



February 16, 2001

Mr. Joseph Papovich
Assistant USTR for Services,
Investment and Intellectual Property
Office of the United States
Trade Representative
600 17th Street, N.W., Room 301
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"), 66 Fed. Reg.
3640 (Jan. 16, 2001)

Dear Mr. Papovich:

This filing responds to the Request for Written Submissions appearing on January 16, 2001 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 57 separate country reports and recommends 56 countries for ranking on the Special 301 lists. We also highlight six initiatives in this letter, and identify 13 countries which we have not recommended be on a list but which merit ongoing attention by the U.S. government.

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

The IIPA is a coalition formed in 1984 consisting of seven trade associations, each of which represents a significant segment of the copyright industry in the United States. IIPA consists of AFMA (formerly the American Film Marketing Association), the Association of American Publishers

(AAP), the Business Software Alliance (BSA), the Interactive Digital Software Association (IDSA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA), and the Recording Industry Association of America (RIAA).

These associations represent almost 1,500 U.S. companies producing and distributing copyright-protected materials throughout the world – all types of computer software including business applications and entertainment software (such as videogame CDs and cartridges, personal home computer CDs, and multimedia products); motion pictures, television programs, and home videocassettes; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications, and journals (in both electronic and print media).

In December 2000, the IIPA released an economic report entitled Copyright Industries in the U.S. Economy: The 2000 Report, the eighth 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 industries¹ accounted for 4.9% of U.S. GDP or \$457.2 billion in value-added in 1999. In the last 22 years (1977-1999), the core copyright industries’ share of GDP grew at an annual rate more than twice as fast as the remainder of the economy (7.2% vs. 3.1%). Also over these 22 years, employment in the core copyright industries more than doubled to 4.3 million workers (3.2% 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. 1.6%). In 1999, the U.S. copyright industries achieved foreign sales and exports of \$79.65 billion, a 15% gain from the prior year.

The copyright industries’ foreign sales and exports continue to be larger than exports of 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.

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 2001; (2) summarizes our submission this year, and (3) identifies additional countries – not recommended for placement on the Special 301 lists – which require continued attention by USTR and other appropriate agencies. Individual country reports are not provided for these 12 additional countries;

¹ 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 which create copyrighted materials as their primary product.

- 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;²
- Appendix D, which provides a historical chart of countries' placement on Special 301 charts by USTR since 1990;
- Appendix E, which contains the Special 301 histories of the countries which appear as our recommendations this year and many other countries which have appeared on USTR's lists in the past and are still candidates for monitoring of their intellectual property practices.

This year's submission contains surveys on a total of 57 countries.

C. COPYRIGHT INDUSTRIES' INITIATIVES AND CHALLENGES IN 2001

Improving intellectual property protection by employing the various bilateral and multilateral tools available to the U.S. government is the goal of this submission. Without these trade tools and their aggressive implementation, the U.S. copyright industries would still be facing the 90% to 100% piracy levels throughout the developing world that we faced in 1984-85 when these trade programs commenced. The vast improvement over the last decade and a half is a largely untold success story. Significantly improved laws and their extension to U.S. copyrighted works through treaty adherence and improved enforcement have brought billions of dollars of increased revenue and millions of new jobs to both U.S. and local copyright industries. However, despite these successes, the U.S. copyright industries (and copyright creators and their industries worldwide) still face grave threats in the 21st century. These threats, emanating in part from the growth of digital and on-line technology, require a renewed commitment to use both the old and new tools available to industry and governments.

IIPA's 1999 Special 301 filing outlined five challenges facing the copyright industries: (1) the importance of implementing the WTO TRIPS Agreement; (2) the uncontrolled expansion of optical media production capacity; (3) end-user software piracy by both governments and businesses; (4) the need to implement the WIPO "digital" treaties; and (5) the growing pirate activity by highly organized international criminal syndicates. In 2000, IIPA added a sixth initiative, an issue which is a growing threat that will plague the copyright industries for years to come — stemming the explosion of copyright infringement on the Internet.

The copyright industries are extremely grateful for the U.S. government's effort in support of these objectives. IIPA urges a continuing and heightened effort to make further progress on all six

² Country surveys were prepared by Eric H. Smith, IIPA President; Steven J. Metalitz, IIPA Vice President and General Counsel; Maria Strong, IIPA Vice President and Associate General Counsel; Eric J. Schwartz, Counsel; and Michael N. Schlesinger, Counsel, and are based on information furnished by IIPA member associations. We also thank Pam Burchette, Sandra Hanna, Stefan Mentzer, Paula Jones-Yates, and Melissa Braford of our staff for their valued contributions to preparing and producing this report.

objectives this year. Ratification of the WIPO treaties remains a priority with the industries, and we and our colleagues around the world are working to achieve as many ratifications as possible in 2001, with the goal of bringing both treaties into effect early this year. Thereafter, we must work to ensure that these treaty obligations are properly and fully implemented in national law.

Below we provide a status report on these six initiatives.

1. TRIPS IMPLEMENTATION

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.³ 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, 1996.⁴

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 law to bring their laws into compliance (or close to compliance) with their TRIPS obligations. However, compliance with TRIPS enforcement obligations remains sparse but is essential to returning the commercial benefits that were envisioned at the conclusion of the Uruguay Round.

A good number of less developed 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.⁵ Accordingly, 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

³ Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Articles 65 and 66.

⁴ 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 which may take advantage thereof. As of November 30, 2000, 140 countries were members of the WTO, including all countries surveyed in this submission with the exception of Armenia, Azerbaijan, Bahamas, Belarus, Kazakhstan, Lebanon, Lithuania, Moldova, the Palestinian Authority, the People's Republic of China, the Russian Federation, Saudi Arabia, Taiwan, Tajikistan, Turkmenistan, Ukraine, Uzbekistan, and Vietnam.

⁵ Uruguay Round Agreements Act, Pub. L. No. 103-465, § 314(c), 108 Stat. 4809 (1994) (also known as the URAA).

the context of Special 301,⁶ as well as directly through the initiation of a dispute settlement proceeding in the WTO.

USTR has already brought a number of successful cases in the WTO against developed countries for violations of TRIPS copyright and copyright enforcement obligations. Three 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; and (3) Ireland, for its inadequate copyright law. The U.S. is still consulting with Denmark for its failure to provide civil *ex parte* searches and with Greece for its failure to enforce its laws against broadcast piracy, though the latter case seems to be nearing formal resolution.⁷

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. IIPA urges USTR to use all the tools available to it, including GSP,⁸ CBI,⁹ ATPA,¹⁰ CBTPA¹¹ and AGOA¹², 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.

IIPA and its member associations urge the U.S. government to use all available trade tools, including the possibility of formal action in the WTO, to deal with the serious copyright deficiencies in Uruguay. We also highlight TRIPS' problems in Sweden and Namibia in this letter.

⁶ 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, eighteen-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).

⁷ Snapshot of WTO Cases in the United States (updated Jan. 26, 2001) <<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).

⁸ 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.).

⁹ 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.).

¹⁰ 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.).

¹¹ 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.).

¹² 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.).

2. REGULATION OF OPTICAL MEDIA PRODUCTION

Increasingly, all sectors of the copyright industry are using a common set of media to distribute their products worldwide. These “optical media” include formats such as compact disc (CD), video CD (VCD), CD-ROM, and digital versatile disc (DVD), among others. An explosion in the world’s capacity to produce optical media products has accompanied the growing demand for these products. Unfortunately, production capacity greatly exceeds legitimate demand, and much of this excess capacity is being devoted to unauthorized production. Because pirate optical media products contain the same high-quality content as legitimate products and easily cross national borders, every sector of the copyright industry is threatened by optical media piracy. Pirate CDs, VCDs, and DVDs containing protected music, sound recordings, and audiovisual works as well as pirate CD-ROMs containing tens of thousands of dollars’ worth of software, games, and literary material can quickly decimate the market for legitimate U.S. products. IIPA urges the U.S. government to be particularly attentive and creative in working with U.S. industries and foreign governments to fashion effective regulatory solutions.

The growing optical media problem confronting the copyright sector demands new and creative solutions. Traditional enforcement mechanisms have not been enough to prevent optical media piracy from spinning out of control and flooding national, regional, and even global markets with millions of high-quality pirate products. As part of each country’s TRIPS obligation to provide deterrent enforcement against piracy on a commercial scale, every country whose optical media production facilities are producing significant pirate product must consider creating and enforcing a specialized regulatory framework for tracking the growth of optical media production capacity, including the cross-border traffic in production equipment and raw materials. This regulatory regime should also include strict licensing controls on the operation of optical media mastering and replication facilities, such as a requirement to use new identification tools that flag in what plant the production occurred and to lead the authorities to the infringer. So far such a regime has been established in China, Bulgaria, Hong Kong, and Macau, is in the process of implementation in Malaysia, and is under consideration in Thailand, Indonesia and the Philippines.

Finally, even after the adoption of regulations controlling and monitoring production, it is critical that these be enforced aggressively, to accompany general copyright enforcement.

3. PIRACY BY ORGANIZED CRIME

Copyright piracy — especially optical media piracy — is a huge and profitable business. Many pirate businesses have access to and control of large amounts of capital, exploiting complex distribution networks to engage in criminal activity of all kinds. These criminal syndicates are highly organized, are linked across national boundaries, and have powerful friends within government. In many cases, these powerful criminal networks use copyright piracy to fund other illicit activities, such as drug smuggling, trade in illegal munitions, money laundering, and other equally serious crimes.

Increasingly, the trend is for organized pirate syndicates to move into owning or controlling optical media production facilities. These syndicates control not only the production but also the distribution of pirated and counterfeit products within the domestic market and around the world. For example, syndicates with optical media 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 media products. These criminal networks are highly sophisticated and are becoming increasingly dangerous to deal with. The entertainment software industry estimates, for example, that 99% of console piracy in Asia and elsewhere is controlled by criminal syndicates, and Russian organized crime is believed to control 75% of the world's piracy in PC-based entertainment software.

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 activities 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.

4. RATIFICATION AND IMPLEMENTATION OF THE WIPO TREATIES

Digital piracy is a serious threat to global electronic commerce in copyrighted materials of all kinds. Combating copyright theft in order to foster the growth of electronic commerce requires a multi-faceted strategy. Technological measures to combat piracy are essential, as is public education about copyright, especially targeted to network users. But these steps are not sufficient by themselves. Strong legal protections must be adopted and vigorously enforced worldwide if sufficient intellectual property protections are to be preserved.

The two treaties adopted by the World Intellectual Property Organization (WIPO) Diplomatic Conference in Geneva in December 1996 provide the basic framework for the transmission of content in e-commerce. Effective implementation of the WIPO Copyright Treaty (WCT) and of the WIPO Performances and Phonograms Treaty (WPPT) will promote efforts to raise minimum standards of copyright protection around the world, particularly with respect to network-based delivery of copyrighted materials.

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. Following is the global status of the WIPO treaties' domestic ratifications and official deposits with WIPO:¹³

¹³ As of February 16, 2001.

	WIPO Copyright Treaty (WCT)	WIPO Performances and Phonograms Treaty (WPPT)
Number of signatories	51	50
Number of domestic ratifications	24	22
Number of deposits with WIPO (30 needed to put Treaties into force)	22	20

Because there are also a number of countries now poised to ratify and deposit, it is IIPA's hope that the treaties can be put into force early this year. In addition to securing ratifications and deposits of the treaties, IIPA is monitoring those countries that are amending their statutory regimes to make them compatible with their TRIPS obligations and encouraging these countries not to take the position that they will deal with WIPO obligations "at a later time." By that time, the prejudicial impact on electronic commerce and the protection of intellectual property online might already be irreversible. Countries should be strongly encouraged to make the necessary legal changes now. The U.S. has already implemented the changes needed to its laws to meet the standards of the treaties by enacting Title I of the Digital Millennium Copyright Act.¹⁴

5. COPYRIGHT PIRACY ON THE INTERNET

Until recently, pirates who engaged in wholesale infringements of copyrighted works served mostly local or regional markets, and in some parts of the world, like Asia, they served global markets through optical media piracy. The sudden and unprecedented growth of the Internet, however, has provided pirates with an even more highly efficient distribution network to reach the global market. Pirates offering and distributing infringing product can now reach any part of the world with great 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.

IIPA recommends that USTR work with our industries to adopt a focused and comprehensive strategy to stem the rising tide of Internet piracy. The challenge is two-tiered. First, governments need to adopt stronger laws that are tailored to address online copyright piracy. Mechanisms like TRIPS, which requires that nations provide "effective action" and adequate "deterrence" against commercial piracy, and the two new "digital" WIPO treaties, which clarify exclusive rights in the on-line world and specifically prohibit circumvention of technological protection measures (TPMs) for copyrighted works, are essential tools to fight this new threat. In particular, the adoption of TPM legislation as part of the WIPO Treaties implementation process

¹⁴ 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.

prohibiting devices and services that circumvent technological protection measures used by right holders to protect their works, is critical to safeguarding the transmission of valuable content over the Internet.

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 give 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 industry, policy, and enforcement in combating Internet piracy.

6. USE OF LEGAL SOFTWARE IN GOVERNMENT AND BUSINESS

The unauthorized use and copying of software by businesses and government entities — “end-user” piracy in the private and public sector — result in greater losses to the U.S. and global economies than any other form of piracy faced by any copyright-based industry. The great majority of the billions of dollars lost to U.S. companies from business software piracy in 2000 was attributable to end-user software piracy.¹⁵

In many nations, government entities are among the largest users of software. Thus the failure of many governments to require and to oversee legal software use within national, provincial, and local agencies results in huge revenue, job, and tax losses and tends to perpetuate a lax attitude toward intellectual property protection in the economy as a whole. This, in turn, discourages investment and innovation in the software and technology fields and stunts a nation’s economic potential in these critical areas.

On the other hand, governments that make legal software use a priority not only comply with their international obligations to protect software copyrights but also set an example for private industry. In addition, they take an important step forward in intellectual property leadership and appropriate management of software technology, both of which are critical to active participation in the information age. The U.S. recognized the importance of government leadership in combating end-user piracy when President Clinton issued Executive Order 13103 on September 30, 1998, which required all Federal government agencies (as well as third parties who do business with government) to use only legal, authorized software. This very significant Presidential Order is currently being implemented within the U.S. government and serves as a model for other governments around the world.

In recognition that governments must lead the way in promoting legal software use, USTR and other agencies have been working with the industry and with their counterparts around the world, urging the adoption of similar Executive Order-style directives. Several nations, including China, Philippines, Taiwan, Thailand, France, U.K., Greece, Hungary, Colombia, Paraguay and Jordan, have already joined the United States by issuing government legalization decrees from their

¹⁵ The figures for losses due to piracy of business applications in each country survey are preliminary only.

top executive levels and, in so doing, have signaled their intent to become global leaders in the field of technology management.

D. IIPA RECOMMENDATIONS FOR 2001 SPECIAL 301 LISTS

This year IIPA has considered deficiencies in copyright protection in 56 countries and has recommended them for placement in the categories of Section 306 Monitoring, Priority Foreign Country, Priority Watch List, and Watch List. We have also recommended that 2 countries not appearing on one of these lists be subject to an Out-of-Cycle Review, and later in this letter, we highlight specific issues of concern in 12 countries, plus Jordan, which was one of the two countries not appearing on a specific list but which IIPA also recommends for an Out-of-Cycle Review.

IIPA recommends that USTR designate Ukraine as a Priority Foreign Country. Ukraine has failed to implement long-needed copyright protection. Because Ukraine fails to provide adequate protection for foreign sound recordings in violation of its bilateral treaty obligations, it has become a "safe haven" for pirate optical media production operations on a massive scale. Ukraine, as was feared, is now the leading producer and exporter of pirate optical discs in Eurasia. Although USTR placed Ukraine on the Priority Watch List in 1999, the Ukrainian government ignored repeated warnings to take legislative action and to close pirate plants. On June 5, 2000, Ukraine formally announced an Action Plan in a joint statement issued by President Clinton and Ukrainian President Kuchma. The Action Plan was meant to combat the unauthorized production and export of optical media products in Ukraine, and in that joint statement, the Government of Ukraine announced its commitment to implement the plan by November 1, 2000. Unfortunately, Ukraine has still not implemented the Action Plan, and the production and distribution of illegal optical media discs continues unabated. There have been extensive and ongoing discussions among the U.S. government, the copyright industries, and the Ukrainian government leading up to and after the November deadline passed, to correctly implement the Action Plan. As a result of these discussions and some potential progress on the legislative front, namely a first reading in the Parliament of some of the necessary changes, USTR announced on January 19, 2001, that a decision on whether to identify Ukraine as a Priority Foreign Country would be deferred until March 1, 2001.

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.

IIPA recommends that 19 countries be placed on the Priority Watch List: Argentina, Brazil, Costa Rica, Dominican Republic, Egypt, Greece, Indonesia, Israel, Kuwait, Lebanon, Lithuania, Malaysia, Philippines, Russia, Saudi Arabia, South Korea, Taiwan, Turkey and Uruguay. IIPA also recommends that 34 countries be designated on the Watch List. We also recommend that Out-of-Cycle Reviews be taken in six countries which already appear on the various 301 lists: Egypt, Italy, Macau, Malaysia, Poland, and Uruguay. IIPA also urges that an expedited Out-of-Cycle Review (in three months) be conducted in Jordan, and that an Out-of-Cycle Review be conducted in the Palestinian Authority, neither of which presently appears on any of the 301 lists.

Appendix C contains a survey of 57 countries or territories. The countries appear by recommended category and in alphabetical order within each category. The following chart summarizes how IIPA has categorized the surveyed countries or territories; in addition, the chart lists IIPA's recommendations for additional Out-of-Cycle Reviews and other countries deserving special attention.

Priority Foreign Country	306 Monitoring	Priority Watch List	Watch List	Out-of-Cycle Review (unlisted)
Ukraine (GSP)	Paraguay People's Republic Of China	Argentina Brazil (GSP) Costa Rica Dominican Republic (GSP) Egypt (+ OCR) Greece Indonesia Israel Kuwait Lebanon Lithuania Malaysia (+ OCR) Philippines Russian Federation (GSP) Saudi Arabia South Korea Taiwan Turkey (GSP) Uruguay (+ OCR)	Bahamas Bolivia Chile CIS (10) ¹⁶ Armenia (GSP) Azerbaijan Belarus Georgia Kazakhstan (GSP) Kyrgyz Republic Moldova Tajikistan Turkmenistan Uzbekistan (GSP) Colombia Czech Republic El Salvador Estonia Guatemala Hungary India Italy (+ OCR) Latvia Macau (+ OCR) Oman Pakistan Peru Poland (+ OCR) Qatar Romania Slovakia South Africa Thailand Venezuela Vietnam	Palestinian Authority Jordan Other Countries Deserving Specific Attention Bulgaria Burma Cambodia Croatia Hong Kong Japan Laos Mexico Namibia Singapore Slovenia Sweden
1 Priority Foreign Country	2 306 Monitoring	19 Priority Watch List	34 Watch List	2 Out-of-Cycle Review 12 Other Countries Deserving Special Attention

¹⁶ "CIS" in this filing denotes 10 former Soviet republics. Russia and Ukraine are treated separately from the CIS in this filing.

Appendix D provides a history of countries appearing on IIPA and USTR lists since 1990, a year after the Special 301 legislation became effective. Seventeen of these countries have appeared on a Special 301 list each year since 1990, and seventeen are recommended by IIPA to appear there again. With the passage of the Uruguay Round Agreements Act implementing U.S. approval of the WTO Agreement, a new amendment was made to the Special 301 enabling legislation. This amendment to Section 182 of the Trade Act dealing with identification of "priority foreign countries," provides that the U.S. Trade Representative must now 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."¹⁷ Under this criterion, these seventeen named by IIPA are particularly vulnerable, having failed to correct their piracy and/or market access problems during the decade that Special 301 has been in existence.

We also call attention to ongoing intellectual property rights reviews under the Generalized System of Preferences (GSP) trade program. In June 1999, IIPA filed eleven GSP petitions against: Poland, Peru, Lebanon, Dominican Republic, Ukraine, Moldova, Uzbekistan, Armenia, Kazakhstan, Belarus, and the Kyrgyz Republic. Since that time, Congress renewed the GSP program through September 30, 2001 and 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 initiated GSP IPR reviews 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 were held on May 12, 2000.

In August 2000, IIPA filed five petitions for GSP reviews of the IPR 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 are scheduled for March 9 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.

E. COUNTRIES DESERVING SPECIFIC ATTENTION IN 2001

IIPA highlights issues in thirteen countries for which there are no surveys in Appendix C. These countries deserve special attention in bilateral efforts during the year.

1. Out-of-Cycle Review

Jordan. Jordan has taken nearly every possible step it could to improve its intellectual property regime within the past two years except one — committing the resources and commencing sustained enforcement actions necessary to eradicate piracy in the market and deter future infringements. The failure to do so will have the unfortunate consequence of undermining the potential value of all of Jordan's legislative accomplishments. By December 2000, Jordan

¹⁷ Uruguay Round Agreements Act Statement of Administrative Action, reprinted in H.R. Doc. No. 103-316, vol. I, at 362 (1994).

already had begun to answer this last vital call to action, as a court in Amman sentenced a representative of a computer store selling illegally copied software to three months in prison. Now the Jordanian government also needs to carry out and sustain publicized raiding against piracy of other industries' works, including home video entertainment (including video recordings), sound recordings, entertainment software, and books. Such raiding must be accompanied by the imposition of deterrent punishment and, where appropriate, the prosecution of commercial pirates that continue to cause harm to Jordan's market. IIPA recommends that an expedited Out-of-Cycle Review be conducted with respect to Jordan in July 2001, to ensure that enforcement needed to lower piracy rates for all the copyright industries and provide a deterrent is forthcoming.

2. TRIPS

Namibia. Namibia is currently in blatant and open violation of its TRIPS obligations by failing to provide legal protection for all foreign works (including sound recordings). Under current Namibian law, works first published in the United States are protected in Namibia only so long as they have been approved for such protection by the Minister of Information and Broadcasting. Section 63(1) of the Copyright Act provides that the Minister may issue a "proclamation" to extend copyright protection to other countries, but the Minister has never done so, and the government has taken the position with certain industry representatives that U.S. works are not protected in Namibia. As a result, enforcement efforts against copyright piracy, including against software piracy, are nonexistent. Namibia violates both its TRIPS substantive obligations for failing to protect U.S. works (including sound recordings) (TRIPS Articles 9 through 14) as well as its TRIPS enforcement obligations (TRIPS Articles 41 through 61) for failing to enforce copyright of U.S. works (including sound recordings).

Sweden. Sweden's copyright law establishes a levy system for the private reproduction of audiovisual works. However, the provisions of Section 26k of this law have been read by the Swedish authorities to deny to authors and producers of U.S. audiovisual works and to the performers that appear in those works the right to be paid any of the funds collected for such private reproduction. By collecting money for the reproduction of these U.S. works and then denying to the rightholders the right to receive their fair share of those funds, Sweden is in violation of its national treatment under the Berne Convention and its national treatment and MFN obligations under the TRIPS Agreement.

Uruguay. Copyright protection under the 1937 copyright law, as amended, contains several TRIPS deficiencies in its substantive provisions (e.g. short terms of protection, overbroad compulsory licensing, lack of full retransmission rights, inadequate protection for compilations of data, unclear scope of protection for pre-existing materials, unclear provisions on rental rights). In addition, several key TRIPS enforcement measures were not codified in Uruguayan law. Efforts to amend the copyright law have been underway for much of the last decade. While the mid-2000 version of the comprehensive copyright reform bill reflected significant improvements in both the levels of substantive protection as well as providing for various enforcement mechanisms over prior versions, further amendments are needed. In late 2000, one legislative chamber succeeded in passing, over the objection of the legitimate copyright industries, a *sui generis* bill for computer programs which contained TRIPS deficiencies as well as other onerous market provisions. Yet another revised version of the copyright bill recently passed out of committee and will be considered this spring. High levels of copyright piracy dominate the market, and the current legal regime is simply inadequate to satisfy Uruguay's TRIPS obligations.

3. BILATERAL CONCERNS

Bulgaria. The entertainment software industry reports that estimated levels of piracy for its videogame products are at 80% – virtually eliminating the legitimate market for US videogame products. Three years ago Bulgaria was one of the world's leading exporters of pirate optical media products. New laws and decrees to license or restrict productions, followed by concrete action, resulted in significant progress in fighting the export problem, although some videogame material is reportedly being exported to Malta. Now, however, enforcement within Bulgarian borders, especially against rampant videogame piracy, needs to improve.

Burma. Reportedly four pirate optical disc plants containing six production lines have relocated to Burma, perhaps from Malaysia. This is a serious development since Burma has failed to update its copyright law (a version of the 1911 colonial British law is still in effect) or join any of the international copyright treaties or conventions. Although courts do occasionally decide copyright cases, the current law is inadequate and enforcement is virtually nonexistent. As a result, there is no protection at all for U.S. copyrighted materials in Burma.

Cambodia. Reportedly one pirate optical disc plant containing two production lines has relocated to Cambodia, which is not a member of the WTO, the Berne Convention, or the WIPO digital treaties. Currently Cambodia has neither an adequate copyright law nor enforcement mechanisms (or other regulatory schemes) in place to control the production, distribution, and importation of pirate optical media product or the raw materials for producing pirate product.

Croatia. According to IDSA, despite several enforcement actions against small pirate operations, piracy rates for videogame products remain at 95% in Croatia. In addition, retail stores openly sell pirate console videogames for \$5 and pirate personal computer videogames for \$3. Croatia joined the WTO on November 30, 2000 and to be in compliance with TRIPS must deal with this problem.

Hong Kong. Although Hong Kong authorities undertook largely successful enforcement actions against optical media piracy in 2000, Hong Kong continues to be the site of significant infringement of U.S. works. Book piracy, which authorities have neglected over the past several years, has been especially devastating for U.S. publishers. In addition, Hong Kong must speed up implementation and enforcement of the new amendment to the Copyright Ordinance clarifying that end-user software piracy is a criminal offense. These amendments will not enter into effect until April 1, 2001, and will have little value if they are not aggressively enforced beginning immediately. HKSAR government efforts to educate the public on the new law and to enforce it vigorously could have a significant effect on the level of business software piracy in Hong Kong this year.

Japan. Issues with Japan turn principally on its implementation of TRIPS, the WCT, and on its failure to date to ratify and implement the WPPT. With respect to the WCT, legislation is needed to ensure that temporary copies are considered reproductions as required by the Berne Convention and TRIPS. With respect to the WPPT, Japan should ratify this Treaty immediately. In addition, the Copyright Law should be amended further to provide an exclusive right to record producers for digital broadcasts that go beyond traditional broadcasts, and to ensure that U.S. record producers receive the national treatment they are entitled to receive with respect to remuneration for broadcasts of sound recordings.

Various ministries in the Japanese government have also released reports on how they would deal with the liability of Internet service providers in the online environment. Ideas proffered to date are seriously deficient, and IIPA and the U.S. government have expressed concerns to those Ministries. This is another key issue for establishing a framework for e-commerce and the Japanese government must be urged to follow the prevailing international precedent in this area. Finally, the Japanese government should also take concrete steps to ensure that government offices are free of infringing software. In keeping with the APEC government legalization initiative, and in light of its leadership position in the region, the Japanese government should (a) issue an order from the Prime Minister requiring all government entities to take steps to ensure that they use software only with authorization; (b) establish a clear and mandatory plan to implement the order in each government office; and (c) educate the public on the need for proper software asset management, using these activities as a model.

Laos. Reportedly two pirate optical disc plants containing two production lines have relocated to Laos from other Asian territories, such as Hong Kong. At the same time, Laos is not a member of the WTO, Berne Convention, and WIPO digital treaties and currently has no copyright law to even begin to combat the problem. As a result, because there is no protection or enforcement for US works, the market for legitimate US copyrighted works in Laos is nonexistent.

Mexico. High levels of piracy, combined with non-deterrent criminal and administrative enforcement and penalties, continue to harm the development of legitimate copyright markets and industries in Mexico. Despite amendments to both the copyright law and the criminal code aimed at enhancing the scope of legal protection, pirate product is still too prevalent across all the copyright industry sectors. During 2000, efforts by criminal authorities (PGR) and administrative officials (IMPI) demonstrated, in some instances, that the government can make inroads in the fight against piracy. While those results marked a promising start that could benefit all copyright industries, much more work needs to be done. Criminal cases rarely result in indictments. IMPI cases are slow-moving and result in small fines that do not deter pirates. Border enforcement is an area where even greater progress is needed. Moreover, those pirates who are indicted are rarely fully prosecuted, and when those rare cases reach judgment, the courts usually do not impose deterrent sentences. IIPA recommends that the U.S. and the new Mexican government commence a new bilateral engagement at a high level to address these problems with a new understanding of the damage that occurs to both economies.

Singapore. While progress has been made in moving Singapore's government toward a more aggressive posture against piracy, a number of concerns remain as to enforcement policies, optical media controls, Internet piracy (particularly the responsibilities of telecommunications service providers), and some remaining TRIPS compliance issues. IIPA anticipates that many of these issues will be addressed in the ongoing negotiations toward a U.S.–Singapore Free Trade Agreement.

Slovenia. Anti-piracy enforcement efforts have improved somewhat over the past year with specialized IP courts and market and customs inspections. Nevertheless, the effectiveness of enforcement remains disappointing. Piracy levels are high, especially for videogame consoles and personal computer videogames. Another significant problem is Internet piracy. Reports indicate that pirates routinely download music and other copyright-protected materials from the Internet, burn the material onto CDs, and then resell these products online.

F. ESTIMATED LOSSES DUE TO PIRACY

As a result of the deficiencies in the copyright regimes of the 58 countries for which losses have been estimated, the U.S. copyright-based industries suffered estimated trade losses due to piracy nearly **\$7.9 billion** in 2000.

Appendix A presents a chart quantifying these losses for the five copyright-based industry sectors — the business applications, entertainment software, motion picture, sound recording and music, and book publishing industries — for 1999 and 2000. In each survey, IIPA has described the piracy levels in each of these countries (where available). In many surveys, estimated piracy losses and levels are listed for the last six years, from 1995 through 2000. 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 58 SELECTED COUNTRIES IN 2000 (in millions of U.S. Dollars)

INDUSTRY	ESTIMATED LOSSES
Motion Pictures	\$1,242.5
Sound Recordings and Musical Compositions	\$1,835.6
Business Software Applications	\$2490.9 ¹⁸
Entertainment Software	\$1,658.4 ¹⁹
Books	\$675.1
TOTAL	\$7,903.3

Appendix B summarizes the methodology used by IIPA member associations to calculate these estimated losses. These losses are a crushing burden on the U.S. economy, on U.S. job growth, and on world trade generally. They result from of 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

¹⁸ BSA's 2000 estimates are preliminary.

¹⁹ IDSA's 2000 estimates are preliminary.

year to make the political commitments, followed by the necessary concrete 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,

A handwritten signature in black ink, appearing to read "Eric H. Smith", with a stylized flourish extending to the right.

Eric H. Smith
President