

February 7, 2019

Submitted via regulations.gov Docket No. USTR-2018-0037

Mr. Daniel Lee
Acting Assistant United States Trade Representative
for Innovation and Intellectual Property
Office of the United States Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: IIPA Notice of Intent to Testify and Hearing Statement Regarding *2019 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Comments and Notice of a Public Hearing*, 83 Fed. Reg. 67468 (Dec. 28, 2018)

To the Special 301 Committee:

The International Intellectual Property Alliance (IIPA) hereby submits its Notice of Intent to Testify and Hearing Statement for the Special 301 Committee Public Hearing scheduled for February 27, 2019.

Under separate cover, IIPA has formally filed our 2018 Special 301 submission concerning intellectual property protection and market access regimes in U.S. trading partners. Our full submission is accessible on our website, www.iipa.org.

This letter also includes an outline of our statement. Participating in the hearing will be:

Kevin M. Rosenbaum
International Intellectual Property Alliance
1818 N Street NW, 7th Floor
Washington, DC 20036
Tel: 202-355-7900
Fax: 202-355-7899
Email: kmr@msk.com

Respectfully submitted,

/Kevin M. Rosenbaum/

Kevin M. Rosenbaum, Counsel
International Intellectual Property Alliance

Hearing Statement of
Kevin M. Rosenbaum
International Intellectual Property Alliance (IIPA)
before the Special 301 Committee
2019 Special 301 Hearing Scheduled for February 27, 2019

Thank you for the opportunity to present the testimony of the International Intellectual Property Alliance (IIPA) in this year's "Special 301" review.

IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve international protection and enforcement of copyrighted materials and to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association of America (www.mpa.org), and Recording Industry Association of America (www.riaa.com). IIPA's five member associations represent over 3,200 U.S. companies producing and distributing materials protected by copyright laws throughout the world.

IIPA has filed comments in the Special 301 reviews for three decades since the 1988 Trade Act created this process. In that time, the technologies available for the production and distribution of copyrighted materials have changed dramatically, and with them, the diversity of methods through which the copyright industries disseminate their creative output—including literary works, music, movies and TV programming, video games and software—to consumers.

This year, as in past IIPA filings, we provide public comments on the acts, practices and policies of our key trading partners that present obstacles to achieving the goals of satisfying consumer demands for U.S. creative materials in foreign marketplaces. This filing recounts, by country, the deficiencies of legal regimes and enforcement practices, and recommends improvements. Dynamic market conditions and ever-changing technologies continue to create enormous opportunities, with huge potential to further expand economic growth and creative activity in key foreign markets. But that potential will only be reached if these protection and enforcement shortcomings, and market access barriers, can be corrected. IIPA's recommendations include, where possible, emerging best practices to address these issues and provide successful strategies applicable both to developed and developing country markets.

I. IIPA'S 2019 SUBMISSION—RANKING RECOMMENDATIONS

This year, IIPA recommends that 19 countries be identified in USTR's 2019 Special 301 Report. These recommendations can be summarized in the following chart:

IIPA 2019 Special 301 Recommendations	
Priority Watch List	Watch List
Argentina	Brazil
Chile	Canada
China	Colombia
India	Ecuador
Mexico	Indonesia
Russian Federation	Peru
South Africa	Switzerland
Taiwan	Thailand
Ukraine	United Arab Emirates
Vietnam	
10	9

In addition, seven countries—Barbados; Costa Rica; Egypt; Guatemala; Jamaica; Turkey; and Venezuela—were identified in USTR’s 2018 Special 301 Report, and previous IIPA submissions have provided detailed analyses of legal and enforcement regimes in these countries. Because IIPA members were aware of no new major developments that would lead us to revisit our current recommendations for USTR designations under Special 301, we have included an Annex to our submission that focuses on one or two key issues in short blurbs on these seven countries.¹ In addition, the Annex references 11 countries that were also identified in USTR’s 2018 Special 301 Report, for which IIPA has, in prior years, filed country reports with recommendations for Watch List placement, but for which IIPA makes no recommendation in our 2019 Special 301 submission.

While full details are available in the individual country reports, for convenience we offer here the following capsule summaries of our filings on Priority Watch List (PWL) recommendations.

- Argentina:** After assuming the G20 Presidency for 2018, and announcing a commitment to international cooperation, the Government of Argentina failed to make copyright protection and enforcement a priority in 2018. While there were some positive developments in 2018, including an agreement by DAC, an Argentine collective management organization representing directors of audiovisual works, to accept and pay claims for royalties asserted by U.S. directors, long-standing deficiencies in IPR protection persist. Digital piracy remains a serious concern, with no significant enforcement actions reported in 2018 and problematic legislative proposals reappearing in a bill impacting creative content. The lack of inter-agency cooperation, especially between prosecutors and police cybercrime agents to address the issue, continues to allow pirate sites to adapt and grow in resilience. The Government of Argentina should improve enforcement, including by applying its existing Civil and Commercial Code provisions against online service providers for infringing content stored on their services, creating a round table for the private sector to discuss potential cross-industry cooperation to tackle online piracy more effectively, and creating a specialized IP Prosecution Office to promote and encourage cross-agency law enforcement cooperation, and to ensure that copyright cases will be investigated and prosecuted.
- Chile:** The U.S.-Chile Free Trade Agreement (FTA) entered into force on January 1, 2004, but Chile has yet to establish, implement, and maintain a copyright law and enforcement regime in line with 21st century norms and fit to combat the rampant piracy in the country. Chile’s copyright law contains major gaps,

¹As in our prior reports, IIPA recommends Costa Rica and Venezuela for placement on the Priority Watch List, and the other countries for placement on the Watch List. Venezuela is currently on the USTR’s Priority Watch List; all others are currently on the Watch List.

including: failure to protect against circumvention of technological protection measures; failure to implement clear and comprehensive secondary copyright liability standards; meaningless notice-and-takedown obligations that require a court order for an ISP to take down content, thereby posing a legal obstacle to standard takedown practices accepted elsewhere in the world; a lack of deterrent remedies; and overly broad exceptions to copyright. These issues remain unresolved, even after Chile adopted amendments to its copyright law in 2010, and prevent a fruitful collaboration with ISPs to combat online piracy because of the lack of necessary mechanisms to encourage participation. Moreover, a new legislative initiative at the Ministry of Justice contemplates a “reform” of the Penal Code whereby all copyright infringement penalties would be reduced and all infringement would become misdemeanors. Furthermore, Chile’s enforcement regime is ill-equipped to handle its major piracy problems, causing its police and court personnel to ineffectively bring cases even in the areas where Chilean law is adequate to bring action against certain copyright crimes.

- **China:** China’s ascendant marketplace for creative works has yet to reach its commercial potential. Supported by the largest Internet user base in the world, China’s online marketplace continues to expand, providing consumers with access to a vast array of legitimate music, movies, TV programming, and other works available through an increasing number of licensed digital services. In addition, China now leads the world with over 60,079 movie screens, most of which support 3D, and many of which offer enhanced formats such as IMAX and China Giant Screen. While past improved enforcement efforts, particularly against unlicensed music services, have contributed to accelerated gains for certain sectors, China’s market for legitimate content continues to be hampered by a combination of rampant piracy, discriminatory market access policies, and long-standing unfulfilled international obligations. Moreover, the Copyright Law amendment process, which is at a critical stage, is vital because a positive outcome would lay the foundation for a successful future for the creative industries in China.
- **India:** India plays an important role in the future growth of the U.S. creative industries, thanks to its growing population of consumers and its status as the second largest market for Internet services and smartphones. The promise of growth, however, is threatened by copyright piracy and a legal system that is sometimes difficult to employ to handle the problem. The effects of this cannot be underestimated. In December 2014, the U.S. International Trade Commission, addressing U.S.-India trade, found that “if tariff and investment restrictions were fully eliminated and standards of IP protection were made comparable to U.S. and Western European levels, U.S. exports to India would rise by two-thirds, and U.S. investment in India would roughly double.”
- **Mexico:** In 2018, much of the attention on improving the Mexican IPR regime focused on securing legal reform and enforcement obligations in the U.S.–Mexico–Canada Agreement (USMCA). While the now-concluded USMCA IPR chapter will require Mexico to make significant improvements in its current IPR protection and enforcement regime, the problems in Mexico are long-standing, and cannot wait for USMCA ratification and implementation. First, the IPR legal regime is at least two decades behind international norms. Second, the problems of enforcement are procedural and structural, and further exacerbated by a lack of resources, gaps in expertise, and government will power (by prior administrations). This combination of legal and enforcement shortcomings has stifled the growth of the digital marketplace, to the detriment of U.S. and other foreign rights holders.
- **Russia:** The number one priority for the copyright industries in the Russian market is to improve the effectiveness of enforcement against online piracy—especially for hosting sites and streaming services. The Government of Russia adopted new civil procedures in recent years to enhance website compliance with takedown notices from rights holders, and to disable access to infringing sites. These procedures, however,

have been directed only against the infringing activity of users within Russia, and are not being used against Russian sites and services catering to users outside the country for whom infringing material is easily accessible. This has resulted in a substantial and persistent international copyright piracy problem. There are two other priorities for the copyright industries in Russia. One is to address long-standing problems concerning collective management of music rights in Russia that have resulted in revenues being a fraction of what they should be for a market the size of Russia. The other priority is to address the long-standing problem of camcording motion pictures with many feature films being illegally copied in theaters and migrating online.

- **South Africa:** As an important emerging market and a dominant economy in sub-Saharan Africa, South Africa is uniquely positioned to demonstrate how a modern copyright regime can contribute to the growth of creative industries in an era of rapid digital and mobile expansion throughout the country and the region. It is now more important than ever to maintain and expand proper incentives for investment in the creation of original material—motion pictures, music, video games, books and journals in all formats. New technologies for distribution of cultural materials provide exciting opportunities for growth of the copyright industries and all creators. To capture this opportunity, it is essential that rights holders enjoy, in law and practice, exclusive rights that enable them to securely disseminate their goods and develop new legitimate services. South Africa's government has stated its commitment to protecting intellectual property and its desire to bring its laws into compliance with international treaties and commitments. South Africa's Cabinet also recently approved the country's accension to the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT), and the Beijing Treaty (the "WIPO Internet Treaties"). IIPA applauds this development, but is seriously concerned about two draft laws recently accepted at the National Assembly, and pending approval by the National Council of Provinces, which are in violation of these treaties and, potentially, South Africa's Constitution.
- **Taiwan:** Taiwan was once a regional leader in establishing policies that fostered and rewarded creativity. But at least since 2013, Taiwan has failed to recognize and address a growing online piracy problem that has hampered the creative industries, casting off the issue as industry's problem, too controversial or difficult to explain, or the problem of other jurisdictions. Yet data suggests that the public in Taiwan would support more effective protection of creative content online. The creative industries make considerable contributions to Taiwan's economy. A 2017 Oxford Economics study shows local film and television sectors directly contribute US\$5.9 billion to Taiwan's GDP, support 104,200 jobs, and generate approximately US\$490 million in tax revenues. Moreover, Taiwan is a hub of music production for the Chinese speaking world and a major exporter of "C-pop." IIPA urges the Government of Taiwan to change course and take the steps necessary to address the growing threats to the creative industries (including authorized distributors in Taiwan), which contribute so significantly to Taiwan's economy and culture.
- **Ukraine:** There are two long-standing priorities for the copyright industries in Ukraine: first, is improving the legal and enforcement regime to address widespread online infringement of copyrighted works and sound recordings. Second, is fixing the chaotic collective administration system (and applying the rule of law) to allow licensed music markets, dependent on public performance rights, to develop. In 2018, there was no progress on the online infringement problem—neither substantial legislative changes, nor any significant improvement with deterrent enforcement against large commercial websites or services. In 2018, a collective administration bill was enacted, intending to correct some of the problems of the current system. Unfortunately, the Government of Ukraine and the Rada ignored the objections of experts in the field, as well as Ukrainian, U.S., and other foreign rights holders, and passed a bill that is likely to allow the existing chaotic system to persist and which will not improve the market for music services in Ukraine, without further revision.

- **Vietnam:** Vietnam is an important emerging market in Southeast Asia for the creative industries, which has investments planned to tap into Vietnam's booming economy. But the market for creative works in Vietnam remains severely stunted due to worsening piracy and persistent and debilitating market access barriers. Vietnam is now host to many of the world's most popular piracy websites, and other problems are growing, including Piracy Devices and apps used to access illegal content. While rights holders have implored Vietnam's government to take action, the government has done very little to address the growing problem. It is long past time for Vietnam to make good on its political commitments and international obligations to improve copyright protection in the digital environment, confront its enormous piracy challenges, and remove the remaining barriers to its creative marketplace.

II. KEY CHALLENGES FOR THE COPYRIGHT INDUSTRIES – PROTECTION, ENFORCEMENT AND MARKET ACCESS ISSUES

Following the lead of USTR itself in its Special 301 report, IIPA devoted a significant portion of its Submission to summarizing some of the overarching trends and challenges confronting the U.S. copyright industries seeking to compete in overseas markets. In addition, IIPA highlighted positive developments during 2018 in a number of countries, including Chile, Italy, Mexico, Colombia, India, Israel, Thailand, and Brazil. While applauding these positive moves IIPA emphasized that, for several of the countries listed, serious additional legal reform and/or enforcement issues remain.

The U.S. copyright industries face complex challenges in overseas markets, but they can be organized into three distinct but overlapping categories: legal reforms, enforcement and market access.

Legal Reforms: Inadequate copyright and related laws (e.g., civil and criminal codes, and procedural codes) that fail to meet current and evolving global standards and commitments, necessary to adequately and effectively address all forms of authorized and unauthorized uses in a fast-changing technological environment.

Enforcement: Inadequate enforcement of existing copyright laws. As a minimum standard, the WTO TRIPS Agreement requires “effective action” and “remedies that constitute a deterrent” to infringement, through civil, administrative, and criminal channels, and effective adjudication in the courts.² To be effective, enforcement tools must address modern infringement challenges, such as pirate operations based online and/or outside the jurisdiction. Further, enforcement authorities need the resources and capacity to do their job effectively.

Market Access: The existence of barriers, investment restrictions, and discriminatory measures make it difficult for U.S. producers and distributors to compete on a level playing field in foreign markets. These barriers also include interference with rights holders contractual freedom or with their licensing practices. These must be dismantled.

Below is a summary of the major challenges across the global markets in each of the above-described categories.

²See WTO TRIPS Articles 41 and 61. There are many obligations for civil, administrative and criminal remedies in Articles 41 through 61, including for provisional relief and judicial procedures (e.g., injunctive relief), which are particularly critical for online enforcement.

A. LEGAL REFORMS

- *WIPO Internet Treaties*

The World Intellectual Property Organization's (WIPO) Copyright Treaty (WCT) and Performances and Phonograms Treaty (WPPT) (collectively the WIPO Internet Treaties) set the global minimum standards for providing copyright holders with the full panoply of exclusive rights in the digital networked environment. The treaties also include an overarching commitment to deterrent levels of enforcement of those rights online as well as offline. The U.S. Government should make it a priority in 2019 to encourage all U.S. trading partners both to accede to and fully implement the WIPO Internet Treaties.

The WIPO Internet Treaties were the catalyst for the global consensus on the need to provide legal protection to technological protection measures (TPMs) that copyright owners (or their licensees) use to control access to and the copying of their works. As discussed below, these access controls are key enabling technologies for the range of online digital services that have brought more creative works than ever to consumers. IIPA urges the U.S. Government to remain vigilant on this issue, especially in reviewing legislation purporting to implement the WIPO Internet Treaties, particularly in our Free Trade Agreement (FTA) countries. In particular, TPMs protections should be adopted in ways that protect access controls independent of whether there is an accompanying copyright infringement. Only in this way can effective TPM legislation establish a practical and enforceable anti-circumvention prohibition.

- *Copyright Principles and Norms Under Threat*

IIPA urges the U.S. Government to continue to press for reform and modernization of national copyright laws that have failed to keep pace with market and technological trends. Unfortunately, there has been a trend in recent years to use these copyright reform initiatives in some countries to weaken, not strengthen protection. In some cases, these reform efforts have become a vehicle for proposals that threaten well-established global norms enshrined in long-standing international instruments.

- *Copyright Duration*

Many U.S. trading partners have extended the duration of copyright in line with evolving global trends. Setting the term of copyright protection at life of the author plus 70 years (or at least 70 years from publication for products whose terms are not measured by the life of the author, e.g., sound recordings) has become a *de facto* global norm. More than 80 countries, including almost all of our major trading partners in Europe and the Americas, and all but a handful of developed economies in the Organization for Economic Cooperation and Development (OECD), already meet or exceed this norm for some or all categories of creative works. The U.S.'s trading partners in the Trans-Pacific Partnership (TPP) negotiations agreed to bring their laws up to this standard for all copyright materials. Even though the U.S. withdrew from the TPP, it is hoped that, in particular, **New Zealand, Vietnam** and **Malaysia** will take this step on its merits. **Japan** completed the process of extending terms of protection for all works and sound recordings, and **Canada** committed in the U.S.-Mexico-Canada Agreement (USMCA) to extend its term for all works and sound recordings.

- *Laws and Regulations Governing Collective Management Organizations (CMOs)*

While direct licensing by individual rights holders of their exclusive rights should always remain the baseline, in certain circumstances where it makes economic sense (and where international treaties permit it), rights and uses are most effectively exercised on a collective basis, e.g., through Collective Management Organizations (CMOs).

Public performance rights are a good example, because there are a large of licensees and users (from cafes and restaurants, to hundreds of radio stations), and the value of individual transactions may be relatively small. Public performance income from these uses has become an increasingly important source of revenue for music rights holders, and a source of income important for the production and dissemination of new works. This has heightened the need for efficient, transparent, and accountable collective management services. It is essential that rights holders can set up (on a voluntary basis) and govern their own CMOs. Governmental roles limited to establishing efficient, fair and non-discriminatory operations, and, where appropriate, providing expert fora for the resolution of disputes on certain aspects of collective management.

- ***Bilateral and Multilateral Treaty Obligations to the United States***

For the past three decades, there has been a bipartisan agreement in the United States that strengthening copyright laws and enforcement worldwide is in the vital economic interests of the country. One effective strategy to elevate the levels of protection and enforcement has been the negotiation and implementation of numerous bilateral and multilateral trade agreements including: (a) the WTO TRIPS Agreement, to which 164 countries have now acceded (and over 20 additional countries are in the process of acceding); and (b) Free Trade Agreements (FTAs) or Trade Promotion Agreements (TPAs) with 20 countries, the most recent entering into force in 2012, with **South Korea, Colombia and Panama**. Each of these agreements contains enforceable provisions designed to open foreign markets to U.S. goods and services dependent on copyright protection, chiefly (though by no means exclusively) by mandating improved and modernized copyright laws, and, in most cases, higher standards for on-the-ground enforcement of these laws. In 2018, the U.S., Mexico, and Canada concluded negotiations and signed the USMCA, which has not yet been ratified in any of the three countries.

It is critical that the U.S. Government ensure in 2019 that our trading partners improve their laws and practices regarding copyright protection and enforcement consistent with the obligations they have already taken on in bilateral, regional, and multilateral copyright agreements to which the United States is also a party. It is also the case that the provisions of some of these agreements have become somewhat outmoded. Some of the provisions meant to address digital technologies were negotiated more than a quarter century ago, before the dawn of the digital age that has so dramatically changed the landscape of the marketplace for goods and services protected by copyright. In such instances, the U.S. Government should seek remedies, consistent with U.S. law, that are suited to addressing today's market needs (and the nature of today's piracy problems) to ensure the proper delivery of digital works and services.

B. ENFORCEMENT TRENDS

While some enforcement challenges have been plaguing the copyright industries for many years, some challenges are the byproduct of evolving technologies. The evolution and development of new technologies creates welcome opportunities for rights holders for the creation and dissemination of their works for new consumer services and business-to-business applications upon which consumer services are built. This section of IIPA's Submission highlights some of the overarching trends and challenges confronting the U.S. copyright industries seeking to compete in overseas markets.

- ***Internet and Mobile Network Piracy***

Online and mobile network piracy threatens the viability of licensed platforms and erodes the capacity of authors, artists, musicians, filmmakers, publishers, video game developers, performers and songwriters to earn a living as well as to invest in creating new materials. The entrenchment of infringing services (including those avoiding

licensing based on a misconstruction of the law) is a leading barrier to U.S. creators and rights holders in markets worldwide.

To address the problem of Internet and mobile network piracy, IIPA supports a multi-step approach including: (1) enabling identification of markets and actors engaged in these activities, especially criminal syndicates—and closing down operations and using criminal enforcement remedies directed at these operations; (2) creating legal frameworks that (i) prevent the operation of services that promote or otherwise induce infringement; and (ii) provide strong incentives for neutral network service providers to work with rights holders to curb the use of their proprietary networks and services for infringing purposes; (3) providing for and applying injunctive relief; and (4) engaging in inter-industry cooperation, wherever possible.

- *Piracy Devices*

A damaging piracy ecosystem has emerged around Piracy Devices and apps (also referred to as “illicit streaming devices” (ISDs)) which allow users to stream, download, or otherwise access unauthorized content from the Internet. IIPA appreciates USTR’s focus on this problem in its 2017 Notorious Markets Report.³ Piracy Devices and apps provide illegal access to movie and television content through a variety of means, including downloading and streaming content as well as unauthorized streaming of live television and sporting events, thus undermining the licensing fees paid by distributors on which content creators depend. The Report estimated that Piracy Devices had a market penetration rate at 6.5% in **North America** and a shocking 19% in the **United Kingdom**, with annual losses inflicted by these devices on the North American entertainment industry estimated at \$4-5 billion.

- *Circumvention of Technological Protection Measures (TPMs), Including Stream-Ripping Services*

A major reason why so much legitimate material is now available to consumers, and in so many formats and platforms, is because of the widespread use of TPMs by content producers and (licensed) services. TPMs have fostered many of the innovative products and services available online by allowing creators and services to control and manage access to copyrighted works, as well as to diversify products, services and their pricing. In short, new business models depend on such controls. TPMs also ensure that works made available in hard goods (DVDs and Blu-ray discs), in the online or mobile environment (including e-books and video games), or through on-demand streaming services or conditional access (e.g., Pay-TV, Pay-per-View) are not easily stolen, and that pirate copies of video games are not playable on console platforms.

While legal protection of TPMs, where properly implemented, enables effective enforcement actions against distributors of unlawful circumvention technologies, these efforts are critically undermined by countries that have yet to implement any or adequate protections. **China** stands out as needing close scrutiny, as the locus for manufacturing of a host of circumvention devices. IIPA’s Submission identified many others, including **Mexico** (now obligated by the USMCA to properly address this problem), that lack protections, and notes that **Israel**, a developed country, has failed to adopt any protection whatsoever, and **New Zealand** has adopted generally weak measures.

- *Illegal Camcording of Theatrical Motion Pictures*

A priority for the motion picture industry involves illegal recordings of movies in theaters. Approximately 90% of newly released movies that are pirated can be traced to use of a digital recording device in a movie theater to record the audiovisual work (whether image or sound or both) from the theater screen and/or sound system. One

³See <https://ustr.gov/sites/default/files/files/Press/Reports/2017%20Notorious%20Markets%20List%201.11.18.pdf> at 8-9.

digital (camcorder) copy, uploaded to the Internet and made available around the world, can undermine global markets and the huge investments needed to produce and distribute a feature film. In 2018, the Motion Picture Association of America identified 510 total illegal recordings of its member company titles from cinemas around the world, including both video and audio captures—this was a decrease from the 610 titles recorded in 2017, although there were increases in some key markets. These figures do not include numerous independent or foreign films that were illegally camcorded.

A multifaceted approach is needed to tackle this problem, including enacting and enforcing anti-camcording legislation to outlaw the use or attempted use of an audiovisual recording device in a theater to make or transmit a copy of all or part of a motion picture; educating the public about how unauthorized camcording hurts both businesses and the consumer; and working with the private sector to identify and prevent unauthorized camcording in cinemas. This strategy has been implemented in many foreign markets (including **Canada, Japan and Korea**) with good results. The USMCA will now also require **Mexico**, which has been a major source of camcorded movies, including many on the Internet, to add proper criminal remedies into its national law. The Submission highlights many other markets where an effective strategy against camcording has not yet been implemented, and where new criminal laws are clearly needed. However, enactment of criminal legislation is not by itself enough, enforcement of these laws remains critical.

- *Piracy of Books and Journals*

The book publishing industry continues to face large scale unauthorized photocopying of academic, scientific, technical and medical books, principally on and around university campuses; sophisticated infringing offset print versions of books (essentially akin to counterfeiting); and unauthorized translations of popular books. Book and journal piracy requires consistent action by law enforcement authorities against entities engaged in unauthorized reproduction of textbooks and other professional books. Counterfeit books are often also being produced not just for sale in the domestic market, but also for export to the U.S. and other developed markets. Government agencies, universities and educational institutions (especially those that are state-funded or state-operated) should do more to promote and adopt appropriate use and copyright policies, in particular the use of legitimate textbooks and journal publications, and to discourage the use of unauthorized copies of all literary, educational and professional works. The U.S. Government should ensure that such acts of infringement are fully covered in all bilateral, regional, and multilateral engagements. Our Submission discusses these issues regarding various countries, and notes that in **India, Indonesia, and Malaysia**, the growth of the publishing market is undercut by widespread unauthorized photocopying of educational materials.

- *Pay-TV Piracy and Signal Theft*

The unauthorized broadcast, cablecast or satellite delivery of motion pictures, television content, and music and sound recordings, including the unauthorized retransmission of broadcast signals over the Internet, has been a long-standing problem for the motion picture and recorded sound industries. Related problems include operators who take cable and satellite signals by unauthorized means (hacked set top boxes; decoding or decrypting signals; or, stealing “overspill” signals from neighboring countries) and sell them to consumers without paying for any of the content. The latter remains a problem in several countries in the **Caribbean and Central and South America**, as well as in **Albania, Egypt, the UAE, Indonesia, and India**. In most of these cases, the signals are encrypted, and pirates must circumvent or hack in order to access the content. Regulations and enforcement must therefore focus on prohibiting the trafficking in pay-TV or signal theft devices or technologies; the unlawful decryption of encrypted cable or satellite signals; and the onward use of the signals already decrypted (whether lawfully or not) without the authorization of the rights holders of the content or of the signal. Such laws can help foster licensing of broadcasters and cablecasters, and weed out unlicensed television distributors. An emerging global threat are illegal Internet

protocol television (IPTV) services that provide stolen telecommunication signals and channels via dedicated web portals, third-party applications, and Piracy Devices configured to access services.

C. MARKET ACCESS BARRIERS

In addition to the key challenges noted above pertaining to copyright protection and enforcement, which constitute *de facto* market access barriers, the U.S. copyright industries also suffer from a variety of formal market access barriers in some crucial foreign markets. All efforts to address copyright infringement will be unavailing if legitimate products and services cannot be brought into a market in a fair and equitable manner to meet consumer demand.

Many of these formal market access barriers are discussed in detail in IIPA's Submission regarding several countries. Whatever form they take, all market access restrictions that impede the entry of legitimate products make it easier for pirate operations to fill the void, and cement strong loyalties with consumers, making them harder to dislodge. U.S. officials should continue to strive to open markets and to eliminate or phase out market access barriers, including those identified in this year's IIPA submission.

III. CONCLUSION

The U.S. economy depends on a thriving copyright sector to create revenue, jobs, and exports. Likewise, the health and competitiveness of our trading partners also depends on promoting and respecting intellectual property rights and opening markets to products and services that depend on copyright. Open markets foster jobs in creative industries, increase cultural diversity, promote international trade and exports, increase tax revenues from legitimate businesses, and attract more foreign direct investment. It is essential to the continued growth and future competitiveness of the U.S. creative industries that our trading partners provide high standards of protection for copyright; more effective policies and tools to enforce that protection; and more free and open markets. IIPA continues to urge USTR and the Administration to use the Special 301 review and other trade tools to encourage the countries and territories identified in our Submission to make the necessary political commitments and actions to bring real commercial gains to the U.S. creative industries by strengthening copyright protection and enforcement regimes worldwide.

We look forward to our continued work with USTR and all U.S. agencies engaged in copyright legal reforms, to meet the goals identified in our Submission.