



February 11, 2008

Mr. Stanford McCoy
 Acting Assistant U.S. Trade Representative
 for Intellectual Property and Innovation
 Office of the U.S. Trade Representative
 600 17th Street, N.W.
 Washington, D.C. 20508

Re: Special 301: Identification of Countries Under Section
 182 of the Trade Act of 1974: Request for Public
 Comment ("Special 301"), 73 Fed. Reg. 2958
 (January 16, 2008)

Dear Mr. McCoy:

This filing responds to the Request for Written Submissions appearing on January 16, 2008 in the Federal Register. The request invites submissions from the public on policies and practices that should be considered in identifying countries that deny adequate and effective protection of intellectual property right or deny fair and equitable market access to U.S. persons who rely on intellectual property protection pursuant to Section 182 of the Trade Act of 1974, 19 U.S.C. §2242 ("Special 301").

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 43 separate country reports. We also recommend where these countries/territories should be ranked on the various Special 301 watch lists. We highlight challenges and initiatives in this letter that define the copyright industries' agenda for the coming year. We also discuss eight 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/territories ("Special Mention" countries/territories).

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 comprises 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).

On January 30, 2007, the IIPA released an economic report entitled *Copyright Industries in the U.S. Economy: The 2006 Report*, the eleventh study written by Stephen Siwek of Economists

Inc. 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 an estimated \$819.06 billion or 6.56% of the U.S. gross domestic product (GDP) in 2005. These “core” industries were responsible for 12.96% of the growth achieved in 2005 for the U.S. economy as a whole (this means that the growth contributed by these core industries (12.96%) was almost double their current dollar share of GDP (6.56%)). In addition, the “core” copyright industries employed 5.38 million workers in 2005 (4.03% of U.S. workers) in 2005. And the report, for the first time, provides data on the estimated average annual compensation for a worker in the core copyright industries: \$69,839 in 2005, which represents a 40% premium over the compensation paid the average U.S. worker. Finally, estimated 2005 foreign sales and exports of the core copyright industries increased to at least \$110.8 billion, leading many other major industry sectors, including chemicals and related products; motor vehicles, parts and accessories; aircraft and associated equipment; food and live animals; and medicinal and pharmaceutical products.

The health and competitiveness of the U.S. economy thus depends on a thriving copyright sector that creates jobs and exports. It is essential to the continued growth and future competitiveness of these industries that our trading partners provide not only free and open markets, but also high levels of protection for copyright, and effective policies to enforce that protection. To meet the constantly evolving threats to copyright worldwide, our country’s response must remain flexible, innovative and committed.

B. OUTLINE OF IIPA’S SPECIAL 301 SUBMISSION

As in prior years, IIPA’s submission contains several separate sections. Included in this year’s submission are the following:

- This letter, which summarizes the submission and outlines IIPA’s recommendations for cross-cutting initiatives to be undertaken by the copyright industries and the U.S. government for 2008;
- Appendix A, which compiles IIPA’s country placement recommendations, estimated trade losses due to piracy, and estimated levels of piracy;
- Appendix B, which describes IIPA members’ methodologies for calculating estimated trade losses and piracy levels,
- Appendix C, which includes all the country surveys² and at the end lists eight countries/territories that deserve continued U.S. government attention but which we have not recommended for placement on the Special 301 lists;
- Appendix D, which provides an 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 that 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 that have never appeared on a USTR list but which deserve special attention.

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. *The 2006 Report* is posted on the IIPA website at <http://www.iipa.com>.

² Country surveys were prepared by Maria Strong, Michael Schlesinger, Eric H. Smith, Steven Metalitz, and Eric Schwartz, and are based on information furnished by IIPA’s seven member associations. We also thank Kristen Schumacher for her contribution in preparing, producing and distributing this submission. The country reports contain information which should not be construed as providing legal advice.

C. COPYRIGHT INDUSTRIES' INITIATIVES AND CHALLENGES IN 2008

This submission aims to provide information that will assist governments to improve copyright protection, reduce global piracy levels, and open markets to works protected by copyright. Strong and effective copyright protection benefits every country, by providing incentives for creativity and innovation, promoting economic, cultural and scientific development, and fostering cultural diversity. Over the past quarter century, the U.S. government has effectively employed a panoply of trade policy tools that have stimulated vast positive changes in the global environment for the protection of intellectual property. Today's challenge is to identify and strengthen the tools that will be most effective in meeting new threats to that environment.

In the early 1980's, most countries' laws did not 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 helped produce 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 threats to U.S. creators and the U.S. copyright industries remain grave and are growing. These threats emanate largely from the growth of digital and on-line piracy; the increased organization and sophistication of commercial pirates; and, most importantly, the failure of governments to adequately enforce their new laws against the rampant piracy of intellectual property. An effective response to these challenges will require a renewed and expanded commitment to use both the old and new tools available to industry and governments.

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 foreign governments to enforce their existing copyright and related laws, threatens to outpace the fight to combat it. The tools exist to make significant progress on the following objectives in 2008. What is needed is the political will for governments to take the actions necessary to address piracy meaningfully and to lower piracy rates locally and globally.

The following objectives are not necessarily listed in order of priority, since different issues may demand priority attention in different countries.

Internet Piracy, Electronic Commerce and the WIPO Internet Treaties

The Scope of the Problem: Online copyright piracy, a serious problem for the past several years, is undergoing explosive growth. As improved mobile devices proliferate in every market and become ever more capable of transmitting and receiving copyrighted works, and as access to broadband networks becomes more ubiquitous around the globe, these new technologies are all too often placed at the service of piracy. Legitimate markets for electronic commerce in copyrighted works are being undermined – and in some cases prevented from coming into existence at all – by a flood of unauthorized copies of sound recordings, entertainment and business software, literary material, and motion pictures. The Internet, and other networks linking mobile devices, are being employed as highly efficient, low cost networks for infringing activity, reaching any part of the world with ease, no matter where infringing material first enters the system. 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.

Protection in this global online network is only as strong as its weakest link. In the United States, for example, access to pirated products is often facilitated through the operation of “tracker sites” or repositories of pirated content housed in other countries. To meet the challenge of online piracy, enhanced international norms, more effective enforcement of those norms, and law enforcement cooperation must be top priorities. Moreover, securing greater inter-industry cooperation in the fight against online and mobile piracy, including through automated detection and removal of infringing content is imperative to curb the theft of online content.

Quantifying economic losses due to online 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 fully take into account piracy online. Affected industries are seeking to improve their ability to measure the prevalence and impact of online piracy. We already know, however, that the problem is growing rapidly, resulting in displaced sales of legitimate products and services, and that an urgent response is needed. For example, independent surveys in just ten of the biggest markets reveal that an estimated 20 billion songs were illegally downloaded through file sharing services in 2006 alone. This translates into billions of dollars in lost revenue at a time when sales of physical products are in decline. Entertainment software publishers estimate that as many as 10,000 to 20,000 copies of the most popular videogame titles are successfully downloaded each week. And new phenomena, like the illegal pre-loading of songs, games and other content onto handheld devices, pose additional threats to healthy electronic commerce.

We urge governments to adopt laws that will prevent and punish online piracy, and to enforce those laws vigorously. An environment that will facilitate the growth of legitimate online delivery of copyrighted materials entails not only the establishment of adequate rights and remedies under copyright, but also rules that compel all entities involved in the transmission of copyright materials to implement reasonable practices. A focused and comprehensive strategy, as outlined below, is required.

The Legal and Enforcement Solutions: 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. The WTO TRIPS Agreement contains a technology-neutral obligation to provide “expeditious remedies to prevent infringements and remedies which constitute a deterrent to future infringements” (Article 41). The enforcement tools described in TRIPS must be applied against online piracy.

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 the new e-commerce economy. These treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), have been in force since 2002. Effective implementation of the global legal minimum standards embodied in the WCT and WPPT is critical in the fight against online piracy, and is a key element of 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 specifically prohibiting the production of or trafficking in tools that circumvent technological protection measures (TPMs) used by right holders to protect copyrighted works, coupled with criminal prohibitions that effectively deter commercial circumvention activities.

Ever since the WIPO Treaties were adopted, 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. Sixty-four countries now belong to the WCT; 62 have acceded to the WPPT; and the momentum continues to build, with the other 14 original EU member states expected to join Belgium by ratifying both treaties in the near future.

Ensuring that these standards are effectively embodied in national law is critical. 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 U.S., which was one of the first countries to implement these changes in its laws a decade ago, should continue to make it a priority to encourage other countries to follow this path.³

Finally, as described further below, the U.S. government's Free Trade Agreements specify and clarify the standards in TRIPS and the WIPO Treaties. The binding obligations that the FTAs create should form the underpinnings of the online enforcement systems in these countries, and eventually in all countries.

In parallel with the physical world, there is no substitute for vigorous enforcement of the new and existing laws against digital and online piracy. To protect the revenue streams and millions of new jobs created by the copyright industries, governments must become flexible and fast moving to deal with a medium that is constantly shifting and evolving. Laws and practices of nations must be designed to secure broad cooperation among all relevant parties to prevent piracy in the first place; to quickly locate and bring down infringing Internet sites or content; and to pursue actions against offenders. 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. Global adoption of the Council of Europe Cybercrime Convention, which requires countries to adopt effective remedies for online copyright infringement, and which facilitates law enforcement cooperation across borders, is a key element of a successful strategy.

These law reform and enforcement measures are critical to deter pirates from destroying the incredibly promising new tools for making copyrighted products available globally. IIPA members, and their member companies, have stepped up to the challenge of online piracy. They devote increasing resources and technical expertise to ferreting out online piracy and taking action against it. But the success of these efforts depends to an increasing extent on obtaining the cooperation of other parties, including network operators and the manufacturers and distributors of access devices. All these parties have a vital stake in building a robust legitimate marketplace for electronic commerce in copyrighted works; and the technical tools for detecting and dealing with online piracy are rapidly becoming more widely available, more flexible, and more effective. However, the incentives and disincentives provided by the laws have not always kept pace with these realities.

Practical and understandable regimes of secondary liability for online infringement are essential to motivate all participants to cooperate in implementing the reasonable practices that will make the online marketplace less hospitable to infringers. While voluntary arrangements among copyright owners, service providers and equipment manufacturers are of course very important in the fight against online piracy, the U.S. government should also urge all its trading partners to refine their secondary liability regimes to reflect the current realities, or to adopt modern, flexible systems where they do not exist. The goal must be to encourage responsible conduct on the part of all parties involved in the transmission of copyright materials. This involves deployment of available technological measures that can detect, and restrict or prevent infringing transmissions at all levels of the delivery chain; swift and cost-effective ways to achieve takedowns of infringing content and services; and ensuring that repeat infringers find no safe harbor on the Internet.

Finally, we must find a global solution that discourages unauthorized peer-to-peer file sharing through aggressive enforcement against unauthorized uploaders of infringing product,

³ The U.S. implemented the WCT and WPPT by enacting Title I of the 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.

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. As we know from our own experience here in the U.S, new legal online services for delivery of copyrighted material can succeed only if they are not undermined by unfair competition from unauthorized sources.

It is critical that governments, educational institutions and similar enterprises that provide broadband connections 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. When their networks transmit only authorized copyrighted material, they are also helping to ensure the security of their networks against unauthorized incursions or other potentially crippling interventions into their systems. 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.⁴

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 materials.

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 and deterrent enforcement, as required by the WTO TRIPS Agreement and the various Free Trade Agreements (FTAs) which the U.S. has negotiated, can this goal be met.

The industries and the U.S. government have been engaged for over twenty years in many countries to try to bring piracy down to acceptable levels. But many still have not meaningfully upgraded their enforcement systems to meet their international obligations by adopting effective remedies and imposing deterrent penalties. In a growing number of countries, police agencies are more able, and often more willing, than in the past to conduct raids against pirate producers, wholesalers and retail sites. But all too often the legal system fails to follow through. For effective deterrence, prosecutors and judges (or, where applicable, administrative agencies) must impose penalties that would remove the monetary incentives that drive the pirate trade. Small fines will not deter pirates who stand to gain hundreds of thousands to millions of dollars; deterrence requires substantial prison sentences in these cases. Again and again, in country after country, major pirates either manipulate the system to evade conviction (often as a result of systemic delays or corruption), or suffer only small monetary fines that utterly fail to discourage them from continuing in their illegal business, or others from following their example. Again and again, raided stores reopen quickly with new pirate product, online pirates move their servers or take on a new online identity, or major pirate producers continue their trade in a new guise to avoid the next enforcement action, which may never

⁴ In 2006, Ministers of the 21 Members of the Asia Pacific Economic Cooperation regional group recommended that "government entities" (which should include educational institutions funded by the State) should ensure that copyright usage, including on P2P networks, is legal. The APEC Ministers specifically "Recommended that APEC Leaders should endorse the principle that government entities should not use illegal software or other content on their computer networks, especially pertaining to Internet usage," noting that "This keeps APEC at the forefront of addressing the growing problem of illegal file sharing on the Internet." Leaders cemented the understanding among the APEC Members in November 2006 in Hanoi, Vietnam that all "government agencies" should ensure that copyright usage is legal. The APEC Leaders stated the following:

We ... called on member economies to exercise appropriate oversight to achieve the objective that central government agencies use only legal software and other copyright materials; that such bodies implement effective policies intended to prevent copyright infringement on their computer systems and via the Internet, in accordance with relevant international conventions and domestic laws and regulations concerning copyright and related rights; and that central government funds are not used by contractors or recipient institutions to purchase illegal software or other illegal copyright materials.

come, or may come only after the pirate has lined his pockets with millions more 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 increase the capacity of willing governments to take effective action. Among the strategies that could be employed are:

- Continuing to coordinate enforcement training, including localized training and capacity-building that demonstrates the benefits of deterrent enforcement.
- Fostering further coordination among and between U.S. agencies, industry, and 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 online piracy. It should include model sentencing guidelines that would help the authorities assess what penalties will actually deter pirates;
- Setting specific enforcement targets for countries in bilateral negotiations.

IIPA and its members applaud USTR for spearheading an international effort to forge an “Anti-Counterfeiting Trade Agreement” (known as the “ACTA”) among like-minded trading partners. This effort, announced on October 23, 2007, recognizes the critical importance that effective enforcement now plays in improving the global trading environment in IPR-based products. The U.S. was joined by key trading partners in making this announcement -- Japan, the EU, Mexico, Switzerland, Canada, Korea and New Zealand. It is essential, however, that such an agreement, if negotiated, set out the very highest standards of effective enforcement to which the rest of the world should aspire.

The Special 301 process must specifically target enforcement in a direct and clear way. 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 has not 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 that actually *reduce* piracy rates (and, conversely, that they will see a change in placement when such actions are in fact undertaken).

Optical Disc Piracy

Piracy of optical disc (OD) products continues to cause major losses to most copyright industries. Increasingly, many 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), DVD-Recordables (DVD-Rs), universal media discs (UMD), and newer, high definition formats such as Blu-ray or HD-DVD. 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 the legitimate demand for such products, whether pre-recorded discs or blank media, with much of the difference inuring to the benefit of illegal pirate enterprises.

In recent years, the problem of industrial production of pirate OD product in factories has to a great extent been overtaken by more decentralized, smaller-scale operations that use blank recordable optical media and OD “burners” to make unauthorized copies on a commercial basis.

Whether “burned” or factory-produced, 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 decimated the market for legitimate U.S. products.

Optical Disc Piracy: Factory Production: For 2008, IIPA identifies the key optical disc piracy factory production trouble spots as: **China, Indonesia, Malaysia, Nigeria, Russia, and Thailand**. These are markets where immediate actions should be taken by the governments to curtail pirate production.

The optical disc factory piracy problem confronting the copyright sectors, now familiar to governments worldwide, has demanded new and creative legislative and enforcement solutions. 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 should 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, Nigeria, the Philippines, Poland, Singapore, Taiwan, Thailand, Turkey, and Ukraine, and are under consideration in Bahrain, Oman, India, Vietnam, and other countries. Increasingly, pirate optical disc production is migrating from jurisdictions with optical disc production regulatory regimes to countries that have not adopted these regulatory tools or do not enforce them, such as Bangladesh, Nigeria, Vietnam, and many others mentioned in this submission.

Above all, the regulations put in place to combat OD piracy must be aggressively enforced. Governments must have the authority to conduct surprise inspections of optical disc production facilities – and they must use it. Deterrent penalties—including license revocation, confiscation of equipment and raw materials, and heavy fines and imprisonment—must be consistently and efficiently imposed.

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

Optical Disc Piracy: Commercial “Burning”: As noted above, as regulatory regimes have been put into place and enforced, the pirates have again taken advantage of technological developments, and moved production increasingly from the “factory” locus to smaller, more mobile venues that are more private and harder to police. Using cheaper and more portable consumer “recordable” technology, pirates with a very small investment can easily and cheaply burn thousands of CD-Rs and DVD-Rs of copyrighted material 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. In territories like Taiwan, Brazil, Mexico, Spain and many others, seizures of pirate product in 2007 were overwhelmingly of “burned” product. Commercial “burning” has probably become the biggest piracy threat in the “hard goods” optical media 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

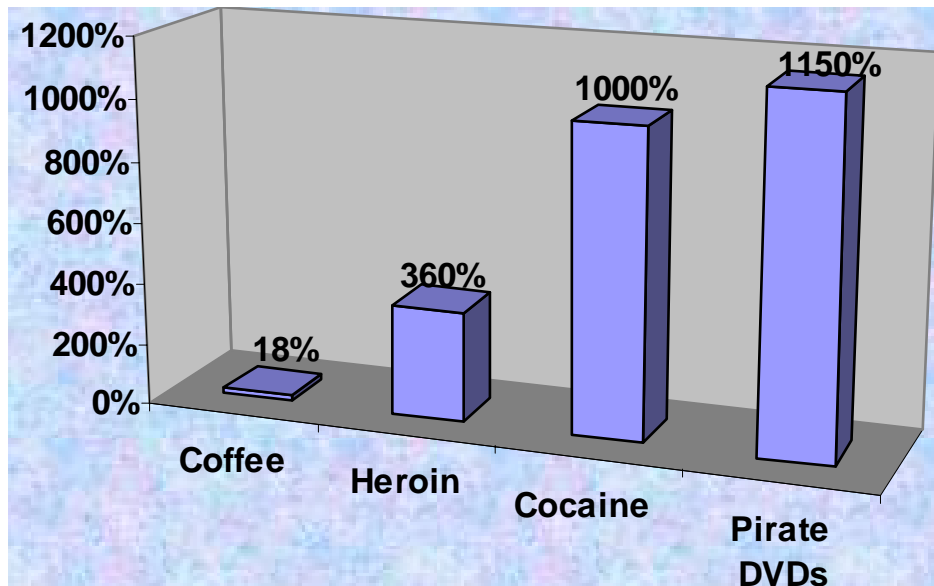
countries are already responding by enacting absolute bans on street sales, with some positive results. More countries should do the same.

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 control large amounts of capital, and exploit complex distribution networks to engage in many kinds of criminal activity beyond copyright infringement, including in some cases drug smuggling, trade in illegal munitions, money laundering, and even funding of terrorist organizations.

These syndicates operate worldwide. 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 reached epidemic proportions in 2007.

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.⁵ 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 significantly less.⁶



⁵ 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.

⁶ *Id.*, at 3

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.

Some examples of the involvement of organized crime on a global basis include:

- In December 2007, Saudi Arabian police ran raids against four warehouses seizing close to 500,000 units of pirated music and video cassettes, VCDs and DVDs. The police also found a large cache of explosives and weapons and arrested 15 people.
- In the summer of 2007, Italian anti-piracy police cracked an illicit distribution network operating in Catania, Sicily, in raids that uncovered a significant seizure of arms and bombs. During the search of one home, the police discovered eight guns, five rifles, ammunition for rifles and machine guns, two kilograms of TNT and bomb making equipment. More than 2,000 CDs and DVDs were seized during the raids as well as several stolen archaeological treasures, such as ancient Roman and Greek pottery. Police arrested two men and are investigating the connection between them and members of criminal organizations closely linked to mafia families.
- In December 2005, Italy's anti-terrorist squad conducted a series of raids aimed at dismantling an arm of the Algerian-based GIA Islamic terrorist network. The group was securing funding by selling pirated CDs, DVDs and fashion goods.
- In March 2006, Uruguayan Customs seized two containers containing 2 million blank CD-Rs manufactured in Malaysia and Taiwan destined for illegal use in Brazil.
- In April 2006, Spanish police raided a gang that has produced very high quality pirate sound recordings for many years that were sold at or near the price of legitimate CDs. The pirates enormous financial benefit from their activity, included a house valued at €2 million (US\$2.9 million). Their total fraud could amount to €15 million (US\$21.75 million)
- In June 2006, Nigerian police raided an international marketplace in Lagos, during which pirates shot two police officers and burned a police vehicle. Tear gas had to be used to quell the violence.
- In July 2006, in a raid on a residential suburb of southern Metro Manila, authorities found, in addition to pirate (and pornographic) DVDs and CD-ROMs, several hand grenades, hundreds of rounds of 5.56 mm ammunition, and sachets of a highly addictive and illegal amphetamine derivative known locally as "Shabu" and elsewhere as "ice." The seized ammunition is of the sort used in high-powered automatic assault weapons.
- During the summer of 2006, Italy's Fiscal Police acted against a nation-wide operation involved in the online sale of pirate CDs and DVDs.
- In September 2006, Mexican police raided several warehouses and laboratories containing huge quantities of blank and pirate CDs, reproduction machinery, as well as large quantities of cocaine, marijuana and other drugs.
- In October 2006, an industry representative who was working on an anti-piracy team was shot and killed in Nakorn Pratom Province, Thailand, and in December 2006, a staff person of a company supporting the industry was attacked during a raid in Open Market in Nonthaburi Province.

The copyright industries cannot fight organized crime alone. 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. The U.S. government should take a leadership role, both bilaterally and in multilateral fora, to place the issue of effective copyright piracy enforcement on the agenda of agencies dealing with organized economic crime. It should encourage countries with existing laws and special investigative procedures against organized crime 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 2007 were attributable to this end-user software piracy. To safeguard the marketplace for legitimate software, governments 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, over 100 countries/territories provide protection for temporary copies as part of the reproduction right either explicitly or by interpretation, or had committed to do so, or had draft legislation pending which would provide such protection.

Enforcement is a critical part of reducing global piracy rates for business software, which exceed 50% of the market 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 have not resulted in deterrent criminal fines and jail terms. Additionally, many countries still do not criminalize corporate end-user piracy or provide civil *ex parte* measures in practice—even though their TRIPS obligations require both.

End-user piracy is of course not limited to business software but now affects all copyright sectors. For example, 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. In addition, internet café piracy in several countries continues to plague the entertainment software industry. While entertainment software publishers are increasingly making available specialized licensing terms for these establishments, the lack of government oversight or incentives for legitimizing use only emboldens internet café owners in their use of pirated or unlicensed product.

Increasingly, for all sectors, the Internet has allowed end-user piracy to proliferate. Online venues are used to advertise and sell pirate hard goods, and unauthorized downloading of music, movies, videogames, books and journals from websites as well as through peer-to-peer file swapping services has 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.

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 individuals, enterprises 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. 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, and electronic files containing book text are now routinely seized as part of enforcement actions against copy shops. This shift from physical copy machines to electronic files—allowing shops to print infringing books on demand—complicates the enforcement process due to lack of infringing stock in hard goods form. Authorities must recognize this shifting pattern and tailor enforcement incentives and activities accordingly. Publishers also suffer from unauthorized institutional or business-related photocopying for commercial research (often accompanied by failure to compensate rights holders through collective means or otherwise for copies made).

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. In some cases, 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 South Korea, Egypt, Thailand, Pakistan, India, China and other countries with large printing capacity, and where printing may still be less expensive for pirates than photocopying. While many pirated copies are rife with errors or obviously of inferior quality, in some cases 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. Unauthorized and unlicensed compilations abound in the academic context as well, in the form of course packs or even “original textbooks” that consist of sections of U.S. publishers’ material, in English or in translation.

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.

Camcorder and Videogame Cartridge Piracy

Camcording as “source piracy” has grown exponentially over the last few years, tracking the development of camcorder technology that makes detection difficult and copies near perfect. MPAA analysis of counterfeit copies seized throughout the world reveals that more than 90% of illicit recently released movies on DVDs can be sourced back to theatrical camcording. In 2007, 530 MPAA member companies’ films were illegally camcordered from theaters around the world and most of these films were stolen within 24 hours of their theatrical release. These films were then uploaded to the Internet, replicated in optical disc plants, and burned to discs, affecting markets around the world.

It is evident that camcorder piracy migrates to those markets where enforcement is weak. With the passage of the U.S. Family Entertainment and Copyright Act, which made camcording a federal offense, and similar state laws, as well as diligent efforts by local police, the U.S. is taking the necessary steps to provide adequate and effective remedies against camcorder piracy. Progress has also been made globally on this critical issue and IIPA calls upon the U.S. government to continue to seek legislative changes that make unauthorized camcording a criminal offense.

While the motion picture industry recognizes that anti-camcording legislation is critical to stopping the rapid increase in camcording, it also recognizes that there are critical steps that it and its business partners in the film industry must undertake on their own. As a result, it has and will continue to expend significant resources in undertaking various measures to mitigate the level of unauthorized camcording activity. Despite industry efforts, it is clear that if camcording is not made a criminal offense and deterrent penalties are not applied, this crippling source piracy will continue, migrating to territories where enforcement is weak.

In addition to optical disc piracy, factory piracy of entertainment software in cartridge format also afflicts the entertainment software industry. Pirate videogame cartridges easily find their way into numerous countries around the world. Absent sustained enforcement actions against these factories engaged in illegal production and export, and the prosecution of their owners and financiers, there will be little progress in curtailing this piracy problem.

Using FTAs to Improve Global Standards of Copyright Protection and Enforcement

The negotiation of bilateral and regional free trade agreements (FTAs) continues to hold a place of 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 submission, FTAs with Singapore, Chile, Australia, Jordan, Morocco, Bahrain and Oman, as well as five of the six nations in the Central America-the Dominican Republic-U.S. FTA, have entered into force. Negotiations with South Korea, Peru, Colombia and Panama have been concluded. Unfortunately, negotiations with the United Arab Emirates and Thailand have stalled. Negotiations with Malaysia continue despite the expiration of Trade Promotion Authority (TPA) in 2007. IIPA strongly supports the renewal of TPA fast track negotiating authority and urges the new Congress to renew it in 2009 and for a new Administration to conclude existing negotiations and commence new FTAs with as many countries as possible.

IIPA trusts and expects that the valuable precedents established in these earlier agreements will be carried forward to the ongoing FTA negotiations, and with any more FTA negotiations opened in the future. In all these negotiations, industry 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 in particular on the Internet, with expeditious and deterrent civil and criminal remedies. We again commend the Administration and Ambassador Schwab 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.

Market Access

In the experience of IIPA, its members and companies, there is a strong connection between a country's ability to foster the introduction of legitimate product quickly and efficiently to market, and its ability to combat piracy effectively. We call upon policymakers to recognize and draw on this relationship to help make the reduction of market access impediments a key component of ongoing efforts to combat piracy. Denial of effective market access for copyright industries is an integral part of the Special 301 process.

Our experience shows that where there are restrictions on the distribution of legitimate products, impediments to the establishment of companies involved in the creation, manufacture or distribution of such products, or the imposition of prohibitively high tariffs and taxes on legitimate products entering the country, illegal operations fill the void with piratical product. Pirates are thus able to become exclusive distributors of the prohibited content or the products that have been priced out of reach for most consumers due to high tariffs, and are rewarded accordingly by cementing strong loyalties with their dedicated consumer base.

Pirates also gain a stronger position in instances where the introduction of new products to market is unreasonably delayed, whether through lengthy content review periods, specialized packaging or stickering requirements, or arduous licensing or registration protocols. Here again, illegal operations will move to take advantage of any temporary product voids by speeding piratical copies to market, maximizing the advantage provided by their informal but highly effective exclusive distribution windows.

These delays can be particularly damaging to "hit-based" businesses that depend on strong initial sales of a relatively small number of highly popular products to recoup investments made in other, less immediately successful ones.

We urge U.S. officials and national policymakers to make elimination of market access barriers—whether such barriers are content or investment based—a priority in their discussions with

relevant foreign governments with the conscious objective of streamlining market access for legitimate products to further aid efforts to combat piracy. Specifically, policymakers should:

- Reexamine the effectiveness of, and policy justifications underlying, market access prohibitions or impediments that restrict legitimate producers' ability to compete with pirates. Industries involved in the creation and distribution of content-based products stand willing to abide by reasonable and fairly applied censorship processes. However, it is both legitimate and necessary to ask whether these measures serve their intended purpose, or whether alternative channels of distribution for these products (such as through authorized or unauthorized online delivery) render these policies ineffectual or less capable of achieving that purpose.
- Work with industry to consider ways of further streamlining those restrictions and/or processes that are deemed essential, including applicable content review, labeling or licensing requirements.
- Work with industry to promote greater understanding and transparency of applicable rules, regulations and procedures governing compliance. Greater transparency in governing regulations facilitates more rapid and more uniform compliance, and affords fewer opportunities for abuses of these processes.
- Enforce penalties for non-compliance with regulatory requirements uniformly, including against vendors of piratical product, and consider the creation of enhanced penalties for non-compliance by pirate operations.

We will continue to monitor various countries' progress along these lines. The U.S. government and foreign governments should consider market-opening policies as an additional tool to combat piracy, and to promote economic and technological competitiveness.

D. IIPA RECOMMENDATIONS FOR THE 2008 SPECIAL 301 LISTS

This year IIPA has analyzed the copyright law and enforcement problems in 43 countries/territories and has recommended them for placement in the categories on the Priority Watch List, Watch List, and Section 306 Monitoring. We also mention specific issues in eight additional countries/territories that deserve increased U.S. government attention.

IIPA recommends that 13 countries be placed on the Priority Watch List: Argentina, Canada, Chile, Costa Rica, Egypt, India, Mexico, the People's Republic of China, Peru, Russia, Saudi Arabia, Thailand, Turkey, and Ukraine. IIPA also recommends that 29 countries/territories be designated or kept on the Watch List. We also recommend that out-of-cycle reviews be taken in three countries: Italy, the Philippines and Thailand.

With respect to the People's Republic of China, IIPA recommends that USTR maintain China on the Priority Watch List and continue monitoring under Section 306 of the Trade Act. China has failed to "significantly reduce infringement levels," 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 between 80% and 90% for most copyright sectors.

With respect to Russia, the priority for IIPA members is to step up enforcement activity well beyond current levels, including the imposition of deterrent criminal penalties and improved criminal investigations and prosecutions. Russia is at a critical juncture in the development of its IPR regime. The (November 19, 2006) IPR Bilateral Agreement signed by the U.S. and Russian governments reflects Russia's acknowledgment of the numerous legal reforms and enforcement steps it needs to

undertake to modernize and improve its copyright system for the benefit of Russian and foreign authors, performers and producers. The U.S. government has consistently reiterated its position that Russia must provide protection and enforcement of IPR consistent with the requirements of the IPR Agreement before the U.S. would support Russia's entry into the WTO. Russia's full compliance with the IPR Agreement's obligations is essential, and should be considered in the Special 301 context, as well as during its review under the General System of Preferences (GSP) program.

IIPA recommends that USTR continue to monitor developments in Paraguay under Section 306 of the Trade Act of 1974. We expect concrete results in 2008 to implement the renewed IPR MOU. While there have been certain positive developments—in particular the operation of the specialized IPR unit (the UTE), piracy remains prevalent and Ciudad del Este continues to operate as a hub for the distribution of pirate materials and raw materials destined for clandestine labs.

Appendix C contains a survey of a total of 51 countries/territories. The countries/territories appear by recommended category and in alphabetical order within each category.

PRIORITY WATCH LIST	WATCH LIST	SECTION 306 MONITORING	OTHER COUNTRIES/TERRITORIES DESERVING SPECIAL MENTION
Argentina Canada Chile Costa Rica Egypt India Mexico People's Republic of China Peru Russian Federation (GSP) Saudi Arabia Thailand (OCR) Ukraine	Bangladesh Belarus Brazil Brunei Dominican Republic Greece Hungary Indonesia Israel Italy (OCR) Kazakhstan Kuwait Lebanon (GSP) Lithuania Malaysia Nigeria Pakistan Philippines(OCR) Poland Romania South Korea Spain Sweden Taiwan Tajikistan Turkey Turkmenistan Uzbekistan (GSP) Vietnam	Paraguay	Bulgaria Germany Hong Kong Japan Jordan New Zealand Singapore Switzerland

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. Fifteen 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.”⁷ Under this criterion, these 15 countries/territories named by IIPA are particularly vulnerable, having failed to correct their piracy and/or market access problems during the 19 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.⁸ As of February 11, 2008, the U.S. government is continuing GSP IPR investigations on the copyright law and enforcement practices in three countries in which IIPA was the original petitioner: Russia, Lebanon, and Uzbekistan. Now that Congress has reauthorized the GSP program, it is imperative that the Administration actually use this program and hold beneficiary countries accountable to the IPR obligations in the statute. The GSP program expires at the end of 2008 and should be renewed.

E. COUNTRIES/TERRITORIES DESERVING SPECIAL MENTION IN 2008

In addition to the 43 countries/territories for which IIPA has provided comprehensive country reports, IIPA also highlights issues in eight countries/territories which deserve special attention this year but which are not recommended for placement on the Special 301 Lists. These countries/territories and the problems encountered in them are: Bulgaria, Germany, Hong Kong, Japan, Jordan, New Zealand, Singapore, and Switzerland.

F. ESTIMATED LOSSES DUE TO PIRACY

As a result of deficiencies in the copyright regimes of the 51 countries/territories highlighted in this submission, the U.S. copyright-based industries suffered estimated trade losses due to piracy in these of over **\$18.4 billion** in 2007.⁹ On a global basis (that is, in all countries/territories including the U.S.), IIPA conservatively estimates that total losses due to piracy were at least **\$30-35 billion** in 2007, 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 and journal publishing industries—for 2006 and 2007. 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.

⁷ Uruguay Round Agreements Act Statement of Administrative Action, *reprinted in* H.R. Doc. No. 103-316, vol. I, at 362 (1994).

⁸ 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 8 cases (Armenia, Moldova, Dominican Republic, Ukraine, Brazil, Pakistan, plus Turkey—a case which IIPA petitioned for in 1993 and was closed in 2001). In May 2006, USTR closed its investigation against Kazakhstan.

⁹ The methodology used by IIPA member associations to calculate these estimates is described in IIPA's 2008 Special 301 submission, at www.iipa.com/pdf/2008spec301methodology.pdf.

ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY IN 51 SELECTED COUNTRIES/TERRITORIES IN 2007 (in millions of U.S. dollars)		
Industry	Estimated Losses 2007	Estimated Losses 2006
Sound Recordings & Musical Compositions	2,229.5	2,176.3
Business Software	12,940.0	10,662.0
Entertainment Software ¹⁰	2,655.8	1,865.6
Books	531.0	560.5
Motion Pictures ¹¹	Not Available	Not Available
Total	18,356.3¹²	15,264.4¹²

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.

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 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,

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¹⁰ 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.

¹¹ MPAA's trade loss estimates and piracy levels for 2006 and 2007 are not available. MPAA did provide 2005 estimates for a select group of countries, using a new methodology that analyzed both physical/"hard goods" and internet piracy. Details regarding MPAA's methodology for 2005 and prior years are found in Appendix B of this IIPA submission.

¹²For 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.