction. In this regard, we support the Administration in urging swift approval of the Korea, Colombia, and Panama FTAs, and we call for a robust Trans-Pacific Partnership agreement, which would include several countries cited by USTR today. Strong IP chapters in these agreements are critical tools to open foreign markets and encourage free and fair trade for America's most productive companies. We also thank USTR for continuing to urge countries to ratify and implement the WIPO Internet Treaties which provide some of the basic tools to protect copyrighted materials in the online and digital environment."

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



## **SUMMARY OF COUNTRY PLACEMENTS IN USTR'S REPORT**

**Priority Watch List:** USTR placed 12 countries on this list (listed in chart below). Among them, we note the following.

**China's** many notorious online piracy sites and services, its failure to effectively lower enterprise end-user software piracy or legalize government and state-owned enterprise (SOE) use of software or publications, and its market access barriers are effectively shutting U.S. content industries out of one of the world's largest and fastest growing markets. China's current special campaign on IP enforcement has made progress on some concerns at the margins, but fundamental problems remain. The Chinese Government must follow through on key commitments regarding liability for those who facilitate online infringement, legalization of software by government agencies and SOEs, strengthening copyright protection in China's libraries, and non-discriminatory market access for U.S. companies and for products with IP owned or developed outside of China. Engagement with China to achieve these goals must be multi-faceted, including through Special 301 as well as discussions in the bilateral Strategic & Economic Dialogue and Joint Commission on Commerce and Trade.

**Canada** stands virtually alone among developed economies in failing to bring its laws up to global minimum standards for the digital networked environment. While Canadian copyright reform legislation was under active consideration, the current election cycle has thrown the legislative process off track again. We hope that the new Government, once elected, will move quickly to close the gap in Canada's legal structure. Canada's enforcement record also falls short, with ineffective border controls, insufficient enforcement resources, inadequate enforcement policies, and a seeming unwillingness to impose deterrent penalties on pirates. Since top leaders and enforcement officers from Canada have in the past several years acknowledged many of the deficiencies in its current copyright laws, IIPA hopes the Canadian Government can continue to engage positively toward helpful outcomes to modernize Canada's copyright system.

**Russia's** legal and enforcement regime related to all aspects of piracy, whether online, on the streets, in corporations, or in government offices, as well as the current chaotic situation with respect to the collective administration of the rights of performers and record companies, continue to raise serious concerns. Present consideration of regulations to address Internet piracy must produce a robust response to the problem, including clearly prohibiting entities like vKontakte from operating businesses based on providing access to infringing materials. IIPA notes a decline in the number of criminal actions undertaken, very little action taken against Internet piracy, and stalled progress in addressing illegal use of software by corporations and government agencies. The independent film and music industries report piracy has reached disastrous levels. Bilateral engagement must include robust IPR protection and in particular, must meaningfully address the burgeoning online piracy problem.

**India** has taken some important measures to combat copyright infringement, yet more needs to be done given the scope of the problem. Copyright piracy in India stifles the market and keeps India's creative industries from reaching their potential. The legitimate music market shrank by almost one-fourth by 2009. Illegal camcording of movies off the screens in India and pay TV theft rob creators of their due. Print and photocopy piracy continue to hinder the development of the trade and educational publishing markets in India. Some gains have been made in addressing software piracy by business enterprises, but more than six out of ten copies of software installed on personal computers last year were unlicensed. Increased Internet access and mobile penetration translate to growth in illegal downloads as well as mobile device piracy allowing rampant digital piracy of copyright materials. Engagement should



capitalize on the Indian Government's announced initiative to develop a national IPR policy and to engage with industry stakeholders in this process, with the goal of a better coordinated national government effort to bolster IP enforcement, from more *suo moto* raids to more deterrent fines or sentences in the courts. The U.S. Government should also continue to engage on the Copyright Bill 2010 which contains some serious deficiencies that need to be addressed.

**Thailand** has not made concrete progress on key concerns, both legislative and enforcement, notwithstanding the appreciated dedicated efforts on the part of many officials and departments over the past eighteen months. Serious piracy problems persist in the physical and online markets and the rapidly growing detections of illegal camcording threaten the film market. The U.S. Government's continued engagement should focus on getting the Royal Thai Government over the finish line on key pieces of legislation as well as concretely tackling piracy which threatens its own stated goal of achieving a "Creative Thailand" over the coming years.

**Watch List and Other Special 301 Results:** USTR placed 29 countries on the Watch List this year. In particular, IIPA believes that the continued bilateral attention regarding copyright developments in **Spain, Brazil, Italy, Malaysia, and Mexico** is warranted, and we hope that significant progress on copyright issues is made to strengthen these important markets. In Italy, IIPA is heartened by USTR's announcement that an Out-of-Cycle Review will be conducted later in the year to review the Italian Government's progress in addressing Internet piracy. We are encouraged by recent actions, and in particular by the contemplated regulation presently before the Communications authority, and we hope that the situation in Italy will have significantly improved by the time the USTR review takes place. USTR will continue to monitor developments in **Paraguay** under Section 306 of the Trade Act of 1974 and engage in regular consultations to effectively implement their bilateral IPR Memorandum of Understanding with the U.S.

**Spain** has witnessed an explosion of online piracy in recent years and the failure of the Spanish Government to address it effectively remains a chief concern. Internet piracy has decimated the Spanish market for some copyright industries. Adoption of the Law on the Sustainable Economy marks an important first step toward combating Internet piracy in Spain. Addressing consumption of infringing materials, removing the protective cloak of anonymity for infringers, and securing greater cooperation on the part of Internet service providers with respect to the use of their proprietary networks and platforms for infringing purposes, are greatly needed.

IIPA notes continued concerns over piracy in **The Philippines** and **Vietnam**. Notwithstanding the enactment of a good anti-camcording law in The Philippines, the Philippine Government has not effectively implemented this new law nor taken adequate steps to address piracy phenomena, including growing P2P and other Internet-based piracy (and increasing mobile piracy), illegal camcording of movies in theaters, book and journal piracy, retail shop and mall piracy, and Pay TV theft. In Vietnam, physical piracy remains largely unchecked, and the increased uptake and capacity of broadband and mobile Internet improvements in the country have led to a severe increase in the trade of illegal copyright files online. The Vietnamese Government's undue focus on administrative measures as opposed to implementing a strong BTA-compatible criminal remedy, its refusal to lift onerous market access restrictions, and pay TV signal theft are crippling the legitimate industries. The United States has become an extremely important export market for Vietnam, and engagement should focus on Vietnam holding up its part of the bargain to address copyright piracy and related concerns. IIPA also remains hopeful that Vietnam's participation in TPP negotiations will aid in improving the IPR climate, and in the elimination of discriminatory barriers.



COUNTRY PLACEMENT IN USTR'S 2011 SPECIAL 301 ANNOUNCEMENT		
PRIORITY WATCH LIST	WATCH LIST	SECTION 306
Algeria	Belarus	Paraguay
Argentina	Bolivia	
Canada	Brazil	
Chile	Brunei	
China	Colombia	
India	Costa Rica	
Indonesia	Dominican Republic	
Israel	Ecuador	
Pakistan	Egypt	
Russia	Finland	
Thailand	Greece	
Venezuela	Guatemala	
	Italy (OCR)	
	Jamaica	
	Kuwait	
	Lebanon	
	Malaysia	
	Mexico	
	Norway	
	Peru	
	Philippines	
	Romania	
	Spain	
	Tajikistan	
	Turkey	
	Turkmenistan	
	Ukraine	
	Uzbekistan	
	Vietnam	
<b>12</b>	<b>29</b>	<b>1</b>

**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. copyright 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. IIPA has participated in every Special 301 cycle since the 1988 Trade Act created this process, providing public comments on acts, practices and policies regarding copyright law, piracy, enforcement and market access in selected foreign countries.

The economic report *Copyright Industries in the U.S. Economy: The 2003 - 2007 Report*, the twelfth study written 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, economic growth and trade. The latest 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 were responsible for 22.74% of the real economic growth achieved by the U.S. economy in 2006-2007. 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, which represents a 30% premium over the compensation paid the average U.S. worker. Finally, estimated 2007 foreign sales and exports of the core copyright industries increased to at least \$126 billion, leading other major industry sectors.

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