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Daniel Lee
Acting 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 in Response to: 2020 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, 85 Fed. Reg. 62006 (October 1, 2020)

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 DCs 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, 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, 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 \$1.3 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 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. 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.

E-COMMERCE PLATFORMS AND OTHER THIRD PARTY INTERMEDIARIES THAT FACILITATE THE IMPORTATION OF PIRATED GOODS INTO THE U.S.

IIPA applauds USTR’s decision to focus on the use of e-commerce platforms and other third party intermediaries to facilitate the importation of counterfeit and pirated goods into the United States. These services are essential for enabling piracy operations, and we commend USTR for taking a comprehensive view of the online ecosystem in identifying markets that facilitate substantial piracy. For IIPA members, some e-commerce platforms enable the distribution of pirated hard goods, circumvention devices and/or Piracy Devices.³ Similarly, some third-party intermediaries fail to ensure their services are not being used to facilitate

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.

³Circumvention 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.

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.

IIPA urges USTR to continue 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. 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. 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 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 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 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. Reverse proxy services are a serious concern for IIPA members and 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 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, such as the Kingdom of Tonga, to encourage registry operators to take action against pirate websites with domain names that include a country code top-level domain (ccTLD).

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 as a result 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 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.

NOTORIOUS MARKETS

IIPA refers the Special 301 Subcommittee to the separate filings of individual IIPA member associations 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. 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 that operates under a hidden hosting location, and disclaims responsibility for copyright infringement because no torrent files are saved on its server. Hosted by Cloudflare, the site 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 year.
- ***Rarbg.to***, a BitTorrent website hosted in Bosnia and Herzegovina that had 1.5 billion visits in the last year, 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 is 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 52 million visits from 7.66 million unique visitors in September 2020. The site is the subject of blocking orders in a number of European and Asian countries.

Cyberlockers

- ***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.
- ***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 26 million visits from nearly 6.5 unique visitors in September 2020.
- ***VK.com***, the leading social networking website in Russia, is a hotbed of illegal distribution of thousands of movies, television and ebooks. Although responsive to takedown notices, the site does not take action against repeat infringers and is subject to a criminal blocking order in Italy.

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 *mp3va.com* and *mp3fiesta.com*, that engage in the unlicensed sale 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.

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 *cinecalidad.to*, *Indo 21* and its associated domains, and *superflix.net* that allow millions of users to stream unauthorized copies of popular movies and television shows.

ESA emphasized the negative impacts of unauthorized digital goods marketplaces that sell in-game digital items, cheat software, and video game user accounts, including *unknowncheats.me*, *mpgh.net* and *engineowning.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 mentioned linking sites such as *oceanofgames.com* and *nxbrew.com* that make available thousands of unauthorized video game titles, as well as other types of notorious online markets.

AAP emphasized the proliferation of ad-supported “read online” websites such as *Ducxe.com*, *1000vampirenovels.com*, *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 many notices to request the takedown of one single work. AAP also discussed recurring notorious markets *sci-hub.io* and *libgen.rs*, both of which continue to facilitate unauthorized access to over 70 million journal articles, academic papers, and books.

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 recently reported that four of its large-budget, theatrical films were subject to massive online piracy on both *Soap2Day.to* and *fmovies.to*. In the month of August alone, 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 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 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,

/Sofia Castillo/
Sofia Castillo, Counsel
International Intellectual Property Alliance