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Daniel Lee
Assistant U.S. Trade representative
For Innovation and Intellectual Property
Office of the U.S. Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: IIPA Written Submission Re: 2019 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments, 84 Fed. Reg. 42975 (August 19, 2019)

Dear Mr. Lee:

In response to the Federal Register notice referenced above, the International Intellectual Property Alliance (IIPA)¹ provides the Special 301 Subcommittee with written comments on notorious markets. Notorious markets are “online and physical markets based outside the United States that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting.” We commend USTR for continuing the Notorious Markets reporting process, which continues to successfully identify key online and physical marketplaces that engage in the infringement of intellectual property rights and cause commercial harm to creators.

POSITIVE DEVELOPMENTS

More important than simply highlighting the bad actors are the 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.

¹IIPA 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), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association (<https://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 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.

The 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 recent positive developments include:

- In 2019, Eurojust coordinated an enforcement action to dismantle Xtream Codes, one of the world’s most popular IPTV management software, that effectively took 200 servers offline in Germany, France, and the Netherlands, and blocked over 150 *PayPal* accounts of criminals associated with Xtream Codes;
- USTR included *pelispedia.tv* in its 2018 Notorious Markets List, and in 2019, Uruguayan authorities arrested the operators of *pelispedia.tv* and *pelisplus.tv*, who were later found guilty of copyright infringement and money laundering; and
- German courts issued preliminary decisions finding *rapidgator.net* liable for copyright infringement and a Russian court ordered ISPs to block access to the website.

The creative industries are encouraged by these positive developments, which prove that this Out-of-Cycle Review has the potential to 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 \$1.3 trillion dollars of economic output in 2017, accounting for 6.85% of the entire economy.² These industries employed nearly 5.7 million U.S. workers in 2017, with jobs paying an average of 39% more than the rest of the U.S. workforce. The core copyright industries in the U.S. outpaced the U.S. economy, growing at 5.23% between 2014 and 2017, while the U.S. economy grew by 2.21%. As evidenced by these numbers, the copyright-based industries are 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. Yet, the degree to which these economic contributions are sustained depends in large part upon the extent to which overseas piracy and market access barriers can be reduced.

MALWARE AND ONLINE PIRACY

IIPA applauds USTR’s decision to focus on malware and online piracy as the issue focus this year. Malware, often delivered through accessing sites facilitating infringing activity, has grossly harmful effects on consumers that are ignored or overlooked far too often. Considering how debilitating it can be for consumers to recover from these harmful effects, discussion of this important concern is welcome.

IIPA members’ notorious markets filings highlight some key articles and studies that illustrate a strong correlation between infringing services and malware, unauthorized data capture, identity theft, third-party control of devices, and other malicious activity, and show that the more consumers access infringing websites, apps, and devices, the more susceptible they will

²See Stephen E. Siwek, *Copyright Industries in the U.S. Economy: The 2018 Report* (December 6, 2018) available at: <https://iipa.org/reports/copyright-industries-us-economy/>. Core copyright industries are those whose primary purpose is to create, produce, distribute, or exhibit copyright materials.

be to such damaging acts.³ In AAP's filing, it cites an article as recent as September 3, 2019, in which security experts warned about the dangers of accessing textbooks online because cybercriminals disguise malware as textbooks or free essays.⁴ In their respective filings, MPAA and RIAA cite a March 2018 Carnegie Mellon University study, which found that doubling the amount of time spent on pirate websites leads to a 20 percent increase in malware count.⁵ RIAA further reports that nearly 1 in 10 children have been affected by malware.⁶

RIAA's filing offers some solutions to this malware problem, including: (i) search engines promoting known, verified websites for searches for music, movies, books, software, and other copyrighted material, and (ii) governments requiring true and accurate registration for any domain, website, service, or app that purports to provide access to copyrighted content.

ENFORCEMENT CHALLENGES AND RECOMMENDED ACTIONS

IIPA members face numerous challenges in enforcing their rights. Many of these challenges are due to the lack of meaningful access to accurate domain name registrant data, which occurs as a result of ICANN's failures in establishing and implementing an effective mechanism for registrars to collect accurate data and for users to access the data for the protection of intellectual property. This 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-compliance with GDPR, which has almost entirely shut down access to registrant WHOIS data.

To support the market for the U.S. copyright-based industries, strengthen the U.S. economy, and protect consumers from the destructive effects of malware, it is essential to replicate and increase the positive developments described above. In addition to RIAA's suggestions in the previous section, IIPA urges USTR to pursue discussions with the governments of countries in which the notorious markets identified herein and in the respective filings of IIPA's members are located. As a part of these discussions, 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. Such intermediaries may enable, facilitate, and/or profit from the infringing conduct in various ways and 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

³See Digital Citizens Alliance, *Fishing in the Piracy Stream: How the Dark Web of Entertainment is Exposing Consumers to Harm* 3-5, 8, 15-20 (Apr. 2019), https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/DCA_Fishing_in_the_Piracy_Stream_v6.pdf ; see also FTC Blog, *Free movies, costly malware* (Apr. 12, 2017), <https://www.consumer.ftc.gov/blog/2017/04/free-movies-costly-malware>.

⁴ See CNET, *Back-to-school malware is hiding in those digital textbooks* (Sept. 3, 2019) <https://www.cnet.com/news/back-to-school-malware-is-hiding-in-those-digital-textbooks/>.

⁵Telang, Rahul, *Does Online Piracy Make Computers Insecure? Evidence from Panel Data* (Mar. 12, 2018) <https://ssrn.com/abstract=3139240> or <http://dx.doi.org/10.2139/ssrn.3139240>.

⁶Internetmatters.org, *Internet safety and the dangers of digital piracy: Understanding the risks for children* 5 (July 2018) <https://www.internetmatters.org/wp-content/uploads/2019/04/Internet-Matters-Report-Dangers-of-digital-piracy.pdf>.

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.

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. Reverse proxy services are a serious concern to IIPA members and effective takedown of 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 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).

NOTORIOUS MARKETS

IIPA refers the Special 301 Subcommittee to the filings of several IIPA member associations, including AAP, ESA, MPA, and RIAA. 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. The extensive list includes the following sites, each of which appears in more than one of our members' filings:

- ***ThePirateBay.org***, which remains the single most popular, and one of the largest, BitTorrent websites in the world and operates under a hidden hosting location, provides access to the world's most popular and newly released films, music, books, articles, and video games and had nearly 686 million visitors this past year;
- ***Uploaded.net***, a direct download cyberlocker and file sharing service hosted in the Netherlands and Switzerland that had over 320 million visits in the past year and approximately USD \$6.6 million in annual revenue, and has received requests to delist over 26.1 million URLs as of September 2019, according to the Google Transparency Report;

- **Rapidgator.net**, a Russian hosted cyberlocker that had over 24 million visits from over 6 million unique visitors in August 2019 and generates approximately USD \$3.7 million in annual revenue;
- **Rarbg.to**, a BitTorrent website hosted in Bosnia and Herzegovina that had 1.5 billion visits in the last year, with about 45 million visits and 4.6 million unique visitors in August 2019, 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 that had 710 million visits in the last year, with about 52 million visits and 6.8 million unique visitors in August 2019, grants unauthorized access to movies, television shows, music, and software, and generates revenue from advertising and pay-per-install of potential malware;
- **VK.com**, the leading social networking website in Russia that had just over 50 million unique visitors in August 2019 alone and distributes pirated movies, television shows, and eBooks;
- **Ifichier.com**, a direct download cyberlocker hosted in France that had 29.23 million visits worldwide and 9.2 million unique visitors in August 2019 and generates revenue through subscription services, referral schemes, and advertising;
- **Nitroflare.com**, a free file hosting and sharing cyberlocker hosted in the Netherlands that had over 106.3 million visits the past year and offers premium accounts and affiliate programs through which users can “earn money”; and
- **Torrentz2.eu**, a BitTorrent website believed to be hosted in Seychelles or Bulgaria, that reemerged after the closure of the original Torrentz.eu as a new and “improved” version, boasts to have over 61,110,000 torrents and has a reported 547 million visits this past year.

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, and in some cases, with a simple copy and paste of the YouTube links and click of a “convert to” button. RIAA also identified websites, including *mp3va.com* and *mp3fiesta.com* 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 and without accounting to copyright owners.

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 apps, and flagged the persistent harms of Piracy Devices and apps configured to access IPTV services and permit illegal streaming of movies and television programs on mobile,

handheld, and other devices. MPA also noted several linking and streaming websites such as *fmovies.is*, *cda.pl*, and *b9good.com* that allow millions of users to stream popular movies and television shows.

ESA emphasized the negative impacts of unauthorized digital goods marketplaces that sell cheat codes, digital items, and video game user accounts, including *mpgh.net* and *playerauctions.com*, which 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 underscored the growing threat of third-party “private” servers, such as *warmane.com*, which crush the revenue streams of legitimate publishers.

AAP called attention to “read online” websites such as *superbooks4u.com*, *1000vampirenovels.com*, *graycity.net*, and *anybooksfree.com*, which are a proliferating form of online piracy that allow users to access infringing works without having to download them and are often supported by Google Ads. AAP also discussed recurring notorious markets *sci-hub.io* and *libgen.is*, 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 Mexico, Brazil, China, and Russia, to call attention to the substantial harm being caused by these troubling markets. AAP and MPA did not call out any specific physical markets, but recognize 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 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 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.

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,



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