



June 25, 2007

Secretary
United States International Trade Commission
500 E Street, SW
Washington, DC 20436

RE: Investigation No. TA-2104-024, U.S. - Korea Free Trade Agreement

Dear Madam Secretary:

The International Intellectual Property Alliance (IIPA) appreciates the opportunity to make this written submission in lieu of participation in the hearing in the above-referenced investigation.

About IIPA and the Copyright Industries

IIPA is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. IIPA is comprised of seven trade associations, each representing a significant segment of the U.S. copyright community.¹ These member associations represent 1,900 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 CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media).

As the Commission knows, the copyright-based industries are among the fastest growing and most productive of any sector of the U.S. economy. On January 30, 2007, the IIPA released an economic report entitled *Copyright Industries in the U.S. Economy: The 2006 Report*, the eleventh study written 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,

¹ IIPA members include the following associations: Association of American Publishers (AAP), Business Software Alliance (BSA), the Entertainment Software Association (ESA), the Independent Film & Television Alliance (IFTA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA), and the Recording Industry Association of America (RIAA).

employment, and trade. The latest data show that the “core” U.S. copyright industries² accounted for an estimated \$819.06 billion or 6.56% of the U.S. gross domestic product (GDP) in 2005. These “core” industries were responsible for 12.96% of the growth achieved in 2005 for the U.S. economy as a whole (this means that the growth contributed by these core industries (12.96%) was almost double their current dollar share of GDP (6.56%)).

In addition, the “core” copyright industries employed 5.38 million workers in 2005 (4.03% of U.S. workers) in 2005. And the report, for the first time, provides data on the estimated average annual compensation for a worker in the core copyright industries: \$69,839 in 2005, which represents a 40% premium over the compensation paid the average U.S. worker. Finally, estimated 2005 foreign sales and exports of the core copyright industries increased to at least \$110.8 billion, leading other major industry sectors.

Virtually since its inception, IIPA has been actively engaged on behalf of its member associations in the monitoring and development of copyright law and enforcement policy in the Republic of Korea (ROK). It has prepared comprehensive reports on these issues in each annual Special 301 proceeding since that mechanism was created in the Omnibus Trade and Competitiveness Act of 1988.³ IIPA and its members also closely followed the progress of the negotiations for a U.S. – Korea Free Trade Agreement, and have studied the provisions of the FTA as publicly posted last month.

Likely Impact of the Korea FTA

IIPA strongly believes that the adoption of the FTA with Korea is likely to have a beneficial impact on the copyright industry sector. Given the importance of this sector to the overall U.S. economy, and particularly to the growth of high-paying jobs and U.S. exports and foreign sales, this positive impact will, IIPA believes, contribute to a favorable outcome for the economy as a whole and for American consumers.

As IIPA noted in testimony presented to the Trade Policy Staff Committee in March 2006, at the outset of the FTA negotiations, “many sectors of our economy could reap significant benefits from a sound and comprehensive US-Korea FTA. This is certainly true of the copyright sector as well. However, these benefits can only be realized if the FTA includes high standards for copyright law reform; concrete deliverables for strengthening enforcement of copyright in Korea; and firm commitments to reduce or eliminate market access barriers in the copyright sector. If Korea agrees to and fully implements such FTA provisions, the prospects for increased U.S. – Korea trade in copyrighted materials would be great, with accompanying positive effects on U.S. employment in the copyright sector, and in U.S. global competitiveness.”

² The “total” copyright industries include the “core” industries plus those that, under conservative assumptions, distribute such products or other products that depend wholly or principally on copyrighted materials. The “core” copyright industries are those that create copyrighted materials as their primary product. *The 2006 Report* is posted on the IIPA website at <http://www.iipa.com>.

³ The twelve most recent annual IIPA Special 301 reports on ROK are available at <http://www.iipa.com/countryreports.html>, listed under South Korea.

On the whole, we submit that the FTA that has been negotiated meets the high standards that we called for in copyright law reform, copyright enforcement, and market access for the copyright sector. If these provisions of the FTA come into force, and if they are fully implemented by the ROK government, we believe that the positive effects we foresaw at the outset of this process are likely to be achieved.

Other submissions in this proceeding have catalogued some of the key features of the Korea FTA for companies that depend on copyright protection. These features are also analyzed in the report of the Industry Trade Advisory Committee on Intellectual Property Rights (ITAC-15). In this submission, IIPA wishes to call attention to a few of these critical provisions.

Re: Copyright protections

- Protection of temporary copies. Korea today stands almost alone among nations in refusing to apply the copyright owner's exclusive right of reproduction to cover the making of temporary copies, such as those made in the Random Access Memory of a personal computer. In light of the ever-increasing economic importance of such copies in the digital networked environment, in which the making and use of such temporary copies is rapidly becoming the primary means by which many copyright works are consumed by the public, this is a significant gap in current law. IIPA is pleased that, in Article 18.4.1 of the FTA, Korea has committed to closing this gap by giving the reproduction right a scope that accords with world copyright standards.
- Technological protection measures. Article 18.4.7 commits Korea to repairing the deficiencies in its current legal framework for safeguarding the technologies that right holders use to control access to and use of their works. Such protections are a critical aspect of global minimum standards for copyright protection, as embodied in the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).
- Online service provider liability. By agreeing to the detailed regime set forth in Article 18.10.30 of the FTA, including the critical undertaking to provide legal incentives for service providers to cooperate with right holders in deterring piracy, Korea has taken a significant step forward toward a more effective system for combating the high levels of online copyright infringement that prevail in that market.
- Exclusive rights for sound recordings. Korea will be obligated, under Article 18.6.3 of the FTA, to bring all means of digital dissemination of sound recordings to the public – including webcasting, streaming and digital broadcasting – within the scope of the exclusive rights of recording producers. Implementation of this FTA commitment should help to dispel uncertainty about the reach of current law,

and promote a robust legitimate market in licensed use of these new media to disseminate sound recordings.

- Extension of term of copyright protection. Article 18.4.4 of the FTA, when implemented, will bring Korea in line with the unmistakable global trend toward extending the term of copyright protection, thus removing the potential irritant to international trade that results from divergent terms among trading partners.
- Contractual rights. Under Article 18.4.6 of the FTA, Korea is obligated to allow all right holders to exercise economic rights in their own names. This could provide a strong legal counterweight to provisions of current Korean law that mandate collective administration of exclusive rights or rights to remuneration.
- Protection for encrypted signals. Article 18.7 of the FTA commits Korea to providing both civil and criminal remedies against those who decode program-carrying satellite signals without authorization, an important new legal tool to be wielded against signal theft.

Re: Enforcement

- Statutory damages. In a major step forward, Korea agreed in Article 18.10.6 of the FTA to supplement its system of civil damages for copyright infringement with a regime of pre-set statutory damages, a reform that will encourage civil enforcement by providing a predictable and deterrent remedy against infringers.
- Other civil remedial provisions. A number of provisions in paragraphs 7-10 of Article 18.10.6 of the FTA will enhance the remedies available to right holders in civil litigation in Korea, including seizure and destruction of infringing copies and the materials and implements used to make them; requirements for defendants to identify third parties in the production or distribution chain of pirated products; and the award of costs and attorneys' fees to prevailing parties.
- Outlawing "camcording." Implementation of Article 18.10.29 of the FTA will help to ensure that Korea does not become a source for unauthorized master digital copies of motion pictures through illicit in-theater camcording.
- Ancillary offenses. Korea agreed in Article 18.10.28 of the FTA to provide criminal remedies against trafficking in counterfeit or illicit labels, documentation or packaging associated with pirate product.
- Enforcement against book piracy. In a side letter, Korea agreed to take specific steps to increase its efforts against book piracy and other copyright infringements on university campuses, ranging from stronger institutional copyright policies to enhanced training and public education campaigns.

- Enforcement against Internet piracy. In a particularly significant commitment, contained in another side letter to the FTA, Korea agreed to make internet piracy a law enforcement priority, with specific references to cooperation with the private sector and to the need to prosecute not only direct infringers, but also those who “profit from developing and maintaining services that effectively induce infringement.” This commitment, which surpasses what is found in other free trade agreements the U.S. has negotiated, is especially appropriate given the ubiquity of online infringement throughout Korea’s highly networked digital marketplace.

Re: Market Access

- Audio-visual quotas. Although much of Korea’s complex system of quotas that impede the access of U.S. film and TV producers to theatrical, broadcast, cable and other distribution channels remains in place, most of these quotas are locked in by the FTA at the least restrictive levels allowed under current law.
- Foreign ownership. Korea has committed in the FTA to phasing out most restrictions on foreign ownership of “program providers” that package channels for broadcast or cable distribution.

Of course the Korea FTA is not a perfect agreement. IIPA is disappointed, for instance, by the ROK’s refusal to allow the norm of national treatment to apply to the availability of equitable remuneration for the terrestrial broadcast of sound recordings, thus perpetuating the unfair denial of this revenue stream to U.S. producers. We also wish that Korea could have been persuaded to make more ambitious market access commitments with regard to new platforms for the delivery of content such as video on demand and Internet protocol television. In such a wide-ranging and comprehensive agreement, compromises on a number of other issues were inescapable. But on the whole, the copyright industries consider this one of the strongest and most progressive FTAs ever negotiated. The fact that the negotiating partner in this case was a large and dynamic economy such as the ROK further enhances the overall value of the agreement. IIPA salutes the U.S. negotiating team for their hard work and perseverance in achieving this commendable outcome.

The potential of the Korea FTA for boosting the U.S. copyright sector, and with it the overall U.S. economy, is considerable. Korea is a major export market for U.S. copyright works of all kinds. The provisions of the FTA summarized above could open this market further to these exports and foreign sales, with particular regard to dismantling the major market access barrier that we face in this and so many other foreign markets: piracy. A more robust market for U.S. copyright materials in Korea can only benefit the American worker, the American position in global trade, and the American economy as a whole.

The key to realizing this exciting potential involves two critical steps. First, the Korea FTA must be approved by Congress. Second, the ROK must do the same, and Korea’s wide-ranging and extensive FTA commitments must be fully and promptly implemented. While IIPA

Secretary
US International Trade Commission
June 25, 2007
Page 6

knows that neither step will be easy to achieve, we strongly believe that making the Korea FTA a reality is in the best interests of American creators, producers, and distributors of copyright materials, of the millions of workers employed in this sector, and of the American economy as a whole. We thank the USITC for the opportunity to share our perspectives in this proceeding, and we stand ready to provide any further information that would assist the Commission in carrying out its duties with respect to this investigation.

Respectfully submitted,

/s/ Steven J. Metalitz

Steven J. Metalitz
on behalf of IIPA

metalitz@iipa.com

direct dial: (+1) 202-973-8136