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Daniel Lee
Assistant U.S. Trade Representative
for Innovation and Intellectual Property (Acting)
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20006

Re: IIPA Written Submission in Response to: 2021 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, 86 Fed. Reg. 48464 (August 30, 2021)

Dear Mr. Lee:

In response to the Federal Register Notice (“Notice”) referenced above, the International Intellectual Property Alliance (IIPA)¹ appreciates the opportunity to provide the Special 301 Subcommittee with written comments on notorious markets. According to the Notice, notorious markets are “online and physical markets that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting.” We commend USTR for continuing the notorious markets reporting process, which identifies key online and physical marketplaces that engage in the infringement of intellectual property rights and cause commercial harm to creators.

POSITIVE DEVELOPMENTS

The Notorious Markets List continues to lead to concrete results, including effective actions taken by the identified websites themselves, and in some cases the governments or courts in the countries in which the websites are hosted, to rectify the infringing behavior. Some recent positive developments include:

¹IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve copyright protection and enforcement abroad and to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association (www.motionpictures.org), and Recording Industry Association of America (www.riaa.com). Collectively, IIPA’s five member associations represent over 3,200 U.S. companies producing and distributing copyrightable content. The materials produced and distributed by IIPA member companies include entertainment software (including interactive video games for 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 recorded in all formats (from digital files to CDs and vinyl) for streaming and other online services, as well as broadcasting, public performance and synchronization in audiovisual materials; and fiction and non-fiction books, educational, instructional and assessment materials, and professional and scholarly journals, databases and software in all formats.

- On March 31, 2020, Taiwanese authorities seized and took offline streaming piracy site *8maple.ru* and seven other related domains, arrested two of its primary operators, and froze more than US\$2 million worth of property and cash. *8maple.ru* was highly popular in Taiwan and Hong Kong and received around 32 million monthly visits. The website earned money from advertising revenues estimated at US\$140,000 per month.
- In June 2021, the Spanish National Police, with the support of Eurojust, conducted the Atria-Sohan Operation, seizing 50 servers across nine countries. This group offered illegal access to over 40,000 streaming services, subscription television channels, and films to approximately two million subscribers worldwide. Eurojust approximates that the proceeds for the suspects was at least €15 million (US\$17,806,131).
- In August 2021, the U.S. Department of Justice, in cooperation with Eurojust and Europol, dismantled the Sparks Group, a criminal gang with servers in 15 countries reported to have caused tens of millions of dollars in losses to film production studios.

The creative industries are encouraged by these positive developments, which indicate that this Out-of-Cycle Review can be very effective. Yet, many notorious markets remain, threatening the vitality of the U.S. copyright-based industries, and as a result, harming the U.S. economy as a whole. The “core” copyright industries generated over \$1.5 trillion dollars of economic output in 2019, accounting for 7.4% of the entire economy.² These industries employed nearly 5.7 million U.S. workers in 2019, with jobs paying an average of 43% more than the rest of the U.S. workforce.³ The core copyright industries in the U.S. outpaced the U.S. economy, growing at 5.87% between 2016 and 2019, while the U.S. economy grew by 2.48%.⁴ As evidenced by these numbers, the copyright-based industries have been one of the fastest-growing and most dynamic sectors of the U.S. economy. Notably, the economic contributions of the “total” copyright industries, which include other industries that at least partially contribute or depend on the production or distribution of copyrighted materials (e.g., manufacturers of television sets or personal computers), are even more staggering.⁵ Yet, the sustainability of these economic contributions depends in large part upon the extent to which overseas piracy and market access barriers can be reduced.

THE ADVERSE IMPACT OF COUNTERFEITING ON WORKERS INVOLVED WITH THE MANUFACTURE OF COUNTERFEIT GOODS

IIPA applauds USTR’s decision to focus on the adverse impact of counterfeiting on workers involved with the manufacture of counterfeit goods. Counterfeit and pirated goods enable piracy operations that financially burden and harm creative industries in the United States and often exploit underpaid or forced labor. The Department of Homeland Security noted that “it is much cheaper to manufacture illicit goods because counterfeit and pirated goods are often produced in unsafe workplaces with substandard and unsafe materials by workers who are often

² *Copyright Industries in the U.S. Economy: The 2020 Report*, by Robert Stoner and Jéssica Dutra of Economists Incorporated, prepared for the International Intellectual Property Alliance (IIPA), (December 2020), p. 4, available at <https://www.iipa.org/files/uploads/2020/12/2020-IIPA-Report-FINAL-web.pdf>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

paid little—and sometimes nothing in the case of forced labor.”⁶ Moreover, these markets constrain the ability of the U.S. creative industries to export legitimate goods and services, which negatively impact revenues returning to the United States and the growth of U.S. jobs, particularly those that are connected to exporting goods and services to the worldwide marketplace. For this and other reasons, we commend USTR for taking a comprehensive view of the ecosystem in identifying markets that facilitate substantial copyright infringement and piracy.

OECD has noted that “low labour costs and poor labour market regulations are important drivers of trade in counterfeit and pirated goods.”⁷ Part of addressing problems with notorious markets should include government engagement on labor conditions of our trading partners. Because of the low labor costs associated with counterfeiting and piracy, legitimate U.S. creators, especially small- and medium-sized businesses have difficulty competing. As a result, U.S. revenue, and ultimately, U.S. jobs are lost. Because operations that produce counterfeit and pirated goods are illicit, engaging with trading partners on labor regulations is not sufficient to improve labor conditions for these workers. The U.S. government needs to engage with our trading partners that allow these notorious markets to thrive and push for laws deter infringement.

IIPA urges USTR to continue to pursue discussions with the governments of countries where the notorious markets identified here and in the respective filings of IIPA’s members are located. It is critical to recognize that online notorious markets operate within a complex ecosystem of providers and intermediaries, including domain name registrars, advertisers, ad placement networks, payment processors, reverse proxy services, and others. Such intermediaries may enable, facilitate, and/or profit from the infringing conduct in various ways and need to be considered in any action plan. The only way to address the negative effects of these notorious markets on the labor market is to address how these markets are entangled in an entire ecosystem that supports them.

An effective response to online piracy requires the establishment of strong legal incentives for all these different types of providers to cooperate with rights holders to battle pervasive infringement and to promote the healthy growth of a legitimate e-commerce marketplace for copyrighted materials. Governments have a critical role to play in encouraging such cooperation, ensuring that their laws are fit for the digital age and confronting the services that promote, induce, or benefit from infringers who exploit laborers and divert consumers from legitimate providers. Attention to these issues is an essential element in correcting the present dysfunction in the online ecosystem that permits websites dedicated to infringement to continue to operate and be profitable.

Whether located online or at a physical location, notorious markets for infringing activity almost always have transnational characteristics. Such characteristics require governments to

⁶ Department of Homeland Security, *Combating Trafficking in Counterfeit and Pirated Goods: A Report to the President*, p. 13, January 24, 2020, available at https://www.dhs.gov/sites/default/files/publications/20_0124_plyc_counterfeit-pirated-goods-report_01.pdf.

⁷ The Organization for Economic Development (OECD), *Illicit Trade, Trends in Trade in Counterfeit and Pirated Goods*, March 18, 2019, available at https://www.oecd-ilibrary.org/trade/trends-in-trade-in-counterfeit-and-pirated-goods_g2g9f533-en.

collaborate and work together across national borders to make lasting progress on this issue. IIPA commends the efforts of law enforcement authorities that have engaged in such initiatives to address cross-border copyright piracy and stresses the need to continue such efforts. Effective takedown of infringing content hosted on such services requires the active cooperation of all participants in the e-commerce ecosystem, both domestically and abroad. Among many other features, reverse proxy services are a serious concern for IIPA members because they act as a firewall and protect websites by hiding the IP addresses and hosting providers of these websites. While reverse proxy services serve a legitimate purpose, many of the websites on the Notorious Markets List utilize reverse proxy services to hide true hosting information and to transmit large files faster. Such uses make enforcement against these sites extremely challenging. IIPA requests that USTR include reverse proxy services in its efforts to address this widespread, systemic problem and to stop the misuse of such services. IIPA also urges USTR to work with foreign governments to encourage registry operators to take action against pirate websites with domain names that include a country code top-level domain (ccTLD).

Many copyright infringing sites also utilize content delivery networks (CDNs). CDNs may be used to efficiently deliver content to users worldwide by placing servers all around the world that store copies of that content to provide high-speed access. However, one feature of the CDN is that it masks the IP address and hosting provider of a website, which may be exploited by notorious markets to avoid detection and enforcement.

An additional and persistent challenge for IIPA members in enforcing their rights is the lack of meaningful access to accurate domain name registrant data, which occurs because of ICANN's failure to establish and implement an effective mechanism for registrars to collect accurate data and for users to access the data for the protection of intellectual property. This lack of access is in part due to: (i) ICANN's failure to meaningfully enforce a requirement for accurate registrant data collection, (ii) ICANN's failure to implement approved policies concerning privacy/proxy services, and (iii) ICANN's over-interpretation of GDPR, which has almost entirely shut down access to registrant WHOIS data.

For IIPA members, some online platforms enable the distribution of pirated hard goods, circumvention devices, or piracy devices.⁸ Similarly, some third-party intermediaries fail to ensure their services are not being used to facilitate copyright infringement, significantly increasing the difficulty and cost of industry efforts to thwart piracy. These services should not be allowed to profit off the theft of American intellectual property or avoid responsibility for enabling piracy by asserting that they are mere "infrastructural" services.

⁸ Circumvention devices and associated software bypass the technological protection measures (TPMs) of video game consoles and authentic games, allowing for the use of unauthorized software and pirated video games. Piracy devices are preloaded with software providing access to illicitly streamed movies and television programming.

NOTORIOUS MARKETS

IIPA refers the Special 301 Subcommittee to the separate filings submitted by AAP, ESA, MPA, and RIAA, which are IIPA members. These filings identify specific bad actors from both online and physical markets that refuse to comply with laws on intellectual property rights and merit further investigation. Our members' filings identify a number of notable cyberlockers, BitTorrent indexing websites, linking and streaming websites, illegal IPTV services, piracy devices and apps, stream-ripping websites, direct download websites, unlicensed pay-for-download websites, websites offering or selling unauthorized digital goods, and hosting providers that make infringing content accessible to users around the world. The following sites appear in more than one of our members' filings:

BitTorrent Sites

- ***ThePirateBay.org*** remains the single most popular, and one of the largest, BitTorrent websites in the world. Available in 35 languages, the site operates under a hidden hosting location and disclaims responsibility for copyright infringement, because no torrent files are saved on its server. The site provides access to the world's most popular and newly released films, music, books, articles, and video games, including pre-release content. The site had 30 million visits from 9.2 million unique visitors in August 2021 – with the U.S. having the highest combination of visitors and page viewers, followed by Japan and South Korea. The site's current Alexa ranking is 339.
- ***Rarbg.to***, a BitTorrent website hosted in Bosnia and Herzegovina, had 51 million visits from 6.3 million unique visitors in August 2021, provides access to a wide range of content such as movies, television shows, and music, and generates revenue from advertising and pay-per-install of potential malware. The site has a global Alexa rank of 596, and a local rank of 478 in the United States. The site is also the subject of blocking orders in a number of European and Asian countries.
- ***1337x.to and related domains*** constitute a popular BitTorrent website hosted in Bulgaria that had 66.2 million visits from 10.1 million unique visitors in August 2021. The site provides access to a range of content, including movies, TV series, music, and software. Variants of the site have been the subject of blocking orders in a number of European and Asian countries.
- ***Gimmepeers.com*** (formally *Bitsoup.org*) is a popular, subscription-based torrent website based in Canada that provides access to 29,000 torrent files across a range of content, including movies, TV series, music, and software. The site uses a reverse proxy service and has been in operation since 2017. The site consistently averages over 500,000 visits per month with over 60 percent of visits coming from the United States and Canada.

Cyberlockers

- ***Ifichier.com*** is a direct download cyberlocker based in France with a global Alexa rank of 1,722, a local rank in France of 216, and 37.35 million visits worldwide from 11.6 million unique visitors in August 2021. The site has a very low compliance rate for takedown notices, and users are rewarded when they refer others to the site.

- **Rapidgator.net** is a cyberlocker, believed to be hosted in Russia, which offers unlimited file storage and fast downloads and features a sophisticated network of offshore companies. The site had 313 million visits in the past year and is a major source of pre-release content. The service is most popular in Japan, with the highest combination of visitors and page views for the site, followed by Germany, and Spain.
- **Uploaded.net** is a direct download cyberlocker and file-sharing service hosted in the Netherlands and Switzerland. The site offers premium subscriptions and monetary rewards for every 1,000 downloads and had over 19 million visits from 5.8 million unique visitors in August 2021. The site's current Alexa ranking is 3,329 – and it continues to be popular in Japan followed by India and France. The Court of Justice of the European Union (CJEU) ruled in July 2021 that certain factors present in Uploaded's business model can result in direct liability but left the final decision to the German Federal Court of Justice, which will continue hearing the case in February 2022.
- **VK.com or VKontakte**, the leading social networking and the most visited website in Russia, is a hotbed of illegal distribution of thousands of movies, television, and ebooks. Although the site has taken steps in recent years to improve and is responsive to takedown notices, the site continues to be a significant infringement hub, does not impose any consequences against repeat infringers, and the volume of infringing content posted by subscribers continues to increase. The site is subject to a criminal blocking order in Italy. It should be noted that this site agreed to music licenses with several major record companies in 2016.

Piracy-as-a-Service (PaaS)⁹

- **Embedforfree.co** is a widely used Canadian pirate content management system (CMS) that provides access to tens of thousands of infringing movies and TV series and is known for pirating the latest content from streaming platforms such as Netflix, Disney+, HBOMax, Apple TV+, and Amazon Prime Video. The service profits from advertisements shown in streams that are embedded using its CMS.

In addition to those listed above, IIPA members, in their individual filings, provided USTR a detailed review of some of the other pervasive notorious markets threatening their industries. IIPA members also explained the difficulties they face tracking and enforcing against online notorious markets because of restricted access to domain name registration data, reverse proxy services, off-shore hosting ISPs, and IP address space subleasing.

In its filing, RIAA stressed the continued growth and pervasiveness of stream-ripping sites like *flvto.biz*, *2conv.com*, and *mp3juices.cc*, which facilitate the unauthorized reproduction and distribution of copyrighted music from licensed streaming sites through the circumvention of technological protection measures by, in some cases, enabling a user to simply copy and paste YouTube links and click a “convert to” button. RIAA also identified websites, including

⁹ Piracy-as-a-Service (PaaS) offerings, a newer threat to the piracy landscape, lower the barriers to entry into commercial piracy, because PaaS offerings make up a suite of off-the-shelf services that allow would-be pirates to create, operate, and monetize a full-functioning pirate operation. See also, Submission by the Motion Picture Association (MPA) in Response to the Request for public comment on the 2021 Special 301 Out of Cycle Review of Notorious Markets Docket No. USTR-2021-0013, October 8, 2021, p. 19.

newalbumreleases.net and *intmusic.net* that engage in the unlicensed streaming or downloading of millions of tracks, some not yet commercially released, at a fraction of the cost found on licensed services and without accounting to copyright owners. Moreover, RIAA raised concerns about piracy within mobile applications that allow users to create channels and upload content and “bulletproof” ISPs that show leniency in the kinds of materials they permit to be uploaded and distributed via their networks and fail to respond to notices of infringement or warning letters that the ISP is hosting and supporting known infringing sites.

MPA highlighted the emerging global threat of illegal internet protocol television (IPTV) services that provide stolen signals/channels to a global audience via dedicated web portals and third-party applications, mentioning *BIPTV.best*, *BestBuyIPTV.store*, *IPTVForest.net*, and *TheKing365tv.org*. Additionally, MPA flagged the persistent harms of Piracy Devices and applications configured to access IPTV services and to permit illegal streaming of movies and television programs on mobile, handheld, and other devices, such as *PopcornTime*. MPA also noted several linking and streaming websites such as *Afdah.video*, *Cda.pl*, *Dytt8.net* and its associated domains, and *Fmovies.to* that allow millions of users to stream unauthorized copies of popular movies and television shows. MPA also notes hosting providers such as *Amaratu/KoDDos* that refuse to take action upon notification that their services are being used to infringe intellectual property in blatant violation of both their own terms of service and the law.

ESA emphasized the negative impacts of unauthorized sales of in-game digital items and software products (collectively known as “unauthorized digital goods”) that enable the accelerated collection of virtual goods, such as bots, hacks, and “cheats.” *Unknowncheats.me*, *mpgh.net* and *engineowning.com* offer hundreds of thousands of free cheats and unauthorized in-game currency, items, skins, accounts, keys, and power-leveling to millions of users. ESA also mentioned linking sites such as *oceanofgames.com* and *nsw2u.xyz*, which provide hyperlinks to infringing copies of complete versions of copyright-protected video games stored on third-party hosting sites (cyberlockers). Finally, ESA noted torrent indexing sites *torrentfunk.com* and *torrentdownloads.pro*, which provide links to torrent files that enable users to join peer-to-peer “swarms” to share infringing content, including illegal copies of video game software files.

AAP emphasized the proliferation of ad-supported “read online” websites, such as *full-english-books.net*, *1000vampirenovels.com*, and *novel22.net*, which all use which all use a CDN to shield their identifying information, as well as *graycity.net*, and *anybooksfree.com*. Supported by Google Ads, Microsoft Advertising, Steepto, and MGID, these sites allow users to access infringing works on their phones without downloading them. These sites pose a significant enforcement challenge as the copyright owner is forced to send a notice for each page of a work, because each page has its own URL. AAP also discussed recurring notorious markets *sci-hub.io* and *libgen.rs*. Sci-hub facilitates unauthorized access to some 87.97 million journal articles and academic papers (at least 85% of all toll access journal articles published). Libgen boasts that it hosts 2.4 million non-fiction books, 80 million science magazine articles, 2.2 million fiction books, 0.4 million magazine issues, and 2 million comic strips,¹⁰ which is also being made available through multiple mirror sites.

¹⁰ See <https://libgen.onl/>, accessed October 8, 2021.

While IFTA did not file separately to identify notorious markets, it reports that illegal online streaming of its members' independently produced, financed, and distributed films is deeply affecting investment in independent films and impacting their successful worldwide exportation. For example, an IFTA member reported that four of its large-budget, theatrical films were subject to massive online piracy on both *Soap2Day.to* and *fmovies.to* and within a month, just those two illegal sites had nearly 70 million visits.

Although most of the markets identified by IIPA members are online, the filings also emphasize the continued importance of addressing physical markets. RIAA listed China and Russia, and ESA listed Mexico and Brazil to call attention to the substantial harm being caused by physical piracy in these troubling markets. AAP and MPA did not call out any specific physical markets, but their filings recognized that the issue still exists and is a threat to many markets around the world.

Notorious markets are egregious examples of open and blatant piracy that play a disproportionate role in harming the copyright industries, and thus, have an extremely negative impact on the U.S. economy and on U.S. employment. IIPA applauds USTR for shining a spotlight on these notorious markets and services that enable them, and for encouraging the governments of territories where these markets are physically or virtually located, or whose nationals operate them, to take meaningful action to address such markets and combat piracy.

IIPA appreciates this opportunity to provide input to the Special 301 Subcommittee in this Out-of-Cycle Review regarding notorious markets for copyright piracy, and once again refers the Subcommittee to its members' filings for consideration of the specific markets listed therein. We thank the Subcommittee and all those in the U.S. Government who work steadfastly to reduce harm to U.S. copyright interests.

Respectfully submitted,

/Linda Quigley/

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