



**Hearing Statement of
Michael Schlesinger
International Intellectual Property Alliance (IIPA)
before the
Special 301 Committee
2012 Special 301 Hearing
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Good morning. I appear before you on behalf of the International Intellectual Property Alliance – IIPA – a coalition of seven copyright-based trade associations, representing over 3,200 companies in the business software, motion picture, music and sound recording, entertainment software, and book and journal publishing industries. We appreciate the opportunity to weigh in on the 2012 Special 301 process. In IIPA’s 2012 Special 301 Report, we reports on 41 countries or territories, and recommends that 33 of them be ranked on the Special 301 Priority Watch List or Watch List, or monitored under Section 306 of the Trade Act, for denial of adequate and effective protection of intellectual property rights and/or failure to afford U.S. creators fair and equitable market access. Our country surveys aim to bring focused attention to the problems identified through the Special 301 process, and can, with the help of all the agencies that sit on this Committee, increase respect for intellectual property globally, open markets, and thereby generate real economic growth and jobs here in the United States and in these countries.

Since its inception in 1988, the Special 301 process has been responsible for generating billions of dollars in revenue and millions of jobs in the U.S. economy since 1988 by elevating the levels of copyright protection and enforcement and dismantling market access barriers around the world. In the mid-1980s many countries in Asia and elsewhere had no, or seriously inadequate, copyright laws, and little or no IP enforcement; piracy rates were 90% or greater throughout the developing world. Today, despite the many piracy challenges our industries continue to face, only a small handful of countries have no copyright protection at all, the vast majority of countries have updated and improved their copyright laws, and most countries have enhanced their enforcement capabilities.

By driving U.S. engagement with our trading partners to address fundamental problems in the protection of intellectual property, the Special 301 program has produced positive results for the U.S. copyright sectors, which in turn have generated millions of high-wage jobs and hundreds of billions of dollars in exports for the U.S. economy. The creativity and innovation of the American people have resulted in this country having very significant and valuable intellectual property assets, which have become important drivers of economic and job growth, and of exports. In 2010 the “core” copyright



industries were responsible for adding \$931.8 billion to GDP, or 6.36% of the U.S. economy, and employed nearly 5.1 million people, or 4.75% of total private employment in the United States. Average annual compensation for workers employed in these industries exceeded overall average compensation by 27%. 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.

At the same time, these statistics do not reveal the massive costs imposed by overseas piracy and other market access barriers to U.S. copyrighted products and services. Content industries continue to contend with those who, in the absence of good protection and enforcement, engage in piracy as a high-profit, low-risk enterprise. Independent studies have shown that the value of digitally pirated music, movies and software is upwards of hundreds of billions of dollars. Moreover, many forms of such piracy provide an unfair competitive advantage to enterprises in these high-piracy countries that increasingly are in competition with U.S. companies. For example, we see this in the use of unlicensed software by business, or in websites that derive revenue by offering pirated movies, music and other copyright material.

Each of the copyright industries is affected by copyright piracy, and that piracy takes different forms. IIPA's filing seeks to help the U.S. Government define and implement concrete solutions. We do this through identifying key "Copyright Industries' Initiatives and Challenges for 2012."

- **The Need for Adequate Laws and Deterrent Enforcement Responses to Copyright Piracy:** The IIPA Submission addresses the overarching objective for the copyright industries, namely, to secure in countries around the world effective legal frameworks capable of providing deterrent enforcement against copyright piracy and working to ensure that enforcement authorities robustly use these legal frameworks to combat copyright infringement. This includes passage and implementation of good, TRIPS-compatible and WIPO Internet Treaties- (WCT- and WPPT-) compatible laws, joining the WCT and WPPT, and providing enhanced enforcement procedures to deal with specific problems.
- **Internet Piracy:** The IIPA Submission discusses the enormous challenge posed by Internet and mobile piracy, and the need for a multi-faceted approach. Governments around the world must recognize the need for proportionate and effective steps to curb online piracy, and provide adequate legal frameworks for the protection of copyright online, including: protections compatible with the WIPO Internet Treaties, the WCT and WPPT; provisions recognizing online piracy as a form of cybercrime; and provisions that foster cooperation among the stakeholders (including ISPs) involved in the online supply chain to combat online infringements. Effective enforcement is critical to ensure the healthy development of a legitimate online market, and it must take place before it is too late to recover markets that are severely damaged by widespread and persistent online piracy in all its forms.
- **Enterprise (Including Government) End-User Piracy of Software and Other Copyright Materials:** The IIPA Submission also addresses the unauthorized use of software within



businesses – “enterprise end-user software piracy” – the principal and most damaging form of infringement to the business software industry today. This problem requires a specific enforcement response including adequate laws prohibiting the unauthorized use of software in a business setting, deterrent-level civil and criminal actions, inspections, audits, and ensuring legal software licensing practices and implementation of software asset management best practices. Governments should lead by example and adopt best practices in managing their own software assets and ensuring full license compliance in government agencies.

- **Unauthorized Loading Onto PCs (Hard-Disk Loading) and Mobile Devices (Mobile Device Piracy):** The IIPA Submission discusses the unauthorized loading of software or other copyright materials onto PCs – known as hard-disk loading – and mobile device piracy. Hard-disk loading is performed by unscrupulous computer manufacturers and dealers who install copies of software onto the internal hard drive of the personal computers they sell without authorization from the copyright holder. A similar problem involves mobile devices. A cottage industry has emerged in which pirates operating from stalls or kiosks, or masquerading as “repair” shops, offer (either at the point of sale of the mobile device, or afterwards) the illicit downloading onto any device of virtually any kind of copyrighted material. Enforcement authorities must get up to speed with these piracy phenomena and take action, or the losses from this kind of piracy will mount out of control.
- **Circumvention of Technological Protection Measures (TPMs):** The IIPA Submission discusses the use of technological protection measures – TPMs – by copyright owners, to ensure that works made available in the digital and online environments are not easily stolen, and those who build their entire business models around providing devices, tools or technologies to fill demand for gaining unlawful access to the content or copying it. Examples include the “mod chip,” “game copier,” and software and technologies used for “soft modding” that facilitate piracy on game console platforms and require strong legal measures and enforcement to make space for the sale of legitimate games. While implementation of TPMs protections has given rise to effective enforcement actions against distributors of unlawful circumvention technologies, these efforts are critically undermined by countries that have yet to pass such provisions. Countries that lack TPM provisions not only fail to afford domestic protections for legitimate online business models, but also serve as a source of circumvention devices for consumers who live in countries where such devices and technologies are rightly prohibited.
- **Illegal Camcording of Theatrical Motion Pictures:** The IIPA Submission discusses one of the greatest concerns to the motion picture industry – the illegal recording of movies from theaters – often just as they open. Approximately 90% of newly released movies that are pirated can be traced to pirates who use a digital recording device in a movie theater to steal the copyrighted audiovisual work right off the theater screen. The increase in the severity of this problem in recent years tracks the development of camcorder technology that makes detection difficult and copies nearly perfect. All it takes is one camcorder copy to trigger the mass reproduction and distribution of millions of illegal Internet downloads and bootlegs in global street markets just hours after a film’s theatrical release. A multifaceted approach is needed including: (1) educating the public about the problem; (2) working with the private sector to identify and prevent unauthorized



camcording in cinemas; and (3) developing and implementing legal measures to effectively deter unauthorized camcording. In 2011, MPAA identified 964 illegal recordings of MPAA member company titles from cinemas around the world, which does not include numerous independent films illegally camcorded.

- **Piracy of Books and Journals:** The IIPA Submission discusses piracy of books and journals – large scale unauthorized photocopying of academic, scientific, technical and medical books, principally on and around university campuses; sophisticated infringing offset print versions of books (essentially akin to counterfeiting); and unauthorized translations of popular books. Photocopy piracy in most countries involves unauthorized commercial copying of entire textbooks by copy shops on and around university campuses, and undertaken on a “copy-on-demand” basis to avoid stockpiling. Book pirates have shifted tactics and are increasingly electronically storing digitized files of books (academic or otherwise) and fulfilling customer requests on a “print-to-order” basis. Book and journal piracy calls for aggressive action by law enforcement authorities, and universities and educational institutions must do more to promote appropriate use and copyright policies.
- **Optical Disc and Game Cartridge Piracy:** The IIPA Submission discusses physical piracy, including of optical disc (OD) products – factory produced or burned recordable discs – and game cartridges, which continue to inflict serious losses, especially in markets with low Internet penetration, or where pirate console- or cartridge-based videogames are popular. In response, programs such as regularized surprise production plant inspections and exemplar (sample) disc collection must continue, and where unlicensed illegal activity is detected, copyright laws and specialized OD laws or regulations should be aggressively enforced. Similarly, unauthorized factory production of entertainment software in cartridge format persists in China for export globally. Without sustained enforcement actions against these factories, and the prosecution of their owners and financiers, there will be little progress in curtailing this piracy problem.
- **Pay TV Piracy and Signal Theft:** The IIPA Submission addresses the problem of the unauthorized broadcast, cablecast or satellite delivery of motion pictures, as well as other content (music and sound recordings), which costs right holders dearly in many markets. Three key problems are identified by the industry. The first is unauthorized cable access, when individuals or groups illicitly tap into the lines of legitimate cable TV companies. This occurs mostly in major metropolitan areas, and may use circumvention or hacking techniques, codes, or devices. The second involves unauthorized operators who take broadcast signals by unauthorized means (hacked set-top boxes or “overspill” boxes from neighboring countries), replicate the signal and sell it to hundreds or even thousands of consumers, without paying for any of the content. The third is subscriber under-declaration, when cable companies do not pay for all the channels they use, or all the subscribers they serve. This problem requires strong traditional copyright laws and enforcement, but authorities also can make use of licensing regulations, halt those who broadcast without a license, and prohibit unlawful decryption or unlawful distribution or retransmission of decrypted signals, since Pay TV signals are almost always encrypted.



- **Using FTAs to Improve Global Standards of Copyright Protection and Enforcement:** The IIPA Submission notes that the negotiation of bilateral and regional free trade agreements (FTAs) over the past fifteen years has proven to be of great value to the U.S. economy, and that these agreements include enforceable obligations for our trading partners to modernize their copyright law regimes and to improve enforcement procedures. The agreements have helped level the playing field for U.S. copyright industries in foreign markets, and have helped our trading partners develop their domestic copyright industries, a true win-win for both parties.
- **Market Access Barriers:** Finally, the IIPA Submission notes that the U.S. copyright industries suffer from myriad market access barriers, investment barriers, and discriminatory treatment that make it difficult for IIPA members to compete in some foreign markets on a level playing field. All efforts to crack down on piracy will be unavailing if legitimate products and services cannot be brought into a market to meet consumer demand. Thus, the reduction of market access impediments is a key component of ongoing efforts to combat piracy. U.S. officials should continue to strive to open markets and eliminate or phase out market access barriers including those identified in this year's IIPA submission.

Reductions in piracy levels and opening markets to copyright by eliminating or phasing out market access barriers in the countries identified in IIPA's report will result in higher economic growth and new jobs. IIPA strongly supports President Obama's call to double U.S. exports from 2010 and 2015. The copyright industries already contribute to this and have the potential to be at the forefront of this effort, but our companies need the support of the U.S. government, through the aggressive use of trade tools like Special 301, to open those markets by improving legal and enforcement regimes and eliminating unfair and discriminatory market access barriers.

We would be pleased to answer any questions on these issues or on the countries we have recommended for placement on the Special 301 lists.

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