



February 12, 2007

Ms. Victoria Espinel  
Assistant U.S. Trade Representative  
for Intellectual Property and Innovation  
Office of the United States  
Trade Representative  
600 17th Street, N.W.  
Washington, D.C. 20508

Re: Request for Public Comment on the Identification of  
Countries under Section 182 of the Trade Act of  
1974 (as amended) ("Special 301"), 72 Fed. Reg.  
1033 (January 9, 2007)

Dear Ms. Espinel:

This filing responds to the Request for Written Submissions appearing on January 9, 2007 in the Federal Register. The request invites submissions from the public on policies and practices that should be considered in connection with designating countries as Priority Foreign Countries pursuant to Section 182 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 2242 ("Special 301"). The Special 301 provisions call upon the United States Trade Representative to identify countries which, *inter alia*, "deny adequate and effective protection" to U.S. intellectual property or deny "fair and equitable market access" to U.S. persons who rely on intellectual property protection.

The International Intellectual Property Alliance (IIPA) submits our discussion of the types, levels, and costs of piracy, an evaluation of enforcement practices to reduce those levels, and the status of copyright law reform in 60 separate country reports. We also recommend where these countries should be ranked on the various Special 301 watch lists. We highlight challenges and initiatives in this letter that define the copyright industries' agenda for the coming year. We also highlight four countries which we believe could be considered for dispute settlement under their respective FTA obligations. Finally, we mention 15 additional countries/territories that we have not recommended be on a Special 301 list but which merit attention by the U.S. government in its bilateral engagements with those countries.

## A. IIPA AND THE COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY

The International Intellectual Property Alliance (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 comprises seven trade associations, each representing a significant segment of the U.S. copyright community. These member associations represent over 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, DVDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; musical compositions, records, CDs, and audiocassettes; and textbooks, trade books, reference and professional publications and journals (in both electronic and print media).

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, employment, and trade. The latest data show that the “core” U.S. copyright industries<sup>1</sup> 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. Those sectors include: chemicals and related products (not including medicinal and pharmaceutical products); motor vehicles, parts and accessories; aircraft and associated equipment; food and live animals; and medicinal and pharmaceutical products.

It is essential to the continued growth and future competitiveness of these industries that our trading partners provide not only free and open markets, but also high levels of protection to the copyrights on which this trade depends. This protection upon which so much U.S. economic performance rests is under constantly evolving threats, and it is critical to sustain U.S. economic competitiveness that our country’s response remains flexible, innovative and committed. There are certain sectors of the U.S. copyright community, notably the music sector, that has already witnessed significant declines in foreign sales and royalty remittances as a consequence of increased levels and new forms of piracy, and it is essential that we address these problems on an urgent basis.

## **B. OUTLINE OF IIPA’S SPECIAL 301 SUBMISSION**

As in prior years, IIPA’s submission contains several separate sections. It is important for the reader to review not only each country survey in Appendix C, but also the other appendices that describe key elements that may be referenced in each country survey. Included in this year’s submission are the following:

- This letter, which (1) outlines IIPA’s recommendations for cross-cutting initiatives to be undertaken by the copyright industries and the U.S. government for 2007; (2) summarizes our submission this year; and (3) points the reader to various appendices;

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<sup>1</sup> 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>.

- Appendix A, which contains IIPA's country placement recommendations, estimated trade losses due to piracy, and estimated levels of piracy;
- Appendix B, which describes IIPA members' methodologies for calculating estimated trade losses, piracy levels, and global data on optical disc factories and production capacity;
- Appendix C, which includes all the country surveys<sup>2</sup> and at the end lists **15** countries that deserve continued U.S. government attention but which we have not recommended for placement on the Special 301 lists;
- Appendix D, which provides a historical chart of countries/territories' placement on Special 301 lists by USTR since 1989; and
- Appendix E, which contains the Special 301 histories of countries/territories which we have recommended for placement on a list this year, many other countries that have appeared on USTR's lists in the past and are still candidates for monitoring intellectual property practices, and certain other countries/territories that have never appeared on a USTR list but which deserve attention.

### **C. COPYRIGHT INDUSTRIES' INITIATIVES AND CHALLENGES IN 2006**

The goal of this submission is to improve copyright protection and reduce global piracy levels by employing the various bilateral, plurilateral and multilateral tools available to the U.S. government. Without these trade tools and their full implementation, the U.S. copyright industries would still be facing a world of inadequate copyright laws—the world our industries faced in the early 1980s. In that world, most countries' laws did not protect U.S. works at all, and 90% to 100% piracy levels prevailed in most developing countries. Since the first marriage of intellectual property and trade in the Trade and Tariff Act of 1984 and formation of the IIPA, the later adoption of the "Special 301" provisions in the 1988 Trade Act, and the adoption or modification of the U.S. unilateral trade preference programs, such as GSP, CBERA, ATPA and others, U.S. government initiatives have helped produce significant legal and enforcement improvements. This largely untold success story has produced billions of dollars of increased revenue and millions of new jobs to both U.S. and local copyright industries. However, despite these successes, the U.S. copyright industries (and copyright creators and their industries worldwide) still face grave, and in many respects, growing, threats in the 21st century. These threats emanate largely from the growth of digital and on-line technology, the increased organization of commercial pirates, and, most importantly, the failure of governments to adequately enforce their new laws against the rampant piracy of our members' intellectual property. An effective response to these challenges will require a renewed and expanded commitment to use both the old and new tools available to industry and governments.

The copyright industries are extremely grateful for the U.S. government's efforts in promoting copyright reform and effective enforcement. But, as is clearly demonstrated in the country surveys included in this report, organized commercial piracy, whether digital or analog, tangible or over the Internet, combined with the failure of foreign governments to enforce their existing copyright and related laws, threatens to outpace the fight to combat it. IIPA believes that a significantly heightened effort is called for to make further progress on the following objectives in 2007. We believe the tools exist to make significant progress—the issue is whether all governments have the political will to take the actions necessary to address piracy

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<sup>2</sup> Country surveys were prepared by Michael Schlesinger, Maria Strong, Eric H. Smith, Steven Metalitz, and Eric Schwartz, and are based on information furnished by IIPA's seven member associations. We also thank the Smith, Strong & Schlesinger LLP staff, Kristen Schumacher, Tracy Baker, Jennifer Stroud and Eunice Kim, for their contributions in preparing, producing and distributing this submission. The country reports contain information which should not be construed as providing legal advice.

meaningfully and to lower piracy rates locally and globally. The following objectives are not necessarily listed in order of priority, since different issues may demand priority attention in different countries.

### **Effective and Deterrent Enforcement Against Copyright Piracy**

The copyright industries' most important global goal is to significantly reduce piracy levels in order to open foreign markets, and create increased revenue and employment. Only through effective deterrent enforcement, as required by the WTO TRIPS Agreement and the various Free Trade Agreements (FTAs) which the U.S. has recently negotiated, can this goal be met. The lack of effective enforcement undergirds virtually all the initiatives/challenges described below, as well as the credibility of the multilateral and bilateral agreements entered into by the United States.

The industries and the U.S. government have been engaged for over twenty years in many countries to secure deterrent levels of enforcement that would bring piracy down to acceptable levels. Even following implementation of the TRIPS Agreement's new enforcement obligations in 1996 and 2000, many countries still have not meaningfully upgraded their enforcement systems to meet their international obligations by adopting effective remedies and imposing deterrent penalties. While there has been a general global upgrading of police ability (and in many cases willingness) to conduct raids against pirate production, wholesale and retail sites, such enforcement activity has not been adequate or effective. Adequate and effective deterrence requires capable and aware prosecutors and judges (or, where applicable, administrative agencies) willing to impose penalties that would remove the monetary incentives that drive the pirate trade. Many enforcement systems reflect a lack of willingness at the political level. Pirates whose vast economic gains amount to hundreds of thousands to millions of U.S. dollars simply cannot be deterred through mere monetary fines. Deterrence requires substantial prison sentences in these cases. Again and again, in country after country, our industries have witnessed major pirates either evading conviction (often as a result of systemic delays or corruption) or being slapped with monetary fines that do not come close to providing the disincentive needed to deter them from continuing in this illegal business. Again and again, raided stores reopen quickly with new pirate product, or major pirate producers continue their trade in a new guise to avoid the next enforcement action, which may never come, or may come only after the pirate has lined his pockets with millions more in illegal income.

Since no country will ultimately undertake effective reform unless it understands that it is in its own interest, it is essential that the U.S. government continue to take steps that will facilitate such an understanding and increase the capacity of willing governments to take effective action. Among the strategies that could be employed are:

- Continue to coordinate enforcement training, including localized training and capacity-building that demonstrates the benefits of deterrent enforcement.
- Foster further coordination among and between U.S. agencies, industry, and international organizations with training resources;
- Create "best enforcement practices" models, including legislative provisions and specific and practical reforms at the police, prosecutorial and judicial levels. These would be based on the TRIPS text and the U.S. FTA models, but with far greater detail to assist the enforcement authorities. This could include recommendations for "zero tolerance" policies against retail piracy and specific actions to be taken in the area of Internet piracy. It should include model sentencing guidelines that would help the authorities assess what penalties

- will actually deter pirates;
- Set specific enforcement targets for countries in bilateral negotiations.

We believe the Special 301 process must specifically target enforcement in a very direct and clear way. It is a fact that many countries believe that Special 301 ranking decisions can be made on the basis of law reform, followed by enforcement “promises” alone. Experience has taught us that this simply has not worked. Countries should be made acutely aware that they will not see a change in their Special 301 placement unless they take the specific enforcement actions necessary to actually reduce piracy rates (and, conversely, that they will see a change when such actions are in fact undertaken).

### **Internet Piracy, Electronic Commerce and the WIPO Internet Treaties**

**The Scope of the Problem:** Copyright piracy on the Internet and through other digital media, a serious problem for the past several years, is undergoing explosive growth and threatens to undermine the very foundations of electronic commerce in this new millennium. While broadband offers exciting prospects for the legitimate dissemination of copyrighted materials of all kinds, too often access to high-speed digital connections is being used to distribute unauthorized copies of sound recordings, software, videogames, literary material, and motion pictures. This has suppressed legitimate consumption.

The unprecedented growth of the Internet and increased availability of broadband connections, coupled with the absence of adequate copyright laws and enforcement in the online environment in many countries, has effectively turned the Internet into a highly efficient network for distribution of infringing copyright materials. Infringing product can now reach any part of the world with ease, no matter where the uploader or infringing service is located. Consequently, the U.S. copyright industries face the daunting task of trying to enforce their legal rights in an online world where borders and distances have decreasing practical significance.

An unfortunate consequence of the global nature of online communications is that inadequate protection or enforcement practices that exist in one country can foster abuses in other countries—even those quite cognizant of and responsive to online piracy challenges. Increasingly we perceive this to be the case in the United States, for example, where access to pirated products is often facilitated through the operation of “tracker sites” or repositories of pirated content housed in other countries. Insofar as countries’ abilities to successfully address challenges relating to online piracy are in many ways interdependent, we encourage countries’ collective attention to this large and growing problem.

Quantifying the economic losses due to Internet piracy and allocating those losses to particular countries are extremely challenging problems. Because of these challenges, IIPA’s estimates of piracy levels and of trade losses due to piracy do not yet fully take into account piracy on the Internet. Yet we know that Internet piracy is growing rapidly, frequently resulting in displaced sales of legitimate product, and that an urgent response is greatly needed. For example, independent surveys in just ten of the biggest markets reveal that an estimated 20 billion songs were illegally downloaded through file sharing services in 2006 alone. This translates into billions of dollars in lost revenue at a time when sales of physical products are in decline. Entertainment software publishers estimate that as many as 10,000 to 20,000 copies of the most popular videogame titles are successfully downloaded each week. And new phenomena, like the illegal pre-loading of songs, games, and other content onto handheld devices, pose yet new digital threats to healthy electronic commerce. We hope to continue to

evolve measures and metrics to gauge the prevalence and impact of online piracy, and to find ways of expressing these figures in a manner that identifies those countries that should be held accountable.

Meanwhile, we urge governments to act quickly and on a global basis to secure the adoption of legal provisions that will prevent piracy, and to create a legal and regulatory environment that will facilitate the growth of legitimate online delivery of copyrighted materials. This entails not only the establishment of adequate rights and remedies under copyright, but also the establishment of rules that compel reasonable practices on the part of all entities involved in the transmission of copyright materials.

**The Legal and Enforcement Solutions:** IIPA recommends that USTR and the U.S. government more broadly work with our industries to adopt a focused and comprehensive strategy to attack Internet piracy. The challenge is two-tiered. First, governments need to adopt stronger laws that are tailored to address online copyright piracy. Second, as described above, those laws must be vigorously enforced.

Well established international norms such as the WTO TRIPS Agreement contribute valuable elements to the needed legal infrastructure to protect electronic commerce and combat Internet piracy. In particular, WTO TRIPS contains a technology-neutral obligation to provide “expeditious remedies to prevent infringements and remedies which constitute a deterrent to future infringements” (Article 41). The fight against this new form of piracy must be conducted under the copyright principles contained in this Agreement, and particularly through application of the existing enforcement tools described there.

In addition, the two treaties adopted by the World Intellectual Property Organization (WIPO) Diplomatic Conference in Geneva in December 1996 provide an additional and more tailored framework for what is needed to protect the transmission of content in the new e-commerce economy. These treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), are now in force, and their effective implementation is critical in the fight to control this new and ominous threat. These treaties form a key part of the international legal standards with which countries must comply in order to provide the “adequate and effective” copyright protection that is demanded under the Special 301 program. These standards include clarifying exclusive rights in the online world, and, in addition, specifically prohibiting the production of or trafficking in tools that circumvent technological protection measures (TPMs) for copyrighted works.

Finally, as described further below, the more specific and clarified enforcement obligations in the U.S. government’s Free Trade Agreements also establish binding enforcement obligations which should form the underpinnings of the Internet enforcement systems in these countries, and eventually in all countries.

IIPA and its members have joined with their counterpart copyright industries around the world to push for ratification and full implementation of the WCT and WPPT in all countries. The first phase of these efforts—bringing the treaties into force through the accession to each of at least 30 countries—was completed in 2002. As of February 10, 2007, official deposits of the treaties with WIPO stood at 62 for the WCT and 60 for the WPPT. More and more countries are now beginning to legislate in this area. From the EU, Belgium has now ratified both treaties. It is expected that the other 14 original EU member states that have yet to ratify will also deposit instruments for both treaties in the near future.

Ensuring that these standards are effectively embodied in national law is at the heart of the critical second phase of the WIPO Treaties implementation effort. Since the WIPO Treaties were adopted, IIPA has been monitoring those countries that are amending their statutory regimes to make them compatible with their TRIPS obligations as well as with the WIPO Internet Treaties. If countries delay in making these needed changes, the prejudicial impact on electronic commerce and the protection of intellectual property online might be irreversible. The coming into force of the WCT and WPPT provides a powerful additional reason for countries to make the necessary legal changes now. The U.S., which has already implemented the changes to its laws needed to meet the standards of the treaties by enacting Title I of the Digital Millennium Copyright Act (DMCA), should continue to make it a priority to encourage other countries to follow this path.<sup>3</sup>

Even in the online world, there is no substitute for vigorous enforcement of the new and existing laws. To protect the revenue streams and millions of new jobs created by the copyright industries, governments must become flexible and fast moving if they want to deal with a medium that is constantly shifting and evolving. Renewed emphasis on training is vital to giving enforcement authorities the tools to quickly locate infringing Internet sites and pursue actions against the offenders who commit the most damage and/or refuse to remove the infringing content. Public education about the dangers of online infringement must be emphasized as well. As global boundaries continue to lose much of their practical relevance because of Internet growth, the usual lines separating the roles of industry and government in policy, enforcement and education must also evolve. Close coordination will be the key to success in this challenging new environment. Efforts should be undertaken to encourage global adoption of the Council of Europe Cybercrime Convention, which requires countries to adopt effective remedies for online copyright infringement, and which facilitates law enforcement cooperation across borders—something which must develop if governments are to be successful in addressing this pressing problem.

These law reform and enforcement measures are critical in deterring pirates from destroying the incredibly promising new tools for making copyrighted products available globally before right holders have had a chance to gain a foothold. IIPA members have significantly increased their monitoring of, and where possible, actions against pirate product traveling over the Internet in many of the countries discussed in this submission. Webcrawlers and other search technologies have been employed to ferret out piracy occurring in many languages in addition to English. One essential tool that should be made available globally is notification of ISPs by copyright owners through cease and desist letters in order to obtain their cooperation to “take down” or block access to infringing material immediately, and otherwise to prevent infringing conduct of all kinds. The effective use of such a “notice and takedown” tool is, in turn, dependent on a system of secondary liability, which exists in some but not all countries, and which must be effectively multilateralized to encourage responsible conduct and enable expeditious action against piracy, and the deployment of available technological measures that can restrict or prevent infringing transmissions at all levels of the delivery chain.

Finally, as we know from our own experience here in the U.S., we must find a global solution that discourages unauthorized peer-to-peer file sharing through aggressive enforcement against unauthorized uploaders of infringing product, whether of musical recordings, movies, business or entertainment software or literary material, as well as against services that provide these tools for the purpose of encouraging and profiting from infringement.

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<sup>3</sup> Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860 (1998). The United States deposited instruments of accession for both treaties on September 14, 1999.

If new legal Internet-based services for delivery of copyrighted material are to succeed, we must ensure that they are not undermined by unfair competition from unauthorized sources.

It is critical that governments, educational institutions and similar enterprises that provide broadband interconnections to their employees, students or others develop and enforce strong internal policies (such as executive orders in the case of governments) to prevent illegal file sharing of copyrighted materials, including through the use of peer-to-peer technologies. In addition, governments should help to ensure that Internet cafés use only legitimate software in the operation of their business, and that they prohibit use of their facilities for the commission of further infringements.<sup>4</sup>

Industry has been hard at work on these critical issues, but we need the help of the U.S. and foreign governments to make the Internet safe for e-commerce in copyrighted materials.

### **Optical Disc Piracy**

Piracy of optical disc (OD) products continues to cause major losses to all the copyright industries. Increasingly, all sectors of the copyright industry use a common set of media to distribute their products worldwide. These “optical disc” products include formats such as compact discs (CD), video CDs (VCD), CD-ROMs, CD-Recordables (CD-Rs), digital versatile discs (DVDs) and DVD-Recordables (DVD-Rs). An explosion in the world’s capacity to produce optical disc products has been driven by the ever-growing worldwide demand for copyrighted high-tech, entertainment and educational products, but also by the potential for pirates to generate billions of dollars in illegal income. Optical disc production capacity has for years greatly exceeded the legitimate demand for such products, whether pre-recorded discs or blank media, with much of the difference inuring to the benefit of illegal pirate enterprises. Increasingly, blank recordable optical media are also used to “burn” unauthorized copies on a commercial basis and the manufacture and sale of blank media are often specifically targeted to support the piracy trade. Pirate CDs, VCDs, CD-ROMs and DVDs, CD-Rs and DVD-Rs containing protected music, sound recordings, audiovisual works, business and entertainment software and books and journals have quickly decimated the market for legitimate U.S. products. With the increased and more effective regulation of factory production, “burning” has nearly become our industries’ biggest “hard goods” piracy threat.

The growth in the number and capacity of optical disc factories around the globe has been staggering. Based on our survey of optical disc production in 80 countries/territories:

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<sup>4</sup> In 2006, Ministers of the 21 Members of the Asia Pacific Economic Cooperation regional group recommended that “government entities” (which should include educational institutions funded by the State) should ensure that copyright usage, including on P2P networks, is legal. The APEC Ministers specifically “Recommended that APEC Leaders should endorse the principle that government entities should not use illegal software or other content on their computer networks, especially pertaining to Internet usage,” noting that “This keeps APEC at the forefront of addressing the growing problem of illegal file sharing on the Internet.” Leaders cemented the understanding among the APEC Members in November 2006 in Hanoi, Vietnam that all “government agencies” should ensure that copyright usage is legal. The APEC Leaders stated the following:

We ... called on member economies to exercise appropriate oversight to achieve the objective that central government agencies use only legal software and other copyright materials; that such bodies implement effective policies intended to prevent copyright infringement on their computer systems and via the Internet, in accordance with relevant international conventions and domestic laws and regulations concerning copyright and related rights; and that central government funds are not used by contractors or recipient institutions to purchase illegal software or other illegal copyright materials.

- There were as many as **1,077 optical disc production plants** in 2006.
- Those plants had at least **8,928 production lines**.
- Total production capacity worldwide was estimated at more than **31.8 billion discs per year** in 2006.

It must be noted that in certain markets, the mere fact that there are sizable numbers of plants and production lines does not directly correlate to piracy or over-production. This is due to the fact that the plants in many markets, such as Hong Kong, Taiwan, the United States, and many European markets, fill legal orders for finished and blank discs. The following chart details this information. For 2007, IIPA identifies the key optical disc piracy production trouble spots as: **China, Russia, Thailand, Indonesia, and Nigeria**. These are markets where immediate actions should be taken by the governments to curtail optical disc pirate production.

Estimated Optical Disc Production Capacity in 80 Countries/Territories <sup>5</sup>						
	Plants (Including CD-R)		Production Lines (Including CD-R)		Capacity in Millions (Including CD-R)	
	2006	2005	2006	2005	2006	2005
<b>ASIA</b>						
Australia <sup>6</sup>	13	13	33	24	115.5	84.0
Bangladesh	6	2	14	6	49.0	21.0
Burma/Myanmar	NA	1	NA	1	NA	3.5
Cambodia	NA	1	NA	1	NA	3.5
China	92	86	1,482	1,374	5,187.0	4,809.0
Hong Kong	90	106	733	817	2,565.5	2,859.5
India	20	20	166	166	581.0	581.0
Indonesia	28	29	145	100	507.5	300.0
Japan <sup>6</sup>	32	32	260	NA	910.0	NA
Korea	28	28	75	78	262.5	273.0
Laos	NA	0	NA	0	NA	0.0
Macau	1	3	1	3	3.5	10.5
Malaysia	32	41	163	NA	570.5	NA
New Zealand	3	3	6	3	21.0	10.5
Pakistan	1	11	1	38	3.5	133.0
Philippines	10	11	45	38	157.5	133.0
Singapore	20	20	99	106	346.5	371.0
Sri Lanka	2	2	2	2	7.0	7.0
Taiwan	83	89	2,795	2,755	9,782.5	9,642.5 <sup>7</sup>
Thailand	41	42	190	155	665.0	542.5
Vietnam	5	5	12	12	42.0	42.0
SUB-TOTAL	507	545	6,222	5,679	22,071.0	19,826.5
<b>E. EUROPE/CIS</b>						
Belarus	1	1	2	2	7.0	7.0
Bulgaria	9	9	13	18	45.5	63.0 <sup>8</sup>
Croatia	NA	NA	NA	NA	NA	NA
Czech Republic	4	4	14	14	49.0	NA
Estonia	3	2	4	2	14.0	7.0
Hungary	4	4	14	14	49.0	49.0
Kazakhstan	2	2	2	2	11.6 <sup>8</sup>	11.6 <sup>8</sup>

<sup>5</sup> The methodology used by IIPA to calculate estimated capacity is discussed in Appendix B of IIPA's 2007 Special 301 submission at <http://www.iipa.com/pdf/2007spec301methodology.pdf>.

<sup>6</sup> In Australia and Japan, we believe there are more production lines but that the lines listed represent those that are dedicated to production of finished discs.

<sup>7</sup> We revise our Taiwan estimate for 2005 for disc production capacity based on updated line numbers.

Lithuania	1	1	2	2	7.0	7.0
Poland	11	9	153	122	830.0 <sup>8</sup>	775.0 <sup>8</sup>
Republic of Montenegro <sup>9</sup>	NA	NA	NA	NA	NA	NA
Republic of Serbia <sup>9</sup>	4	4	6	10	21.0	35.0
Romania	2	2	3	3	10.5	10.5
Russia	53	54	130	113	455.0	395.5
Slovenia	2	2	5	5	17.5	17.5
Ukraine	7	5	17	14	90.0 <sup>8</sup>	49.0 <sup>8</sup>
<b>SUB-TOTAL</b>	<b>103</b>	<b>99</b>	<b>365</b>	<b>321</b>	<b>1,607.1</b>	<b>1,427.1</b>
<b>WESTERN EUROPE</b>						
Austria	5	5	10	8	35.0	28.0
Belgium	3	3	17	25	59.5	87.5
Denmark	4	5	36	36	126.0	126.0
Finland	2	3	4	6	14.0	21.0
France	15	18	146	204	511.0	714.0
Germany	28	42	240	144	840.0	504.0
Greece	11	12	31	40	108.5	140.0
Ireland	8	8	70	70	245.0	245.0
Italy	37	29	124	101	434.0	353.5
Luxembourg	1	2	18	19	63.0	66.5
Netherlands	13	17	96	107	336.0	374.5
Portugal	2	3	5	5	17.5	17.5
San Marino	1	2	1	2	3.5	7.0
Spain	16	16	108	119	378.0	416.5
Sweden	2	5	3	12	10.5	42.0
Switzerland	3	3	12	11	42.0	38.5
United Kingdom	14	16	112	128	392.0	448.0
<b>SUB-TOTAL</b>	<b>165</b>	<b>189</b>	<b>1,033</b>	<b>1,037</b>	<b>3,615.5</b>	<b>3,629.5</b>
<b>WESTERN HEMISPHERE</b>						
Argentina	9	9	30	30	105.0	105.0
Brazil	13	13	84	88	294.0	308.0
Canada	17	17	130	132	455.0	462.0
Chile	2	2	2	2	7.0	7.0
Colombia	2	2	8	9	28.0	31.5
Costa Rica	1	1	1	1	3.5	3.5
Dominican Rep.	1	1	1	1	3.5	3.5
Mexico	10	9	208	205	728.0	717.5
Paraguay	4	1	15	1	52.5	3.5
Peru	2	2	3	3	10.5	10.5
United States	185	181	679	740	2,376.5	2,590.0
Uruguay	1	1	1	1	3.5	3.5
Venezuela	2	2	7	7	24.5	24.5
<b>SUB-TOTAL</b>	<b>249</b>	<b>241</b>	<b>1,169</b>	<b>1,220</b>	<b>4,091.5</b>	<b>4,270.0</b>
<b>MIDDLE EAST</b>						
Algeria	4	4	10	10	35.0	35.0
Egypt	3	4	5	6	17.5	21.0
Iran	2	2	2	3	7.0	10.5
Israel	5	7	15	19	52.5	66.5
Jordan	1	1	1	1	3.5	3.5
Kuwait	1	1	3	3	10.5	10.5
Lebanon	1	1	1	1	3.5	3.5
Palestinian Auth.	1	1	1	1	3.5	3.5

<sup>8</sup> The capacity numbers for Bulgaria (2005 numbers only) and for Kazakhstan, Poland, and Ukraine do not follow the IIPA methodology, and are based on plant visits and/or different per line capacity estimates.

<sup>9</sup> Formerly part of Serbia and Montenegro, the Republic of Montenegro formed in June 2006, and it is unclear whether any of the plants in the former Serbia and Montenegro are located in the territory of the Republic of Montenegro, hence the chart lists "NA."

Saudi Arabia	1	1	1	6	3.5	21.0
Syria	2	2	2	5	7.0	17.5
Turkey	10	10	21	25	73.5	87.5
SUB-TOTAL	31	34	62	80	217.0	280.0
<b>AFRICA</b>						
Nigeria	15	15	52	36	182.0	126.0
Senegal	1	1	1	1	3.5	3.5
South Africa	6	5	24	24	84.0	84.0
SUB-TOTAL	22	21	77	61	269.5	213.5
<b>TOTALS</b>	<b>1,077</b>	<b>1,129</b>	<b>8,928</b>	<b>8,398</b>	<b>31,871.6</b>	<b>29,646.6</b>

The growing optical disc problem confronting the copyright sectors, now familiar to governments worldwide, demands new and creative legislative and enforcement solutions. Traditional enforcement mechanisms have not been sufficient to prevent optical disc piracy from spinning out of control and flooding national, regional, and even global markets with millions of high-quality pirate products. As part of countries' WTO TRIPS obligations to provide deterrent enforcement against piracy "on a commercial scale," every country whose optical disc production facilities are producing significant pirate product should create and enforce a specialized regulatory framework for tracking the growth of optical disc production capacity, including the cross-border traffic in production equipment and raw materials, principally optical-grade polycarbonate. These regulatory regimes should include strict licensing controls on the operation of optical disc mastering and replication facilities, and the requirement to use identification tools that identify the plant in which production occurred and that help lead the authorities to the infringer. So far such regimes have been established in Bulgaria, China, Hong Kong, Indonesia, Macau, Malaysia, the Philippines, Poland, Singapore, Taiwan, Thailand, Turkey, and Ukraine, have reportedly been enacted in Nigeria, and are under consideration in Bahrain, Oman, India, Vietnam, and other countries. Increasingly, pirate optical disc production is migrating from jurisdictions with optical disc production regulatory regimes to countries that as yet have not adopted these regulatory tools or do not enforce them, such as Bangladesh, Nigeria, Vietnam, and many others mentioned in this submission.

We urge the U.S. to press every country in the regions most affected by pirate optical disc production and export—including East Asia, South Asia, Eastern Europe, Russia and the countries of the former Soviet Union and increasingly Africa—to put comprehensive optical disc regulatory controls into place promptly. Otherwise, pirate syndicates will continue to transfer their optical disc operations across borders in an effort to stay one step ahead of enforcement efforts.

IIPA and its members have developed a number of resources to help governments in fashioning an effective optical disc regulatory system. We also note that governments have recognized the importance of effective regulations. In October 2003, APEC leaders agreed on the need to "stop optical disk piracy" and endorsed a set of "Effective Practices." We commend these to all governments addressing this problem. We stand ready to work with USTR to assist governments in understanding, drafting and implementing these recommendations into national law.

As these regimes have been adopted and enforcement under them has matured, the pirates have again taken advantage of technological developments, and moved production increasingly from the "factory" locus to smaller, more mobile venues that are more private and harder to police. The newest generation of pirates uses much less expensive and more portable consumer "recordable" technology – CD and DVD "burning" on CD-Rs and DVD-Rs. That technology has now advanced so that with a very small investment, pirates can easily and

cheaply replicate thousands of copies of copyrighted products for commercial sale. We refer here not to individual consumers “burning” copies but to aggressive commercial exploitation – often by the very same syndicates that operated the factories and generate millions of dollars for the pirate operators. In some countries/territories, like Taiwan, Brazil, Mexico, Spain and many others, seizures of pirate product in 2006 were overwhelmingly of “burned” product. Commercial “burning” has probably become the biggest piracy threat in the “hard goods” market. This new development calls for innovative responses. Improved enforcement machinery must aim at implementing zero tolerance policies against the offer for sale of pirate product. If pirates have no place to sell their products, their ability to manufacture becomes superfluous. Some countries are already responding by enacting absolute bans on street sales, with some positive results. Commitment from more countries to do the same is sorely needed.

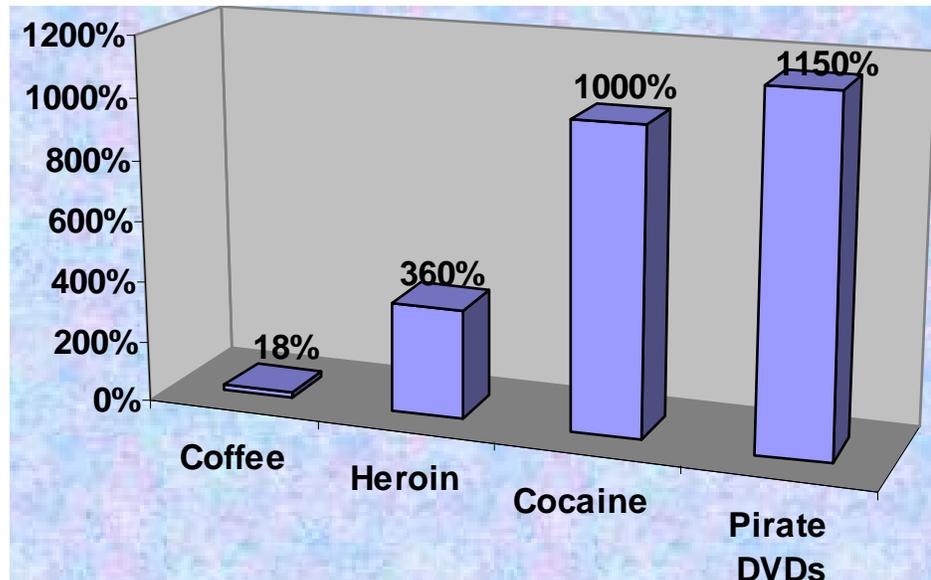
In sum, regulations controlling and monitoring production need to be adopted, implemented and enforced, and must be accompanied by general copyright enforcement. As we have monitored the development of these regulatory regimes, it has become increasingly apparent, as it has with all piracy, that enforcement is again the key to the effective functioning of these new regimes. In too many cases, the regulations are put into place and then simply not enforced. This must end. Governments must be given the authority to conduct surprise inspections of optical disc production facilities to ensure full compliance, and then must actually engage in such inspections. They must deal effectively with commercial “burning” operations, and they must use that authority accompanied by vigorous enforcement. Deterrent penalties—including license revocation, confiscation of equipment and raw materials, and heavy fines and imprisonment—must be consistently and efficiently imposed on optical disc pirates, and governments must adopt and implement zero tolerance policies on the sale of infringing materials.

### **Piracy by Organized Crime Syndicates**

Because of the immense profits that can be garnered by producing pirate optical disc products, this illegal business has been taken over in many countries by organized crime syndicates, making it even more difficult for local authorities to combat the problem. These criminal syndicates are highly organized, are linked across national boundaries, and have powerful friends within governments. They have access to and control of large amounts of capital, and exploit complex distribution networks to engage in many kinds of criminal activity. In many cases, these powerful criminal networks are involved in multiple lines of criminal activities, including copyright piracy, drug smuggling, trade in illegal munitions, and money laundering. In some cases, the proceeds of copyright piracy have been used to fund terrorist organizations.

These syndicates control the production and distribution of pirated and counterfeit optical disc products within the domestic market and around the world. For example, syndicates with optical disc production facilities in Southeast Asia work with partners in South America to conduct a thriving trans-Pacific trade in pirate music CDs, entertainment software, and other optical disc products. These criminal networks are highly sophisticated and are becoming increasingly dangerous to deal with. Starting in 2003, responding to improved enforcement against factory pirate production, the syndicates began moving their illegal trade into CD-R and DVD-R “burning” and to the Internet. This phenomenon has grown to epidemic proportions in 2006.

In an October 2005 study by MPA, it was reported that the estimated criminal revenue in 2004 for IPR theft was \$512 billion, while for drug trafficking it was \$322 billion.<sup>10</sup> The following table from that same study shows graphically that the mark-up for DVD piracy is higher than that for cocaine and heroin, with the risk of getting caught and receiving deterrent punishment very significantly less.<sup>11</sup>



*Source: Adapted from UK National Criminal Intelligence Service SU/Drug Project (2004); Cocaine markup is Colombia to Spain/U.K.; Heroin markup is from Iran to U.K.; DVD markup is from Malaysia to UK.*

Examples of the involvement of organized crime on a global basis include:

- In December 2005, Italy's anti-terrorist squad conducted a series of raids aimed at dismantling an arm of the Algerian-based GIA Islamic terrorist network. The group was securing funding by selling pirated CDs, DVDs and fashion goods.
- In March 2006, Uruguayan Customs seized two containers containing 2 million blank CD-Rs manufactured in Malaysia and Taiwan destined for illegal use in Brazil.
- In April 2006, Spanish police raided a gang that has produced very high quality pirate sound recordings for many years that were sold at or near the price of legitimate CDs. The pirates enormous financial benefit from their activity, included a house valued at €2 million (US\$2.6 million). Their total fraud could amount to €15 million (US\$19.50 million)
- In June 2006, Nigerian police raided an international marketplace in Lagos, during which pirates shot two police officers and burned a police vehicle. Tear gas had to be used to quell the violence.
- In July 2006, in a raid on a residential suburb of southern Metro Manila, authorities found, in addition to pirate (and pornographic) DVDs and CD-ROMs, several hand grenades, hundreds of rounds of 5.56 mm ammunition, and sachets of a highly addictive and illegal amphetamine derivative known locally as "Shabu" and

<sup>10</sup> Motion Picture Association, *Optical Disc Piracy v. Illegal Drug Trafficking*, October 2005, p. 2. About the same time, MPA released another new study, *Organized Crime & Motion Picture Piracy*, from which some of the examples in the text are taken.

<sup>11</sup> *Id.*, at 3

- elsewhere as “ice.” The seized ammunition is of the sort used in high-powered automatic assault weapons.
- During the summer of 2006, Italy’s Fiscal Police acted against a nation-wide operation involved in the online sale of pirate CDs and DVDs.
  - In September 2006, Mexican police raided several warehouses and laboratories containing huge quantities of blank and pirate CDs, reproduction machinery, as well as large quantities of cocaine, marijuana and other drugs.
  - In October 2006, an industry representative who was working on an anti-piracy team was shot and killed in Nakorn Pratom Province, Thailand, and in December 2006, a staff person of a company supporting the industry was attacked during a raid in Open Market in Nonthaburi Province.

The copyright industries alone cannot fight such organized criminal activity. Company representatives and counsel have in some countries already experienced threats on their lives or physical intimidation when their investigations began to make progress. In some cases, this has prevented any enforcement activity by the private sector. We look to the U.S. government for additional leadership, both here and in the appropriate bilateral and multilateral fora, to place the issue of effective copyright piracy enforcement on the agenda of agencies dealing with organized economic crime—generally, cybercrime, fraud, extortion, white-collar crime, drug enforcement, money laundering, and border and customs control. The U.S. government should encourage countries with existing anti-organized crime laws and investigative procedures to bring them to bear against syndicate operations involved in piracy. Where such laws and procedures are not in place, the U.S. government should encourage governments to adopt them and to include, among predicate offenses, intellectual property right violations.

### **End-User Piracy of Business Software and Other Copyrighted Materials**

The unauthorized use and copying of software by businesses result in tremendous losses to the U.S. and global economies. The great majority of the billions of dollars lost to U.S. software companies from business software piracy in 2006 were attributable to this end-user software piracy. To safeguard the marketplace for legitimate software, governments must have in place both substantive standards of protection and adequate enforcement mechanisms.

For the business software industry, it is particularly critical, given the growing use of electronic networks to make software available commercially to corporate and other end users, to ensure that the reproduction right covers both temporary as well as permanent reproductions. It is likely that very soon, virtually all consumers will engage in the full exploitation of software they license and receive over a network without ever making a permanent copy on their hard drive. They will simply access the software, in accordance with mutually agreed license terms, then load it into the random access memory (RAM) of their workstation or server, use the software and, when finished, close the program or shut down the computer—all without the software ever being permanently stored on the computer’s or server’s hard drive. Failure to make clear that such temporary reproductions are covered by the exclusive reproduction right is a violation of the Berne Convention, the WTO TRIPS Agreement and the WIPO Copyright Treaty. Great progress has been made globally on this critical issue, and IIPA calls upon the U.S. government to continue to seek legislative changes and clarifications on this point. As of today, at least 96 countries/territories provided protection for temporary copies as part of the reproduction right either explicitly or by interpretation, or had committed to do so, or had draft legislation pending which would provide such protection.

Enforcement is a critical part of reducing global piracy rates for business software, which exceed 50% of the market in the developing world. The biggest challenge to the business software industry is to persuade governments to take effective enforcement action against enterprises that use unlicensed software in their businesses. To effectively enforce against corporate end-user piracy, countries must provide an effective civil system of enforcement, provisional remedies to preserve evidence, and deterrent criminal penalties for piracy. More specifically, it is critical that countries provide *ex parte* search orders in an expeditious manner, deterrent civil damages and criminalization of corporate end-user piracy as required by Article 61 of TRIPS. Industry, along with USTR, has raised the need for strong procedural and remedial enforcement measures around the world. Although some countries have made attempts to improve enforcement through special enforcement periods and action plans, most of these proposals for action have not been sustained over time or resulted in deterrent criminal fines and jail terms. Additionally, many countries still do not criminalize corporate end-user piracy or provide civil *ex parte* measures—even though their TRIPS obligations require both.

End-user piracy is of course not limited to software but now affects all copyright sectors. For example, in government, school and university facilities, photocopy machines are routinely used for commercial-scale book piracy. Where the government is directly involved or directly responsible for the facilities and implements used, policies and decrees must be promulgated and strictly enforced to ensure that these facilities are not used for infringing conduct.

Increasingly, for all sectors, the Internet has allowed end-user piracy to proliferate. Online venues are used to advertise and sell pirate hard goods, and unauthorized downloading of music, movies, videogames, books and journals from websites as well as through peer-to-peer file swapping services has skyrocketed. Unauthorized digital streaming, where bandwidth permits, is also growing. A great deal of this activity is being conducted through government-owned Internet Service Providers and from servers owned and operated by governments, schools and universities.

Where the activity is confined to the private sector and to private individuals, mechanisms for strict enforcement against pirate websites, P2P services and against individual uploaders and downloaders must be put into place and deterrent penalties imposed. Where lacking, legislation must be passed clarifying secondary liability as well as infringement liability for unauthorized uploading and downloading. Statutory notice and takedown regimes, with narrowly crafted safe harbors for ISPs, should be adopted, which allow for expedited action (with minimal and reasonable notification procedures) to block access to infringing material or take down infringing websites or FTP sites. Piracy directly by individuals, enterprises or government end-users is on the increase; the appropriate and effective enforcement tools must be put into place immediately.

### **Piracy of Books and Journals**

The book and journal publishing industry faces not only the same challenges encountered by other entertainment and high-tech industries (digital and online piracy), but must contend with other methods of infringement as well. This piracy comes primarily in two forms—commercial photocopying and print piracy.

Unauthorized commercial-scale photocopying of books and journals is responsible for the industry's biggest losses in most territories worldwide. This photocopying takes place in a variety of venues—commercial photocopy shops located on the perimeters of university campuses and in popular shopping malls; on-campus copy facilities located in academic

buildings, libraries and student unions; and wholly illicit operations contained in residential areas or other underground establishments. Publishers also suffer from unauthorized photocopying for commercial research purposes in both for-profit and non-profit institutions (often accompanied by failure to compensate reprographic rights organizations (“RROs”) in countries where they exist to collect photocopying royalties). These operations are highly organized and networked, and technology advances are making the problem worse. Digitally scanned covers, for instance, allow pirates to conceal text that is often of poor quality, misleading consumers into believing they are purchasing a legitimate product, and electronic files containing book text are now routinely seized as part of enforcement actions against copyshops. This shift from physical copy machines to electronic files—allowing a shop to print infringing books on demand—complicates the enforcement process due to lack of infringing stock in hard goods form. Authorities must recognize this shifting pattern and tailor enforcement incentives and activities accordingly.

In addition, the U.S. publishing industry continues to lose hundreds of millions of dollars per year from unauthorized printing of entire books, including academic textbooks, professional reference books and trade books. These printers come in two varieties. In some cases, they are licensed printers or distributors who are engaged in offset printing beyond the scope of a valid license granted by the publisher. Others are wholly illegal pirate operations that have no license from the copyright owner at all. Print piracy is especially prevalent in Egypt, Pakistan, India, China and other countries with large printing capacity, and where printing may still be less expensive for pirates than photocopying. Sophisticated printing technologies result in extremely high-quality pirate editions of books, making it difficult for users to distinguish between legitimate and pirate products.

Publishers continue to suffer from unauthorized translations of books and journals of all kinds and genres, as well as counterfeiting in the form of “bogus” books or trademark misuse. Plagiarism also abounds, most often in the form of compilations of English language material or directly translated material marketed as a local professor’s own product.

These types of piracy call for the same kind of aggressive enforcement techniques discussed throughout this submission, accompanied by the political will and awareness of governments to recognize the serious damage done to economies, culture and the educational environment by letting such infringements persist. IIPA urges the U.S. government to ensure that such acts of piracy are fully covered in all bilateral, plurilateral and multilateral engagements.

### **Using FTAs to Improve Global Standards of Copyright Protection and Enforcement**

The negotiation of bilateral and regional free trade agreements (FTAs) now occupies a place of overriding importance to the copyright industries and to U.S. trade policy. These negotiations offer an important opportunity to persuade our trading partners to modernize their copyright law regimes so they can maximize their participation in the new e-commerce environment, and to improve enforcement procedures. Since copyright issues are not being addressed in the Doha Round of multilateral negotiations under the World Trade Organization, the FTA process has become by far the most fruitful avenue to address the law reform challenges brought on by developments in technology.

At the time of this submission to USTR, FTAs with Singapore, Chile, Australia, Jordan, Morocco and Bahrain have entered into force. FTAs with four of the six nations in the Central America-the Dominican Republic-U.S. FTA have entered into force. Negotiations with Oman,

Peru, Colombia and Panama have been concluded. Negotiations with the United Arab Emirates, South Korea and Malaysia will hopefully conclude soon. Unfortunately, negotiations with Thailand are stalled. IIPA trusts and expects that the valuable precedents established in these earlier agreements will be carried forward to the ongoing FTA negotiations, and with any more FTA negotiations opened in the future. In all these negotiations, we will continue to seek, full implementation of the WIPO Internet Treaties; stronger substantive protection in other areas, including the extension of the term of copyright protection; and detailed and effective enforcement obligations that make clear the requirement to enforce copyright in all areas, including on the Internet, with expeditious and deterrent civil and criminal remedies. We again commend the Administration and Ambassador Schwab for moving swiftly and aggressively to secure new high levels of protection and enforcement that will be critical to the development of e-commerce in the coming years.

We cannot leave the important subject of the FTAs without noting the Trade Promotion Authority is about to expire soon. Without extension of this authority, it will be virtually impossible to get those important FTAs, whose negotiation are not completed by the end of March, approved by Congress so that they can enter into force. IIPA strongly urges the Congress to support the extension of Trade Promotion Authority so that this incredibly valuable FTA process can proceed to lift levels of copyright protection and enforcement in many more countries.

### **Market Access**

In the experience of IIPA, its members and companies, there is a strong connection between a country's ability to foster the introduction of legitimate product quickly and efficiently to market, and its ability to combat piracy effectively. We call upon policymakers to recognize and draw on this relationship to help make the reduction of market access impediments a key component of ongoing efforts to combat piracy.

Our experiences show that where there are unjustifiable prohibitions on the distribution of legitimate products, impediments to the establishment of companies involved in the creation, manufacture or distribution of such products, or the imposition of prohibitively high tariffs and taxes on legitimate products entering the country, illegal operations fill the voids with piratical product. Pirates are thus able to become exclusive distributors of the prohibited content or the products that have been priced out of reach for most consumers due to high tariffs, and are rewarded accordingly by cementing strong loyalties with their dedicated consumer base.

Pirates also gain a stronger position in instances where the introduction of new products to market is unreasonably delayed, whether through lengthy content review periods, specialized packaging or stickering requirements, or arduous licensing or registration protocols. Here again, illegal operations will move to take advantage of any temporary product voids by speeding piratical copies to market, maximizing the advantage provided by their informal but highly effective exclusive distribution windows.

These delays can be particularly damaging to "hit-based" businesses that depend on strong initial sales of a relatively small number of highly popular products to recoup investments made in other, less immediately successful ones.

We urge U.S. officials and national policymakers to make elimination of market access barriers—whether such barriers are content or investment based—a priority in their discussions

with relevant foreign governments with the conscious objective of streamlining market access for legitimate products to further aid efforts to combat piracy. Specifically, policymakers should:

- Reexamine the effectiveness of, and policy justifications underlying, market access prohibitions or impediments that restrict legitimate producers' ability to compete with pirates. Industries involved in the creation and distribution of content-based products stand willing to abide by reasonable and fairly applied censorship processes. However, it is both legitimate and necessary to ask whether these measures serve their intended purpose, or whether alternative channels of distribution for these products (such as through authorized or unauthorized online delivery) render these policies ineffectual or less capable of achieving that purpose.
- Work with industry to consider ways of further streamlining those restrictions and/or processes that are deemed essential, including applicable content review, labeling or licensing requirements.
- Work with industry to promote greater understanding and transparency of applicable rules, regulations and procedures governing compliance. Greater transparency in governing regulations facilitates more rapid and more uniform compliance, and affords fewer opportunities for abuses of these processes.
- Enforce penalties for non-compliance with regulatory requirements uniformly, including against vendors of piratical product, and consider the creation of enhanced penalties for non-compliance by piratical operations.

We will continue to monitor various countries' progress along these lines, and would encourage the U.S. government and foreign governments to consider market-opening policies as an additional tool to combat piracy, and to promote economic and technological competitiveness.

#### **D. IIPA RECOMMENDATIONS FOR THE 2007 SPECIAL 301 LISTS**

This year IIPA has analyzed the copyright law and enforcement problems in 60 countries/territories and has recommended them for placement in the categories on the Priority Watch List, Watch List, and Section 306 Monitoring. We also mention specific issues in 15 additional countries/territories that deserve increased U.S. government attention.

IIPA recommends that 16 countries be placed on the Priority Watch List: Argentina, Canada, Chile, Costa Rica, the Dominican Republic, Egypt, India, Israel, Mexico, the People's Republic of China, Russia, Saudi Arabia, Thailand, Turkey, Ukraine and Venezuela. IIPA also recommends that 28 countries/territories be designated or kept on the Watch List. We also recommend that out-of-cycle reviews be taken in seven countries/territories: Russia, Indonesia, Pakistan, the Philippines, South Korea, Taiwan, and Switzerland.

IIPA recommends that USTR conduct an out-of-cycle review of Russia in 2007, and that Russia's eligibility for GSP benefits be suspended if it fails to meet the commitments that it undertook in the 2006 IPR Agreement with the United States. Russia's copyright piracy problem remains one of the most serious of any country in the world. Piracy rates for most sectors are estimated at around 70%-80% in 2006 and piracy losses exceed 2.18 billion. Despite the repeated efforts of industry and the U.S. government to convince the Russian government to provide meaningful and deterrent enforcement of its copyright and other laws against OD



Appendix D provides a history of countries/territories appearing on IIPA and USTR lists since 1989, a year after the Special 301 legislation became effective. Fifteen of these countries/territories have appeared on a Special 301 list each year since 1989, and are recommended by IIPA to appear there again. A 1994 amendment to Section 182 of the Trade Act, dealing with identification of “priority foreign countries,” provides that the U.S. Trade Representative must take into account “the history of intellectual property laws and practices in the foreign country, whether the country has been identified as a priority foreign country previously, and U.S. efforts to obtain adequate and effective intellectual property protection in that country.”<sup>12</sup> Under this criterion, these 15 countries/territories named by IIPA are particularly vulnerable, having failed to correct their piracy and/or market access problems during the 18 years that Special 301 has been in existence.

**Ongoing GSP IPR Reviews:** IIPA also calls attention to ongoing intellectual property rights reviews under the Generalized System of Preferences (GSP) trade program. IIPA has been a strong supporter of the GSP program, and over the years has filed numerous petitions requesting the U.S. government to initiate GSP IPR reviews of copyright law and enforcement practices in targeted countries.<sup>13</sup> As of February 12, 2007, the U.S. government is continuing GSP IPR investigations on the copyright law and enforcement practices in three countries in which IIPA was the original petitioner: Russia, Lebanon, and Uzbekistan. Now that Congress has reauthorized the GSP program, it is imperative that the Administration actually use this program and hold beneficiary countries accountable to the IPR obligations in the statute.

#### **E. ADDITIONAL COUNTRIES: THOSE SUBJECT TO FTA DISPUTE SETTLEMENT AND THOSE DESERVING SPECIAL MENTION IN 2007**

In addition to the 45 countries/territories for which IIPA has provided comprehensive country reports, IIPA also highlights issues in 15 countries/territories which deserve special attention this year but which are not recommended for placement on the Special 301 Lists. These latter countries and the problems encountered in them are divided into two sections. The four FTA trading partners identified in the FTA dispute settlement category are Bahrain, Jordan, Morocco and Singapore. The twelve countries/territories deserving special mention are: Azerbaijan, Cambodia, Hong Kong, Japan, Laos, Latvia, New Zealand, Oman, Singapore, South Africa, Sweden and Switzerland.

#### **F. ESTIMATED LOSSES DUE TO PIRACY**

As a result of deficiencies in the copyright regimes of the **60** countries/territories highlighted in this submission, the U.S. copyright-based industries suffered estimated trade losses due to piracy in these **60 countries/territories of over \$15.2 billion in 2006**.<sup>14</sup> On a

<sup>12</sup> Uruguay Round Agreements Act Statement of Administrative Action, *reprinted in* H.R. Doc. No. 103-316, vol. I, at 362 (1994).

<sup>13</sup> Since 1999, IIPA (and in one case, a coalition of 6 of 7 IIPA members) has filed 18 GSP IPR petitions with USTR, requesting the initiation of IPR investigations against the following countries: Poland, Peru, Lebanon, Dominican Republic, Ukraine, Moldova, Uzbekistan, Armenia, Kazakhstan, Belarus, the Kyrgyz Republic, Brazil, Russia, Guatemala, Costa Rica, Uruguay, Thailand, and Pakistan. Of these 18 petitions, USTR initiated reviews in 10 countries: the Dominican Republic, Ukraine, Moldova, Uzbekistan, Armenia, Kazakhstan, Brazil, Russia, Lebanon, and Pakistan. IIPA withdrew its request to initiate reviews in three cases (Peru, Uruguay and Thailand). Of these 10 reviews, so far USTR has completed its investigations and terminated its reviews in 8 cases (Armenia, Moldova, Dominican Republic, Ukraine, Brazil, Pakistan, plus Turkey—a case which IIPA petitioned for in 1993 and was closed in 2001). In May 2006, USTR closed its investigation against Kazakhstan.

<sup>14</sup> The methodology used by IIPA member associations to calculate these estimates is described in IIPA's 2006 Special 301 submission, at [www.iipa.com/pdf/2006spec301methodology.pdf](http://www.iipa.com/pdf/2006spec301methodology.pdf).

global basis (that is, in all countries/territories including the U.S.), IIPA conservatively estimates that total losses due to piracy were **\$30-35 billion** in 2005, not counting significant losses due to Internet piracy, for which meaningful estimates are not yet available.

Appendix A presents a chart which quantifies losses for the five copyright-based industry sectors—the entertainment software, business software, motion picture, sound recording and music publishing, and book publishing industries—for 2005 and 2006. In most surveys, IIPA has described the piracy levels in each of the sectors in each of these countries/territories (where available). This should prove helpful in identifying trends and in determining whether enforcement efforts have actually been successful in reducing piracy levels in the particular country.

ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY IN 60 SELECTED COUNTRIES IN 2006 (in millions of U.S. dollars)		
Industry	Estimated Losses 2006	Estimated Losses 2005
Sound Recordings & Musical Compositions	2,374.4	2,456.3
Business Software	10,345.0	8,684.4
Entertainment Software <sup>15</sup>	1,951.0	2,652.8
Books	582.5	600.5
Motion Pictures <sup>16</sup>	Not Available	2,913.0
<b>Total</b>	<b>15,252.9<sup>17</sup></b>	<b>17,307.0<sup>17</sup></b>

Appendix B summarizes the methodology used by the IIPA member associations to calculate these estimates. They represent a crushing burden on the U.S. economy, on U.S. job growth, and on world trade generally. They result from the blatant theft of one of this country's most valuable trade assets—its cultural and technological creativity. Appendix B also describes how IIPA and its members estimate global OD production capacity, including factories, types of OD production lines, and capacity both for production of content and blank media (CD-Rs and DVD-Rs). The use of recordable media has now come close to becoming the pirate's tool of choice, particularly as enforcement pressure on factory production has increased.

<sup>15</sup> ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses." The methodology used by the ESA is further described in Appendix B of this report.

<sup>16</sup> MPAA's trade loss estimates and piracy levels for 2006 are not yet available. However, such numbers will become available later in the year and, as for 2005, will be based on a methodology that analyzes physical or "hard" goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As the 2006 loss numbers and piracy levels become available, they will be posted on the IIPA website, <http://www.iipa.com>.

<sup>17</sup> For many countries, the "total" loss figure does not include losses for one or more industry sectors where figures are unavailable (NA). Consequently, the totals for these countries are even more conservative.

## G. CONCLUSION

Special 301 remains a cornerstone of U.S. intellectual property and trade policy. We urge the Administration to use Special 301, and the tools available under the GSP, CBI, ATPA, CBTPA, and AGOA programs, and to consider IIPA's proposals to amplify attention to ineffective and non-deterrent enforcement—to encourage the countries/territories identified in our recommendations this year to make the political commitments, followed by the necessary actions, to bring their enforcement (and where necessary their copyright) regimes up to international standards. The U.S. government should also use the WTO dispute settlement machinery to ensure that countries/territories bring their substantive and their enforcement regimes into compliance with their international obligations under TRIPS. The dispute settlement mechanisms in FTAs should also be used, where necessary, with those trading partners. We look forward to our continued work with USTR and other U.S. agencies to bring about major improvements in copyright protection and enforcement worldwide.

Respectfully submitted,



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