



February 13, 2006

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

Re: Request for Public Comment on the Identification of Countries under Section 182 of the Trade Act of 1974 (as amended) ("Special 301"), 71 Fed. Reg. 2166 (Jan. 17, 2006)

Dear Ms. Espinel:

This filing responds to the Request for Written Submissions appearing on January 17, 2006 in the Federal Register. The request invites submissions from the public on policies and practices that should be considered in connection with designating countries as Priority Foreign Countries pursuant to Section 182 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 2242 ("Special 301"). The Special 301 provisions call upon the United States Trade Representative to identify countries which, *inter alia*, "deny adequate and effective protection" to U.S. intellectual property or deny "fair and equitable market access" to U.S. persons who rely on intellectual property protection.

The International Intellectual Property Alliance (IIPA) submits our discussion of the types, levels, and costs of piracy, an evaluation of enforcement practices to reduce those levels, and the status of copyright law reform in 46 separate country reports. We also recommend where these countries should be ranked on the various Special 301 watch lists. We highlight seven challenges and initiatives in this letter that define the copyright industries' agenda for the coming year. Finally, we mention 22 additional countries/territories that we have not recommended be on a Special 301 list but which merit attention by the U.S. government in its bilateral engagements with those countries.

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

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. IIPA is comprised of seven trade associations, each representing a significant segment of the U.S. copyright community. These member associations represent over 1,900 U.S. companies producing and distributing materials

protected by copyright laws throughout the world—all types of computer software, including business applications software and entertainment software (such as videogame CDs, DVDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; musical compositions, records, CDs, and audiocassettes; and textbooks, trade books, reference and professional publications and journals (in both electronic and print media).

In October 2004, the IIPA released an economic report entitled *Copyright Industries in the U.S. Economy: The 2004 Report*, the tenth 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 6% of U.S. GDP or \$626.6 billion in value-added in 2002. In the last 25 years (1977-2002), 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 25 years, employment in the core copyright industries grew to 5.48 million workers (4% of total U.S. employment). In 2002, the U.S. copyright industries achieved foreign sales and exports of \$89.26 billion. The copyright industries’ foreign sales and exports continue to be larger than other major industry sectors, including chemicals and related products, automobiles, parts and accessories, and aircraft and associated equipment sectors. 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 and royalty remittances as a consequence of increased levels and new forms of piracy, and it is essential that we address these problems on an urgent basis.

B. OUTLINE OF IIPA’S SPECIAL 301 SUBMISSION

As in prior years, IIPA’s submission contains several separate sections. It is important for the reader to review not only each country survey in Appendix C, but also the other appendices that describe key elements that may be referenced in 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 2006; (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 IIPA members’ methodology for calculating estimated trade losses, piracy levels, and global data on optical disc factories and production capacity;

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 that create copyrighted materials as their primary product.

- Appendix C, which includes all the country surveys² and at the end lists 22 countries that deserve continued U.S. government attention but which we have not recommended for placement on the Special 301 lists;
- Appendix D, which provides a historical chart of countries/territories' placement on Special 301 lists by USTR since 1989; and
- Appendix E, which contains the Special 301 histories of countries/territories which we have recommended for placement on a list this year, many other countries that have appeared on USTR's lists in the past and are still candidates for monitoring intellectual property practices, and certain other countries/territories that have never appeared on a USTR list but which deserve attention.

C. COPYRIGHT INDUSTRIES' INITIATIVES AND CHALLENGES IN 2006

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

In our last seven 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 efforts in promoting copyright reform and effective enforcement. But, as is clearly demonstrated in the country surveys included in this report, organized commercial piracy, whether digital or analog, tangible or over the Internet, combined with the failure of these governments to enforce their existing copyright and related laws, threatens to outpace the fight to combat it. IIPA believes that a significantly heightened effort is called for to make further progress on the following objectives in 2006. We believe the tools exist to make significant progress—the issue is whether all governments have the political will to take the actions necessary to address piracy meaningfully and to lower piracy rates locally and globally. The following objectives are not

² Country surveys were prepared by Maria Strong, IIPA Vice President and General Counsel; Michael Schlesinger, IIPA Vice President and Associate General Counsel; Eric H. Smith, IIPA President; Steven J. Metalitz, IIPA Senior Vice President; Eric J. Schwartz, IIPA Vice President and Special Counsel; and are based on information furnished by IIPA member associations. We also thank the Smith & Metalitz LLP staff, Melissa Braford, Pam Burchette, Lauren Braford, and Kristen Schumacher, for their contributions in preparing, producing and distributing this submission.

necessarily listed in order of priority, since different issues may demand priority attention in different countries.

Effective and Deterrent Enforcement Against Copyright Piracy

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

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

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

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

- penalties will actually deter pirates;
- Setting specific enforcement targets for countries in bilateral negotiations;
- Considering the negotiation of plurilateral enforcement agreements among countries based on these “best enforcement practices” and negotiated targets.

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

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, is undergoing explosive growth, and threatens to undermine the very foundations of electronic commerce in this new millennium. While broadband offers exciting prospects for the legitimate dissemination of copyrighted materials of all kinds, too often access to high-speed Internet connections is being used to distribute unauthorized copies of sound recordings, software, videogames, literary material, and motion pictures. This has suppressed legitimate consumption.

The unprecedented growth of the Internet and increased availability of broadband connections, coupled with the absence of adequate copyright law and enforcement in the online environment in many countries, 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 have decreasing practical significance.

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. Yet we know that 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 to create a legal and regulatory environment that will facilitate the growth of legitimate online delivery of copyrighted materials.

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

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

In addition, the two treaties adopted by the World Intellectual Property Organization (WIPO) Diplomatic Conference in Geneva in December 1996 provide an additional and more tailored framework for what is needed to protect the transmission of content in 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 with which countries must comply in order to provide the “adequate and effective” copyright protection that is demanded under the Special 301 program. These standards include clarifying exclusive rights in the online world, and, in addition, specifically prohibiting the production of or trafficking in tools that circumvent technological protection measures (TPMs) for copyrighted works.

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

IIPA and its members have joined with their counterpart copyright industries around the world to push for ratification and full implementation of the WCT and WPPT in all countries. The first phase of these efforts—bringing the treaties into force through the accession to each of at least 30 countries—was completed in 2002. As of February 10, 2006, official deposits of the treaties with WIPO stood at 58 for the WCT and 57 for the WPPT. More and more countries are now beginning to legislate in this area.

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

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 lose much of their practical relevance because of Internet growth, the usual lines separating the roles of industry and government in policy, enforcement and education must also evolve. Close coordination will be the key to success in this challenging new environment. Efforts should be undertaken to encourage global adoption of the Council of Europe Cybercrime Convention, which requires countries to adopt effective remedies

³ 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.

for online copyright infringement, and which facilitates law enforcement cooperation across borders—something which must develop if governments are to be successful in addressing this pressing problem.

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

Finally, as we know from our own experience here in the U.S., we must find a global solution that discourages unauthorized peer-to-peer file sharing through aggressive enforcement against unauthorized uploaders of infringing product, whether of musical recordings, movies, business or entertainment software or literary material, as well as against services that provide these tools for the purpose of encouraging and profiting from infringement. If new legal Internet-based services for delivery of copyrighted material are to succeed, we must ensure that they are not undermined by unfair competition from unauthorized sources.

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

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.

Optical Disc Piracy

Piracy of optical disc (OD) products today causes grave losses to all the copyright industries. Increasingly, all sectors of the copyright industry use a common set of media to distribute their products worldwide. These “optical disc” products include formats such as compact discs (CD), video CDs (VCD), CD-ROMs, CD-Recordables (CD-Rs), digital versatile discs (DVDs) and DVD-Recordables (DVD-Rs). An explosion in the world’s capacity to produce optical disc products has been driven by the ever-growing worldwide demand for copyrighted high-tech, entertainment and educational products, but also by the potential for pirates to generate billions of dollars in illegal income. Optical disc production capacity has for years greatly exceeded 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, CD-Rs and DVD-Rs containing protected music, sound recordings, audiovisual works, business and entertainment

software and books and journals have quickly decimated the market for legitimate U.S. products. With the increased and more effective regulation of factory production, “burning” has nearly become our industries’ biggest “hard goods” piracy threat.

The growth in the number and capacity of optical disc factories around the globe has been staggering. Based on our survey of optical disc production in 79 countries/territories:

- There were as many as **1,117 optical disc production plants** in 2005, a 14% increase in the number of plants over 2004.
- Those plants had (not including blank facilities in Taiwan) at least **5,912 production lines**.
- Total production capacity worldwide was estimated at more than **30.8 billion discs per year** in 2005.

The following chart details this information. It is noteworthy that the greatest optical disc piracy threat continues to be in Asia and Eastern Europe/Russia.

Estimated Number of Optical Disc Plants and Production Capacity in 79 Countries/Territories⁴									
Year	Plants			Production Lines			Estimated Capacity in Millions		
	2005	2004	2003	2005	2004	2003	2005	2004	2003
ASIA									
Australia	13	11	9	NA	59	96	NA	206.5	374.0
Bangladesh	2	2	NA	6	6	NA	21.0	21.0	NA
Burma/Myanmar	1	1	1	2	2	1	7.0	7.0	3.5
Cambodia	1	1	1	1	1	1	3.5	3.5	3.5
China	86	83	71	1,374	763	808	4,809.0	2,670.5	3,875.0
Hong Kong	106	88	112	817	805	538	2,859.5	2,817.5	2,455.0
India	20	12	9	166	378	334	581.0	1323.0	1,353.0
Indonesia	29	40	27	100	75	37	350.0	262.5	197.0
Japan	32	21	34	NA	297	941	NA	1,039.50	2,783.0
Korea	28	32	31	78	72	93	273.0	252.0	404.0
Laos	1	0	2	1	0	2	3.5	0.0	7.0
Macau	3	4	2	5	16	NA	17.5	56.0	0.0
Malaysia	41	32	38	NA	126	NA	300.0	441.0	1,871.0
New Zealand	3	NA	NA	3	NA	NA	10.5	NA	NA
Pakistan ⁵	5	10	8	NA	25	25	NA	230.0	140.0
Philippines	11	16	7	38	26	21	133.0	91.0	73.5
Singapore	20	14	15	106	96	169	371.0	336.0	698.0
Sri Lanka	2	2	NA	2	2	NA	7.0	7.0	NA
Taiwan	89	44	61	341 ⁶	2,818	2,171	10,700.0	9,863.0	7,779.0
Thailand	42	40	39	155	157	98	542.5	549.5	556.0
Vietnam	5	4	3	12	12	3	42.0	42.0	10.5
SUB-TOTAL	540	457	470	3,207	5,736	5,338	21,031.0	20,218.5	22,583.0
E. EUROPE/CIS⁷									
Belarus	1	1	NA	2	1	NA	7.0	5.2	NA
Bulgaria	9	8	7	18	12	9	63.0	55.0	19.0

⁴ The methodology used by IIPA to calculate estimated capacity is discussed in Appendix B of IIPA's 2006 Special 301 submission at www.iipa.com/pdf/2006spec301methodology.pdf.

⁵ Pakistan: The capacity numbers in 2003 and 2004 represent actual production based on polycarbonate imports and various countries' customs data.

⁶ This number is the estimated lines producing pre-recorded discs, while the capacity reported includes production of blank recordable discs. Estimated capacity of finished discs in Taiwan is roughly 1.2 billion discs.

⁷ The capacity numbers in Bulgaria, Kazakhstan and Poland (2005 numbers) do not follow the IIPA methodology, and are based on plant visits and/or different per line capacity estimates. Many of the estimates from 2003 especially, but also 2004 (including Belarus, Bulgaria, Kazakhstan, Poland, Russia, and Serbia and Montenegro) did not follow the IIPA methodology.

Estimated Number of Optical Disc Plants and Production Capacity in 79 Countries/Territories⁴									
Year	Plants			Production Lines			Estimated Capacity in Millions		
	2005	2004	2003	2005	2004	2003	2005	2004	2003
Croatia	NA	1	NA	NA	1	NA	NA	3.5	NA
Czech Republic	4	4	4	NA	44	43	NA	154.0	193.0
Estonia	2	1	NA	2	1	NA	7.0	3.5	NA
Hungary	4	4	3	14	14	7	49.0	49.0	37.0
Kazakhstan	2	1	1	2	1	0	11.6	8.1	0.0
Lithuania	1	1	1	2	2	1	7.0	7.0	5.0
Poland	9	9	9	122	101	154	775.0	597.2	501.0
Romania	2	1	1	3	2	1	10.5	7.0	6.0
Russia	47	34	32	113	83	52	395.5	390.0	220.0
Serbia and Montenegro	4	4	NA	10	5	NA	35.0	25.0	NA
Slovenia	2	2	NA	5	5	NA	17.5	17.5	NA
Ukraine	5	5	4	14	13	5	49.0	49.5	31.0
SUB-TOTAL	92	76	62	307	285	272	1,427.1	1,371.5	1,012.0
W. EUROPE									
Austria	5	4	NA	8	6	NA	28.0	21.0	NA
Belgium	3	4	NA	25	25	NA	87.5	87.5	NA
Denmark	5	4	NA	36	16	NA	126.0	56.0	NA
Finland	3	3	NA	6	6	NA	21.0	21.0	NA
France	18	23	NA	204	156	NA	714.0	546.0	NA
Germany	42	44	NA	144	132	NA	504.0	462.0	NA
Greece	12	5	5	40	40	73	140.0	140.0	NA
Ireland	8	8	NA	70	70	NA	245.0	245.0	NA
Italy	29	23	23	101	119	182	353.5	416.5	801.0
Luxembourg	2	2	NA	19	19	NA	66.5	66.5	NA
Netherlands	17	18	NA	107	62	NA	374.5	217.0	NA
Portugal	3	3	NA	5	5	NA	17.5	17.5	NA
San Marino	2	2	NA	2	NA	NA	7.0	NA	NA
Spain	16	16	12	119	123	100	416.5	430.5	600.0
Sweden	5	7	NA	12	9	NA	42.0	31.5	NA
Switzerland	3	3	NA	11	11	NA	38.5	38.5	NA
United Kingdom	16	19	NA	128	90	NA	448.0	315.0	NA
SUB-TOTAL	189	188	40	1,037	889	355	3,629.5	3,111.5	1,401.0
W. HEMISPHERE									
Argentina	9	11	10	30	26	26	105.0	91.0	142.8
Brazil	13	11	9	88	91	128	308.0	318.5	624.9
Canada	17	17	NA	132	78	NA	462.0	273.0	NA
Chile	2	2	2	2	5	3	7.0	17.5	19.0
Colombia	2	2	2	9	9	8	31.5	31.5	48.0
Costa Rica	1	1	NA	1	1	NA	3.5	3.5	NA
Dominican Republic	1	1	1	1	1	1	3.5	3.5	7.0
Mexico	9	12	12	205	231	101	717.5	808.5	514.0
Paraguay	1	1	NA	1	1	NA	3.5	3.5	NA
Peru	2	3	3	3	5	3	10.5	17.5	17.0
United States	181	143	NA	740	348	NA	2,590.0	1,218.0	NA
Uruguay	1	1	NA	1	1	NA	3.5	3.5	NA
Venezuela	2	2	2	7	7	7	24.5	24.5	40.0
SUB-TOTAL	241	207	41	1,220	804	277	4,270.0	2,814.0	1412.7
MIDDLE EAST									
Algeria	4	3	NA	10	NA	NA	35.0	NA	NA
Egypt	4	4	4	6	6	4	21.0	21.0	23.0
Iran	2	2	NA	3	2	NA	10.5	7.0	NA
Israel	7	7	5	19	18	23	66.5	63.0	114.0
Jordan	1	1	NA	1	NA	NA	3.5	NA	NA

Estimated Number of Optical Disc Plants and Production Capacity in 79 Countries/Territories⁴									
Year	Plants			Production Lines			Estimated Capacity in Millions		
	2005	2004	2003	2005	2004	2003	2005	2004	2003
Lebanon	1	1	1	1	1	1	3.5	3.5	7.0
Kuwait	1	NA	NA	3	NA	NA	10.5	NA	NA
Palestinian Authority	1	3	2	1	4	4	3.5	14.0	23.0
Saudi Arabia	1	3	1	6	7	NA	21.0	24.5	NA
Syria	2	1	1	5	1	NA	17.5	3.5	NA
Turkey	10	8	8	25	23	NA	87.5	80.5	NA
SUB-TOTAL	34	33	22	80	62	32	280.0	217.0	167.0
AFRICA									
Nigeria	15	8	NA	36	25	NA	126.0	87.5	NA
Senegal	1	1	NA	1	1	NA	3.5	3.5	NA
South Africa	5	3	3	24	12	NA	84.0	42.0	NA
SUB-TOTAL	21	12	3	61	38	NA	213.5	133.0	NA
TOTALS	1,117	973	638	5,912⁸	7,814	6,275	30,851.1	27,865.5	26,575.7

The growing optical disc problem confronting the copyright sector, now familiar to governments worldwide, demands new and creative legislative and enforcement solutions. Traditional enforcement mechanisms have not been sufficient to prevent optical disc piracy from spinning out of control and flooding national, regional, and even global markets with millions of high-quality pirate products. As part of countries' WTO TRIPS obligations to provide deterrent enforcement against piracy "on a commercial scale," every country whose optical disc production facilities are producing significant pirate product should create and enforce a specialized regulatory framework for tracking the growth of optical disc production capacity, including the cross-border traffic in production equipment and raw materials, principally optical-grade polycarbonate. These regulatory regimes 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 Bulgaria, China, Hong Kong, Indonesia, Macau, Malaysia, Philippines, Poland, Singapore, Taiwan, Thailand, Turkey, and Ukraine, are under consideration in Bahrain, India, and other countries, and are committed to be established in Oman. 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, Vietnam, and many others mentioned in this submission. We urge the U.S. to press every country in the regions most affected by pirate optical disc production and export—including East Asia, South Asia, Eastern Europe, Russia and the countries of the former Soviet Union—to put comprehensive optical disc regulatory controls into place promptly. Otherwise, pirate syndicates will continue to transfer their optical disc operations across borders in an effort to stay one step ahead of enforcement efforts.

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

⁸ This total number of lines does not include Taiwan blank disc production lines. If we were to include these lines, the total number actually went up in 2005.

governments in understanding, drafting and implementing these recommendations into national law.

As these regimes have been adopted and enforcement under them has matured, the pirates have again taken advantage of technological developments, and moved production increasingly from the “factory” locus to smaller venues that are more private and harder to police. The newest generation of pirates uses much less expensive and more portable consumer “recordable” technology – CD and DVD “burning” on CD-Rs and DVD-Rs. That technology has now advanced so that with a very small investment, pirates can easily and cheaply replicate thousands of copies of copyrighted products for commercial sale. We refer here not to individual consumers “burning” copies but to aggressive commercial exploitation – often by the very same syndicates that operated the factories and generate millions of dollars for the pirate operators. In some countries, like Taiwan, Brazil, Mexico, Spain and many others, seizures of pirate product in 2005 were overwhelmingly of “burned” product. Commercial “burning” has nearly become the biggest piracy threat in the “hard goods” market. This new development calls for innovative responses. Improved enforcement machinery must aim at implementing zero tolerance policies against the offer for sale of pirate product. If pirates have no place to sell their products, their ability to manufacture becomes superfluous. Some countries are already responding by enacting absolute bans on street sales, with some positive results. Commitment from more countries to do the same is sorely needed.

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

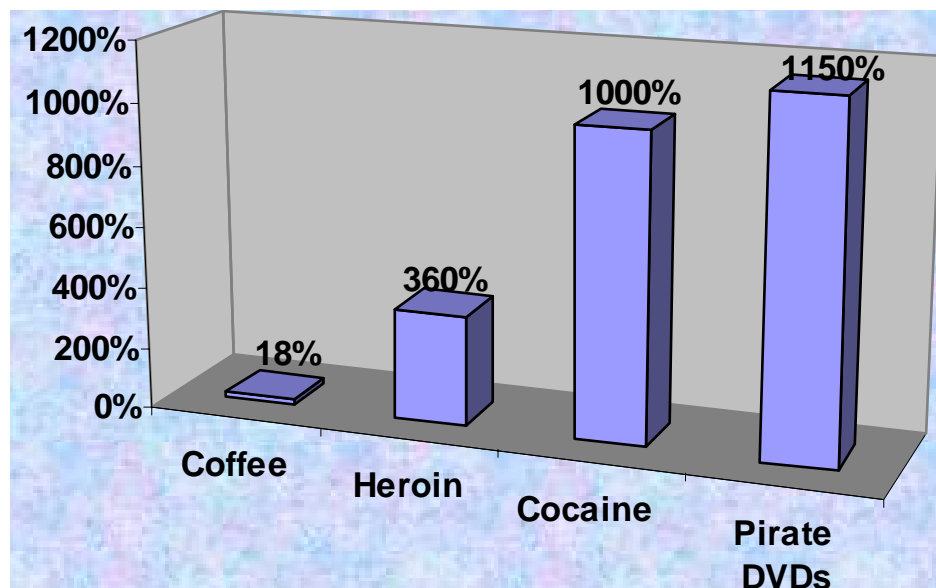
Piracy by Organized Crime Syndicates

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

These syndicates control 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. Starting in 2003, responding to improved enforcement against factory pirate production, the syndicates began moving their illegal trade into CD-R and DVD-R “burning” and to the Internet. This phenomenon has grown to epidemic proportions in 2006.

In an October 2005 study by MPA, it was reported that the estimated criminal revenue in 2004 for IPR theft was \$512 billion, while for drug trafficking it was \$322 billion.⁹ The following table from that same study shows graphically that the mark-up for DVD piracy is higher than that for cocaine and heroine, with the risk of getting caught and receiving deterrent punishment very significantly less.¹⁰



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

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

- In a cross-jurisdiction operation called Operation Glaring Sun, **Hong Kong, Macau** and mainland **China** authorities in June 2005 arrested 1,600 triad members, raiding more than 1,900 locations, taking down 31 vice establishments, 30 gambling dens, nine drug dens and 61 pirate disc centers. Police froze US\$11 million belonging to the syndicates and seizures included 159,000 pirated and pornographic optical discs, US\$1.4 million worth of illegal betting slips, 3,000 liters of illicit fuel, 4.51 million contraband cigarettes, 123 grams of heroin, 212 tablets of ecstasy, 180 grams of ICE, 1,104 tablets of midazolam, and 70 grams of ketamine. A follow up operation yielded the arrest of a further 27 individuals implicated in an optical disc piracy manufacturing operation. In that raid, 53 CD-R burners, 10,000 pirated discs, and 90,000 pornographic discs were seized.

⁹ Motion Picture Association, *Optical Disc Piracy v. Illegal Drug Trafficking*, October 2005, p. 2. About the same time, MPA released another new study, *Organized Crime & Motion Picture Piracy*, from which some of the examples in the text are taken.

¹⁰ *Id.*, at 3

- In **China**, the head of a criminal syndicate was sentenced in March 2004 to 7 years in prison for the sale of more than 6 million pirate audio and video products. Chinese prosecutors estimated that this syndicate had been responsible for one third of all pirate music CDs seized over several years. More than 10 million discs had been imported, mainly from Hong Kong, from 2001-March 2003.
- In **Australia**, by the middle of 2004 the number of stalls selling pirated film DVDs at Melbourne's Caribbean Gardens Markets had increased fivefold (to more than 135 stalls); the price of pirated DVDs had substantially dropped (from AU\$15-\$20 per disc to AU\$10); traders not affiliated with two main organized criminal gangs were forced to pay protection money or were simply muscled out of the market; and a well-organized lookout system had been put in place. In August 2004, the Caribbean Market hosted the largest concentration of DVD sellers under one roof in the Asia-Pacific region. A battle (at times armed) for control between two criminal gangs resulted in physical intimidation of investigators from the motion picture industry's Australian anti-piracy program.
- In 2004, enforcement authorities in the United Kingdom uncovered the involvement of Triad and Snakehead gangs in China in forcing illegal immigrants from China to sell pirate DVDs on the street to pay for their illegal passage to the UK.
- An April 2004 Interpol report on the links between terrorism and IPR crimes noted a 2000 case of a CD plant in **Russia** run by Chechens who remitted funds to the Chechen rebels. The average monthly earnings of the organization were estimated at US\$500,000-\$700,000. During the raid on suspects' houses, a number of explosives and arms were seized.
- In 2004, turf wars between syndicates operating out of **Russia** and Bulgarian organized crime gangs were numerous, particularly over control of piracy at some of **Bulgaria's** most blatant pirate hotspots. Bulgaria's anti-organized crime agency has acknowledged the involvement of these syndicates in the pirate distribution business.
- A press report has noted that a new OD factory had been set up in **Burma** close to the border with northern Thailand near Chiang Rai. The plant produces pirate CDs, VCDs, and DVDs and is owned by the notorious drug lord Wei Hseuh-kang. The production lines and blank discs reportedly were imported from China. Annual profit from this plant was estimated at US\$6.5 million. Pirates in the border town in Thailand near the plant sold pirate product from the plant and DVDs of the newest U.S. films imported from China.
- In November 2004, police in Bangkok, **Thailand** raided a night market at King Rama I Bridge and were attacked by 30 piracy gang members. Some of the officers were injured.
- In August 2004, the owner of a pirate video shop in a popular Bangkok, **Thailand** shopping mall was shot dead in the mall by an assailant on a motorbike. Police suspect the murder was ordered by the criminal gang that controls the piracy business in this and other malls. Police believe the murdered man was trying to break the protection racket that insulated the shops from possible police raids.

- In late 2004, **Hong Kong** Customs smashed an extensive OD piracy syndicate allegedly run by a woman dubbed the “queen of piracy” and her sons. Ten locations were raided and close to US\$200,000 worth of pirate copies and equipment were seized. It was estimated that this ring generated more than US\$1.5 million per year over a four year period. In this same period, another sweep led to the arrest of 284 organized crime gang members, with more than US\$330,000 worth of pirate product seized. The raids were aimed at the revenue sources of Triad societies in West Kowloon. The sweep involved over 500 law enforcement officials.
- Also in 2004, **Hong Kong** Customs ran “Operation Sunrise,” which disrupted a criminal syndicate run by the Sun Yee On Triad Society, yielding the arrests of 30 people, including a 12-year-old girl. Police raided 435 locations and inspected 1,921 entertainment premises, making arrests at 18 gambling establishments, 9 pirate optical disc shops, 23 brothels and 6 drug dens. Seizures included 1,700 ecstasy tablets, 200 grams of ketamine, weapons, 160,000 pornographic or pirate optical discs, 9,500 liters of unlicensed gasoline and about 3.9 million cigarettes. The operation followed another successful anti-organized crime operation on June 25, 2004, when Hong Kong police and other agencies conducted a three-day operation code-named “Windpipe” that resulted in the arrest of 499 people and the seizure of over 12,200 copyright-infringing items including pirate optical discs.
- In August 2004 in **Malaysia**, it was reported that one of the suspected members of a Malaysian criminal syndicate distributing pirate ODs crashed his van into several vehicles while attempting to escape MDTCA officers. The suspect was apparently unloading 250,000 discs of local and international musical repertoire worth US\$400,000.
- In January 2005 in **Malaysia**, incoming MDTCA Minister Datuk Shafie Apdal reiterated the importance of arming IPR enforcement officers after gun battles erupted during several VCD raids: “... we asked for the guns as protection for our people who are constantly at risk while dealing with these pirate VCD traders. There is a criminal element among some of these traders and our officers have to be protected.”
- 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 **Paraguay**, in April 2004, a key organized crime leader, Antonio Gonzalez Neira, was jailed for seven and a half years. The conviction was for the illegal import of blank CD-Rs suspected of being used in piracy. Neira was one of the most powerful pirates in Paraguay, and his family has a long and documented history of assisting Chinese and Taiwanese organizations involved in smuggling in the country.

- In **Brazil**, the notorious piracy kingpin Law Kim Chong was arrested in June 2004 for attempting to bribe the Chairman of Brazil's Congressional Anti-Piracy Committee. As part of the follow-up to this arrest, authorities raided one warehouse owned by Chong at which over 7.5 million blank CD-Rs and 3.5 million blank DVD-Rs were seized. The bribe was alleged to be between US\$1 million and \$2.3 million. Chong owned numerous shopping centers and supplied product from China to over 10,000 points of sale throughout the country. Chong is now in jail and the investigation continues.
- In May 2005 in **Italy**, the historical involvement in music piracy of the Camorra mafia gang in Italy was confirmed by the Naples Deputy Attorney General Franco Roberti, who said that 213 members of the gang had been sentenced since 2000. In late 2004, a police officer in Naples had been shot and killed during a raid with the killer believed to be linked to the Camorra gang.
- In early 2004, 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\$57,200) in cash. The gang used a number of computer shops and restaurants to launder the money generated by the pirate product.
- In **Germany** in August 2004, law enforcement authorities seized a major "release group" server (named "dRAGON") at a university in Frankfurt. The server was being used by three of the largest release groups believed by the authorities to be responsible for up to 80% of online releases of German-language versions of movies. (A prior operation in March 2004 resulted in closing down 19 such servers) The server contained approximately 180 copies of newly-released films and about 20 interactive games. It was being used as a so-called mux-server (combining picture material with German soundtracks) by three of the largest and recently reorganized release groups, FLT (Flatline), TOE (Titans of Entertainment) and BBP (Block Buster Productions).
- 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.
- 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 the U.S. government for additional leadership, both here and in the appropriate bilateral and multilateral fora, to place the issue of effective copyright piracy enforcement on the agenda of agencies dealing with

organized economic crime – generally, cybercrime, fraud, extortion, white-collar crime, drug enforcement, money laundering, and border and customs control. The U.S. government should encourage countries with existing anti-organized crime laws and investigative procedures to bring them to bear against syndicate operations involved in piracy. Where such laws and procedures are not in place, the U.S. government should encourage governments to adopt them and to include, among predicate offenses, intellectual property right violations.

End-User Piracy of Business Software and Other Copyrighted Materials

The unauthorized use and copying of software by businesses result in tremendous losses to the U.S. and global economies. The great majority of the billions of dollars lost to U.S. software companies from business software piracy in 2004 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 90 countries either provide express protection for temporary copies, or do so by interpretation of their laws, 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, countries must provide an effective civil system of enforcement, provisional remedies to preserve evidence, and deterrent criminal penalties for piracy. More specifically, it is critical that countries provide *ex parte* search orders in an expeditious manner, deterrent civil damages and criminalization of corporate end-user piracy as required by Article 61 of TRIPS. Industry, along with USTR, has raised the need for strong procedural and remedial enforcement measures around the world. Although some countries have made attempts to improve enforcement through special enforcement periods and action plans, most of these proposals for action have not been sustained over time or resulted in deterrent criminal fines and jail terms. Additionally, most countries still do not criminalize corporate end-user piracy or provide civil *ex parte* measures—even though their TRIPS obligations require both.

End-user piracy is of course not limited to software but, in part because of the Internet, now affects all copyright sectors. Hard goods piracy using the Internet to advertise and sell pirate product, and unauthorized downloading of music, movies, videogames and books from websites as well as through peer-to-peer file swapping services have all skyrocketed.

Unauthorized digital streaming, where bandwidth permits, is also growing. A great deal of this activity is being conducted through government-owned Internet Service Providers and from servers owned and operated by governments, schools and universities. Likewise, in government, school and university facilities photocopy machines are routinely used for commercial-scale book piracy. Where the government is directly involved or directly responsible for the facilities and implements used, policies and decrees must be promulgated and strictly enforced to ensure that these facilities are not used for infringing conduct.

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

Piracy of Books and Journals

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

Unauthorized commercial-scale photocopying of books and journals is responsible for the industry's biggest losses in most territories worldwide. This photocopying takes place in a variety of venues—commercial photocopy shops located on the perimeters of university campuses and in popular shopping malls; on-campus copy facilities located in academic buildings, libraries and student unions; and wholly illicit operations contained in residential areas or other underground establishments. Publishers also suffer from unauthorized photocopying for commercial research purposes in both for-profit and non-profit institutions (often accompanied by failure to compensate reprographic rights organizations ("RROs") in countries where they exist to collect photocopying royalties). These operations are highly organized and networked, and technology advances are making the problem worse. Digitally scanned covers, for instance, allow pirates to conceal text that is often of poor quality, misleading consumers into believing they are purchasing a legitimate product, and electronic files containing book text are now routinely seized as part of enforcement actions against copyshops.

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 Egypt, Pakistan, India and China, 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.

Using FTAs to Improve Global Standards of Copyright Protection and Enforcement

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

At the time of this letter, FTAs with Singapore, Chile, Australia, Jordan and Morocco have entered into force. FTAs with Central America, the Dominican Republic, Bahrain, Oman and Peru have been concluded. Negotiations with Panama, the United Arab Emirates and the other Andean Pact countries of Colombia and Ecuador are slated to end soon. Negotiations with Thailand are ongoing and a new FTA with South Korea was just announced. An FTA negotiation with Malaysia may be announced soon. IIPA trusts and expects that the valuable precedents established in these earlier agreements will be carried forward to the ongoing FTA negotiations, including with the South African Customs Union (SACU), and with any more FTA negotiations opened in the future. 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 protection; and detailed and effective enforcement obligations that make clear the requirement to enforce copyright in all areas, including on the Internet, with expeditious and deterrent civil and criminal remedies. We again commend the Administration and Ambassador Portman 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, while the negotiations have been stalled for some time, it is possible to envision in the future an unprecedented Free Trade Agreement of the Americas in which the standards of copyright protection and enforcement will 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.

D. IIPA RECOMMENDATIONS FOR THE 2006 SPECIAL 301 LISTS

This year IIPA has analyzed the copyright law and enforcement problems in 46 countries/territories and has recommended them for placement in the categories of Priority Foreign Country, Priority Watch List, Watch List, and Section 306 Monitoring. We also mention specific issues in 22 additional countries/territories that deserve increased U.S. government attention.

IIPA recommends that USTR designate Russia as a Priority Foreign Country in 2006 and that Russia's eligibility for GSP benefits be immediately suspended. Russia's copyright piracy problem remains one of the most serious of any country in the world. Piracy rates for most sectors are estimated at around 70%-80% in 2005 and piracy losses again exceed \$1.7 billion.¹¹ Despite the repeated efforts of industry and the U.S. government to convince the Russian government to provide meaningful and deterrent enforcement of its copyright and other laws against OD factories as well as all other types of piracy—including some of the most open and notorious websites selling unauthorized materials such as www.allofmp3.com—little progress has been made over the years. Meanwhile, piracy continues unabated in the domestic market and pirate exports continue to flood both Eastern and Western Europe.

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

With respect to the People's Republic of China, IIPA recommends that USTR maintain China on the Priority Watch List. Industry and USTR continue to look into the prospects of a WTO dispute settlement case against China. China has failed to "significantly reduce piracy rates," as promised by China's Vice Premier Wu Yi at the Joint Commission on Commerce and Trade (JCCT) meetings in April 2004. Piracy rates still hover around 90%, where they have been for years.

IIPA commends Paraguay for the efforts that it has made over the course of the past two years, and recommends that USTR continue to monitor developments in Paraguay under Section 306 of the Trade Act of 1974.

Appendix C contains a survey of a total of 68 countries or territories. The countries/territories appear by recommended category and in alphabetical order within each category.

¹¹ The methodology used by IIPA member associations to calculate these estimates is described in IIPA's 2006 Special 301 submission, at www.iipa.com/pdf/2006spec301methodology.pdf. For example, ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses."

PRIORITY FOREIGN COUNTRY	PRIORITY WATCH LIST	WATCH LIST	SECTION 306 MONITORING	OTHER COUNTRIES DESERVING SPECIAL MENTION
Russia	Argentina Chile Colombia Costa Rica Dominican Republic Egypt India Indonesia Israel Lebanon PRC Philippines Thailand Turkey Ukraine Venezuela	Bahamas Belarus Bolivia Brazil (OCR) Bulgaria Canada (OCR) Ecuador Greece Hungary Italy Kazakhstan Kuwait Latvia Lithuania Malaysia (OCR) Mexico Pakistan (OCR) Peru Poland Romania Saudi Arabia (OCR) Serbia and Montenegro South Korea (OCR) Taiwan Tajikistan Turkmenistan Uzbekistan Vietnam	Paraguay	Azerbaijan Bangladesh Bosnia and Herzegovina Brunei Burma Cambodia Cyprus Czech Republic Estonia Hong Kong (OCR) Japan Kenya Laos Morocco Netherlands New Zealand Nigeria Panama Singapore South Africa Spain Sweden Switzerland
1	16	28	1	22

Appendix D provides a history of countries/territories appearing on IIPA and USTR lists since 1989, a year after the Special 301 legislation became effective. Sixteen of these countries/territories have appeared on a Special 301 list each year since 1989, and are recommended by IIPA to appear there again. A 1994 amendment to Section 182 of the Trade Act, dealing with identification of “priority foreign countries,” provides that the U.S. Trade Representative must take into account “the history of intellectual property laws and practices in the foreign country, whether the country has been identified as a priority foreign country previously, and U.S. efforts to obtain adequate and effective intellectual property protection in that country.”¹² Under this criterion, these 16 countries/territories named by IIPA are particularly vulnerable, having failed to correct their piracy and/or market access problems during the 17 years that Special 301 has been in existence.

Ongoing GSP IPR Reviews: IIPA also calls attention to ongoing intellectual property rights reviews under the Generalized System of Preferences (GSP) trade program. IIPA has been a strong supporter of the GSP program, and over the years has filed numerous petitions requesting the U.S. Government to initiate GSP IPR reviews of copyright law and enforcement practices in targeted countries. As of February 13, 2006, the U.S. government is continuing GSP IPR investigations on the copyright law and enforcement practices in four countries in

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

which IIPA was the original petitioner: Russia, Lebanon, Kazakhstan and Uzbekistan. In January 2006, USTR terminated the GSP investigations of Ukraine, Brazil and Pakistan: in all three cases IIPA was the original petitioner. The GSP program is due to expire at the end of 2006, unless Congress reauthorizes its funding. IIPA strongly supports reauthorization.

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

E. COUNTRIES DESERVING SPECIAL MENTION IN 2006

In addition to the 46 countries/territories for which IIPA has provided comprehensive country reports, IIPA also highlights issues in 22 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 Section entitled “Countries Deserving of Special Mention.” These countries/territories are: Azerbaijan, Bangladesh, Bosnia and Herzegovina, Brunei, Burma, Cambodia, Cyprus, Czech Republic, Estonia, Hong Kong, Japan, Kenya, Laos, Morocco, New Zealand, Nigeria, Panama, Singapore, South Africa, Spain, Sweden and Switzerland.

F. ESTIMATED LOSSES DUE TO PIRACY

As a result of deficiencies in the copyright regimes of the 68 countries/territories highlighted in this submission, the U.S. copyright-based industries suffered estimated trade losses due to piracy in these 68 countries/territories of over \$15.8 billion in 2005.¹³ On a global basis (that is, in all countries/territories including the U.S.), IIPA conservatively estimates that total losses due to piracy were \$30-35 billion in 2005, not counting significant losses due to Internet piracy, for which meaningful estimates are not yet available.

Appendix A presents a chart which quantifies losses for the five copyright-based industry sectors—the entertainment software, business software, motion picture, sound recording and music publishing, and book publishing industries—for 2004 and 2005. In most surveys, IIPA has described the piracy levels in each of the sectors in each of these countries/territories (where available). This should prove helpful in identifying trends and in determining whether enforcement efforts have actually been successful in reducing piracy levels in the particular country.

¹³ The methodology used by IIPA member associations to calculate these estimates is described in IIPA's 2006 Special 301 submission, at www.iipa.com/pdf/2006spec301methodology.pdf.

ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY IN 68 SELECTED COUNTRIES IN 2005 (in millions of U.S. dollars)	
Industry	Estimated Losses
Motion Pictures¹⁴	1,976.0
Records & Music	2,563.4
Business Software	8,028.1
Entertainment Software¹⁵	2,652.8
Books	606.5
Total	15,826.8¹⁶

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

G. CONCLUSION

Special 301 remains a cornerstone of U.S. intellectual property and trade policy. We urge the Administration to use Special 301, and the tools available under the GSP, CBI, ATPA, CBTPA, and AGOA programs, and to consider IIPA's proposals to amplify attention to ineffective and non-deterrent enforcement—to encourage the countries/territories identified in our recommendations this year to make the political commitments, followed by the necessary actions, to bring their enforcement (and where necessary their copyright) regimes up to international standards. The U.S. government should also use the WTO dispute settlement

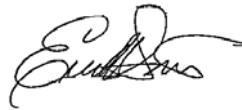
¹⁴ MPAA's trade losses and piracy levels for 2005 are available for a limited number of countries and are based on a methodology that analyzes physical or "hard" goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As loss numbers and piracy levels become available for additional countries at a later time, they will be posted on the IIPA website, <http://www.iipa.com>.

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

¹⁶ For many countries, the "total" loss figure does not include losses for one or more industry sectors where figures are unavailable (NA). Consequently, the totals for these countries are even more conservative.

machinery to ensure that countries/territories bring their substantive and their enforcement regimes into compliance with their international obligations under TRIPS. The dispute settlement mechanisms in FTAs should also be used, where necessary, with those trading partners. We look forward to our continued work with USTR and other U.S. agencies to bring about major improvements in copyright protection and enforcement worldwide.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Eric H. Smith". The signature is fluid and cursive, with a large initial "E" and "S".

Eric H. Smith
President
International Intellectual Property Alliance