INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®

2101 L STREET NW, SUITE 1000 · WASHINGTON, DC 20037 · TEL (202) 833-4198 · FAX (202) 331-3101 · WWW.IIPA.COM · EMAIL: INFO@IIPA.COM

March 21, 2008

Via email ACTA@ustr.eop.gov
Ms. Rachel Bae
Director for Intellectual Property & Innovation
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Anti-Counterfeiting Trade Agreement (ACTA): Request for Public Comments 73 Fed. Reg. 8910 (Feb. 10, 2008)

Dear Ms. Bae:

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to provide comments in response to the request of the Office of the U.S. Trade Representative (USTR) regarding its efforts to negotiate an Anti-Counterfeiting Trade Agreement (ACTA).

About the IIPA

The 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. The IIPA is comprised of seven trade associations (listed in the logo, below), which in turn 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; theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media). A description of all seven IIPA members and links to their respective websites are found on the IIPA website, www.iipa.com.

About ACTA

IIPA observes that any negotiation should be entered into with the objective of setting out the very highest standards of effective enforcement. The WTO TRIPS Agreement already sets out the minimum level of enforcement standards. While many countries may have laws in place, those laws are not effectively enforced in practice.

An ACTA should have high level enforcement standards, not those that simply reiterate TRIPS, but rather clarify existing TRIPS obligations and go beyond TRIPS, along the lines of the IPR Chapters the U.S. government has negotiated in its Free Trade Agreements. To the extent such "standards" are not in fact obligations *per se* but are cast more toward creating "best practices," then the reason for setting the bar high becomes even stronger. Importantly, standards and/or best practices should cover those applicable to the anti-piracy fight in both the hard goods and the online environment. Nations willing to participate in the ACTA negotiations must be willing to commit to supporting and enforcing high levels of disciplines.

CONTRIBUTIONS TO THE U.S. ECONOMY AND BEYOND

The vitality and competitiveness of the U.S. economy depends on a thriving copyright sector that creates jobs and exports. 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 for copyright, and effective policies to enforce that protection. To meet the constantly evolving threats to copyright worldwide, our country's responses must remain flexible, innovative and committed.

To emphasize why IIPA and its members care about this ACTA endeavor and the economic stakes involved, we provide an overview of several recent economic studies on the contributions of the various copyright-related industries to the U.S. economy.

U.S. copyright study by the IIPA (2007):

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.[1] This report details the economic impact and contributions of U.S. copyright industries to U.S. Gross Domestic Product, employment, and trade.

Major Contribution to the U.S. Gross Domestic Product and Real Growth

- The U.S. "core" copyright industries accounted for an estimated $819.06 billion or 6.56% of the U.S. gross domestic product (GDP) in 2005, up from 6.48% of the U.S. GDP ($760.49 billion) in 2004.
- The U.S. "total" copyright industries accounted for an estimated $1.38 trillion or 11.12 % of GDP in 2005, up from 11.09% of the U.S. GDP ($1.3 trillion) in 2004.
- The "core" copyright industries were responsible for 12.96% of the growth achieved in 2005 for the U.S. economy as a whole. For the first time, this report includes estimates of the annual contributions made by the copyright industries to real growth experienced by the U.S. economy. This means that the growth contributed by these core industries (12.96%) was almost double their current dollar share of GDP (6.56%).

[1] Copyright Industries in the U.S. Economy: The 2006 Report, by Stephen E. Siwek, Economists Incorporated, prepared for the International Intellectual Property Alliance (IIPA), available at www.iipa.com. Note: The "core" industries are those copyright-related industries whose primary purpose is to produce and/or distribute copyright materials. The "total" copyright industries contain four sub-sectors called the core, partial, non-dedicated support, and interdependent sectors. 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. A one-page summary sheet on this report can be found at http://www.iipa.com/pdf/2006SiwekSummary.pdf.

Strong Employment and Wages

- The "core" copyright industries employed 5.38 million workers in 2005 (4.03% of U.S. workers), up from 5.34 million workers in 2004 (4.07%).
- The "total" copyright industries employed 11.3 million workers in 2005 (8.49%), up from 11.2 million workers in 2004 (8.53%).
- This 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 up from $66,997 in 2004. This represents a 40% premium over the compensation paid the average U.S. worker.

Foreign Sales and Exports

- Finally, estimated 2005 foreign sales and exports of the core copyright industries increased to at least $110.8 billion, leading many other major industry sectors, including chemicals and related products; motor vehicles, parts and accessories; aircraft and associated equipment; food and live animals; and medicinal and pharmaceutical products.

As a result of his work with the IIPA over the past decade, Mr. Siwek has become a leading expert on copyright industry-related studies, and helped formulate the methodology developed by WIPO (discussed immediately below) to measure the copyright industries' role within all economies.

WIPO methodology and support for country studies:

The IIPA's 2006 Report is the second IIPA report which reflects the recommended economic and statistical standards developed by the World Intellectual Property Organization (WIPO) in 2003. This 2003 WIPO Guide addresses the development of economic and statistical standards to measure the impact of domestic copyright industries on any domestic economy.[2]

Spurred by the issuance of this 2003 WIPO Guide, a number of countries have either published similar studies or are in the process of preparing such reports. For example, studies have been concluded in Singapore, Latvia, Hungary, and Canada (see WIPO publication 624e, which also contains IIPA's *Copyright Industries in the U.S. Economy: The 2004 Repor*). Studies are close to completion, underway or soon to be launched in Malaysia, the People's Republic of China, Brazil, the Philippines, Mexico, Colombia, Peru, Jamaica, Lebanon, Morocco, Bulgaria, Romania, Croatia, Russia and Ukraine. Proposals are just now being examined by many more governments. IIPA is very supportive of nations' efforts to conduct such studies.

New entertainment software industry study (2007):

The Entertainment Software Association (ESA) recently released an annual report on the growth of the computer and video game industry between 2003-2006.[3] According to the study called Video Games in the 21st Century: Economic Contributions of the U.S. Entertainment Software Industry, the U.S. computer and video game industry's annual growth rate from 2003 to 2006 exceeded 17%, far outpacing the U.S. economy as a whole (which grew only 4.0% in this same period). This study,

[2] WIPO, Guide on Surveying the Economic Contribution of the Copyright-Based Industries, WIPO Publication 893 (2003), available at http://www.wipo.int/ebookshop?lang=eng&cmd=display_pub&cat_id=1198&cart_id=771049-36566208.

[3] ESA, "U.S. Video Game Industry's Growth Outpaces National Economy," Nov. 27, 2007, at http://www.theesa.com/archives/2007/11/us_video_game_i.php.

conducted by Steve Siwek of Economists Incorporated for the ESA, is the first economic study to outline the specific contributions of the entertainment software industry on the U.S. economy. The report contained the following key findings:

- The computer and video game industry's value added to U.S. Gross Domestic Product (GDP) in 2006 was $3.8 billion;
- In 2003-04 and 2005-06, the industry's contribution to real growth exceeded its share of GDP by more than four to one;
- The entertainment software industry directly and indirectly employs more than 80,000 people in 31 states;,
- U.S. entertainment software industry employees received total compensation of $2.2 billion; and
- The U.S. entertainment software industry directly employs more than 24,000 individuals, with an average salary of $92,300 in 2006.

Study of contributions of both the U.S. copyright and patent sectors (2005):

In 2005, Steve Siwek of Economists Inc. analyzed the contributions to the U.S. economy of the U.S. "IP industries"– industries that rely most heavily on copyright or patent protection to generate revenue, employ and compensate workers and contribute to real growth.[4] This study, entitled Engines of Growth: Economic Contributions of the U. S. Intellectual Property Industries, found, among other things, that these IP industries are the most important growth drivers in the U.S. economy, contributing nearly 40% of the growth achieved by all U.S. private industry and nearly 60% of the growth of U.S. exportable products. It also found that the IP industries were responsible for 20% of the total U.S. private industry's contribution to GDP and 40% of the contribution of U.S. exportable products and services to GDP.

COSTS OF COPYRIGHT PIRACY

In this section, we provide a chronological summary of the findings of several recent reports on copyright piracy, especially in the U.S. markets. But the harm to the U.S. markets is not the sole concern of IIPA and its members; there are additional economic impacts beyond the U.S. borders. Strong, robust national laws are, of course, one solution to combat piracy. Another critical solution is enhanced enforcement efforts that attack copyright piracy. Effective, deterrent anti-piracy actions -- from raids, to prosecutions, to judicial decisions -- are needed, and are needed at a more urgent and more consistent pace than what the copyright industries currently experience.

Motion Picture Piracy Study (IPI, September 2006):

The Institute for Policy Innovation (IPI) released a study in 2006 that describes the impact of movie piracy on the U.S. economy.[5] That study analyzed the movie industry to determine the full upstream and downstream economic consequences including lost economic output, lost jobs, and lost

[4] Engines of Growth: Economic Contributions of the U. S. Intellectual Property Industries, by Stephen E. Siwek, Economists Inc. (2005), available at http://nbcumv.com/corporate/Engines_of_Growth.pdf

[5] IPI Policy Report # 186, The True Cost of Motion Picture Piracy to the U.S. Economy, by Stephen E. Siwek, issued September 29, 2006, available at www.ipi.org.

tax revenues. Also written by Steve Siwek, "*The True Cost of Motion Picture Piracy to the U.S. Economy*" concluded the following:

- Motion picture piracy now results in total lost output among all U.S. industries of $20.5 billion annually. Output includes revenue and related measures of economic performance.
- Motion picture piracy costs U.S. workers $5.5 billion annually in lost earnings. Of this amount, $1.9 billion would have been earned by workers in the motion picture industries while $3.6 billion would have been earned by workers in other U.S. industries.
- Motion picture piracy costs jobs. Absent piracy, 141,030 new jobs would have been added to the U.S. economy. Of this total, 46,597 jobs would have been created in the motion picture industries while 94,433 jobs would have been added in other industries.
- Motion picture piracy costs governments at all levels $837 million in lost tax revenue. Absent piracy, an additional $147 million in corporate income taxes from motion picture corporations, $91 million in other taxes on motion picture production or sales, and $599 million in personal income taxes from employees would have been paid annually to federal, state and local governments.

Sound Recording Piracy Study (IPI, August 2007):

IPI also released a study that attempted to paint a complete picture of the impact of piracy of musical recordings on the U.S. economy.[6] That 2007 study, again done by Steve Siwek, analyzed the recording industry's losses to determine the full upstream and downstream economic consequences including lost economic output, lost jobs, and lost tax revenues. Siwek noted, "The true cost of sound recording piracy far exceeds its impact on U.S. producers and distributors of sound recordings. Piracy harms not only the owners of intellectual property but also U.S. consumers and taxpayers." Key excerpts from the study appear below:

- As a consequence of global and U.S.-based piracy of sound recordings, the U.S. economy loses $12.5 billion in total output annually. Output includes revenue and related measures of economic performance. As a result of sound recording piracy, the U.S. economy loses 71,060 jobs. Of this amount, 26,860 jobs would have been added in the sound recording industry or in downstream retail industries, while 44,200 jobs would have been added in other U.S. industries.
- Because of sound recording piracy, U.S. workers lose $2.7 billion in earnings annually. Of this total, $1.1 billion would have been earned by workers in the sound recording industry or in downstream retail industries while $1.6 billion would have been earned by workers in other U.S. industries.
- As a consequence of piracy, U.S. federal, state and local governments lose a minimum of $422 million in tax revenues annually. Of this amount, $291 million represents lost personal income taxes while $131 million is lost corporate income and production taxes.

[6] IPI Policy Report # 188, The True Cost of Sound Recording Piracy to the U.S. Economy, written by Stephen E. Siwek, issued on August 21, 2007, available at http://www.ipi.org/

Copyright Industry Piracy Study (IPI, October 2007):

IPI most recently issued another report by Steve Siwek in late 2007 that looked at several (but not all) copyright industry sectors, and concluded that: "… each year, copyright piracy of motion pictures, sound recordings, business and entertainment software and video games costs the U.S. economy $58.0 billion in total output, costs 373,375 jobs and $16.3 billion in earnings, and costs federal, state, and local governments $2.6 billion in tax revenue."[7] There Siwek noted:

> However, these direct losses to copyright owners represent only part of the story. Piracy also causes significant and measurable harm to both the upstream suppliers and downstream distributors who would also have benefited from the sale of legitimate copyright products. Indeed, the harms that flow from piracy produce a cascading effect throughout the economy as a whole. In order to determine the magnitude of these ripple effects, this paper assesses the harmful impact of the piracy of U.S. produced copyright products on the overall U.S. economy. To accomplish this, data were gathered that reflected the piracy losses incurred in 2005 by four of the major U.S. copyright industries: motion pictures, sound recordings, business software and entertainment software/video games. In 2005, piracy conservatively cost these U.S. industries collectively at least $25.6 billion in lost revenue. This lost revenue translates into lost production of legitimate copyright products, which in turn means lost wages and lost purchases of upstream products and services throughout the U.S. economy. This study measures the lost economic output, jobs and employee earnings that are the economic consequences of copyright piracy.

Additional excerpts from the study results appear below:

- The U.S. economy loses $58.0 billion in total output annually. Output includes revenue and related measures of gross economic performance.
- The U.S. economy loses 373,375 jobs. Of this amount, 123,814 jobs would have been added in the copyright industries or in downstream retail industries, while 249,561 jobs would have been added in other U.S. industries in support of the copyright industries.
- American workers lose $16.3 billion in earnings annually. Of this total, $7.2 billion would have been earned by workers in the copyright industries or in their downstream retail industries while $9.1 billion would have been earned by workers in other U.S. industries.
- Federal, state and local governments lose at least $2.6 billion in tax revenues annually. Of this amount, $1.8 billion represents lost personal income taxes while $0.8 billion is lost corporate income and production taxes.

Business Software Studies (May 2007, January 2008):

The Business Software Alliance (BSA) periodically issues studies on the state of copyright piracy of business and other selected software worldwide.[8] The Fourth Annual BSA and IDC Global Software Piracy Study revealed that 35% of the software installed in 2006 on personal computers (PCs)

[7] IPI Policy Report # 189, The True Cost of Copyright Industry Piracy to the U.S. Economy, by Stephen E. Siwek, issued on October 3, 2007, available at www.ipi.org.
[8] BSA and IDC, Fourth Annual Global Piracy Study, available at http://w3.bsa.org/globalstudy/ (May 2007).

worldwide was obtained illegally, amounting to nearly $40 billion in global losses. The data in this survey cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. Data on numerous countries are included in this report. An illustrative summary of the overall key findings are:

- Total software installed on computers: more than $100 billion.
- Total software paid for: $65 billion.
- Total packaged software loss: nearly $40 billion.
- Global piracy rate: 35%.
- Changes from 2005: Total losses up 15% to nearly $40 billion.

In addition, another study recently commissioned by the BSA and conducted independently by International Data Corporation (IDC) finds that while all countries could benefit from reducing the use of illegal software on personal computers (PC), emerging economies with high-piracy rates could experience the most dramatic, positive gains.[9] The Economic Benefits of Reducing PC Software Piracy looks at the bottom line economic benefits of reducing piracy in 42 countries that together account for more than 90 percent of global IT spending in 2007. The study was designed to quantify the economic benefits to domestic economies that could be gained from a ten percentage point reduction in PC software piracy over a four-year period, from 2008-2011.

Sound Recordings and Digital Piracy (IFPI, January 2008):

The International Federation of the Phonographic Industry (IFPI) issued its IFPI Digital Music Report 2008 in January 2008.[10] This report includes an analysis of the impact of copyright theft on the legitimate music business globally, as well as the industry's anti-piracy strategies for disrupting it. It also outlines the hidden dangers to consumers and businesses of illegal downloading, and provides a summary of the public education work being done internationally by the recording industry to improve awareness of legal online sites and of copyright. Excerpts of the "Highlights" outlined by IFPI are listed below:

- Global digital music sales are estimated at approximately US$2.9 billion in 2007, a roughly 40% increase on 2006 (US$2.1 billion).
- Single track downloads, the most popular digital music format, grew by 53% to 1.7 billion (including those on digital albums).
- Digital sales now account for an estimated 15% of the global music market, up from 11% in 2006 and zero in 2003. In the world's biggest digital music market, the US, online and mobile sales now account for 30% of all revenues.
- The music industry is more advanced in terms of digital revenues than any other creative or entertainment industry except games. Its digital share is more than twice that of newspapers (7%), films (3%) and books (2%).
- There are more than 500 legitimate digital music services worldwide, offering over 6 million tracks – over four times the stock of a music megastore.

[9] The Economic Benefits of Reducing PC Software Piracy, A Report by IDC, sponsored by the Business Software Alliance, January 2008, available at http://www.bsa.org/idcstudy.aspx?sc_lang=en.

[10] IFPI Digital Music Report 2008, issued January 24, 2008, available at http://www.ifpi.org/content/section_resources/dmr2008.html

- Tens of billions of illegal files were swapped in 2007. The ratio of unlicensed tracks downloaded to legal tracks sold is about 20 to 1.
- The growth rate of around 40% in digital sales did not offset the sharp fall in CD sales globally, meaning that the overall market for the year will be down on 2006.

Importance of the Online Environment

The creativity, production and distribution of original content is what drives investment, job creation and increased tax payments to government. The theft of copyrighted creative content -- in both hard goods and online -- severely undercuts the ability of U.S. creators, both companies and individuals, to engage in legitimate commerce and to grow in both the domestic U.S. market, and increasingly, the international market. Positive industry growth simply cannot be sustained in countries where piracy dominates the market.

Many of the copyright industries are currently exploring new ways to distribute their content but are hampered in such efforts by the continuing growth of online piracy. Robust laws and effective enforcement measures must be in place to provide both right holders and governments with the proper means to combat this very damaging form of economic and cultural theft.

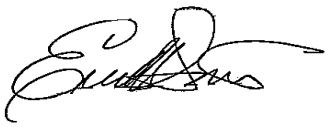
Final Comments on ACTA

In the ACTA, the U.S. and other interested governments seek an agreement with provisions in three main areas: international cooperation, enforcement practices, and the legal framework for IPR enforcement. The above discussion of economic contributions and the costs of copyright piracy points to an inescapable conclusion -- it is critical that the ACTA enhance international norms and strengthen standards for the enforcement of intellectual property rights.

The ACTA's objective should be an ambitious agreement that addresses today's challenges, including strengthened legal regimes and strengthened and effective copyright enforcement in both the hard goods and online environments. Such ambition should not be sacrificed for additional signatories or the need for a hurried conclusion of negotiations. As the framework for negotiating the ACTA progresses and actual negotiations commence, U.S. right holders will be able to submit additional comments and discuss those possibilities with the U.S. negotiators.

We appreciate this opportunity to provide our views.

Respectfully submitted,



Eric H. Smith
For the International Intellectual Property Alliance