

October 15, 2018

**Filed via [www.regulations.gov](http://www.regulations.gov), Docket No. USTR-2018-0027**

Sung Chang  
Director for Innovation and Intellectual Property  
Office of the U.S. Trade Representative  
600 17th Street, NW  
Washington, DC 20508

**Re: IIPA Written Submission Re: 2018 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments, 83 Fed. Reg. 40821 (August 16, 2018)**

Dear Mr. Chang:

In response to the Federal Register notice referenced above, the International Intellectual Property Alliance (IIPA)<sup>1</sup> provides the Special 301 Subcommittee with written comments on notorious markets. Notorious markets are “online and physical marketplaces that reportedly engage in and facilitate substantial copyright piracy and trademark counterfeiting.” Through this process, the Office of the United States Trade Representative (USTR) identifies “online and physical markets based outside the United States that should be included in the 2018 Notorious Markets List.”

We commend USTR for publishing a Notorious Markets List, which continues to successfully identify, separately from the annual Special 301 Report, key online and physical marketplaces that engage in the infringement of intellectual property rights and cause commercial harm to creators. More important than simply highlighting the bad actors are the concrete results and effective actions taken by the websites themselves, and in some cases the governments or courts in the countries in which the websites are hosted, to rectify the infringing behavior. This Notorious Markets List continues to lead to the closure of some websites whose businesses thrive on illegal conduct and has increased cooperation from sites previously identified as “notorious” to combat infringement. Some notable recent developments include:

<sup>1</sup>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 to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include Association of American Publishers ([www.publishers.org](http://www.publishers.org)), Entertainment Software Association ([www.theesa.com](http://www.theesa.com)), Independent Film & Television Alliance ([www.ifta-online.org](http://www.ifta-online.org)), Motion Picture Association of America ([www.mpaa.org](http://www.mpaa.org)), and Recording Industry Association of America ([www.riaa.com](http://www.riaa.com)). Collectively, IIPA’s five member associations represent over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world. These 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, 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.

- In June 2017, the Court of Justice of the European Union found that The Pirate Bay does communicate to the public and therefore directly infringes copyright;
- The Mexican government effectively converted two physical notorious markets that were noted in ESA's filing last year, Bazar Pericoapa and Plaza Meave, into legal, viable shopping malls; and
- In November 2017, a district court in Virginia issued a second default judgement against *sci-hub.io*, a website that continues to be one of the worst pirate websites for the book and journal publishing industry, and awarded the publisher in the case \$4.8 million in damages.

Such positive developments are encouraging to the creative industries and prove the possible effectiveness of efforts like the Out-of-Cycle Review. To increase the success of combatting notorious markets, IIPA urges USTR to pursue discussions with governments associated with the identified notorious markets. In doing so, it is critical to take a comprehensive approach that recognizes 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 – that may enable, facilitate, and/or profit from the infringing conduct in various ways, all of which need to be considered in any action plan.

An effective response to online piracy requires the establishment of strong legal incentives for 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 or induce infringement. 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.

IIPA refers the Special 301 Subcommittee to the filings of several IIPA member associations, including AAP, ESA, RIAA, and MPAA. 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. The 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, and hosting providers that make infringing content accessible to users around the world. Amongst the extensive list are the following sites, all of which appear in more than one of our members' filings:

- ***Rapidgator.net***, a Russian hosted cyberlocker, most popular in Japan and the United States, offers monetary rewards to encourage users to distribute pirated copyrighted works such as books, music, movies, and television programs;
- ***Uploaded.net***, a direct download cyberlocker and file sharing service hosted in the Netherlands and Switzerland, incentivizes users to upload files by offering download rewards (payments for files downloaded several thousand times) and file size rewards (payments for uploading large files such as television episodes and movies);

- **ThePirateBay.org**, which has reemerged as one of the largest BitTorrent websites in the world and operates under a hidden hosting location, provides access to the most popular films, music, and video games and had nearly 37 million worldwide unique visitors in July 2018 alone;
- **Rarbg.to**, a BitTorrent website hosted in Bosnia and Herzegovina that had 1.5 billion visits in the last year, with about 13 million worldwide unique visitors in July 2018, 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;
- **1337x.to**, a popular BitTorrent website believed to be hosted in Finland, grants unauthorized access to movies, television shows, music, and software and also generates revenue from advertising and pay-per-install of potential malware;
- **VK.com**, the leading social networking website in Russia, with just over 169 million worldwide unique visitors in July 2018 only, distributes illegal movies, television shows, and ebooks; and
- **Torrentz2.eu**, a BitTorrent website believed to be hosted in Bulgaria, reemerged after the closure of the original Torrentz.eu as a new and “improved” version that indexes and aggregates over 80 third-party torrent sites.

In addition to those listed above, each member provided USTR a detailed review of some of the other pervasive notorious markets threatening their industries in each of their individual filings, and 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 streamripping sites like *flvto.biz*, *2conv.com*, and *onlinevideoconverter.com*, which facilitate the unauthorized reproduction and distribution of copyrighted music from licensed streaming sites through the circumvention of technological protection measures. RIAA also identified websites, including *newalbumreleases.net* and *leakth.is*, that engage in the unlicensed sale of singles and albums, some not yet commercially released, at a fraction of the cost found on licensed services. MPAA highlighted the persistent use of Piracy Devices and apps that grant users the ability to illegally stream movies and television programs on mobile, handheld, and other devices, and flagged an emerging global threat: illegal internet protocol television (IPTV) services that provide stolen signals/channels to a global audience via dedicated web portals, third-party apps and Piracy Devices configured to access IPTV services. MPAA also noted several linking and streaming websites such as *fmovies.is*, *kinogo.cc*, and *seasonvar.ru* that allow millions of users to stream popular movies and television shows. ESA underscored the growing threat of third-party “private” servers, such as *warmane.com*, which crush the revenue streams of legitimate “free-to-play” publishers. ESA also emphasized the repercussions of unauthorized digital goods marketplaces that sell cheat codes, digital items, and video game user accounts, including *mpgh.net*, which offers hundreds of thousands of free cheats to over 4 million users. AAP called attention to “read online” websites such as *superbooks4u.com* and *1000vampirenovels.com*, which are a new form of online piracy that allow users to access infringing works without having to download them. AAP also discussed recurring notorious markets *sci-hub.io* and *libgen.io*, both of which continue to facilitate unauthorized access to over 70 million journal articles, academic papers, and books.



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

Whether located online or at a physical location, notorious markets for infringing activity almost always have transnational characteristics. Such characteristics require governments to collaborate and work together across national borders to make lasting progress on this issue. IIPA applauds the efforts of law enforcement authorities who have engaged in such initiatives to address cross-border copyright piracy, and stresses the need to continue such efforts. A persistent and serious concern to IIPA members that requires the active cooperation of all participants in the e-commerce ecosystem, both domestically and abroad, to effectively take down is the use of reverse proxy services. Among many other features, reverse proxy services use a firewall and protect websites by hiding the IP addresses and locations associated with 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).

Addressing IP theft through processes such as USTR's Out-of-Cycle Review of notorious markets benefits the U.S. economy as a whole. The latest indicators show that the "core" copyright industries (those whose primary purpose is to create, produce, distribute, or exhibit copyrighted materials) generated over \$1.2 trillion in 2015, which accounts for 6.88% of the total U.S. economy. These industries employ nearly 5.5 million U.S. workers, with jobs paying an average of 38% more than the rest of the U.S. workforce. The industries also grew at an aggregate annual rate of 4.81% between 2012 and 2015, with the U.S. economy as a whole growing by 2.11%. Leading copyright industries accounted for \$177 billion in foreign sales and exports in 2015, far more than sectors such as chemicals, aerospace products and parts, agricultural products, and pharmaceuticals and medicines.<sup>2</sup> Notably, the numbers of the "total" copyright industry, which incorporate other industries that contribute to the "core" copyright economy, are even more staggering. Yet, the degree to which these numbers are sustained depends in large part upon the extent to which overseas piracy and market access barriers can be reduced.

Notorious markets are egregious examples of open and blatant piracy that play a disproportionate role in harming the copyright industries, and thus, have a disproportionately negative impact on the U.S. economy and on U.S. employment. IIPA applauds USTR for shining a spotlight on these notorious markets and for encouraging the governments of territories

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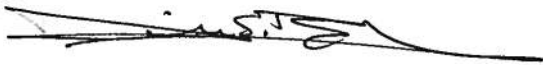
<sup>2</sup>Stephen E. Siwek, *Copyright Industries in the U.S. Economy: The 2016 Report* (December 6, 2016) <https://iipa.org/reports/copyright-industries-us-economy/>.

where these markets are physically or virtually located, or whose nationals operate them, to take meaningful action to address such markets and their widespread piracy.

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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,

A handwritten signature in black ink, appearing to read 'Dima S. Budron', written over a horizontal line.

Dima S. Budron, Counsel  
International Intellectual Property Alliance