



October 15, 2012

**Filed via [www.regulations.gov](http://www.regulations.gov)**

Douglas M. Bell,  
Chair, Trade Policy Staff Committee  
Office of the U.S. Trade Representative  
Washington, DC 20508

Re: IIPA Written Submission in Response to: Request for Public Comments To  
Compile the National Trade Estimate Report on Foreign Trade Barriers, 77 Fed.  
Reg. 49055 (August 15, 2012) Docket: USTR-2012-0021

To the Trade Policy Staff Committee:

In response to the August 15, 2012 Federal Register notice referenced above, the International Intellectual Property Alliance (IIPA)<sup>1</sup> takes this opportunity to provide the Trade Policy Staff Committee (TPSC) with written comments to “assist it in identifying significant barriers to U.S. exports of goods, services, and U.S. foreign direct investment for inclusion in the [National Trade Estimate Report on Foreign Trade Barriers] NTE” (the “2013 NTE Report”).

**IIPA’s Observations for the 2013 NTE Report**

As has been noted in IIPA’s many submissions over the years, inadequate copyright protection, inadequate enforcement systems against piracy, and market access barriers or other restrictions to trade, combine to harm the economic interests of U.S. copyright owners. The failure adequately to protect and enforce intellectual property rights, or to afford market access,

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<sup>1</sup> The IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries in bilateral and multilateral efforts working to improve international protection and enforcement of copyrighted materials and open up foreign markets closed by piracy and other market access barriers. IIPA’s seven member associations appear below, and represent over 3,200 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 discs and cartridges, personal computer CD-ROMs, and multimedia products); theatrical films, television programs, 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. Visit [www.iipa.com](http://www.iipa.com). 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](#).

In November 2011, IIPA released the latest update of the comprehensive economic report, Copyright Industries in the U.S. Economy: The 2011 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 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. These industries provide nearly 5.1 million U.S. jobs, which is 4.75% of the entire private sector labor force in 2010, and pay on average over \$78,000, 27% higher than the overall workforce average. Estimated 2010 foreign sales and exports of key sectors of the core copyright industries amounted to \$134 billion, a significant increase over previous years, and more than foreign sales of other major U.S. industry sectors such as aircraft, automobiles, agricultural products, food, and pharmaceuticals. Linkages between copyright protection and economic development in other countries are 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, compiling similar studies in 30 countries. World Intellectual Property Organization, Copyright + Creativity = Jobs and Economic Growth: WIPO Studies on the Economic Contribution of the Copyright Industries, 2012 (on file with IIPA).



poses significant barriers to copyright owners' abilities to grow jobs and revenues here at home and export their legitimate goods and services in countries around the world. In the 2012 Special 301 process, IIPA made a broad submission identifying countries that deny adequate and effective protection of intellectual property rights or that 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 2012 submission has been distributed or otherwise made available to the TPSC and to many U.S. government officials who work on the countries' issues and who contribute to preparing the NTE.<sup>2</sup> In the main Special 301 submission, which is attached to this filing, IIPA also describes the key challenges and initiatives that define the copyright industries' agenda. As an easy reference, attached please find IIPA's one-page summary of the "Copyright Industries' Initiatives or Challenges for 2012."<sup>3</sup>

IIPA's many public submissions in late 2011 and 2012 address issues pertinent to topics on which the TPSC seeks information for the 2013 NTE Report in the Federal Register Notice. Most prevalent have been our discussions of point 4, "[I]ack of intellectual property protection (e.g., inadequate ... copyright ... regimes)," but our submissions have also addressed various "[s]ervices barriers," "[i]nvestment barriers," "[i]mport policies," "[g]overnment procurement policies," "[t]rade restrictions affecting electronic commerce," "[g]overnment-tolerated anticompetitive conduct of state-owned or private firms that restrict the sale or purchase of U.S. goods or services in the foreign country's markets," and "[o]ther barriers" which commonly affect one or more copyright industry sectors in important foreign markets. The Federal Register Notice also expressly asks that comments "place particular emphasis on any practices that may violate U.S. trade agreements," and IIPA's submissions have addressed such practices as well. From late 2011 forward, IIPA has made the following public submissions, all of which, in addition to the 2012 Special 301 Report, pertain to this docket, and all of which are attached to this submission:

- IIPA filed comments on the 2011 annual review of country eligibility for benefits under the African Growth and Opportunity Act (AGOA).<sup>4</sup>
- IIPA filed comments in response to USTR's request on the Trade and Investment Partnership for the Middle East and North Africa.<sup>5</sup>
- IIPA filed comments on the U.S.-Paraguay IPR Memorandum of Understanding.<sup>6</sup>

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<sup>2</sup> IIPA's 2012 Special 301 Report is available to the public via [www.regulations.gov](http://www.regulations.gov) as well as our website, at [www.iipa.com/2012\\_SPEC301\\_TOC.htm](http://www.iipa.com/2012_SPEC301_TOC.htm). IIPA plans to participate in the 2013 Special 301 process and will submit its filing in February 2013. As in prior years, IIPA will provide the TPSC with a courtesy copy of our 2013 Special 301 submission in February 2013 for its consideration in this NTE docket. In years past, the NTE report published in March often has incorporated the most current IIPA information and statistics, even though our Special 301 submission arrives later in the NTE production process. IIPA appreciates the Committee's efforts in that regard.

<sup>3</sup> This global initiatives paper is also posted on the IIPA website at [www.iipa.com/pdf/2012KeyInitiatives.pdf](http://www.iipa.com/pdf/2012KeyInitiatives.pdf).

<sup>4</sup> See IIPA, *Public Comments on Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act*, 76 Fed. Reg. 58855-56 (September 22, 2011), October 11, 2011, at [http://www.iipa.com/pdf/2011\\_Oct11\\_IIPA\\_AGOA\\_Filing.PDF](http://www.iipa.com/pdf/2011_Oct11_IIPA_AGOA_Filing.PDF).

<sup>5</sup> See IIPA, *IIPA Written Comments in Response to: Request for Comments on The Trade and Investment Partnership for the Middle East and North Africa*, 76 Fed. Reg. 55456 (September 7, 2011) Docket: USTR\_FRDOC\_0001-0160, October 15, 2011, at [http://www.iipa.com/pdf/2011\\_Oct15\\_IIPA\\_Comments\\_on\\_MENA.PDF](http://www.iipa.com/pdf/2011_Oct15_IIPA_Comments_on_MENA.PDF).

<sup>6</sup> See IIPA, *Public Comments on the U.S.-Paraguay IPR Memorandum of Understanding*, 76 Fed. Reg. 60114-5 (September 28, 2011), October 18, 2011, at [http://www.iipa.com/pdf/2011\\_Oct18\\_IIPA\\_Comments\\_US\\_Paraguay\\_IPR\\_MOU.PDF](http://www.iipa.com/pdf/2011_Oct18_IIPA_Comments_US_Paraguay_IPR_MOU.PDF).



- IIPA filed a written submission with USTR on the 2011 Special 301 Out of Cycle Review of Notorious Markets.<sup>7</sup>
- IIPA filed a petition to review IPR and market access practices in Ukraine in the 2011 Generalized System of Preferences (GSP) Cycle.<sup>8</sup>
- IIPA filed a petition to review IPR and market access practices in Indonesia in the 2011 Generalized System of Preferences (GSP) Cycle.<sup>9</sup>
- IIPA filed comments on Mexico's expression of interest in joining the Trans-Pacific Partnership (TPP) negotiation.<sup>10</sup>
- IIPA filed comments on Japan's expression of interest in joining the Trans-Pacific Partnership (TPP) negotiation.<sup>11</sup>
- IIPA filed comments on Canada's expression of interest in joining the Trans-Pacific Partnership (TPP) negotiation.<sup>12</sup>
- IIPA published its written testimony before the Special 301 Subcommittee in the 2012 Special 301 process.<sup>13</sup>
- IIPA filed a written submission to the U.S. Intellectual Property Enforcement Coordinator related to the development of the Joint Strategic Plan on Intellectual Property Enforcement.<sup>14</sup>
- IIPA filed written testimony on negotiating objectives with respect to Canada's participation in the proposed Trans-Pacific Partnership Trade Agreement.<sup>15</sup>
- IIPA filed written testimony on negotiating objectives with respect to Mexico's participation in the proposed Trans-Pacific Partnership Trade Agreement.<sup>16</sup>

<sup>7</sup> See IIPA, *IIPA Written Submission Re: 2011 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments*, 76 Fed. Reg. 58854 (September 22, 2011), Docket No. USTR-2011-0012, October 26, 2011, at [http://www.iipa.com/pdf/2011\\_Oct26\\_IIPA\\_Notorious\\_Markets\\_Submission.PDF](http://www.iipa.com/pdf/2011_Oct26_IIPA_Notorious_Markets_Submission.PDF).

<sup>8</sup> See IIPA, *Generalized System of Preferences (GSP): Request for Review of the Intellectual Property Rights Practices of Ukraine in the 2011 Annual GSP Country Practices Review*, 76 Fed. Reg. 67531 (November 1, 2011), December 29, 2011, at [http://www.iipa.com/pdf/2011\\_Dec29\\_Ukraine\\_GSP\\_Submission.PDF](http://www.iipa.com/pdf/2011_Dec29_Ukraine_GSP_Submission.PDF).

<sup>9</sup> See IIPA, *Request for Review of the Intellectual Property Rights Practices of Indonesia in the 2011 Annual GSP Country Practices Review*, 76 Fed. Reg. 67531 (November 1, 2011); 76 Fed. Reg. 76477 (December 7, 2011) (extending deadline to December 30, 2011), Docket No. USTR-2011-0015, December 30, 2011, at [http://www.iipa.com/pdf/2011\\_Dec30\\_Indonesia\\_GSP\\_Submission.pdf](http://www.iipa.com/pdf/2011_Dec30_Indonesia_GSP_Submission.pdf).

<sup>10</sup> See IIPA, *Mexico's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations*, 76 Fed. Reg. 76479 (December 7, 2011), Docket No. USTR-2011-0020, January 13, 2012, at [http://www.iipa.com/pdf/2012\\_Jan13\\_Mexico\\_TPP\\_Submission.PDF](http://www.iipa.com/pdf/2012_Jan13_Mexico_TPP_Submission.PDF).

<sup>11</sup> See IIPA, *Japan's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations*, 76 Fed. Reg. 76478 (December 7, 2011), Docket No. USTR-2011-0018, January 13, 2012, at [http://www.iipa.com/pdf/2012\\_Jan13\\_Japan\\_TPP\\_Submission.PDF](http://www.iipa.com/pdf/2012_Jan13_Japan_TPP_Submission.PDF).

<sup>12</sup> See IIPA, *Canada's Expression of Interest in the Trans-Pacific Partnership Trade Negotiations*, 76 Fed. Reg. 76480 (December 7, 2011), Docket No. USTR-2011-0019, January 13, 2012, at [http://www.iipa.com/pdf/2012\\_Jan13\\_Canada\\_TPP\\_Submission.PDF](http://www.iipa.com/pdf/2012_Jan13_Canada_TPP_Submission.PDF).

<sup>13</sup> See IIPA, *Hearing Statement of Michael Schlesinger, International Intellectual Property Alliance (IIPA), before the Special 301 Committee 2012 Special 301 Hearing Scheduled for February 23, 2012*, February 23, 2012, at [http://www.iipa.com/pdf/2012\\_Feb23\\_Special301HearingTestimony.PDF](http://www.iipa.com/pdf/2012_Feb23_Special301HearingTestimony.PDF).

<sup>14</sup> See IIPA, *IIPA Written Submission Related to the Development of the Joint Strategic Plan on Intellectual Property Enforcement; Request of the U.S. Intellectual Property Enforcement Coordinator for Public Comments*, 77 Fed. Reg. 38088 (June 26, 2012), August 10, 2012, at [http://www.iipa.com/pdf/2012\\_Aug10\\_IIPA\\_Filing\\_to\\_IPEC\\_on\\_Joint\\_Strategic\\_Plan.pdf](http://www.iipa.com/pdf/2012_Aug10_IIPA_Filing_to_IPEC_on_Joint_Strategic_Plan.pdf).

<sup>15</sup> See IIPA, *Negotiating Objectives With Respect to Canada's Participation in the Proposed Trans-Pacific Partnership Trade Agreement*, 77 Fed. Reg. 43,131 (July 23, 2012), September 4, 2012, at [http://www.iipa.com/pdf/2012\\_Sep04\\_IIPA\\_Request\\_to\\_Appear\\_and\\_Testimony\\_on\\_Canada\\_TPP.PDF](http://www.iipa.com/pdf/2012_Sep04_IIPA_Request_to_Appear_and_Testimony_on_Canada_TPP.PDF).



- IIPA filed comments regarding the 2012 Special 301 Out-Of-Cycle Review of Notorious Markets.<sup>17</sup>
- IIPA filed its request to testify and pre-hearing brief in the GSP IPR and market access review regarding Ukraine.<sup>18</sup>
- IIPA filed its request to testify and pre-hearing brief in the GSP IPR and market access review regarding Indonesia.<sup>19</sup>
- IIPA filed a request to testify and testimony regarding China's compliance with its WTO commitments.<sup>20</sup>

In addition to these many filings, throughout the year, IIPA has worked with the interagency on developments (both legal reform and enforcement concerns) in dozens of countries as well as in regional initiatives, and we have also worked on matters related to implementation, ratification, and negotiation of existing, pending, and evolving Free Trade Agreements.

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IIPA and its members appreciate the opportunity to provide the Committee with information pertaining to the development of the 2013 NTE Report.

Sincerely,

Michael Schlesinger  
International Intellectual Property Alliance

## Attachments

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<sup>16</sup> See IIPA, *Participation of Mexico in the Trans-Pacific Partnership Trade Negotiations*, 77 FR 43134 (July 23, 2012), 77 FR, September 4, 2012, at [http://www.iipa.com/pdf/2012\\_Sep04\\_Mexico\\_TPPHearing\\_AppearanceandTestimony.PDF](http://www.iipa.com/pdf/2012_Sep04_Mexico_TPPHearing_AppearanceandTestimony.PDF).

<sup>17</sup> See IIPA, *IIPA Written Submission Re: 2012 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments*, 77 Fed. Reg. 48583 (August 14, 2012), September 14, 2012, at [http://www.iipa.com/pdf/2012\\_Sep14\\_Notorious\\_Markets.pdf](http://www.iipa.com/pdf/2012_Sep14_Notorious_Markets.pdf).

<sup>18</sup> See IIPA, *GSP Country Practices Review, USTR-2012-0012, Ukraine, Pre-Hearing Brief and Request to Appear at the GSP Public Hearing*, 77 FR 41209 (July 12, 2012) (dates revised in 77 FR 49476 (August 16, 2012)), September 18, 2012, at [www.iipa.com/pdf/2012\\_Sep18\\_IIPA\\_Ukraine\\_GSP\\_Brief.pdf](http://www.iipa.com/pdf/2012_Sep18_IIPA_Ukraine_GSP_Brief.pdf).

<sup>19</sup> See IIPA, *International Intellectual Property Alliance, Pre-Hearing Brief and Request to Appear at the Public Hearing on Indonesia, Regarding Generalized System of Preferences (GSP): Country Practice Petitions Accepted as Part of the 2011 Annual GSP Review*, 77 FR 41209 (July 12, 2012) (dates revised in 77 FR 49476 (August 16, 2012)), September 18, 2012, at [www.iipa.com/pdf/2012\\_Sep18\\_IIPA\\_Indonesia\\_GSP\\_Brief.pdf](http://www.iipa.com/pdf/2012_Sep18_IIPA_Indonesia_GSP_Brief.pdf).

<sup>20</sup> See IIPA, *China's WTO Compliance - Notification of Intent to Testify and Testimony Re: "Request for Comments and Notice of Public Hearing Concerning China's Compliance With WTO Commitments"* (77 Fed. Reg. 50206, August 20, 2012), September 19, 2012, at [www.iipa.com/pdf/2012\\_Sep19\\_IIPA\\_China\\_WTO\\_Compliance\\_Request\\_to\\_Testify\\_and\\_Testimony.pdf](http://www.iipa.com/pdf/2012_Sep19_IIPA_China_WTO_Compliance_Request_to_Testify_and_Testimony.pdf).