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

Re: IIPA Notice of Intent to Testify and Hearing Statement in Response to USTR's Request for Comments and Notice of a Public Hearing Regarding the 2020 Special 301 Review, 84 Fed. Reg. 70613 (Dec. 23, 2019)

To the Special 301 Committee:

The International Intellectual Property Alliance (IIPA) hereby submits its Notice of Intent to Testify and Hearing Statement for the Special 301 Committee Public Hearing scheduled for February 26, 2020.

Under separate cover, IIPA has formally filed our 2020 Special 301 submission concerning intellectual property protection and market access regimes in U.S. trading partners. Our full submission is accessible on our website, www.iipa.org.

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

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Respectfully submitted,

/Kevin M. Rosenbaum/

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**Hearing Statement of
Kevin M. Rosenbaum
International Intellectual Property Alliance (IIPA)
before the Special 301 Committee
2020 Special 301 Hearing Scheduled for February 26, 2020**

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

IIPA is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries working to improve copyright protection and enforcement abroad and to open foreign markets closed by piracy and other market access barriers. Members of the IIPA include Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association (www.motionpictures.org), and Recording Industry Association of America (www.riaa.com).

Collectively, IIPA's five member associations represent over 3,200 U.S. companies producing and distributing copyrightable content. IIPA has filed comments in the Special 301 reviews for over three decades. In that time, the technologies available for the production and distribution of copyrighted materials have changed dramatically, and with them, the diversity of methods through which the copyright industries disseminate their creative output—including literary works, music, movies and TV programming, video games and software—to consumers.

IIPA's 2020 Special 301 submission depicts, by country, the deficiencies of the legal regimes and enforcement practices of our key trading partners, and recommends improvements. Dynamic market conditions and ever-changing technologies continue to create enormous opportunities, with huge potential to further expand economic growth and creative activity in key foreign markets. However, that potential will only be reached if these protection and enforcement shortcomings, and market access barriers, can be corrected. IIPA's recommendations include, where possible, emerging best practices to address these issues and provide successful strategies applicable both to developed and developing country markets.

I. IIPA’S 2020 SUBMISSION—RANKING RECOMMENDATIONS

IIPA recommends the following 19 countries be identified in USTR’s 2020 Special 301 Report:

IIPA 2020 Special 301 Recommendations	
Priority Watch List	Watch List
Argentina	Brazil
Chile	Canada
China	Colombia
India	Ecuador
Indonesia	Peru
Mexico	Switzerland
Russian Federation	Thailand
South Africa	United Arab Emirates
Taiwan	
Ukraine	
Vietnam	
11	8

In addition, short country reports containing one or two key issues on legal reforms, enforcement, or market access barriers—sometimes pertaining to only one or two IIPA members—are provided in an Annex to IIPA’s submission on the following seven countries: **Barbados; Costa Rica; Egypt; Guatemala; Jamaica; Turkey; and Venezuela**. These countries were all identified in USTR’s 2019 Special 301 Report and a more detailed analyses of legal and enforcement regimes in these countries can be found in previous IIPA country report filings on our website, www.iipa.org. In these countries, there was not enough new information, or no new major developments in 2019 to warrant a longer country report. IIPA makes the same recommendations on these seven countries as in our prior filings for USTR’s 2020 Special 301 placement, namely:

IIPA 2020 Special 301 Recommendations–Annex (Short) Country Reports	
Priority Watch List	Watch List
Costa Rica	Barbados
Venezuela	Egypt
	Guatemala
	Jamaica
	Turkey
2	5

Further, IIPA’s submission references the following 11 countries for which IIPA has filed reports in the past, but in 2020 note only that there have been no significant improvements to warrant an updated report:

IIPA 2020 Special 301 Recommendations—No New (2020) Country Reports	
Watch List	Last Year IIPA Filed Full Country Report
Bolivia	2006
Dominican Republic	2008
Greece	2014
Kuwait	2014 (and in 2017 Annex)
Lebanon	2013
Pakistan	2013
Romania	2014
Saudi Arabia	2014
Tajikistan	2014
Turkmenistan	2014
Uzbekistan	2014
11	

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

Argentina: Despite some positive developments, the Government of Argentina continued to demonstrate an overall lack of commitment in 2019 to effective copyright enforcement. The absence of a strategic enforcement policy and inter-agency cooperation, especially between prosecutors and law enforcement cybercrime experts, continues to allow pirate sites to thrive in Argentina and expand to other Spanish-language countries. Hard goods piracy, linked to organized crime groups, also remains rampant. Market access obstacles persist in Argentina, including film and television quotas, and high taxes on copyrighted content.

Chile: Chile needs to revamp its legal framework to enable effective copyright enforcement online and, in turn, to foster the development of a healthy digital marketplace. Chile’s copyright law contains major gaps, including: absence of clear and comprehensive secondary copyright liability standards; counterproductive court order prerequisite to online content removal; failure to protect against circumvention of technological protection measures (TPMs); a lack of deterrent remedies; and overly broad exceptions to copyright. These issues remain unresolved or even made worse by Chile’s last copyright law amendment in 2010 (Ley No. 20.425).

China: China holds enormous potential for the creative industries. China’s online marketplace continues to expand, and China now leads the world in cinemas with almost 70,000 movie screens at the end of 2019, most of which support 3D, and many of which offer enhanced formats such as IMAX and China Giant Screen. China is now the seventh largest music market, and the fourth largest music streaming market, in the world by revenue. Yet China’s market for legitimate content continues to be hampered by piracy, discriminatory and restrictive market access policies, and long-standing unfulfilled international obligations.

India: India plays an important role in the future growth of the U.S. creative industries, with its growing population of consumers and its status as the second largest market worldwide for Internet services and smartphones. The promise of growth, however, is threatened by piracy, market access barriers, overbroad interpretations of statutory licenses for broadcasting musical works and sound recordings, criminal enforcement difficulties and legal requirements that are out-of-step with technological developments.

Indonesia: As the fourth most populous country in the world, Indonesia is an important and growing market for the creative industries. For the motion picture and television industry, Indonesia ranks within the top 20 markets for box office revenues. Several years ago the government made improvements to its copyright law, enforcement system, and investment framework. But progress stalled in 2019 because the government took troubling steps backwards on market access, and there are no official plans for further needed reforms for copyright protection and enforcement. IIPA recommends that in 2020 the Government of Indonesia build on past progress and increase efforts to combat online piracy by updating aspects of its legal framework to add effective remedies, and to close existing gaps in protection. Indonesia should also reverse course and address the many market access barriers, investment barriers, and discriminatory treatment against U.S. copyright materials that make it more difficult to do business and compete in the country.

Mexico: The growth of the digital marketplace in Mexico has been severely hampered by an IPR legal framework that is decades behind international norms and cannot properly address online infringement by sites and services. Criminal enforcement activity has been uncoordinated and generally weak, slowed by procedural and structural deficiencies, as well as by a lack of adequate resources. Although it ratified the WIPO Internet Treaties (the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)) in 2002, Mexico has yet to fully implement these treaties. The obligations in the U.S.–Mexico–Canada Agreement (USMCA) will also require Mexico to make significant improvements in its current IPR regime, including protections against the circumvention of TPMs and for rights management information (RMI)—two key components of the WIPO Internet Treaties that gave rise to new content delivery models such as streaming and on-demand services. These and other legal reforms to modernize the Mexican legal regime for the digital marketplace are long overdue.

Russia: Russia, in recent years, has made significant reforms to its civil procedures and streamlined its processes, to require websites with infringing content to comply with rights holders' takedown notices. These reforms have allowed the Russian courts (in particular, the Moscow City Court), working with RosKomNadzor (the Federal Service on Communications and Mass Media) to disable access to infringing sites. Additionally, the court orders can extend—without reapplication to the court—to clone, proxy and mirror websites containing infringing content. Online search services are also required to exclude infringing websites (identified in the court orders) from search results. Overall, these reforms have blocked or slowed access to some major infringing sites and services. Unfortunately, American rights holders continue to report that these procedures are being directed only against the infringing activity of users within Russia, and are not being used against Russian sites and services catering to users outside the country. This has resulted in a substantial and persistent international copyright piracy problem, with users in major markets accessing infringing Russian sites and services. Two additional legal reforms are recommended: first, Russia should clarify its Civil Code on the legal liability of Internet Service Providers (ISPs), including that any safe harbors only apply to neutral and passive activities; and second, the takedown procedures should be expanded to cover mobile apps, now the most popular means of infringement.

South Africa: South Africa's current copyright protection and enforcement framework is not up to the challenges of the digital age. New technologies are providing South Africa's consumers with increasing access to legitimate creative content and exciting opportunities for the growth of the copyright industries and all creators. Unfortunately South Africa's inadequate response to growing piracy enabled by these same technologies threatens to undermine this progress. An important emerging market and a dominant economy in sub-Saharan Africa, South Africa is uniquely positioned to demonstrate how a modern copyright regime can contribute to the growth of creative industries in an era of rapid digital and mobile expansion throughout the country and the region. It is now more important than ever to maintain and expand proper incentives for investment in the creation of original material—motion pictures, music, video games, books and journals in all formats—by ensuring that rights holders enjoy, in law and practice, exclusive rights that enable them to securely disseminate their content and develop new legitimate services. IIPA is encouraged that South Africa's government has stated its commitment to protecting intellectual property and its desire

to bring its laws into compliance with international treaties and commitments. IIPA is seriously concerned, however, about two bills that are sitting on the President's desk, which are not only inconsistent with the WIPO Internet Treaties, but, if enacted, would also violate South Africa's obligations under the TRIPS Agreement, potentially violate South Africa's Constitution, and move South Africa even further away from international norms.

Taiwan: The creative industries make considerable contributions to Taiwan's economy, but online piracy and other barriers continue to limit access to Taiwan's market for the U.S. creative industries. Once a regional leader in establishing policies that fostered and rewarded creativity, Taiwan has done little in recent years to address its online piracy problems. Instead, Taiwan's government has mostly shrugged off the issue as industry's problem, too controversial, or the problem of other jurisdictions. Yet data suggests that the public in Taiwan would support more effective protection of creative content online, which would also further the Taiwanese Government's stated interest in negotiating a bilateral trade agreement with the U.S. Taiwan's government needs to update its legal framework to combat its evolving and mounting piracy problems, and should remove other barriers to its market.

Ukraine: There are two long-standing problems thwarting the growth of the copyright industries in the Ukraine marketplace. The first is very weak criminal enforcement—the result of an antiquated legal regime that cannot properly address online piracy, a lack of resources, and the absence of coordinated and effective campaigns against large-scale illegal operations. The second concerns collective management of music rights. Positive steps were taken in 2019 to address collective management through the accreditation of music industry and artist supported collective management organizations (CMOs). The Government of Ukraine should be encouraged to continue on its path to normalize the CMO landscape, including taking actions against rogue collecting societies. Additionally, a major revision of the Copyright Law is underway, but the latest draft of the law has not yet been made public. There is much within the Ukrainian copyright system that needs modernization, so a major copyright revision is welcomed if it will lead to significant improvements to allow the film, book, video game and music markets to develop online as they have in neighboring countries. Amendments to the Customs Code were enacted in October 2019 with provisions aimed at improving copyright and trademark protections at the border.

Vietnam: The market for creative works in Vietnam remains severely stunted due to worsening piracy and debilitating market access barriers. Vietnam is an important emerging market in Southeast Asia for the creative industries, which are eager to invest in its booming economy. However, Vietnam hosts many of the world's most popular illegal websites, and other problems are growing, including Piracy Devices (PDs) and apps to access unauthorized audiovisual content. The Government of Vietnam has done very little to address these growing problems.

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

U.S. copyright industries face complex challenges in overseas markets. These challenges are distinct, but overlap:

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

Enforcement: Inadequate enforcement of existing copyright laws. As a minimum standard, the WTO TRIPS Agreement requires “effective action” and “remedies that constitute a deterrent” to infringement through civil,

administrative, and criminal channels, and effective adjudication in the courts.¹ To be effective, enforcement tools must address modern infringement challenges, such as pirate operations based online and/or outside the jurisdiction which are frequently run anonymously, and often across a number of jurisdictions. Moreover, enforcement authorities need the resources and capacity to do their jobs effectively.

Market Access: Barriers, investment restrictions, or discriminatory measures that make it difficult for U.S. producers and distributors to participate fully in foreign markets. These barriers also include interference with rights holders' contractual freedom and with their licensing practices.

Below is a summary of the major challenges across the global markets:

A. LEGAL REFORMS

- ***WIPO Internet Treaties***

The WIPO Internet Treaties—adopted in 1996—set the global minimum standards for providing copyright holders with the full panoply of exclusive rights in the digital networked environment. The treaties also include an overarching commitment for countries to enable effective exercise of these rights in practice, and include deterrent levels of enforcement of these rights online as well as offline. The WIPO Internet Treaties were the culmination of a global consensus on the need to provide legal protection to TPMs that copyright owners (or their licensees) use to control access to and the copying of their works and recordings. These controls, particularly access controls, are key enabling technologies for a full range of online digital services, such as subscription streaming services, that deliver creative works to consumers in a time and place convenient to them, and in a manner that protects the affirmative rights of creators and producers.

There are still several large trading partner countries that have not acceded to the treaties, including: **Brazil, Thailand, Pakistan, Israel, Norway, Saudi Arabia, Vietnam, South Africa and Egypt**, as well as smaller markets, such as **Bolivia, Kuwait, Kenya, Lebanon, Tanzania, Uganda** and others. **Saudi Arabia** is currently undertaking a major copyright law revision as part of possible future treaty accession (and acceded to the Marrakesh VIP Treaty on February 21, 2019); reports are that the draft law is a positive step forward, but it should be monitored for proper Internet Treaty compliance. **Brazil** has begun a public process updating its 1998 Copyright Law, which could also signal accession to the WIPO Internet Treaties in the near future. Many countries have joined the treaties, but have not yet fully implemented the treaties' obligations into their national laws, including: **Algeria** (2014), **Ecuador** (2002), **India** (2018), **Mexico** (2002), **Nigeria** (2018), and the **UAE** (2004). The U.S. Government should make it a priority in 2020 to encourage all U.S. trading partners to both accede to and fully implement the WIPO Internet Treaties.

- ***Copyright Principles and Norms Under Threat***

IIPA urges the U.S. Government to continue to press for reform and modernization of national copyright laws that have failed to keep pace with market and technological trends. Unfortunately, in recent years, some countries have used these copyright reform initiatives to weaken, not strengthen protection. In a few cases, including in South Africa, Canada, and Ecuador, reform efforts have become a vehicle for proposals that threaten well-established global norms

¹See WTO TRIPS Articles 41 and 61. There are many obligations for civil, administrative and criminal remedies in Articles 41 through 61, including for provisional relief and judicial procedures (e.g., injunctive relief), which are particularly critical for online enforcement.

enshrined in long-standing international instruments, which for example, confine exceptions and limitations to the limits of the “three-step test.”²

- **Copyright Duration**

Many U.S. trading partners have extended the duration of copyright in line with evolving global trends. Setting the term of copyright protection at life of the author plus 70 years (or at least 70 years from fixation or first distribution for works or recordings not measured by the life of the author, e.g., sound recordings) has become a *de facto* global norm. More than 80 countries, including almost all of our major trading partners in Europe and in the Americas, and all but a handful of Organization for Economic Cooperation and Development (OECD) countries already meet or exceed this norm for some or all categories of creative works (and all except New Zealand do so for sound recordings). The U.S.’ trading partners in the Trans Pacific Partnership (TPP) negotiations agreed to bring their laws up to this standard for all copyright materials. Although the U.S. withdrew from the TPP, the hope is that in particular, New Zealand, Vietnam and Malaysia will take this step on its merits. Japan completed the process of extending terms of protection for all works and sound recordings. Canada has committed to extending its term for all works and sound recordings as part of the obligations in the U.S.–Mexico–Canada Agreement (USMCA). This will generate extra licensing and sales revenues for U.S. rights holders for works and recordings that would otherwise be in the public domain. China is a major market that still provides life plus 50 years for works and 50 years from fixation terms for sound recordings. As part of its revision in 2019 (but still not in force), Switzerland enacted term extensions for neighboring rights, including sound recordings to 70 years from publication or fixation (if unpublished), and a 20 year extended term for computer programs. Uruguay also adopted a 70 years from publication term for sound recordings. It is hoped that other countries, particularly in Asia and Africa, will follow these recent examples (many in Latin America) of extending term for sound recordings

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

Direct licensing of copyright works and sound recordings by individual rights holders of their exclusive rights should always remain the baseline. However, in certain circumstances where it makes economic sense and where international treaties permit, rights holders may prefer to exercise some of their rights on a collective basis, e.g., through CMOs. Public performance and broadcasting rights are a good example because there are often a large number of users (potential licensees) involved, for example, from cafes and restaurants, to hundreds of radio stations; and the value of individual transactions may be relatively small compared to the transactional costs. Public performance income has become an increasingly important source of revenue for music rights holders, more so than broadcast income worldwide. This represents an important source of monies for the financing of the production and dissemination of new works. This importance has heightened the need for efficient, transparent, and accountable collective management services. It is therefore essential that rights holders can, on a voluntary basis, set up and govern their own CMOs. Governmental roles should be limited to establishing regulatory frameworks that enable efficient, fair and non-discriminatory operations of CMOs backed by rights holders, and, where appropriate, providing expert fora for the resolution of disputes on certain aspects of collective management, including by ensuring that rights are properly valued.

²Article 13 of the WTO TRIPS Agreement obligates WTO members to “confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder.” See also Berne Convention Article 9(2) (same, as to reproduction right); WIPO Copyright Treaty (WCT) Article 10 (same, as to all Berne exclusive rights and all exclusive rights granted under the WCT itself); WIPO Performances and Phonograms Treaty (WPPT) Article 16(2) (same, as to all rights provided for under WPPT).

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

For decades, there has been bipartisan agreement in the U.S. Government and in Congress that strengthening copyright laws and enforcement worldwide is vital to the economic interests of the country. One effective strategy to elevate the levels of protection and enforcement has been the negotiation and implementation of numerous bilateral, regional, and multilateral trade agreements.

The short list of these agreements includes: (a) the WTO TRIPS Agreement, to which 164 countries have now acceded (and over 20 additional countries are in the process of acceding); and (b) Free Trade Agreements (FTAs) or Trade Promotion Agreements (TPAs) with 20 countries, the most recent entering into force in 2012, with **South Korea**, **Colombia** and **Panama**. Each of these agreements is designed to open foreign markets to U.S. goods and services dependent on copyright protection, chiefly (though by no means exclusively) by mandating improved and modernized copyright laws, and, in most cases, higher standards for on-the-ground enforcement of these laws. These agreements have been in operation during a period of rapid market transformation in many countries, but the goals of better copyright protection and more efficient enforcement, especially online, remain valid and should spur U.S. trading partners to act.

In 2020, the USMCA will enter into force after ratification in the U.S., **Mexico** and **Canada**. Although **Mexico** and **Canada** have enjoyed free trade status with the U.S. for more than 20 years under the North American Free Trade Agreement (NAFTA), that agreement did not address e-copyright or the enforcement challenges of the digital era. The USMCA is a step in the right direction for the copyright industries, although its overall impact on the copyright industries will depend on how it is implemented and whether global best practices are properly adopted in the process.

In January 2020, the U.S. Government completed a Phase One Agreement with **China**, which includes some enforcement obligations pertaining to copyright protection (including obligations for **China** to develop a more effective notice and takedown system). The two governments plan to commence negotiations later in the year on a possible Phase Two Agreement which should address the many legal regime and enforcement shortcomings in **China** detailed in the Country Report. In addition, in 2020, the Administration intends to commence trade agreement negotiations with the **United Kingdom**, **Japan** and the **European Union**. There are specific concerns and hoped-for expectations for each of these agreements that the copyright industries have addressed in separate written submissions to the U.S. Government.³

The U.S. Government has entered into a wide range of other bilateral agreements, including binding trade agreements, in which our trading partners have committed to taking steps to modernize and strengthen their copyright laws and/or enforcement regimes.⁴

This year, it is critical that the U.S. Government ensure that our trading partners improve their laws and practices regarding copyright protection and enforcement, consistent with the obligations they have already taken on in bilateral, regional, and multilateral copyright agreements to which the United States is also a party. It is also the case that some of the provisions in a few of these agreements have become outmoded. Some of the provisions meant to address digital technologies were negotiated more than a quarter century ago, before the dawn of the digital age and interactive uses that have so dramatically changed the landscape of the marketplace for goods and services protected by copyright. In such instances, the U.S. Government should seek high standard remedies that support today's

³See https://iipa.org/files/uploads/2019/01/2019_Jan15_IIPA_Comments_US_UK_Trade_Agreement_Negotiating_Objectives.pdf; https://iipa.org/files/uploads/2019/01/2018_Nov26_IIPA_Comments_US_Japan_Trade_Agreement_Negotiating_Objectives.pdf and https://iipa.org/files/uploads/2019/01/2018_Dec10_IIPA_Comments_US_EU_Trade_Agreement_Negotiating_Objectives.pdf.

⁴See, for example, the intellectual property rights agreements compiled by the Commerce Department's Trade Compliance Center, available at: http://tcc.export.gov/Trade_Agreements/Intellectual_Property_Rights/index.asp.

business models of the creative industries, including remedies that effectively respond to current challenges and reflect international best practices—to ensure the proper delivery of digital works and services.

B. ENFORCEMENT TRENDS AND CHALLENGES

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

- ***Online and Mobile Network Piracy***

Online and mobile network use is now the dominant authorized delivery system for copyrighted works, including music, films and television programs, journal publications, and video games. It is also the most prevalent form of unauthorized and unlicensed use, threatening the viability of licensed platforms and eroding the capacity of creative artists, authors and producers to earn a living, as well as to invest in creating new materials. The entrenchment of infringing services (including those misconstruing laws to avoid licenses) is a leading barrier to U.S. creators and rights holders in markets worldwide.

IIPA continues to recommend four steps to address the problem of Internet and mobile network piracy: (1) identifying and closing down markets and actors engaged in these activities, especially criminal syndicates through the use of criminal enforcement remedies; (2) creating legal frameworks that (i) prevent the operation of services that promote or otherwise induce infringement; (ii) criminalize online infringement; and (iii) provide strong incentives for neutral network service providers to work with rights holders to curb the use of their proprietary networks and services for infringing purposes; (3) providing and applying injunctive relief and administrative measures, especially to address notorious online marketplaces hosted in one country that target consumers in another; and (4) engaging in inter-industry cooperation, wherever possible.

- ***Piracy Devices***

Piracy Devices (PDs) and apps (also referred to as “illicit streaming devices” (ISDs)) allow users to stream, download, or otherwise access unauthorized content from the Internet and are a major problem for the motion picture and television industry. This issue was the focus of USTR’s 2017 Notorious Markets Report.⁵ PDs and apps provide illegal access to movie and television content through a variety of means, including downloading and streaming content as well as unauthorized streaming of live television and sporting events, thus undermining the licensing fees paid by distributors on which content creators depend. Motion Picture Association (MPA) members continue to suffer enormously from a growing threat of these PDs. It is estimated (Sandvine Study, December 2018) that approximately 5.5% of North American households access pirated live television services, especially via Internet protocol television (IPTV) uses (e.g., Kodi boxes), and this figure does not include web-browser video piracy. Vigorous action is needed to lessen the growing harm to the legitimate digital delivery of copyrighted materials by these devices.

⁵In its 2017 Notorious Markets Report, USTR spotlighted the growing problem of Piracy Devices (i.e., PDs), concluding that they “pose a direct threat to content creators, sports leagues, and live performance, as well as legitimate streaming, on-demand, and over-the-top (OTT) media service providers.” USTR 2017 NM Report at 8-9.

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

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

While legal protection of TPMs, where properly implemented, enables effective enforcement actions against distributors of unlawful circumvention technologies, these efforts are often undermined by countries that have yet to implement any or adequate protections. **China** is the locus for the manufacturing of a host of circumvention devices. There are many countries identified in Appendix A of IIPA's submission, with weak or non-existent TPM protections, including **Mexico**, now committed by the USMCA to properly address this problem; as well as **Israel**, a developed country that has failed to adopt any protection whatsoever in this field; and **New Zealand**, which adopted weak TPM provisions.

- ***Illegal Camcording of Theatrical Motion Pictures and Pay-TV Piracy and Signal Theft***

A priority for the motion picture industry involves stopping the illegal recordings of movies in theaters. Approximately 90% of newly released movies that are pirated can be traced to use of a digital recording device in a movie theater to record the audiovisual work (whether the image or sound or both) from the theater screen and/or sound system. A multifaceted approach is needed to tackle this problem, including enacting and enforcing anti-camcording legislation to outlaw the use or attempted use of an audiovisual recording device in a theater to make or transmit a copy of all or part of a motion picture; educating the public about how unauthorized camcording hurts both businesses and the consumer; and working with the private sector to identify and prevent unauthorized camcording in cinemas. This strategy has been implemented in many foreign markets (including **Canada**, **Japan** and **Korea**) with good results. The USMCA requires **Mexico**, which has been a major source of camcorded movies uploaded to the Internet, to add proper criminal remedies into its national law. The Country Reports in IIPA's 2020 Special 301 submission highlight many other markets where an effective strategy against camcording has not yet been implemented, and where new criminal laws are clearly needed. Enactment of criminal sanctions is not by itself enough; effective enforcement of these laws remains critical to addressing the problem.

The unauthorized broadcast, cablecast or satellite delivery of motion pictures, television content, and music and sound recordings, including the unauthorized retransmission of broadcast signals over the Internet, has been another long-standing problem for the motion picture and recorded sound industries. Related problems include operators who take cable and satellite signals by unauthorized means (hacked set top boxes; decoding or decrypting signals; or, stealing "overspill" signals from neighboring countries) and sell them to consumers without paying for any of the content. The latter remains a problem in several countries in the **Caribbean** and **Central and South America**, as well as in **India**. In most of these cases, the signals are encrypted, and infringers circumvent to access the content so enforcement actions (and regulations) need to focus on: (i) prohibiting the trafficking in pay-TV or signal theft devices or technologies; (ii) the unlawful decryption of encrypted cable or satellite signals; and (iii) the forwarding of decrypted signals (whether lawfully or not) without the authorization of the rights holders of the content or of the signal. These actions can help foster the licensing of broadcasters and cablecasters, and weed out unlicensed television distributors.

A related problem to cable and signal theft are the illegal IPTV services that provide stolen telecommunication signals and channels via dedicated web portals, third-party applications, or PDs configured to access services. There are now over 1,000 illegal IPTV services worldwide, offering hundreds of channels sourced from multiple providers, along with VOD content of unauthorized movies and television programs. Many of these illegal services are subscription-based for-profit services, with monthly or yearly user packages. The technical infrastructure of these services is often vast and complex, making the identification of content sources and service operators extremely challenging. The marketing and sale of these services is often carried out by a network of global IPTV re-sellers who purchase subscriptions at wholesale prices and re-sell them for a profit, further complicating investigations. These services rely on infrastructure and support services including from hosting providers, media servers, and panel hosts, sometimes without the knowledge or approval of the legal services or product (but sometimes in cooperation with these services).

C. MARKET ACCESS BARRIERS

In addition to the key challenges pertaining to copyright protection and enforcement, which constitute *de facto* market access barriers, the U.S. copyright industries also suffer from a variety of formal market access barriers in crucial foreign markets. The issues of copyright protection of authorized materials, and enforcement against infringing goods, are moot if legitimate American works and recordings cannot be disseminated in a particular market in a fair and equitable manner to meet consumer demand.

One recent trend has seen governments seeking to regulate the online marketplace in the same manner as the traditional television market, threatening the vitality of fast-growing and dynamic business segments such as VOD and other OTT television and film services. Today there are more than 480 legitimate online audiovisual services, responding to all manners of consumer viewing preferences and offering diverse options and price points.

These formal market access barriers are discussed in detail, in markets where they occur, in the Country Reports in Appendix A of IIPA's 2020 Special 301 submission. Whatever form they take, all market access restrictions that impede the entry of legitimate products increase the appeal of unauthorized production and distribution operations. Often these illegal operations cement strong loyalties with consumers, making them even harder to dislodge. U.S. officials should continue to strive to open markets for American creators and producers, and to eliminate or phase out market access barriers, as identified in this year's IIPA submission. In the recently concluded USMCA, Canada secured a "cultural carveout." This means that American cultural industries potentially will not benefit in Canada from the market opening opportunities of the USMCA. This carveout is inconsistent with the principles of free and fair trade, since cultural promotion and open markets are compatible and complementary. IIPA members are committed to the promotion and protection of cultural diversity and believe that governments can, in lieu, effectively rely on the flexibilities built into FTAs, including permissible support programs, to promote their cultural interests.

III. CONCLUSION

IIPA has filed comments on behalf of a coalition of U.S. rights holders every year since the 1988 Trade Act established the Special 301 review proceeding, and has been a witness to the many positive results yielded by the process over those years. It is hoped that further market expansion and progress will result from this year's review proceeding. As detailed in the 2018 Siwek Report, the U.S. economy depends on a thriving copyright sector to create revenue, jobs, and exports. Likewise, the health and competitiveness of the economies of our trading partners also depends on promoting and respecting intellectual property rights and opening markets to products and services that depend on copyright. Open markets foster jobs in the creative industries, increase cultural diversity, promote international trade and exports, increase tax revenues from legitimate businesses, and attract more foreign direct investment. It is essential to the continued growth and future competitiveness of the U.S. creative industries that our



trading partners provide high standards of protection for copyright; more effective policies and tools to enforce that protection; and more free and open markets. IIPA continues to urge USTR and the Administration to use the Special 301 review and other trade tools to encourage the countries and territories identified in our submission to make the necessary political commitments and actions to bring real commercial gains for the U.S. creative industries, by strengthening copyright protection and enforcement regimes worldwide.

We look forward to continuing to work together with USTR and all U.S. agencies engaged in copyright legal reforms and enforcement to meet the goals identified in our submission.