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## **IIPA Hails USTR Decision to Designate Ukraine a Priority Foreign Country; Commends 2013 Special 301 Report Identifying Countries with Poor IP Protection**

*USTR Report Designates 41 Countries, Announces Reviews of 2 Others, for IPR Issues Including Piracy and Other Market Barriers, Hindering Economic and Employment Growth*

**Washington** — Today the International Intellectual Property Alliance (IIPA)<sup>1</sup> praised the United States Trade Representative (USTR) for designating Ukraine as a Priority Foreign Country (PFC), the most serious ranking available in the Special 301 trade program identifying countries that fail to provide adequate and effective protection for U.S. intellectual property and/or fair and equitable market access. IIPA also commends USTR for its 2013 Special 301 Report, listing 40 other countries on either the Priority Watch List or the Watch List, and launching reviews in 2 additional countries, including Spain, for their shortcomings in copyright protection and enforcement and/or market access for U.S. copyrights.

Special 301 is an important trade tool to identify country practices that warrant attention for lax copyright protection or closed markets. American, foreign, and local creators and distributors need strong copyright protection and enforcement, in combination with better market access, to generate millions of skilled high-wage jobs, further expand exports, and contribute substantially to their nations' economies. By identifying problem markets and seeking concrete solutions to IP theft and market barriers, USTR's Report signals the Administration's continuing commitment to protect our nation's most valuable IP assets. We thank all those in the U.S. Government for continuing to engage bilaterally and regionally to encourage our trading partners to make concrete progress toward the goal of stronger and more open IP marketplaces worldwide.

IIPA Counsel Eric J. Schwartz added regarding Ukraine, "This is the first time that USTR has had a country designated as a PFC since 2005, and the designation is clearly justified. Piracy rates in Ukraine have worsened over the past two years, preventing legitimate right holders from being able to do business in Ukraine. Ukraine is, by its own admission, the source of widespread free and pay-for-download (and streaming) piracy of copyrighted materials through websites such as ex.ua, which have halted the development of a legitimate copyright market locally and harmed international markets for content. Collecting societies that have been duly authorized by right holders have lost their accreditation from the State, resulting in market confusion and loss of revenue in an already highly challenged marketplace. Software piracy remains rampant, including significant unlicensed software use by government agencies. High-quality unauthorized camcording of films in Ukraine's theaters are uploaded to top pirate sites and distributed across the Internet. We hope this designation today will stimulate Ukraine to make real and measurable progress against piracy.

<sup>1</sup> The IIPA is a coalition of seven member associations (over 3,200 companies), each of which represents a significant segment of the U.S. copyright industries. IIPA Counsel include Steven J. Metalitz, Eric J. Schwartz, Michael Schlesinger, and Amanda Denton.



<b>COUNTRY PLACEMENT IN USTR'S 2013 SPECIAL 301 ANNOUNCEMENT</b>			
<b>PRIORITY FOREIGN COUNTRY</b>	<b>PRIORITY WATCH LIST</b>	<b>WATCH LIST</b>	<b>OUT-OF-CYCLE REVIEWS</b>
Ukraine (GSP)	Algeria Argentina Chile China India Indonesia (GSP) Pakistan Russian Federation (GSP) Thailand Venezuela	Barbados Belarus Bolivia Brazil Bulgaria Canada Colombia Costa Rica Dominican Republic Ecuador Egypt Finland Greece Guatemala Israel Italy Jamaica Kuwait Lebanon Mexico Paraguay Peru Philippines Romania Tajikistan Trinidad and Tobago Turkey Turkmenistan Uzbekistan (GSP) Vietnam	El Salvador Spain
<b>1</b>	<b>10</b>	<b>30</b>	<b>2</b>

**More Background on USTR's Special 301 Report and Country Placements:** This year's Special 301 Report includes designating **Ukraine** as a Priority Foreign Country, listing 10 countries on the Priority Watch List, 30 countries on the Watch List, and conducting Out-Of-Cycle Reviews (OCRs) in two countries (including Spain). The Report also recognizes progress made in many markets; notes work on developing best practices in the area of IP protection and enforcement; and discusses key commercial concerns to the copyright industries including piracy over the Internet and digital piracy, trends in copyright piracy (including the emergence in Asia of "media box" piracy), and government legalization of software. The Report also addresses capacity building developments and WTO dispute settlement, among other thematic topics addressed.



IIPA appreciates the Administration's continuing focus on **China** which remains on the Priority Watch List. Dedicated U.S. government engagement on IP and market access concerns with China has yielded some recent progress. This includes China's efforts to develop legal liability norms to address Internet infringements, and the historic U.S.-China Film Agreement. Yet China remains a market of unfulfilled promise for foreign and local stakeholders. High copyright piracy levels persist in China, from widespread online piracy of music, films, software, television programming, books and journals, and other copyright materials, to pervasive use of unlicensed software by enterprises (including state-owned enterprises); pre-installation of unlicensed software and other copyright materials (hard disk loading piracy); and physical piracy, including the export of relatively high-quality counterfeits, "media boxes," and counterfeit/pirated books. While periodic enforcement campaigns (including one in June 2012 to address online infringements), a government software legalization program, some civil and administrative actions, and transfers of cases for criminal prosecution have had some positive effect, IP theft will not abate until the Chinese government implements needed legal reforms and takes a much more active approach that leads to deterrent levels of enforcement against all forms of copyright infringement. In addition, China still maintains too many barriers to creative content (like the ban on sales of videogame consoles, restrictions on foreign investment in online distribution, onerous and discriminatory censorship review processes and "indigenous innovation" programs favoring products with locally owned and developed IP). These barriers harm U.S. companies as well as Chinese businesses and prevent the development of a healthy marketplace for copyright materials. As a new leadership group comes to power in China, we urge them to build on the signs of progress and devote greater resources to addressing market barriers that keep the Chinese market closed and ultimately stunt commercial growth for the U.S. copyright industries.

The situation in **Russia** warrants its continued placement on the Priority Watch List. In 2012, Russia completed its accession to the World Trade Organization last year and is now bound by TRIPS standards as well as obligations spelled out in the Working Party Report to protect IP for the benefit of foreign and local stakeholders. A new U.S.-Russia IPR Action Plan of December 2012 sets out a number of important enforcement and legal reform priorities for Russian IPR enforcement which, if properly and fully implemented, should significantly improve copyright protection and enforcement. We urge Russia to address rampant digital piracy effectively and immediately. The continued operation of infringing music services, such as by vKontakte; hosted sites like pdfchm.com; and P2P sites like rutracker.org, exemplify the seriousness of the problem. The vKontakte service, listed by USTR last year as a "Notorious Market" for piracy, still operates an unlicensed music service despite several Russian court rulings against it. Takedown rates for infringing online content remain very low in Russia. Similarly, police activity and the number of criminal raids against enterprises using unlicensed software and other forms of copyright infringement declined significantly last year, and not a single Internet piracy criminal case was commenced in Russia in 2012. The state accredited collecting societies for authors, record labels and performers, including VOIS, lack transparency. The Russian Government should use its oversight authority to ensure that right holders are being fairly represented and treated, in accordance with commitments made to the U.S. and other trading partners.

IIPA further appreciates the decision to conduct an Out-Of-Cycle Review (OCR) for **Spain**. The pervasive level of online piracy in Spain continues to worsen, and IIPA urges the Government of Spain to address legislative gaps and a lack of political will on the part of law enforcement, which hinder both civil and criminal enforcement actions, and to follow through on the commitments it made in early 2012 to effectively carry out swift antipiracy procedures through Section Two of the Intellectual Property Commission, including in particular against linking sites.



While noting that the **Philippines** remains on the Watch List as of now, IIPA is pleased that USTR has acknowledged progress and will reconsider its Special 301 status upon additional developments during the year.

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**About the IIPA:** The IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve international protection and enforcement of copyrighted materials and open foreign markets closed by piracy and other market access barriers. IIPA's seven member associations represent over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world—all types of computer software, including operating systems, systems software such as databases and security packages, business applications, and consumer applications such as games, personal finance, and reference software, free software, open source software, and software as a service, entertainment software including interactive games for videogame consoles, handheld devices, personal computers and the Internet, and educational software; motion pictures, television programming, 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. 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 (GDP), 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. 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.<sup>2</sup>

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<sup>2</sup>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). In 2003, the World Intellectual Property Organization (WIPO) published a guidebook on the economic parameters to develop such studies entitled *Guide on Surveying the Economic Contribution of the Copyright-Based Industries* (WIPO Publication No. 893) (2003), at [http://www.wipo.int/copyright/en/publications/pdf/copyright\\_pub\\_893.pdf](http://www.wipo.int/copyright/en/publications/pdf/copyright_pub_893.pdf). The guidelines have been implemented in over 39 countries around the world, and studies have been published so far in 30 countries, including: Australia (2007), Bhutan (2011), Brunei (2012), Bulgaria (2011), Canada (2004), China (2011), Colombia (2010), Croatia (2010), Finland (2011), Hungary (2006), Jamaica (2008), Kenya (2011), Latvia (2006), Lebanon (2008), Malaysia (2011), Mexico (2008), Netherlands (2011), Pakistan (2011), Panama (2011), Peru (2011), Philippines (2008), Republic of Korea (2012), Romania (2010), Russia (2010), Singapore (2004), Slovenia (2011), South Africa (2012), Thailand (2012), and Ukraine (2010), and United States (2011).