



COMMENTS of  
INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

Submitted March 24, 2010

The International Intellectual Property Alliance (IIPA) submits the following response to the request for written submissions issued on February 23, 2010 by the office of the Intellectual Property Enforcement Coordinator (IPEC). See 75 Fed. Reg. 8137 (Feb. 23, 2010). We are pleased to have this opportunity to contribute to the development of a Joint Strategic Plan for intellectual property enforcement, as called for in the Prioritizing Resources and Organization for Intellectual Property (PRO-IP) Act of 2008, P.L. 110-403.

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 associations in turn represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world — business software (operating systems, Internet enabling software, browsers, search engines, office productivity software, database management software, green technology enabling software, security software and mobile technologies); entertainment software (interactive games for video game consoles, handheld devices, personal computers, and the Internet); theatrical films, television programs, home videos and digital representations of audiovisual works; musical compositions, recorded music, CDs, and audiocassettes; and textbooks, trade books, reference and professional publications and journals, in both print and electronic media.

IIPA's work has consistently focused on copyright law and enforcement issues in markets outside the United States, along with associated trade policy issues. That focus is reflected in these comments. We note that several individual association members of the IIPA are submitting separate comments in these proceedings, which will encompass domestic as well as international concerns. IIPA comments present the common and collective concerns of the copyright industries, particularly with regard to the impact of copyright infringement on a commercial scale that originates outside our borders. We also address issues relating to the protection of technological measures used by copyright owners to control access to and prevent infringement of their works. We follow the organizational format of the request for written submissions.

## **Part I: Costs to the U.S. Economy**

Over the years, government and private sector reports have demonstrated how piracy undermines the revenues and profitability of the entire copyright sector, and inflicts substantial harm on the U.S. economy as a whole.<sup>1</sup> As these reports have consistently noted, piracy is a clandestine activity, so exact data on costs of piracy to the U.S. economy of piracy is difficult to produce. Instead, methodologies aim at achieving approximations or reasonable conservative estimates. A number of recent studies attempt to quantify this harm, both for individual copyright industry sectors, and, in one case, across four leading sectors. These include three studies authored by Stephen E. Siwek and issued by the Institute for Policy Innovation,<sup>2</sup> as well as the piracy reduction impact study released in early 2008 by IIPA member Business Software Alliance (BSA).<sup>3</sup> All these studies measure not only the direct impact of piracy on the particular industry sector or sectors involved, but also the “ripple effects” on jobs, tax receipts, and overall economic activity, by estimating the increases in these categories that would be expected in the absence of piracy (the Siwek studies), or if the currently observed piracy levels were reduced by 10 percentage points (the BSA study). Overall, it is evident that our economy is foregoing tens of thousands of jobs, billions of dollars in tax revenue for governments at all levels, and tens of billions of dollars in overall economic activity, because of the prevailing levels of copyright piracy.

IIPA has also consistently provided estimates of trade losses due to piracy in specific countries, as well as estimated piracy rates in many countries, particularly those that appear on the Special 301 lists. These estimates can be found in IIPA’s annual Special 301 submission on the IIPA website at [www.iipa.com](http://www.iipa.com). When piracy was primarily of hard goods, such as in 1980’s and 1990’s, the methodologies used to generate these estimates were reasonably straight-forward. The losses reflected during this period, for the 40 to 50 selected countries surveyed,

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<sup>1</sup> The first modern-day accounting of losses due to copyright piracy were carried out by the U.S. government in 1984, in International Trade Commission, *The Effects of Foreign Product Counterfeiting on U.S. Industry, Final Report on Investigation No. 332-158 under Section 332(b) of the Tariff Act 1930*, January 1984; and U.S. Copyright Office, *Size of the Copyright Industries in the United States, a Report of the U.S. Copyright Office to the Subcommittee on Patents, Copyrights and Trademarks of the Committee on the Judiciary*, United States Senate, December 1984 (as reported in International Intellectual Property Alliance, *Piracy of U.S. Copyrighted Works in Ten Selected Countries, a Report by the International Intellectual Property Alliance to the United States Trade Representative*, August 1985 (on file with IIPA)).

<sup>2</sup> See Stephen E. Siwek, *The True Cost of Motion Picture Piracy to the U.S. Economy* (2006), available at <http://www.ipi.org/>; Stephen E. Siwek, *The True Cost of Sound Recording Piracy to the U.S. Economy* (2007), available at <http://www.ipi.org/>; Stephen E. Siwek, *The True Cost of Copyright Industry Piracy to the U.S. Economy* (2007), available at <http://www.ipi.org/>. All three of the studies discussed in the text relied on the RIMS II mathematical model maintained by the Bureau of Economic Analysis of the U.S. Department of Commerce.

<sup>3</sup> See International Data Corp., *The Economic Benefits of Reducing PC Software Piracy* (2008), available at [http://www.bsa.org/idcstudy.aspx?sc\\_lang=en](http://www.bsa.org/idcstudy.aspx?sc_lang=en).

were conservatively estimated in some years to be over \$20 billion. Of course, if all countries outside the U.S. had been included in these estimates, the loss numbers would be considerably greater.

The only comprehensive estimates available for losses to U.S. companies from piracy outside the U.S. have been those of the BSA. Its most recent estimate – for 2009 – for lost revenue to U.S. software publishers from piracy of packaged PC software outside the U.S. was \$24.017 billion.<sup>4</sup> These losses are due primarily to end-user piracy of software in enterprises, but also include losses due to hard goods and online piracy.

It should be borne in mind that methodologies to estimate the losses to the U.S. economy deriving from infringements occurring over the Internet or through mobile networks are not yet fully developed, so across-the-board estimates have not been produced. We do, however, believe those losses far exceed those that have been measured for piracy of hard goods for the motion picture and music industries. Hard goods piracy has never been the major element of business software piracy losses. As noted, internal corporate piracy has been and remains the major source of business software piracy.

Any discussion of the costs of copyright piracy to the U.S. economy should also take into account the major role that industries dependent on copyright protection play in the U.S. economy. IIPA has been deeply engaged in this topic for two decades, during which we have commissioned a dozen studies on the economic contributions of the copyright industries. The most recent edition, Copyright Industries in the U.S. Economy: The 2003-2007 Report, was issued in July 2009 and is available on our website at <http://www.iipa.com/pdf/IIPASiwerekReport2003-07.pdf>. Like previous reports, it includes a discussion of the methodology, assumptions, and data sources employed in its preparation. Its author, Stephen E. Siwek, was instrumental in the development of the 2003 Guide on Surveying the Economic Contributions of the Copyright-Based Industries issued by the World Intellectual Property Organization (WIPO), the specialized United Nations agency in the field, and IIPA's latest study is the third that follows the WIPO recommendations and standards. A two-page fact sheet summarizing the study's conclusions is attached to these comments as Attachment A and is posted at <http://www.iipa.com/pdf/IIPA2009Report2PageSummary.pdf>. This study, along with those previously issued, clearly demonstrate how essential the copyright industries are to U.S. economic recovery and growth, to its workforce, and to its international competitiveness.

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<sup>4</sup> BSA figures for 2009 are preliminary. They represent the U.S. software publishers' share of software piracy losses in countries outside the U.S., as estimated based on the methodology compiled in the Sixth Annual BSA and IDC Global Software Piracy Study (May 2009), available at <http://global.bsa.org/globalpiracy2008/studies/globalpiracy2008.pdf>, pp. 17-20. Appendix A to IIPA's Special 301 submission (February 2010) provides the figure of \$14.27 billion for U.S. software industry losses attributable to the 39 territories and countries listed there. <http://www.iipa.com/rbc/2010/2010SPEC301LOSSLEVEL.pdf>. The methodology for their calculation is spelled out in Appendix B to the Special 301 submission, <http://www.iipa.com/rbc/2010/2010SPEC301METHODOLOGY.pdf>.

## **Part II: Recommendations for Joint Strategic Plan**

We begin with a few general recommendations for the Joint Strategic Plan:

- First, numerous agencies, including most of those listed in the PRO-IP Act as participating in the international intellectual property enforcement advisory committee (PRO-IP, section 301(b)(3)), play critical roles in the US government effort to promote better copyright enforcement overseas. All these activities need adequate funding, and all those engaged in carrying out these efforts require strong political support from their parent agencies.
- Second, the Special 301 interagency process remains a key element of this effort, and its importance has repeatedly been highlighted by the U.S. Congress and is again underscored in the PRO-IP Act. The effectiveness of this process could be improved by developing concrete action plans for all countries and territories named to the Priority Watch List each year. This would build on recent trends in the Special 301 process, and would provide affected countries and the U.S. government with clear benchmarks for gauging progress – or lack thereof – over the ensuing year.
- Third, the PRO-IP Act correctly targets the coordination of training and capacity building activities carried out by various U.S. government agencies as a critical need. The Administration, with the coordinating leadership of the IPEC, should facilitate participation by as many agencies as possible, in order to avoid duplication or working at cross-purposes, and to ensure that these valuable training and assistance resources are targeted as intelligently and expended as efficiently as possible.
- Fourth, in order to improve the effectiveness of U.S. border controls and thus to reduce the deleterious impact of overseas-based piracy on the U.S. economy, the Administration should provide strong support to provisions of pending legislation (S. 1631) that would enhance the enforcement capabilities of U.S. customs officials against piratical imports, including the import of devices aimed at circumventing technological measures used by U.S. copyright owners to control access to their works.

The remainder of this section of IIPA's comments is devoted to a listing of some of the key features of effective copyright enforcement regimes that other countries and territories should be encouraged to adopt. Most of these features build on, and clarify, the TRIPS Agreement's enforcement text. In order to keep pace with changing circumstances and technologies, many are included in the FTAs that the U.S. has negotiated with several countries since TRIPS came into force. As noted above, many agencies play complementary roles in advancing U.S. policy in this sphere. The following list may be of use in a number of these roles, including but not limited to:

- enforcement of existing agreements (both bilateral, such as FTAs, and multilateral, such as the WTO TRIPS Agreement), and full implementation of the WIPO Internet Treaties;

- the negotiation of new international agreements with our trading partners (including, but not limited to, the Anti-Counterfeiting Trade Agreement (ACTA) and the Trans-Pacific Partnership Free Trade Agreement (TPP-FTA));
- the exercise of trade tools that give incentives for strong governmental copyright enforcement (such as the conditions for qualifying for the Generalized System of Preferences, or regional trade preference programs);
- bilateral or plurilateral engagement with specific trading partners, both within and outside the Special 301 process.

We caution however, that the following list is intended to be neither exhaustive nor prescriptive in all circumstances. While all our trading partners should be encouraged to meet high standards of copyright enforcement, *one size does not fit all*, and the variations in legal systems and traditions, attitudes toward intellectual property enforcement, resource constraints, and prior history with regard to enforcement activities must all be taken into account.

#### **A. Criminal enforcement standards**

1. Ex officio enforcement: law enforcement officials should be empowered to investigate and prosecute criminal violations of the copyright laws, without the necessity for a formal complaint from an injured right holder.<sup>5</sup>

2. The scope of criminal liability should embrace all willful acts of infringement on a commercial scale, as required by Article 61 of TRIPS, without requiring proof that the infringer had a commercial motivation or directly profited. For instance, making valuable works available online risks stimulating a high volume of infringing activity and should be criminally punishable regardless of commercial motivation, or actual profit to the infringer, provided that the infringing acts are likely to cause significant economic harm. Online piracy also hinders the establishment of legitimate online services and encourages a culture of “free access to content” with which legitimate distributors cannot compete

3. Criminal penalties must be sufficient to provide effective deterrence, and to remove any monetary incentive to infringe. The deterrent effect must be gauged based on the penalties actually imposed, not simply on those which may be authorized in the law.

4. Criminal liability should extend to ancillary offenses, such as those involving trafficking in tools or services aimed at circumventing technological measures used by right holders to control access or prevent infringement. While such offenses may not directly involve infringement, they represent a powerful multiplying factor for infringement, since circumvention facilitates the use of infringing products. Criminal penalties should also be provided for the

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<sup>5</sup> The provision of *ex officio* authority should not be understood as requiring countries to modify existing separate enforcement practices based on the filing of complaints and the efficient resolution thereof.

manufacture or distribution of counterfeit authentication tools, documentation and packaging, and for unauthorized camcording in a cinema, a major source of digital master copies of first-run films for the pirate marketplace.

## **B. Investigative procedures**

1. Laws and policies should encourage and should remove impediments to information sharing and cooperation between law enforcement officials and right holders, and should also encourage the former to make use of the technical expertise and market knowledge of the latter.

2. Law enforcement should be able to move *ex parte* to obtain search warrants and similar processes in appropriate cases, without notice to the alleged infringer

3. Police should be authorized to seize items within described categories, rather than being limited to specific named titles.

4. The use of reliable informants is critical to detecting and prosecuting many cases of criminal copyright infringement, especially in the business end-user environment, so adequate provisions should be made for shielding the anonymity of such witnesses and protecting them against reprisals.

5. Law enforcement should be encouraged, through appropriate incentives, to pursue investigations upstream in the distribution channel, to identify suppliers and manufacturers.

## **C. Evidentiary standards**

1. Legal presumptions regarding the subsistence and ownership of copyright should be recognized in order to forestall frivolous challenges that delay and needlessly complicate both criminal and civil enforcement against infringement.

2. Reasonable factual presumptions should also be recognized, such as by allowing the demonstrated infringing character of a sample of products seized to stand as evidence that all are infringing.

3. Courts should have the authority to order defendants to provide information that will provide evidence of, for example, their supply chain, so that more culpable individuals or entities may be identified and pursued.

## **D. Available remedies**

1. Civil damages should not be restricted to the infringer's profits, nor calculated based on prices in the pirate marketplace, but must fully compensate the right holder and provide adequate deterrence to acts of infringement.

2. Pre-set statutory damages or other effective means of enhancing damages should be available, and set at fully compensatory and deterrent levels. Because actual damages are

often difficult to prove, particularly in the online environment, such pre-established damages, available at the election of the rights holder, have proven to be a very effective deterrent to infringement.

3. In civil actions, full recovery of costs and attorneys' fees should be available to prevailing plaintiffs.

4. Courts should have the power to issue and to enforce injunctions against infringers, including on an *ex parte* basis when necessary to preserve evidence or to prevent pirated goods from entering the stream of commerce. Injunctive authority should be available on a basis broad enough to effectively prevent or restrain threatened infringement.

5. Remedies in limine should include seizure of pirate goods, the implements used to produce them, assets attributable to piracy, and documentary evidence of infringing activity.

6. Final remedies should include forfeiture and destruction of pirate goods and the implements used to produce them, as well as confiscation of the proceeds of infringing activity.

7. Closure of manufacturing facilities or retail outlets should also be available as remedies for infringement in appropriate cases.

8. Publication of judgments and the disposition of cases can be a powerful educational tool and should be encouraged.

9. Emphasis should be placed on the securing and destruction of infringing goods seized in enforcement actions so that these products do not end up being re-introduced into the marketplace and distribution channels.

#### **E. Border measures**

1. Ex officio authority should be granted to customs officials to detain or seize imports that are suspected of being infringing copies or illicit circumvention devices.

2. Information sharing with right holders regarding border seizures (including information on points of origin and destination) should be the norm, as well as access by right holders to samples of seized product for inspection and analysis under appropriate safeguards.

3. Border measures should also extend to searches and seizure of exports and goods in transit, including those passing through free trade zones, in order to comprehensively deter international trade in pirate goods.

4. Destruction of goods seized by customs officials is crucial in preventing such seized pirated goods or equipment from being returned to the country of origin or re-shipped into the target country through another port.

## **F. Government policies on copyright, including software legalization**

The government is generally the largest single user of software in any country. Use of unlicensed software on government computers is especially harmful since, in addition to the direct harm it causes to software producers, it most likely violates the law and sets a poor example for corporate end users of software in other sectors of the economy. The U.S. should ensure that our trading partners publicize and actively implement bans on the use of unlicensed software in the IT systems of all levels of their government.

Similar principles should be enforced to ensure that government networks and computers are not used to infringe copyright, and to prevent public educational institutions from using infringing copies of textbooks or other educational materials.

## **G. Online infringement**

As U.S. government officials engage with their foreign government counterparts to combat widespread copyright infringement in the online environment, in order to establish legitimate distribution outlets and financial models for authorized online streaming and downloading, the primary goal can be simply stated: to provide strong incentives for Internet service providers to cooperate with right holders to deal effectively with online infringement. The forms that those incentives will take will no doubt vary across different markets, but the solutions will cluster around certain common themes, including:

- *Clear standards for secondary liability:* the laws of our trading partners should clearly define the circumstances under which Internet service providers should be responsible for copyright infringements that are directly committed by other parties;
- *Limitations on infringement remedies should be available for Internet service providers who follow sound practices* aimed at minimizing acts of infringements over their systems, of which they lack the requisite knowledge, and which they have not encouraged or induced;
- *Expedient notice and takedown procedures for removing or disabling access to infringing content* hosted on their systems, as well as assistance from Internet service providers to address transitory P2P infringements occurring through their networks. As we know from our respective members' experiences, new legal online services for delivery of copyrighted material can succeed only if they are not undermined by unfair competition from illegal sources.

Progress has been made in a number of countries to build bridges between rights holders and ISPs resulting in the adoption of more effective mechanisms for addressing the conduct of repeat or persistent infringers using p2p services or other means to distribute infringing materials. In some cases, legislation was adopted to promote such systems or to establish the legal incentives necessary to encourage such mechanisms.



The U.S. government should also advocate that governments make the necessary investments in building capacity to provide effective enforcement against criminal infringements carried out online, and we should stand ready to assist with training, expertise and other relevant resources as appropriate.

### **Part III. Responses to selected Supplemental Questions**

While some of the “supplemental questions” listed in the Federal Register notice have been addressed in Part II above, IIPA offers the following additional observations on a few of them, omitting those questions to which additional responses are not being provided.

2. *Identify specific existing enforcement actions, methods, procedures or policies employed by the U.S. Government or governments of other countries that have been particularly effective at curtailing or preventing infringement (including, if possible, specific examples illustrating the effectiveness of those methods).*

3. *Identify specific existing processes involving cooperation between stakeholders and the U.S. Government (or between stakeholders and other governments) that have been particularly effective at curtailing or preventing infringement.*

4. *Provide examples of existing successful agreements, in the U.S. or abroad, that have had a significant impact on intellectual property enforcement, including voluntary agreements among stakeholders or agreements between stakeholders and the relevant government.*

The following response is provided to items 2, 3 and 4, since many of the effective techniques that IIPA has observed in foreign markets have also involved cooperation between governments and right holders, and in some cases formal agreements. We also emphasize again that not every technique is equally applicable in all markets and legal systems.

- Criminal enforcement: IIPA members have observed over the past 25 years that the most important enforcement tool in reducing piracy levels in any country has been criminal prosecution of commercial pirates, accompanied by remedies and penalties, including jail terms in appropriate cases, which result in the deterrence of further infringements. There have been a number of success stories worth highlighting;
  - In the 1980’s Taiwan had the reputation of being the piracy and counterfeiting world leader. Over the years, through effective law reform, accompanied in particular by aggressive prosecution of commercial infringers and the imposition of jail terms in a large number of cases, Taiwan was able to reduce piracy of hard goods from the 90% range down to as low as 10% for video and audio piracy, and down more than 30 percentage points in the area of business software. These are among the lowest rates of piracy in the Asian region. Aggressive enforcement against Internet piracy, accompanied by deterrent penalties, has also been successful in stemming piracy in the hosted environment. Because of Taiwan’s tough action against piracy, it was removed from the Special 301 Watch List in 2009.

- South Korea also has been successful in substantially reducing the rates of hard goods piracy by aggressive prosecutions of infringers and the imposition of real deterrent penalties. As in Taiwan, the imposition of significant jail terms for major pirates for whom monetary fines would not be a deterrent was a major contributor to the substantial reduction of piracy rates in that country to among the lowest in the Asian region. While online piracy has posed very difficult challenges, Korea has sought to keep pace with adoption and implementation of the most successful enforcement tools
- The United Arab Emirates for years had been a haven for the production of certain pirate products and the transshipment of optical disk products to other countries in the region. The UAE then adopted a zero-tolerance policy against copyright piracy and has sentenced hundreds, perhaps thousands, of pirates to jail terms. Piracy rates are now the lowest in the Gulf region.
- Interagency and public/private coordination: Copyright industry representatives seek to work with country officials to promote industry/government coordination in the critical fight against copyright piracy. One example of successful cooperation and concrete results involves Brazil. In 2004, the Brazilian Congress created the National Council to Combat Piracy and Intellectual Property Crimes (CNCP). The CNCP is the main governmental entity, composed of numerous Brazilian agencies, which is responsible for the central coordination and implementation of Brazil's national anti-piracy campaign (which is broad and includes operational elements, legislative reform, enforcement training and public awareness initiatives). Several Brazilian copyright associations are part of the CNCP structure and participate directly, and such interaction has worked well to promote progress and achieve tangible results. In May 2009, the CNCP issued its second national plan (for 2009-2012) and already has taken initial steps to implement its top five priorities in 2010.<sup>6</sup> There are similar examples of public-private organizations up and running successfully in other countries.<sup>7</sup>

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<sup>6</sup> *"Fight Against Piracy and Counterfeiting in Brazil: Progresses and Challenges,"* prepared by Mr. André Barcellos, Executive Secretary, National Council on Combating Piracy and Intellectual Property Crimes (CNCP), Brasília, presented at the World Intellectual Property Organization (WIPO) meeting on the Advisory Committee on Enforcement, Geneva, November 2-4, 2009, available at [http://www.wipo.int/edocs/mdocs/enforcement/en/wipo\\_ace\\_5/wipo\\_ace\\_5\\_8.doc](http://www.wipo.int/edocs/mdocs/enforcement/en/wipo_ace_5/wipo_ace_5_8.doc).

<sup>7</sup> In Hungary, the National Anti-Counterfeiting Body (HENT) is led by the Ministry of Justice and Law Enforcement and coordinated by the Hungarian Patent Office and is composed of government and industry representatives. HENT's objectives include cooperating in developing the national strategy against piracy and counterfeiting, preparing awareness campaigns, coordinating the activities of the state bodies and non-governmental organizations, and preparing legislative proposals, among others. The government accepted a new National Strategy on October 1, 2008. The three pillars of the strategy involve enforcement initiatives, statistics and public awareness.

- Business end-user piracy: Under a commitment made to USTR by the government of South Korea in 2002, police and prosecutors conduct a high volume of criminal raids each month against corporate end user piracy based on right holder complaints. After the raids, most infringers agree to pay damages for past infringements and to legalize their software use going forward, thus turning software pirates into legitimate customers. Korea's software piracy rate has fallen from 48% in 2003 to 43% in 2009. This is well below the region's median rate of 67%.
- License verification: South Korea has periodically faced serious problems of pirates presenting fraudulent distribution "licenses" for feature films to government authorities in order to obtain classification/censorship permits allowing the pirate to distribute unauthorized copies of the films in various formats in Korea with a stamp of legitimacy. The Korean government worked with MPAA and IFTA to put in place a license verification program that has virtually eliminated the problem.
- Anti-camcording legislation: As laws against camcording in cinemas were passed in the United States and Canada, enforcement procedures were established, and exhibitor awareness programs were introduced, resulting in a marked decrease in the number of pirate copies of films sourced from theaters in those countries. For instance, before Canada's anti-camcording law was enacted, law enforcement would not respond even when individuals were caught repeatedly camcording in theatres. In 2006, Canadian camcords were the source of approximately 20% of all illegally-camcorded MPAA member company films that appeared either online or as a pirated DVD. With the new law in place, local police can now take action to prevent films from being stolen.

*11. Suggest methods to improve the adequacy, effectiveness and/or coordination of U.S. Government personnel stationed in other countries who are charged with enforcement of intellectual property, including but not limited to: a. Department of Justice IP Law Enforcement Coordinator (IPLEC) program; b. U.S. Patent and Trademark Office Intellectual Property attaches program; c. Food and Drug Administration foreign country offices; d. Foreign Agricultural Service; e. Department of Commerce International Trade Administration Foreign Commercial Service officers; f. Department of Commerce International Trade Administration compliance attaches; g. Department of Homeland Security/Immigration and Customs Enforcement and Department of Homeland Security/Customs and Border Patrol attaches and other representatives; h. Department of State's Foreign Service officers and post leadership; and i. Office of the U.S. Trade Representative IP attache.*

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(...continued)

In Poland, the Ministry of Culture heads the special governmental team responsible for combating piracy (the "Intergovernmental Team for Counteracting Infringements of Copyright and Related Rights"). Copyright private sector organizations participate in the meetings of this group, which was created in 2000. Recently two new working groups have been created to discuss internet and optical disc issues in more depth. In mid-2008, the Polish government adopted its IPR strategic plan for 2008-2010 (it issues such plans every three years).

All of the functions listed above (other than (c) and (d), which are inapplicable to IIPA member associations) are important elements in delivering a consistent and persuasive message to foreign governments regarding copyright enforcement, and in identifying and taking advantage of opportunities to collaborate with foreign counterparts on specific enforcement matters. The Joint Strategic Plan should call for adequate funding for all these important functions, and for providing them with strong political support in their parent agencies. The placement in foreign postings of IP specialists, whose job is dedicated to these issues, has been quite productive in the past, and should be encouraged and expanded. Best practices should also be identified in integrating the work of these personnel into the operation of the posts where they are stationed, in a manner that conveys to other overseas representatives of the U.S. government the high priority accorded to strong copyright protection and enforcement.

*14. Suggest specific methods to limit or prevent use of the Internet to sell and/or otherwise distribute or disseminate infringing products (physical goods or digital content).*

See comments in part II above.

In addition, the U.S. government should encourage our trading partners to provide accessible and reliable contact data (Whois) on domain name registrants in those countries' Country Code Top Level Domains.

*18. Discuss the possible application of World Trade Organization provisions, including, but not limited to, those on anti-dumping, subsidies, standards and safeguard measures in cases where failure to enforce intellectual property laws in other jurisdictions produces unfair cost or other advantages for the production or distribution of goods and services or otherwise disadvantages U.S. right holders.*

The use of productivity software and similar business applications is an important input to a wide range of products and services provided by non-U.S. companies for consumption in the United States and third countries. Where such companies avoid licensing fees by using pirate software, they gain an unfair competitive advantage over companies that comply with the law. The U.S. government should consider using these remedies against other governments that tolerate this form of software theft, in effect subsidizing the goods and services produced and exported by such companies.

*19. Suggest specific strategies to significantly reduce the demand for infringing goods or products both in the U.S. and in other countries.*

A critical factor in reducing the demand for infringing goods in foreign markets is to reduce or eliminate market access barriers to legitimate copyrighted products and create a climate where lawful online distribution can be established. The unavailability of legitimate product in a marketplace inevitably drives consumers to pirate sources. For example, long-standing market access restrictions, including the application of discriminatory censorship processes, that make it very difficult for U.S. motion picture producers and record companies to operate in China, or to distribute their products in a timely manner and on reasonable commercial terms, continue to undercut any enforcement efforts the government has undertaken against

pirate product in the market. For the video game industry, a continuing ban on the sale of home game consoles in China stymies industry growth. Elsewhere, such as in Brazil and India, exorbitant tariffs and taxes contribute to piracy by dramatically increasing the price of legitimate entertainment software products.

*20. Provide specific suggestions on the need for public education and awareness programs for consumers, including a description of how these programs should be designed, estimates of their cost, whether they should focus on specific products that pose a threat to public health, such as counterfeit pharmaceuticals, or whether should they be general infringement awareness programs.*

IP education as a standard element in the educational agenda for elementary school age groups should be adopted as an effective way to reduce demand by making children aware at an early age of the moral cost of infringing activity. Many countries such as Singapore are already working in this direction, exceeding even the United States in promoting awareness and respect for intellectual property, not only in schools but among the general public. In many countries, piracy is so prevalent that large percentages of the population do not even realize that they are engaging in infringing activities as there is so little consequence for their doing so.

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Thank you for the opportunity to provide the perspectives of the U.S. copyright-based industries on the Joint Strategic Plan. Please do not hesitate to call on us if you need further information.

Respectfully submitted,

/s/ Steven J. Metalitz

Steven J. Metalitz  
On behalf of IIPA

E-mail: [met@msk.com](mailto:met@msk.com)  
Direct dial: (+1) 202-355-7902

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



2101 L STREET NW, SUITE 1000 · WASHINGTON, DC 20037 · TEL (202) 833-4198 · FAX (202) 331-3101 · WWW.IIPA.COM · EMAIL: INFO@IIPA.COM

## ATTACHMENT A

### Fact Sheet

## **COPYRIGHT INDUSTRIES IN THE U.S. ECONOMY: THE 2003-2007 REPORT**

The U.S. copyright industries continue to outperform the rest of the U.S. economy, in terms of their real annual growth rates and their contributions to the overall growth of the U.S. economy as a whole (2003-2007 data). These industries play a prominent role in the growth of U.S. exports. These industries also command large shares of U.S. gross domestic product and employ millions of U.S. workers, and compensation paid to U.S. workers in the copyright industries substantially exceeds the average compensation level paid to U.S. workers as a whole.

### ***Major Contributor to Real Growth of the U.S. Economy and Gross Domestic Product (GDP)***

- In 2004, 2005, 2006 and 2007, the real annual growth rates achieved by both the core and total copyright industries were more than twice the real growth rates achieved by the U.S. economy as a whole.
- The copyright industries have positively contributed to real U.S. growth in a disproportionate manner. In 2006-2007, the core copyright industries contributed 22.74% of the real growth achieved for the U.S. economy as a whole. In the same period, the total copyright industries contributed an astounding 43.06% of total real U.S. growth.
- In 2007, the value added by the core copyright industries was \$889.1 billion, approximately 6.44% of U.S. GDP.
- The value added for the total copyright industries rose to \$1.52 trillion, or 11.05% of GDP, in 2007.

### ***Foreign Sales and Exports***

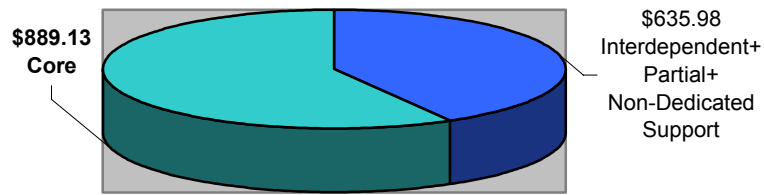
- Sales of U.S. copyright products continue to expand in overseas markets. The total core copyright sales in foreign markets exceeded \$116 billion in 2006 and nearly \$126 billion in 2007, an 8% increase.
- As a comparison, the foreign sales of the copyright industries significantly exceed foreign sales of other U.S. industries including aircraft (\$95.6 billion), automobiles (\$56.8 billion), agricultural products (\$48.1 billion), food (\$39.4 billion) and pharmaceuticals (\$27.9 billion).

### ***Strong Employment and Wages***

- The core copyright industries employed nearly 5.6 million workers in 2007, that is, 4.05% of the U.S. workforce.
- In 2007, 11.7 million people were employed by the total copyright industries, or 8.51% of the U.S. workforce.
- The annual 2007 compensation paid to core copyright workers (\$73,554) exceeded the average annual compensation (\$56,817) paid to all U.S. workers by 30%. The average compensation paid to employees of the total copyright industries (\$66,498) exceeded the U.S. average by 18%.

Report issued on July 20, 2009

**Copyright Industries in the U.S. Economy 2007**  
(billions of U.S. dollars)

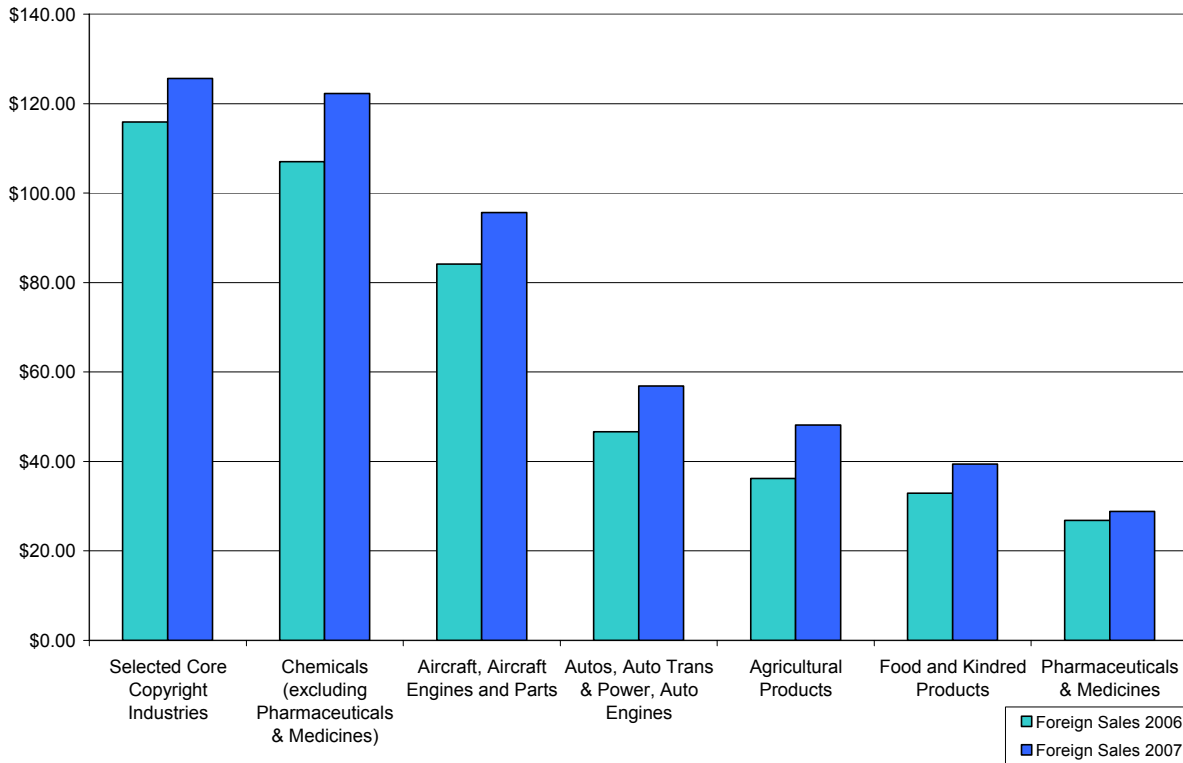


**\$1,525.11 (\$1.5 Trillion) -- --Total Copyright Industries**

**Real Annual Growth Rates Value Added to U.S. GDP**

	2003-2004	2004-2005	2005-2006	2006-2007
Core Copyright Industries	9.61%	5.87%	5.85%	7.26%
Total Copyright Industries	9.38%	7.72%	7.86%	7.91%
U.S. GDP	3.64%	2.94%	2.78%	2.03%

**Foreign Sales and Exports for Selected Industries 2006 and 2007**  
(billions of U.S. dollars)



Source: *Copyright Industries in the U.S. Economy: The 2003-2007 Report*, by Stephen E. Siwek, Economists Incorporated, prepared for the International Intellectual Property Alliance (IIPA), available at [www.iipa.com](http://www.iipa.com). This is the third IIPA report which reflects the recommended statistical standards developed by the World Intellectual Property Organization (WIPO) in 2003, and is the twelfth economic report prepared for the IIPA since 1990. *The 2003-2007 Report* includes statistical data from the year 2007, the most recent full-year data available.

Note: The “core” industries are those copyright-related industries whose primary purpose is to produce and/or distribute copyright materials. The “total” copyright industries include those whose revenues, etc. are dependent on the “core” industries and contain four sub-sectors called the “core,” “partial,” “non-dedicated support,” and “interdependent” sectors.