



February 13, 2004

Mr. James Mendenhall  
Assistant USTR for Services, Investment  
and Intellectual Property  
Office of the United States  
Trade Representative  
600 17th Street, N.W., Room 303  
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"), 69 Fed. Reg.  
718-719 (Jan. 6, 2004)

Dear Mr. Mendenhall:

This filing responds to the Request for Written Submissions appearing on January 6, 2004 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 (the "IIPA" or "Alliance") submits our discussion of the status of copyright law reform and enforcement in 41 separate country reports. We also highlight seven challenges and initiatives in this letter that define our agenda for the coming year. Finally, we mention 15 additional countries that we have not recommended be on a Special 301 list but which merit attention by the U.S. government.

#### **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 is comprised of six trade associations, each representing a significant segment of the U.S. copyright community. These member associations represent over 1,350 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; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and

journals (in both electronic and print media).

In April 2002, the IIPA released an economic report entitled Copyright Industries in the U.S. Economy: The 2002 Report, the ninth such 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 5.24% of U.S. GDP or \$535.1 billion in value-added in 2001. In the last 24 years (1977-2001), the core copyright industries' share of GDP grew at an annual rate more than twice as fast as the remainder of the economy (7.0% vs. 3.0%). Also over these 24 years, employment in the core copyright industries more than doubled to 4.7 million workers (3.5% of total U.S. employment), and grew nearly three times as fast as the annual employment growth rate of the economy as a whole (5.0% vs. 1.5%). In 2001, the U.S. copyright industries achieved foreign sales and exports of \$88.97 billion, a 9.4% gain from the prior year. The copyright industries' foreign sales and exports continue to be larger than almost all other leading industry sectors, including automobiles and auto parts, aircraft, and agriculture. 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 sustaining U.S. economic competitiveness that our response remains flexible, innovative and committed. There are certain sectors of the U.S. copyright community, notably the music sector, that are already witnessing significant declines in foreign sales 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 (e.g., industry initiatives, methodology) that may be referenced in the 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 2004; (2) summarizes our submission this year; and (3) points the reader to various appendices;
- Appendix A, which contains IIPA's country placement recommendations, estimated trade losses due to piracy, and estimated levels of piracy;
- Appendix B, which describes our members' methodology for calculating estimated trade losses and piracy levels;
- 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 have not been placed on the Special 301 lists;
- Appendix D, which provides a historical chart of countries' placement on Special 301 lists by USTR since 1989; and

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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.

<sup>2</sup> Country surveys were prepared by Eric H. Smith, IIPA President; Steven J. Metalitz, IIPA Senior Vice President; Maria Strong, IIPA Vice President and General Counsel; Eric J. Schwartz, IIPA Vice President and Special Counsel; and Michael N. Schlesinger, IIPA Vice President and Associate General Counsel, and are based on information furnished by IIPA member associations. We also thank Ryan Lehning at Smith & Metalitz LLP and the firm's law clerks, Alina Morris and Marc Shaw, and our staff, Pam Burchette, Melissa Braford, Michael Murphy, Jayme MacDonald, and Lauren Braford for their contributions in preparing, producing and distributing this submission.

- Appendix E, which contains the Special 301 histories of the countries that appear as our recommendations this year, and many other countries that have appeared on USTR's lists in the past and are still candidates for monitoring intellectual property practices.

### **C. COPYRIGHT INDUSTRIES' INITIATIVES AND CHALLENGES IN 2004**

Improving copyright protection by employing the various bilateral, plurilateral and multilateral tools available to the U.S. government is the goal of this submission. Without these trade tools and their full implementation, the U.S. copyright industries would still be facing a world of inadequate copyright laws, most not even protecting U.S. works at all, and 90% to 100% piracy levels in most developing countries — a world which our industries faced in the early 1980s. 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 produced significant legal and enforcement improvements. This largely untold success story has produced billions of dollars of increased revenue and millions of new jobs both to 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, emanating largely from the growth of digital and on-line technology, the increased organization of commercial pirates, and the failure of governments to adequately enforce their new laws, require a renewed commitment to use both the old and new tools available to industry and governments.

In our last five Special 301 filings, IIPA outlined a series of challenges facing the copyright-based industries. This year, we have updated these challenges/objectives to take into account new developments and new challenges.

The copyright industries are extremely grateful for the U.S. government's effort in support of progress toward meeting these objectives. But, as is clearly demonstrated in the country surveys included in this report, organized commercial piracy, whether digital, analog or over the Internet, threatens to outpace the fight to combat it. IIPA believes that a significantly heightened effort to make further progress on these objectives is called for in 2004. We believe the tools exist to make significant progress — the issue is the political will of all governments to take the actions necessary to meaningfully address piracy 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.

### **OPTICAL DISC PIRACY AND ITS EFFECTIVE REGULATION**

Piracy of optical disc products today causes grave losses to all the copyright industries. Increasingly, all sectors of the copyright industry are using 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-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 and entertainment products and the potential for pirates to generate billions of dollars in illegal income. Unfortunately, production capacity now greatly exceeds legitimate demand, with the difference inuring to the benefit of illegal pirate enterprises. Increasingly, recordable optical media are also used to “burn” unauthorized copies on a commercial basis. Pirate CDs, VCDs, CD-ROMs and DVDs 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.

The growth in the number and capacity of optical disc “factories” around the globe has been staggering. The following chart details that growth in selected countries. It is noteworthy that the greatest optical disc piracy threat is in Asia and Russia, which have shown the fastest growth in the number of plants and production lines. (This chart does not address the issue of CD-R burning, a global problem whose impact is especially severe in Asia; in several European countries, such as Italy, Germany and Spain; and in Latin America).

| Estimated Optical Disc Production Capacity in 45 Countries/Territories |                     |              |              |   |                |                |   |                   |                        |              |
|--|---------------------|--------------|--------------|---|----------------|----------------|---|-------------------|------------------------|--------------|
|  | Plants (Excl. CD-R) |              |              | Estimated Production Lines (Excl. CD-R) |                |                | Estimated Capacity in Millions (Excl. CD-R) |                   | DVD Plants (Dedicated) | DVD Lines    |
|  | 2003                | 2002         | 1999         | 2003                                    | 2002           | 1999           | 2003  | 2002              |                        |              |
| <b>ASIA</b>  |                     |              |              |   |                |                |   |                   |                        |              |
| Australia  | 9.0                 | 9.0          | 12.0         | 19.0                                    | 19.0           | 13.0           | 66.5  | 66.5              | 3.0                    | 6.0          |
| Cambodia   | 1.0                 | 1.0          | 0.0          | 1.0                                     | 2.0            | 0.0            | 3.5   | 7.0               | NA                     | NA           |
| China  | 71.0                | 70.0         | 72.0         | 569.0 <sup>3</sup>                      | 196.0          | 156.0          | 1,991.5 <sup>3</sup>                        | 686.0             | 32.0                   | 65.0         |
| Hong Kong  | 112.0               | 93.0         | 94.0         | 623.0                                   | 554.0          | 414.0          | 2,181.0                                     | 1,939.0           | 28.0                   | 50.0         |
| India  | 9.0                 | 9.0          | 8.0          | 14.0                                    | 14.0           | 8.0            | 49.0  | 49.0              | 1.0                    | 1.0          |
| Indonesia  | 27.0                | 19.0         | 12.0         | 31.0                                    | 36.0           | 16.0           | 108.5                                       | 126.0             | 2.0                    | 2.0          |
| Japan  | 34.0                | 34.0         | 34.0         | 66.0                                    | 66.0           | 62.0           | 231.0                                       | 231.0             | 10.0                   | 14.0         |
| Korea  | 31.0                | 31.0         | 24.0         | 96.0 <sup>4</sup>                       | 96.0           | 28.0           | 336.0                                       | 336.0             | 7.0                    | 42.0         |
| Laos   | 2.0                 | 2.0          | 2.0          | 2.0                                     | 2.0            | 2.0            | 7.0   | 7.0               | NA                     | NA           |
| Macau  | 2.0                 | 7.0          | 26.0         | 2.0                                     | 6.0            | 31.0           | 7.0   | 21.0              | 0.0                    | 0.0          |
| Malaysia   | 38.0                | 38.0         | 32.0         | 86.0                                    | 86.0           | 41.0           | 301.0                                       | 301.0             | 3.0                    | 6.0          |
| Myanmar/Burma  | 1.0                 | 2.0          | 4.0          | 1.0                                     | 4.0            | 6.0            | 3.5   | 14.0              | NA                     | NA           |
| Pakistan   | 8.0                 | 5.0          | 5.0          | 25.0                                    | 12.0           | 5.0            | 180.0 <sup>5</sup>                          | 66.0 <sup>6</sup> | 2.0                    | 2.0          |
| Philippines  | 7.0                 | 9.0          | 5.0          | 21.0                                    | 23.0           | 7.0            | 73.5  | 80.5              | 0.0                    | 3.0          |
| Singapore  | 15.0                | 15.0         | 17.0         | 29.0                                    | 29.0           | 29.0           | 101.5                                       | 101.5             | 2.0                    | 6.0          |
| Taiwan   | 61.0                | 61.0         | 41.0         | 310.0                                   | 283.0          | 239.0          | 1,085                                       | 990.5             | 12.0                   | 97.0         |
| Thailand   | 39.0                | 51.0         | 20.0         | 126.0                                   | 102.0          | 56.0           | 441.0                                       | 357.0             | 8.0                    | 14.0         |
| Vietnam  | 3.0                 | 2.0          | 3.0          | 3.0                                     | 2.0            | 3.0            | 10.5  | 7.0               | 0.0                    | 0.0          |
| <b>SUB-TOTAL</b>   | <b>470.0</b>        | <b>458.0</b> | <b>411.0</b> | <b>2,024.0</b>                          | <b>1,532.0</b> | <b>1,116.0</b> | <b>7176.5</b>                               | <b>5,386.0</b>    | <b>110.0</b>           | <b>308.0</b> |
| <b>E. EUROPE/CIS</b>   |                     |              |              |   |                |                |   |                   |                        |              |
| Bulgaria   | 7.0                 | 7.0          | 5.0          | 7.0                                     | 9.0            | 7.0            | 24.5  | 31.5              | NA                     | NA           |
| Czech Republic   | 4.0                 | 4.0          | 3.0          | 25.0                                    | 24.0           | NA             | 87.5  | 84.0              | NA                     | NA           |
| Hungary  | 3.0                 | 3.0          | 1.0          | 3.0                                     | 3.0            | 1.0            | 10.5  | 10.5              | NA                     | NA           |
| Kazakhstan   | 1.0                 | 1.0          | NA           | 1.0                                     | 1.0            | NA             | 3.5   | 3.5               | NA                     | NA           |
| Lithuania  | 1.0                 | 1.0          | 0.0          | 1.0                                     | 1.0            | 0.0            | 3.5   | 3.5               | NA                     | NA           |
| Poland   | 9.0 <sup>7</sup>    | 11.0         | 11.0         | 48.0                                    | 49.0           | NA             | 385.6 <sup>8</sup>                          | 171.5             | NA                     | NA           |
| Romania  | 1.0                 | 1.0          | 1.0          | 2.0                                     | 1.0            | 1.0            | 7.0   | 3.5               | NA                     | NA           |
| Russia   | 32.0                | 26.0         | 10.0         | 52.0                                    | 50.0           | 20.0           | 371.6 <sup>9</sup>                          | 175.0             | NA                     | NA           |
| Ukraine  | 4.0                 | 3.0          | 7.0          | 7.0 <sup>10</sup>                       | 8.0            | NA             | 24.5  | 28.0              | NA                     | NA           |
| <b>SUB-TOTAL</b>   | <b>62.0</b>         | <b>57.0</b>  | <b>38.0</b>  | <b>146.0</b>                            | <b>146.0</b>   | <b>29.0</b>    | <b>918.2</b>                                | <b>511.0</b>      | <b>NA</b>              | <b>NA</b>    |

<sup>3</sup> May include lines devoted to production of blank media.

<sup>4</sup> Number of verified lines; unverified lines not included.

<sup>5</sup> This number represents actual production.

<sup>6</sup> This number represents actual production.

<sup>7</sup> Seven plants known to be operational.

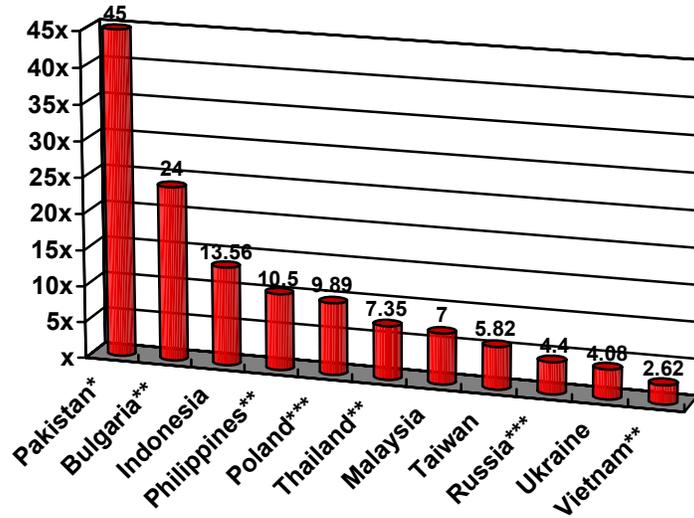
<sup>8</sup> Estimated capacity based on a thorough investigation of plants, lines and their capacity in Poland in November 2003. May include blank CD-R.

<sup>9</sup> Estimated capacity based on a thorough investigation of plants, lines and their capacity.

<sup>10</sup> Number of verified lines; unverified lines not included.

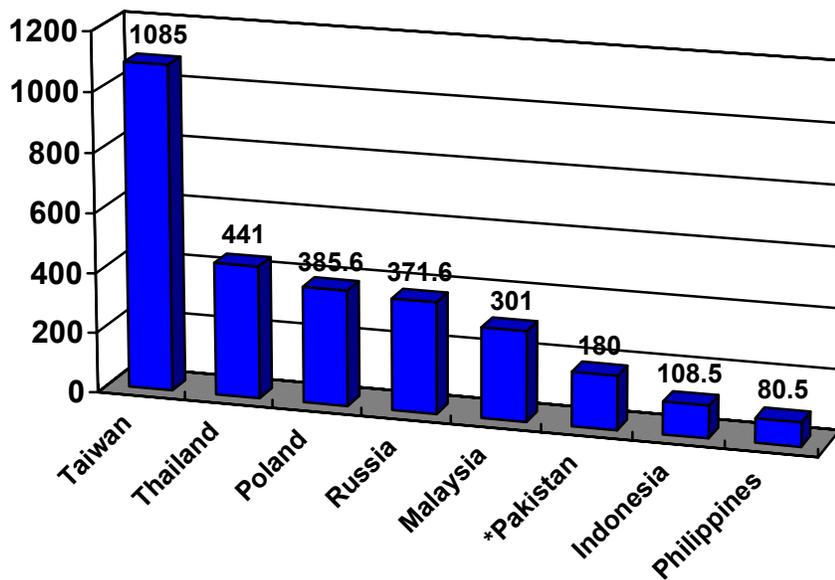
| <b>Estimated Optical Disc Production Capacity in 45 Countries/Territories</b> |                     |              |              |   |                |                |   |                |                        |           |
|---|---------------------|--------------|--------------|---|----------------|----------------|---|----------------|------------------------|-----------|
|   | Plants (Excl. CD-R) |              |              | Estimated Production Lines (Excl. CD-R) |                |                | Estimated Capacity in Millions (Excl. CD-R) |                | DVD Plants (Dedicated) | DVD Lines |
|   | 2003                | 2002         | 1999         | 2003                                    | 2002           | 1999           | 2003  | 2002           | 2003                   | 2003      |
| <b>W. EUROPE</b>  |                     |              |              |   |                |                |   |                |                        |           |
| Greece  | 5.0                 | 5.0          | NA           | 11.0                                    | 11.0           | NA             | 38.5  | 38.5           | NA                     | NA        |
| Italy   | 23.0                | 29.0         | 11.0         | 51.0                                    | 57.0           | NA             | 178.5                                       | 199.5          | NA                     | NA        |
| Spain   | 12.0                | NA           | NA           | 98.0                                    | NA             | NA             | 343.0                                       | NA             | NA                     | NA        |
| <b>SUB-TOTAL</b>  | <b>40.0</b>         | <b>34.0</b>  | <b>11.0</b>  | <b>160.0</b>                            | <b>68.0</b>    | <b>NA</b>      | <b>560.0</b>                                | <b>238.0</b>   | <b>NA</b>              | <b>NA</b> |
| <b>LATIN AMERICA</b>  |                     |              |              |   |                |                |   |                |                        |           |
| Argentina   | 10.0                | 16.0         | 8.0          | 26.0                                    | 31.0           | 17.0           | 91  | 108.5          | NA                     | NA        |
| Brazil  | 9.0                 | 9.0          | 9.0          | 11.0                                    | 11.0           | NA             | 38.5  | 38.5           | NA                     | NA        |
| Chile   | 2.0                 | 2.0          | 1.0          | 2.0                                     | 2.0            | 1.0            | 7.0   | 7.0            | NA                     | NA        |
| Colombia  | 2.0                 | 2.0          | 2.0          | 8.0                                     | 8.0            | 8.0            | 28.0  | 28.0           | NA                     | NA        |
| Dominican Rep.  | 1.0                 | 1.0          | 0.0          | 1.0                                     | 1.0            | 0.0            | 3.5   | 3.5            | NA                     | NA        |
| Mexico  | 12.0                | 14.0         | 5.0          | 136.0                                   | 49.0           | NA             | 476   | 171.5          | NA                     | NA        |
| Peru  | 3.0                 | 3.0          | 3.0          | 5.0                                     | 5.0            | NA             | 17.5  | 17.5           | NA                     | NA        |
| Venezuela   | 2.0                 | 2.0          | 2.0          | 4.0                                     | 4.0            | NA             | 14.0  | 14.0           | NA                     | NA        |
| <b>SUB-TOTAL</b>  | <b>41.0</b>         | <b>49.0</b>  | <b>30.0</b>  | <b>193.0</b>                            | <b>111.0</b>   | <b>26.0</b>    | <b>675.5</b>                                | <b>388.5</b>   | <b>NA</b>              | <b>NA</b> |
| <b>MIDDLE EAST</b>  |                     |              |              |   |                |                |   |                |                        |           |
| Egypt   | 4.0                 | 6.0          | 3.0          | 6.0                                     | 6.0            | NA             | 21.0  | 21.0           | NA                     | NA        |
| Israel  | 5.0                 | 7.0          | 5.0          | 5.0                                     | 18.0           | NA             | 17.5  | 63.0           | NA                     | NA        |
| Lebanon   | 1.0                 | 1.0          | 0.0          | 1.0                                     | 1.0            | 0.0            | 3.5   | 3.5            | NA                     | NA        |
| Palestinian Auth.   | 2.0                 | 3.0          | 2.0          | 2.0                                     | 4.0            | 3.0            | 7.0   | 14.0           | NA                     | NA        |
| Saudi Arabia  | 1.0                 | 1.0          | NA           | 1.0                                     | 1.0            | NA             | 3.5   | 3.5            | NA                     | NA        |
| Syria   | 1.0                 | 1.0          | NA           | 1.0                                     | 1.0            | NA             | 3.5   | 3.5            | NA                     | NA        |
| Turkey  | 8.0                 | 8.0          | NA           | 18.0                                    | 18.0           | NA             | 63.0  | 63.0           | NA                     | NA        |
| <b>SUB-TOTAL</b>  | <b>22.0</b>         | <b>27.0</b>  | <b>10.0</b>  | <b>34.0</b>                             | <b>49.0</b>    | <b>3.0</b>     | <b>119.0</b>                                | <b>171.5</b>   | <b>NA</b>              | <b>NA</b> |
| <b>AFRICA</b>   |                     |              |              |   |                |                |   |                |                        |           |
| South Africa  | 3.0                 | 3.0          | NA           | 7.0                                     | 7.0            | NA             | 24.5  | 24.5           | NA                     | NA        |
| <b>SUB-TOTAL</b>  | <b>3.0</b>          | <b>3.0</b>   | <b>0.0</b>   | <b>7.0</b>                              | <b>7.0</b>     | <b>0.0</b>     | <b>24.5</b>                                 | <b>25.0</b>    | <b>NA</b>              | <b>NA</b> |
| <b>TOTALS</b>   | <b>638.0</b>        | <b>628.0</b> | <b>500.0</b> | <b>2,564.0</b>                          | <b>1,913.0</b> | <b>1,174.0</b> | <b>9473.7</b>                               | <b>6,720.0</b> |                        |           |

**Ratio of Estimated Optical Disc Production Capacity to Estimated Legitimate Domestic Demand in 11 Countries (Excluding Blank Media)**



- \* Denotes actual production as compared to estimated production capacity; excludes legitimate demand for DVDs.
- \*\* Includes legitimate demand for audio only.
- \*\*\* Denotes actual production as compared to estimated production capacity.

**Optical Disc Production Capacity of Content (Excluding Blank Media) in Millions of Discs**



- \* Denotes actual production as compared to estimated production capacity.

The growing optical disc problem confronting the copyright sector, now familiar to governments worldwide, has demanded 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, including optical-grade polycarbonate. These regulatory regimes must 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 China, Bulgaria, Hong Kong, Malaysia, Philippines, Taiwan and Macau, and are under consideration in Thailand, Indonesia, India and other countries. Ukraine has adopted a system of regulatory controls as well, but this law is flawed and must be corrected.<sup>11</sup> 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, such as Russia, Pakistan, India, Thailand, and Vietnam, and 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, Russia and the countries of the former Soviet Union—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.

As these regimes have been adopted and enforcement under them matured, the pirates have, again, taken advantage of new technological developments, and moved production increasingly from the "factory" locus, to smaller venues that are more private and harder to police. The newest generation of pirates use 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, like Taiwan, Brazil, Mexico, Spain and countless others, seizures of pirate product in 2003 have been overwhelmingly of "burned" product. This new development calls for still newer responses — in this case, through tailored optical disc law provisions and improved enforcement machinery aimed at implementing zero tolerance policies against the offer for sale of pirate product.

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 disc piracy" and agreed on a set of "Effective Practices" which we suggest that governments addressing this problem carefully study. We stand ready to work with USTR to assist governments in understanding, drafting and implementing these recommendations into national law.

Finally, even after the adoption of regulations controlling and monitoring production, it is critical that these be enforced aggressively, to accompany general copyright enforcement. Governments must be given the authority to conduct surprise inspections of optical disc production facilities to ensure full compliance, and to deal effectively with commercial "burning"

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<sup>11</sup> As a consequence, the U.S. government has levied sanctions against Ukraine under Special 301 and removed its GSP benefits. Such sanctions remain in place today.

operations, and they must use that authority vigorously. 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.

### **PIRACY BY ORGANIZED CRIME**

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 not only the production but the 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. In 2003, responding to improved enforcement against factory pirate production, the syndicates have begun moving their illegal trade into CD-R and DVD-R “burning” and to the Internet (see, for example, the country survey on Taiwan).

Time Europe<sup>12</sup> has reported that a drug dealer pays about \$47,000 for a kilo of cocaine, and can sell it on the street for about \$94,000, a 100% profit. But for \$47,000 and with a lot less risk, a pirate can buy or produce 1,500 pirated copies of Microsoft’s Office 2000 Professional and resell them for a profit of 900%! Examples of the involvement of organized crime on a global basis include:

- In March 2002, the largest seizure ever in **Australia** took place—35,000 pirate VCDs and DVDs. The disks were produced in **Malaysia** and a Malaysian national was arrested at the time. Further investigation led to the arrest of another Malaysian entering Australia with false documents. The authorities determined that this was a well organized syndicate including Malaysian and Australian nationals operating in cell-type structures to protect the ultimate kingpins. Unfortunately, both suspects were assessed inadequate fines, and merely deported without requiring the fine to be paid.
- A pair of shipments intercepted by **Australian** Customs in October 2003 and described as containing “staircase fittings” was found to contain four steel cylinders large enough to hold 200 DVDs each. The airfreight shipments, seized in Sydney on October 17th, were intended for an importer well-known to the Motion Picture Association (MPA) and involved in previous pirate disc smuggling operations. The “staircase fittings” shipment was interpreted as part of a long-term investigation into a very well organized syndicate operation.
- From late August to mid-October 2003, **Hong Kong** Police, Customs Department and Immigration Department personnel have conducted three major joint operations against criminal gangs (triads) in the West Kowloon district, an effort aimed at cutting off triad income from organized crime activities such as

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<sup>12</sup> “Busting Software Pirates,” *Time/Europe*, November 18, 2002.

prostitution, illegal gambling and the sale of untaxed cigarettes, pornography and pirated optical discs. During the operations, 729 suspects were arrested and 237,738 pirated and obscene optical discs were seized.

- In July 2001 in **Malaysia**, suspected as a center of organized piracy in Asia, a City Council President received a personal death threat along with a threat to rape his daughter if he continued his crackdown on the city's illegal VCD traders. He also received a handwritten letter containing a 10cm-long razor blade. Newspaper reports cited that there had been seven death threats reported to the police in the months following aggressive action by the enforcement officers against VCD pirates. The Minister of the Domestic Trade and Consumer Affairs Ministry (MDTCA)—the main enforcement arm in Malaysia—also received a personal death threat. The Deputy Prime Minister stated publicly that it was clear that piracy is linked to criminal elements in Malaysia.
- Also in **Malaysia**, the police reported in October 2002 that pirate production of thousands of copies of protected films were now being carried out aboard ships anchored in international waters off the Malaysian coast. The ships later offloaded their cargo at obscure points along the coast. An investigation is continuing into this new, troubling method of piracy.
- In February 2001 **Indonesian** Police broke into a heavily fortified factory and discovered four production lines, three of which were in operation. During the search the raiding team were forced to abandon the premises after a local armed militia group sought to engage the police in a fire fight in an effort to recover the premises.
- A raid in **Taiwan** in May 2001 turned up several illegal firearms along with 70,000 suspect CD-Rs and other optical disc products containing music and pornography. This led to the discovery of an illegal arms factory alongside a sophisticated CD-R facility.
- In September 2002, in central **Taiwan**, the police arrested a 19-year-old in connection with the production of firearms to equip gang members protecting the local marketplace of a pirate optical disc production syndicate.
- In **Hungary**, criminal syndicates are assuming control of illegal CD-R burning, as well as all other aspects of duplication and distribution of entertainment software. For example, these criminal groups are using the Petöfi Stadium, which belongs to the local municipality, as a distribution point to supply the surrounding region, including into Germany.
- In **Lithuania**, distribution of pirated entertainment software product (especially manufactured discs produced in Russia) is controlled by Russian organized crime syndicates that are now affixing their own logos and brand names to their illicit products. These pirated materials are then stored in Lithuania for distribution locally and throughout Eastern and Central Europe.
- CDs carrying extremist propaganda found in **Argentina, Mauritius, Pakistan** and **Paraguay** have been demonstrated to come from the same source as much of the illegally produced music in these regions. Other extremist or terrorist groups, for example in **Northern Ireland**, are partly funded by music piracy.

- In **Mexico** in October 2001, police discovered a massive CD-R operation in raids on 11 houses, three linked internally by tunnels. Over one million blank CD-Rs, half a million pirated CD-Rs and 235 CD burners were found. Together the operation had the capacity to produce 14 million CD-Rs annually. It is believed the profits were invested in narcotics and prostitution.
- In February 2003, a high level Camorra crime boss in Naples, **Italy**, Luigi Giuliano, confessed to Italian prosecutors that the Camorra gang earned €100,000 per week (US\$125,000 or US\$6.5 million annually) from the drug trade, extortion and video and music piracy.
- A series of 13 raids by the National Police in Madrid, **Spain** led to the arrest of 40 persons involved in the mass duplication of CD-Rs. The suspects, many of whom were illegal immigrants from China and who had been brought to Spain by the other members of a criminal gang, were found in possession of 346 high speed burners, 168,400 blank CD-Rs, 24,450 recorded CDs, 39,000 DVDs, 10,500 VCDs containing movies, 515,000 jewel cases, 210,000 inserts and €48,000 (US\$60,000) in cash. The gang used a number of computer shops and restaurants to launder the money generated by the pirate product.
- Interpol has reported that in **Lebanon**, in February 2000, an individual was arrested for piracy and suspected of fundraising for Hezbollah. The individual sold pirated music CDs, Sega, Sony and Nintendo game discs to fund a Hezbollah-related organization. Among the discs recovered were discs containing images and short films of terrorist attacks and interviews with suicide bombers. The discs were allegedly used as propaganda to generate funds for Hezbollah. This individual is currently a fugitive.
- One individual, who has been identified by the U.S. Treasury Department as a “Specifically Designated Global Terrorist,” is understood to be a principal financier of one or two of **Pakistan’s** largest optical media plants.

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 additional leadership by the U.S. government, both here and in the appropriate bilateral and multilateral fora, to assist in placing 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.

## **CORPORATE AND GOVERNMENT END-USER PIRACY OF BUSINESS SOFTWARE**

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 2003 was attributable to this end-user software piracy. To safeguard the marketplace for legitimate software, government 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 48 countries either provide express protection, or do so by interpretation, for temporary reproductions, or have committed to provide such protection.

Enforcement is a critical part of reducing global piracy rates for business software, which exceed 50% 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, it is critical that countries provide an effective civil system of enforcement, provisional remedies to preserve evidence, extensive customs procedures to stop infringing goods at the border, 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 have 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, most countries still do not criminalize corporate end-user piracy or provide civil *ex parte* measures—both in violation of their TRIPS obligations.

## **PIRACY OF BOOKS AND JOURNALS**

The book and journal publishing industry faces not only the same challenges faced by other entertainment and high-tech industries (digital and online piracy), but must contend with more traditional methods of infringement. This traditional piracy comes 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 profit and non-profit institutions (often accompanied by failure to compensate reproduction 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.

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. Often, 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 China, Pakistan and India, where printing is to some extent still 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.

### **INTERNET PIRACY, ELECTRONIC COMMERCE AND THE WIPO INTERNET TREATIES**

**The Scope of the Problem:** Copyright piracy on the Internet, a serious problem for the past several years, has undergone 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 increased access to high-speed Internet connections has fueled online piracy by making it faster and easier to distribute unauthorized copies of sound recordings, software, videogames, literary material, and motion pictures.

The unprecedented growth of the Internet, coupled with increased availability of broadband connections, has provided pirates with a highly efficient distribution network to reach the global market. Pirates offering and distributing infringing product can now reach any part of the world with ease, no matter where they are 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 no longer matter.

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 take into account piracy on the Internet. Internet piracy is growing rapidly and an urgent response is greatly needed. We must act quickly and on a global basis to secure the adoption of legal provisions that will prevent piracy and create a legal and regulatory environment that will facilitate the growth of legitimate on-line delivery of copyrighted materials.

**The Legal and Enforcement Solutions:** IIPA recommends that USTR 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, 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, accompanied by effective deterrence of this new type of illegal conduct. 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 e-commerce. 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 are part of the international legal standards that countries must comply with 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.

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. More and more countries are now beginning to legislate in this area. Following is the global status of the official deposits of the treaties with WIPO.<sup>13</sup>

|                                     | <b>WIPO COPYRIGHT TREATY (WCT)</b> | <b>WIPO PERFORMANCES AND PHONOGRAMS TREATY (WPPT)</b> |
|-------------------------------------|------------------------------------|---|
| <b>NUMBER OF SIGNATORIES</b>        | <b>51</b>                          | <b>50</b>   |
| <b>NUMBER OF DEPOSITS WITH WIPO</b> | <b>44</b>                          | <b>42</b>   |

Ensuring that these standards are effectively embodied in national law is the heart of the critical second phase of the WIPO treaties implementation effort. Success in this phase will mean that the appropriate legal infrastructure for e-commerce in copyrighted materials is in place in all major markets.

Since the treaties were adopted, IIPA has been monitoring those countries that are amending their statutory regimes to make them compatible with their TRIPS obligations. We have encouraged these countries to bring their laws into conformity with the WIPO Internet treaties as well. If countries delay in making these needed changes, the prejudicial impact on electronic commerce and the protection of intellectual property online might become 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>14</sup>

<sup>13</sup> As of February 12, 2004.

<sup>14</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.

Second, even in the online world, there is no substitute for vigorous enforcement of 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 break down because of Internet growth, so must the usual lines separating the roles of industry and government in policy, enforcement and education. Close coordination will be the key to success in this challenging new environment. We also mention that efforts should be undertaken to encourage global adoption of the Cybercrime Convention, which requires countries to adopt effective remedies for on-line copyright infringement, and which facilitates law enforcement cooperation across borders—something that needs to develop if we are going to be successful in addressing this pressing problem.

These law reform and enforcement measures are critical if pirates are to be deterred from taking over this incredibly promising new tool for making copyrighted products available globally. IIPA members have significantly increased their monitoring of 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 of the essential tools that should be made globally available is the ability of copyright owners to notify ISPs through cease and desist letters and obtain their cooperation to immediately “take down” or block access to infringing material and to otherwise prevent infringing conduct of all kinds. The effective use of the “notice and takedown” tool is, in turn, dependent on a system of secondary liability, which exists in some but not all countries. And, 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 illegally provide these file-sharing tools. Room must be made for the new and growing legal Internet-based services for delivery of copyrighted material. 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. It is also critical that governments, educational institutions and similar enterprises that provide broadband interconnections to their employees, students or others be encouraged to develop executive orders and other strong internal policies to prevent illegal file sharing, including through the use of peer-to-peer technologies.

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 material.

### **IMPROVING COPYRIGHT PROTECTION AND ENFORCEMENT THROUGH FREE TRADE AGREEMENTS**

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 letter, FTAs with Singapore and Chile have entered into force. FTAs with Central America and Australia have

been concluded, negotiations with Morocco are slated to end soon, and negotiations with Bahrain and the Dominican Republic have begun. IIPA trusts that the valuable precedents established in these earlier agreements will be carried forward to the on-going IPR negotiations with the South African Customs Union (SACU) and also to the newly announced, and expected, negotiations with Thailand, the Philippines, Kuwait, Tunisia and, hopefully, many more to come. In all these negotiations, we have achieved, and 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; and detailed and effective enforcement obligations that make clear the obligation to enforce copyright in all areas, including on the Internet, with expeditious and deterrent civil and criminal remedies. We again compliment the Administration and Ambassador Zoellick 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. Finally, we next expect all this effort to come together in an unprecedented Free Trade Agreement of the Americas in which the standards of copyright protection and enforcement continue to reflect the new global framework of protection established in the FTAs negotiated to date. IIPA looks forward to working closely with U.S. negotiators to achieve these goals in the FTA and FTAA fora.

### **IMPLEMENTATION OF THE TRIPS ENFORCEMENT TEXT**

On January 1, 1996, the World Trade Organization (WTO) TRIPS Agreement entered into force for the U.S. and for all other WTO members that do not qualify for, and take advantage of, the transition periods of four and ten years.<sup>15</sup> Even for WTO members that do qualify for a transition period, the national treatment and MFN provisions of TRIPS applied fully as of January 1, 1996.<sup>16</sup>

On January 1, 2000, all TRIPS copyright obligations, including providing effective and deterrent enforcement, entered into force for all the world's developing countries (except those classified by the U.N. as the "least" developed countries). Before 2000, many of these countries successfully amended their statutory laws to bring them into compliance (or close to compliance) with TRIPS obligations. However, compliance with TRIPS *enforcement* obligations remains sparse but essential to returning the commercial benefits that were envisioned at the conclusion of the Uruguay Round.

**Non-Compliance with TRIPS "Performance" Requirements:** A good number of developing countries simply have not taken sufficient measures to ensure that their laws and enforcement regimes (civil, criminal, provisional remedies, and border measures) are compatible with their TRIPS obligations. TRIPS obligations, both with respect to substantive law and to enforcement, are the worldwide "floor" for copyright and other intellectual property protection. Compliance with TRIPS obligations is necessary, though not alone sufficient, to meet the Special 301 statutory standard of "adequate and effective" protection.<sup>17</sup> Accordingly,

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<sup>15</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Articles 65 and 66.

<sup>16</sup> TRIPS, Article 65.2, provides that "any developing country Member is entitled to delay for a further period of four years [following the expiration of the one year period after the entry into force of the WTO generally] the date of application, as defined in paragraph 1 above, of the provisions of the Agreement other than Articles 3, 4 and 5 of Part I." Articles 3 and 4 establish the national treatment and MFN obligations of the Agreement and Article 5 excludes these obligations with respect to WIPO treaties. This exception to the use of transition is also provided in all other categories of countries that may take advantage thereof. As of February 12, 2004, 146 countries were members of the WTO, including all countries surveyed in this submission with the exception of Azerbaijan, Belarus, Bosnia and Herzegovina, Cambodia, Kazakhstan, Laos, Lebanon, the Russian Federation, Saudi Arabia, Serbia and Montenegro, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam,.

<sup>17</sup> Uruguay Round Agreements Act, Pub. L. No. 103-465, § 314(c), 108 Stat. 4809 (1994) (also known as the URAA).

in the country surveys and as part of the Special 301 process itself, IIPA has paid special attention to the extent to which the countries (or territories) surveyed in this submission are in compliance with these obligations. Where TRIPS incompatibilities are found, they can appropriately be dealt with in the context of Special 301,<sup>18</sup> as well as directly through the initiation of a dispute settlement proceeding in the WTO.

All countries must acknowledge that the TRIPS enforcement text requires effective enforcement against all types of infringements and particularly against copyright piracy on a commercial scale. This includes not only the new forms of piracy discussed throughout this submission, such as piracy of movies, records and music, entertainment and business software and books and journals on optical disc formats and on, or involving, the Internet, but also piracy of works in traditional formats. We refer here to piracy of movies on VHS tapes, as well as broadcast/cable/satellite piracy and unauthorized public performances, music on audiocassette, entertainment software in cartridge format and traditional textbook, tradebook and journal offset printing piracy, as well as commercial photocopying.

**U.S. Government Actions in the TRIPS Copyright-Related Realm:** USTR has already brought a number of successful cases in the WTO against developed countries for violations of TRIPS copyright and copyright enforcement obligations. Five of the copyright cases which the U.S. has brought have been resolved to the satisfaction of the U.S. and U.S. industry, without proceeding to a formal decision by a panel: (1) Japan, for its failure to provide 50 years of retroactive protection to U.S. sound recordings; (2) Sweden, for its failure to provide civil *ex parte* searches; (3) Ireland, for its inadequate copyright law; (4) Greece, for its failure to enforce its laws against broadcast piracy; and (5) Denmark, for its failure to provide civil *ex parte* searches.<sup>19</sup>

IIPA continues to urge USTR and the U.S. government as a whole to use the Special 301 process as a leverage and consultation tool to move developing countries, whose obligations under TRIPS became fully effective on January 1, 2000, toward bringing their laws and particularly their enforcement regimes fully into compliance with TRIPS. Most important, USTR and the U.S. government should carefully monitor Chinese compliance with its TRIPS obligations, given the magnitude of the piracy problem in China. In addition, the U.S. government should seriously consider whether Pakistan is complying with the enforcement obligations of the TRIPS Agreement, given its nearly 100 percent piracy rate and the massive exports of pirated product flowing out of Pakistan.

IIPA urges USTR to use all the tools available to it, including GSP,<sup>20</sup> CBI,<sup>21</sup> CBTPA,<sup>22</sup>

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<sup>18</sup> Indeed, in the Uruguay Round Agreements Act, Congress envisioned that TRIPS issues might be the impetus for a Priority Foreign Country designation under Special 301. Congress amended Section 304(a)(3)(A) and (B) to extend the time limit for dealing with disputes involving allegations of TRIPS violations from six months (the normal time limit in actions under Special 301) to the longer, 18-month period required by the WTO Dispute Settlement Understanding, 19 U.S.C. § 2414(a)(3)(A) and (B). As noted in the Statement of Administrative Action accompanying the URAA, "[t]he six-month time limit in section 304(a)(3) will continue to apply to investigations involving intellectual property and market access matters initiated as a result of a 'priority foreign country' identification where the TRIPS Agreement or another trade agreement is not involved." Uruguay Round Agreements Act Statement of Administrative Action, *reprinted in* H.R. Doc. No. 103-316, vol. I, at 1029 (1994).

<sup>19</sup> Snapshot of WTO Cases in the United States (updated Oct. 22, 2003) at <http://www.ustr.gov/enforcement/snapshot.html>. The case numbers at the WTO are: WT/DS 28 (Japan), WT/DS 86 (Sweden), WT/DS 83 (Denmark), WT/DS 125 (Greece), WT/DS 82 (Ireland).

<sup>20</sup> Generalized System of Preferences Renewal Act of 1984, Pub. L. No. 98-573, tit. V, 99 Stat. 2948 (1984) (codified at 19 U.S.C. § 2461 *et seq.*).

<sup>21</sup> Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, tit. II, 97 Stat. 369 (1983) (codified at 19 U.S.C. § 2701 *et seq.*).

ATPA,<sup>23</sup> ATPDEA,<sup>24</sup> and AGOA,<sup>25</sup> to reach the objective of strong global copyright protection, including, as the “floor” of this protection, compliance with TRIPS. IIPA identifies TRIPS-inconsistent laws or practices in the country surveys.

#### **D. IIPA RECOMMENDATIONS FOR THE 2004 SPECIAL 301 LISTS**

This year IIPA has considered deficiencies in copyright protection in 41 countries and has recommended them for placement in the categories of Priority Foreign Country, Section 306 Monitoring, Priority Watch List, and Watch List. We also mention specific issues in 15 additional countries.

This year IIPA recommends that Pakistan be designated as a Priority Foreign Country. The government of Pakistan has ignored the growing production of pirate U.S. copyrighted products by illicit optical disc factories. Exports of these pirate goods are flooding the world market. Efforts to persuade the Pakistani government to halt such pirate production and export have, to date, produced no results. Furthermore, the Pakistani government has failed to take adequate measures to stop rampant book piracy and commercial photocopying, which collectively decimate the market for legitimate publishers.

IIPA recommends that USTR should keep Ukraine as a Priority Foreign Country (PFC) and that trade sanctions continue accordingly in 2004. This includes the continued suspension of Ukraine’s duty-free trade benefits under the Generalized System of Preferences (“GSP”); those benefits were suspended in August 2001 for Ukraine’s copyright shortcomings. We make these recommendations because Ukraine’s copyright piracy problem remains very serious almost four years after it agreed to a Joint Action Plan signed by then-President Clinton and President Kuchma which Ukraine has neither effectively nor completely implemented. By its failure to fully implement an optical disc regulatory scheme and by its overall criminal enforcement failures, Ukraine is not in compliance with the June 2000 bilateral agreement, nor with the 1992 Bilateral NTR Trade Agreement with the United States (which Ukraine agreed to implement by December 31, 1993). Also, Ukraine’s overall copyright law and enforcement regime falls far short of compliance with WTO TRIPS obligations. Ukraine should be prevented from accession to the WTO until it is in complete compliance.

IIPA urges USTR to continue to monitor developments closely in the People’s Republic of China and Paraguay under Section 306 of the Trade Act of 1974.

We recommend that the remaining countries be placed on, or maintained on, the Priority Watch List or the Watch List, where they are subject to ongoing bilateral scrutiny.

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<sup>22</sup> U.S.-Caribbean Trade Partnership Act, Trade and Development Act of 2000, Pub. L. No. 106-200, tit. II (May 18, 2000) (codified at 19 U.S.C. § 2703 *et seq.*).

<sup>23</sup> Andean Trade Preference Act of 1990, Pub. L. No. 102-182, tit. II, 105 Stat. 1233 (1991) (codified at 19 U.S.C. § 3201 *et seq.*).

<sup>24</sup> Andean Trade Promotion and Drug Eradication Act, Pub. L. No. 107-210 (2002) (codified at 19 U.S.C. § 3201 *et seq.*)

<sup>25</sup> African Growth Opportunities Act, Trade and Development Act of 2000, Pub. L. No. 106-200, tit. I (May 18, 2000) (codified at 19 USC § 2461 *et seq.*).

IIPA recommends that 17 countries be placed on the Priority Watch List: Argentina, Brazil, Bulgaria, Colombia, the Dominican Republic, Egypt, India, Indonesia, Israel, Kuwait, Lebanon, the Philippines, Poland, the Russian Federation, South Korea, Taiwan, and Thailand. IIPA also recommends that 20 countries be designated on the Watch List. We also recommend that out-of-cycle reviews be taken in six countries that already appear on the various 301 lists: Malaysia, the Philippines, Poland, the Russian Federation, Saudi Arabia and Taiwan.

Appendix C contains a survey of 56 countries or territories. The countries appear by recommended category and in alphabetical order within each category.

| PRIORITY FOREIGN COUNTRY  | SECTION 306 MONITORING                    | PRIORITY WATCH LIST  | WATCH LIST   | OTHER COUNTRIES DESERVING ADDITIONAL ATTENTION   |
|---------------------------|---|--|--|--|
| Pakistan (GSP)<br>Ukraine | Paraguay<br>People's Republic of<br>China | Argentina<br>Brazil (GSP)<br>Bulgaria<br>Colombia<br>Dominican Republic (GSP)<br>Egypt<br>India<br>Indonesia<br>Israel<br>Kuwait<br>Lebanon (GSP)<br>Philippines + OCR<br>Poland + OCR<br><b>Russian Federation (GSP) + OCR</b><br>South Korea<br>Taiwan + OCR<br>Thailand | Bolivia<br>Chile<br>CIS (6) <sup>26</sup><br>Azerbaijan<br>Belarus<br>Kazakhstan (GSP)<br>Tajikistan<br>Turkmenistan<br>Uzbekistan (GSP)<br>Ecuador<br>Estonia<br>Hungary<br>Italy<br>Latvia<br>Lithuania<br>Malaysia +OCR<br>Peru<br>Romania<br>Saudi Arabia + OCR<br>Spain<br>Turkey | <b>Bosnia and Herzegovina</b><br>Cambodia<br>Canada<br>CIS (4)<br>Armenia (GSP)<br>Georgia<br>Kyrgyz Republic<br>Moldova<br>Costa Rica<br>Guatemala<br>Hong Kong<br>Laos<br>Serbia and Montenegro<br>Singapore<br>Uruguay<br>Vietnam |
| <b>2</b>                  | <b>2</b>                                  | <b>17</b>  | <b>20</b>  | <b>15</b>  |

Appendix D provides a history of countries appearing on IIPA and USTR lists since 1989, a year after the Special 301 legislation became effective. Seventeen of these countries 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>27</sup> Under this criterion, these 17 countries named by IIPA are particularly vulnerable, having failed to correct their piracy and/or market access problems during the 16 years that Special 301 has been in existence.

<sup>26</sup> "CIS" in this filing denotes ten former Soviet republics. Russia and Ukraine are treated separately from the CIS in this filing.

<sup>27</sup> Uruguay Round Agreements Act Statement of Administrative Action, *reprinted in* H.R. Doc. No. 103-316, vol. I, at 362 (1994).

**Ongoing GSP IPR Reviews:** We also call attention to ongoing intellectual property rights reviews under the Generalized System of Preferences (GSP) trade program. In June 1999, IIPA filed 11 GSP petitions against: Poland, Peru, Lebanon, Dominican Republic, Ukraine, Moldova, Uzbekistan, Armenia, Kazakhstan, Belarus, and the Kyrgyz Republic. After Congress renewed the GSP program through September 30, 2001, the U.S. government commenced consideration of whether to grant these petitions. On February 7, 2000, IIPA withdrew its petition against Peru in light of the commitments made by that country to improve enforcement. On February 14, 2000, USTR accepted IIPA's GSP petitions against six countries: Dominican Republic, Ukraine, Moldova, Uzbekistan, Armenia, and Kazakhstan. Our Belarus petition was not accepted because GSP benefits were being withdrawn from that country for other reasons. Hearings on these six countries were held on May 12, 2000.

In August 2000, IIPA filed five petitions for GSP reviews of the copyright practices of five countries (Brazil, Russia, Guatemala, Costa Rica, and Uruguay) as part of the 2000 Annual Review. On January 10, 2001, USTR decided to initiate GSP IPR reviews against Brazil and the Russian Federation. GSP hearings were held on March 9, 2001 in Washington, D.C. USTR also announced that it was terminating the GSP review against Moldova due to legislative progress recently made in that country. For the 2001 GSP Annual Review process, IIPA filed GSP petitions against Lebanon, Pakistan and Uruguay. A coalition of six copyright-based associations also submitted a petition against Thailand. On August 6, 2002, the GSP program was renewed for four years through December 31, 2006.

On September 3, 2003, USTR announced its decisions in both the 2001 and 2002 GSP Annual Reviews for country practices. USTR accepted IIPA's GSP IPR petition against Lebanon; acknowledged IIPA's requests to withdraw its petitions against Thailand and Uruguay; announced the termination of the IPR reviews against Armenia and Turkey; and postponed its decision whether to accept or reject IIPA's petition against Pakistan. GSP hearings were held on October 7, 2003, and IIPA presented testimony in its six active cases against Brazil, Russia, the Dominican Republic, Kazakhstan, Uzbekistan and Lebanon.

#### **E. COUNTRIES DESERVING SPECIAL MENTION IN 2003**

In addition to the 41 countries for which IIPA has provided comprehensive country reports, IIPA also highlights issues in 15 countries which deserve special attention this year but which are not recommended for placement on the Special 301 Lists. These countries and the problems encountered in them can be found at the end of Appendix C in a new Section entitled "Countries Deserving of Special Mention in 2004." These countries are: Armenia, Bosnia and Herzegovina, Cambodia, Canada, Costa Rica, Georgia, Guatemala, Hong Kong, Kyrgyz Republic, Laos, Moldova, Serbia and Montenegro, Singapore, Uruguay and Vietnam.

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

As a result of the deficiencies in the copyright regimes of the 56 countries for which losses have been estimated, the U.S. copyright-based industries suffered significant damage due to piracy. Because piracy statistics from the Business Software Alliance (BSA) were not available by the date of this submission, it is not possible to provide a meaningful estimate of total trade losses for 2003. As soon as these BSA estimates become available, they will be posted on the IIPA website at <http://www.iipa.com> and the totals for these 56 countries provided. On a global basis, however (that is, in all countries including the U.S.), IIPA conservatively estimates that total losses due to piracy were at very minimum \$20-22 billion in 2003, 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 four of the five copyright-based industry sectors—the entertainment software, motion picture, sound recording and music, and

book publishing industries—for 2002 and 2003. As noted above, the BSA losses for 2003 are not yet available (2002 final loss estimates for business software applications do, however, appear in the chart). In most surveys, IIPA has described the piracy levels in each of the sectors in each of these countries (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 56 SELECTED COUNTRIES IN 2003  
(in millions of U.S. dollars)**

| <b>Industry</b>                       | <b>Estimated Losses</b> |
|---------------------------------------|-------------------------|
| <b>Motion Pictures</b>                | <b>1,528.0</b>          |
| <b>Records &amp; Music</b>            | <b>2,260.7</b>          |
| <b>Business Software Applications</b> | <b>NA</b>               |
| <b>Entertainment Software</b>         | <b>1,549.9</b>          |
| <b>Books</b>                          | <b>499.6</b>            |
| <b>Total</b>                          | <b>NA</b>               |

Appendix B summarizes the methodology used by each IIPA member association 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.

**G. CONCLUSION**

Special 301 remains a cornerstone of U.S. intellectual property and trade policy. We urge the Administration to use Special 301 — as well as the tools available under the GSP, CBI, ATPA, CBTPA, and AGOA programs — to encourage the countries identified in our recommendations this year to make the political commitments, followed by the necessary actions, to bring their copyright and enforcement regimes up to international standards. The U.S. government should also use the multilateral tools in the WTO's dispute settlement machinery to encourage countries to bring their substantive and enforcement regimes into compliance with their international obligations under TRIPS. 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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