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USTR Special 301 Report Highlights the Link Between Strong Copyright Protection and U.S. Economic Growth Through Access to Creative Foreign Markets

IIPA lauds U.S. Government for recognizing the critical importance of combating online and physical piracy through effective, deterrent copyright systems, and opening markets by reducing barriers to trade

Washington — Today the International Intellectual Property Alliance (IIPA)¹ lauded the United States Trade Representative Ron Kirk for releasing the 2012 Special 301 Report highlighting piracy and market access barriers in foreign markets causing harm to U.S. companies and the U.S. economy. The 2012 Special 301 Report emphasizes the need for our trading partners to take concrete, measurable steps to improve their copyright laws and enforcement policies, and to dismantle market access barriers to U.S. creators. USTR's review process examined IPR protection and enforcement in 77 trading partners, and today's report names 40 countries for failing to provide adequate and effective intellectual property rights protection and/or fair and equitable market access.

Steven J. Metalitz, counsel to IIPA, commented on the USTR Special 301 Report: "Strong copyright protection and enforcement, in combination with open markets, remain critical to the ability of U.S. creators to continue to substantially contribute to the U.S. economy, generate many skilled or professional U.S. jobs, and further expand exports. By seeking concrete solutions to piracy and barriers to market entry in those markets most affected by these distortions, USTR's Report signals strongly the Administration's commitment to protect one of our nation's most valuable assets. We thank senior officials at USTR, Commerce, State, USPTO, the Copyright Office, the Office of the IP Enforcement Coordinator, the IPR Center, and other agencies, along with their staffs, for continuing to engage bilaterally and regionally, encouraging and ensuring that our trading partners make concrete progress toward more open markets where intellectual property rights are respected."

Summary of Country Placements in USTR's 2012 Special 301 Report

Priority Watch List: USTR placed 13 countries on this list (see chart below). Among them, we note the following:

China's Priority Watch List placement and monitoring under Section 306 of the Trade Act signify recognition of the persistence of high copyright piracy levels, from widespread online and mobile piracy

¹ 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.



of music, films, television programming, and books and journals, to pervasive use of unlicensed software by enterprises, pre-installation of unlicensed software and other copyright materials at the distribution level, and physical piracy including the online sale of hard goods pirated materials. USTR's placement also acknowledges a country still characterized by significant market access barriers to the products and services offered by U.S. creative companies. In particular, China should not further delay implementation of the changes made in the Foreign Investment Catalogue to permit foreign investment in online music delivery services to comply with the decision of the Appellate Body in the recent WTO case, and should address onerous and discriminatory censorship processes for clearing music that unnecessarily delay the entry of legitimate materials. China should also lift the ban on the importation and sale of video game consoles in place since 2000. It is critical that China follow through on its high-level commitments to address physical, online and mobile piracy; make "permanent the leadership structure under the ... Special IPR Campaign"; take additional measures to ensure that the government at all levels and other enterprises use only legitimate software; and hold local officials accountable for lax enforcement. The copyright reform process and the issuance of a draft Judicial Interpretation on intermediary liability (to hopefully confirm as promised that "those who facilitate online infringement will be equally liable for such infringement") are hopeful signs but more concrete steps need to be taken.

Ukraine deserves its place on the Priority Watch List because of very weak enforcement and very high piracy rates (among the highest in Europe) for both hard copy and digital copyright piracy, and extremely burdensome market access barriers. Ukraine is a key country in the region because it exports digital piracy around the world, including through several notorious pay-for-download websites and some of the world's top BitTorrent sites. Use of unlicensed software by large and small enterprises, and even within the Government administration, is rife. The Government also needs to resolve the dire situation with "rogue" collecting societies and take enforcement steps against these unauthorized societies. IIPA calls for the full implementation of the 2010 Action Plan targeting digital piracy, which was adopted by the Government of Ukraine, in consultation with the U.S. Government.

Russia remains on the Priority Watch List to reflect continuing serious concerns about Russia's legal and enforcement regime related to many areas of copyright theft, as well as the current non-transparent situation with respect to the collective administration of the rights of performers and record companies. Priorities for the Government should include: the adoption of legal norms to clearly prohibit the operation of services based on providing access to infringing materials (such as the one operated by *vKontakte*, already identified by USTR as a Notorious Market); enhanced cooperation by Internet service providers with right holders in addressing infringements taking place over ISP networks or platforms; enforcement actions to take down unlicensed streaming services and pay-per-download websites and other digital infringers; and prosecution of offenders. Additionally, for the motion picture industry, the problem of illegal camcording remains a very serious one, with 60 detections of in-theater theft of major U.S. motion pictures of the MPAA in the first nine months of 2011. The rapid rise of unauthorized access to professional and scientific journals online is stunting the growth of legitimate markets and investment. Russia is in the process of completing its accession to the World Trade Organization, which means that Russia must be in full compliance with the TRIPS Agreement (along with the detailed obligations spelled out in the Working Party Report).

Canada remains on the Priority Watch List. IIPA urges the U.S. government to continue its vigorous engagement with our largest trading partner on the issue of long-overdue reform of Canada's outmoded copyright law, on which progress was made earlier this year. IIPA also urges the U.S. to work with the Government of Canada to ensure Canada promptly turns to the long list of other changes to laws, regulations and enforcement policies that are needed to bring its copyright regime fully into line with 21st century norms.



India continues to be placed on the Priority Watch List, as the potential of its creative industries is suppressed by problems such as physical, online, and mobile piracy; circumvention of technological protection measures, e.g., through the use of mod chips and game copiers; illegal camcording of movies from cinema screens; print and photocopy piracy; pay TV theft; and unlicensed use of business software. Market access and related barriers in India also affect the copyright industries and impede market growth. Notwithstanding some signs of progress recently, including enforcement activities against certain notorious piracy websites, collaboration with the central and state governments to promote use of licensed software and software asset management best practices, and some successful court cases, the courts remain backlogged and other problems continue to hinder the effectiveness of judicial processes, especially outside Delhi.

USTR recognizes that **Indonesia** belongs on the Priority Watch List, as it remains a market dominated by pirated material in physical form and supplied or distributed online, and by restrictive market access barriers closing off opportunities to the creative industries to supply legitimate product into the country. On December 30, 2011, IIPA submitted a request that the eligibility of Indonesia as a GSP beneficiary country be reviewed, specifically, to determine whether Indonesia is providing adequate and effective copyright protection for U.S. copyright owners as well as equitable and reasonable access to its market.

Watch List and Other Special 301 Results: USTR placed 26 countries on the Watch List, and will continue to monitor the situation in **Paraguay** under Section 306 of the Trade Act of 1974.

COUNTRY PLACEMENT IN USTR'S 2012 SPECIAL 301 ANNOUNCEMENT		
PRIORITY WATCH LIST	WATCH LIST	SECTION 306
Algeria	Belarus	Paraguay
Argentina	Bolivia	
Canada	Brazil	
Chile	Brunei	
China (306)	Colombia	
India	Costa Rica	
Indonesia	Dominican Republic	
Israel	Ecuador	
Pakistan	Egypt	
Russian Federation	Finland	
Thailand	Greece	
Ukraine	Guatemala	
Venezuela	Italy	
	Jamaica	
	Kuwait	
	Lebanon	
	Mexico	
	Norway	
	Peru	
	Philippines	
	Romania	
	Tajikistan	
	Turkey	
	Turkmenistan	
	Uzbekistan	
	Vietnam	
13	26	1



About the IIPA: 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 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 (interactive games for videogame consoles, handheld devices, personal computers and the Internet); 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. Members of the IIPA include [Association of American Publishers](#), [Business Software Alliance](#), [Entertainment Software Association](#), [Independent Film & Television Alliance](#), [Motion Picture Association of America](#), [National Music Publishers' Association](#), and [Recording Industry Association of America](#).

The economic report *Copyright Industries in the U.S. Economy: The 2011 Report*, is the thirteenth study written by Stephen Siwek of Economists Inc. to detail 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, and nearly 5.1 million workers in 2010, which is 3.93% of all U.S. workers and 4.75% of all private workers in 2010.² The report notes a 27% “compensation premium” for workers in the core copyright industries, amounting to \$78,128 per year. Finally, 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 exceeding foreign sales of other major U.S. industries such as aircraft, automobiles, agricultural products, food, and pharmaceuticals. Other countries’ studies similarly show the significant linkage between copyright protection and economic development, as 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*.³

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²See Steven E. Siwek, *Copyright Industries in the U.S. Economy: The 2011 Report*, November 2, 2011. The entire report as well as summaries can be accessed at http://www.iipa.com/copyright_us_economy.html. Core copyright industries are those whose primary purpose is to create, produce, distribute or exhibit copyright materials. These include books, journals, newspapers, and periodicals; motion pictures; recorded music; radio and television broadcasting; and computer software. Total copyright industries include the “core” industries and those whose revenues are dependent on the “core”. These encompass industries whose reliance on copyright is “partial;” “non-dedicated support” industries, that distribute copyright and non-copyrighted material; and “interdependent” sectors such as manufacturers of equipment primarily used with copyright materials.

³In 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. The guidelines have been implemented in over 40 countries around the world, and 30 studies have been completed and published, including: Australia (2007), Bhutan (2011), Brunei (2011), Bulgaria (2011), Canada (2004), Colombia (2010), Croatia (2010), Hungary (2006), Jamaica (2008), Kenya, Korea, Latvia (2006), Lebanon (2008), Malaysia (2007), Mexico (2008), the Netherlands (2008), Panama, People’s Republic of China, Peru, the Philippines (2008), Romania (2010), Russia (2010), Singapore (2006), Slovenia, and Ukraine (2010).