

**Oral Statement of Kevin M. Rosenbaum of the
International Intellectual Property Alliance (IIPA)
before the United States International Trade Commission (USITC)
Global Digital Trade 2: The Business-to-Business Market, Key Foreign Trade Restrictions,
and U.S. Competitiveness;
and Global Digital Trade 3: Business-to-Consumer Market, Key Foreign Trade Restrictions,
and U.S. Competitiveness**

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On behalf of the International Intellectual Property Alliance (IIPA), thank you for the opportunity to contribute to these investigations. We hope that the results will be a catalyst for positive change to address the challenges faced by the U.S. creative industries in key markets abroad.

IIPA is a private sector coalition, formed in 1984, of the leading trade associations representing U.S. copyright-based industries. The core copyright industries combined, according to a December 2016 study, contribute over \$1.2 trillion to the U.S. economy, provide 5.5 million jobs, and nearly 7% of the gross domestic product. Foreign sales and exports totaled \$177 billion in 2015, significantly exceeding foreign sales of other major U.S. industries. Our members are Association of American Publishers (www.publishers.org), Entertainment Software Association (www.theesa.com), Independent Film & Television Alliance (www.ifta-online.org), Motion Picture Association of America (www.mpa.org), and Recording Industry Association of America (www.riaa.com). These associations comprise over 3,200 companies producing and distributing materials protected by copyright laws throughout the world.

As evidenced by the growth of revenues, the copyright industries have embraced all means of digital technologies to produce and distribute their works and recordings, including launching new businesses, services, and apps to meet consumer demand. More legitimate copyrighted material is now available to consumers, and in more diversified ways and with more flexible pricing than at any time in history. This consumer appetite for copyrighted materials does not stop at our borders. To meet worldwide demand, the copyright sector, more than any other in the U.S. economy, has moved aggressively to digitally deliver its products and services across borders, inextricably linking digital trade with trade in copyright-protected material. As a result, the U.S. copyright industries, as much as any industry, depend on strong rules and practices for digital trade. For the copyright industries to flourish abroad, foreign markets need to: (i) have copyright laws that meet high standards of protection; (ii) provide efficient copyright enforcement and sound legal structures to enable healthy licensing of works and recordings; and (iii) eliminate market access barriers and unfair competitive practices. Markets with these features also help our trading partners to develop, nurture, and enjoy the fruits of their own cultural and creative output.

Turning to the key foreign markets identified in first report, in Europe, the digital marketplace for goods and services dependent on copyright protection has been growing substantially. Unfortunately, certain policies in the European Union impede access to its digital marketplace, including a value-added tax that has a discriminatory impact on the U.S. creative industries, and failure of certain Member States to correctly implement

key provisions of EU Directives, resulting in inadequate protection and enforcement of copyrights. Moreover, some aspects of the European Commission's Digital Single Market Strategy raise serious concerns, particularly proposals that would erode the possibility of territorial licensing. At the same time, there is strong support from the music industry for a proposal that addresses the "Value Gap", which refers to the gulf between the value that certain "user upload content" technology platforms derive from creative content and the money they pay to creators to exploit that content.

Pursuant to the "Special 301" process, the U.S. Government identifies "foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection." IIPA's 2018 Special 301 submission, filed last month, included updates on relevant digital market developments in 26 markets around the world, including five of the key foreign markets identified in the first report: China, Russia, Brazil, India and Indonesia. Selections from this Submission, including country reports for each of these markets, are appended to the IIPA Pre-Hearing Statement. I will briefly summarize these country reports.

The commercial potential of China's ascendant marketplace for creative works has yet to be fully realized. As part of the largest Internet user base in the world, Chinese consumers have access to a vast array of legitimate music, movies, TV programming, and other works through an increasing number of licensed digital services. China also leads the world with over 50,000 movie screens, many of which offer enhanced formats such as IMAX and 3D. While improved enforcement efforts, particularly against unlicensed music services, have contributed to accelerated gains for certain sectors, copyright piracy remains a critical issue in China, continuing to hamper the market for legitimate content and severely depress licensing revenues. At the same time, China's third comprehensive Copyright Law amendment process has entered a critical stage, and the future development of the creative industries and China's market for creative content hangs in the balance. Moreover, China's policies that deny fair and equitable market access to U.S. content producers and distributors threaten to undermine the hard fought progress that has been achieved.

The copyright industries have three intellectual property rights (IPR) priorities in Russia, which if properly addressed, could significantly improve the Russian marketplace for copyrighted works and recordings. First is to dramatically improve enforcement against online piracy, particularly piracy sites and services directed to users outside of Russia. Second, Russia needs to address the collective administration problems that have long thwarted the ability of music rights holders to effectively control the licensing of their recordings via the collecting societies in Russia. Third, Russia must address the problem of camcording motion pictures, which has risen dramatically over the past three years (200% since 2015) and fuels online piracy.

Development of Brazil's large and potentially thriving market for legitimate content and content delivery services has been hampered by continuing rampant piracy and a wide range of market access barriers for the creative industries. The coming year, culminating in an election, offers an opportunity for the government to commit to promoting a legitimate Internet marketplace for copyright materials and to take action against the extensive digital piracy operations targeting the Brazilian market.

Turning to India, in December 2014, the U.S. International Trade Commission found that "if tariff and investment restrictions were fully eliminated and standards of IP protection were made comparable to U.S. and Western European levels, U.S. exports to India would rise by two-thirds, and U.S. investment in India would roughly double." India, currently the second largest Internet market in the world after China, remains a market

with significant concerns for the copyright industries. Deficient legislation that is not suitable for the digital age or aligned with international best practices, lack of effective enforcement, and a high number of online pirate services all are undermining India's digital marketplace.

To improve its marketplace for copyrighted works, the Indonesian Government should continue effective actions under the law to address primarily infringing websites; provide clear guidelines to inhibit camcording in cinemas; amend the Film Law or its implementing regulations to remove significant barriers to market entry; set enforcement benchmarks (including judicial reform); and expand cooperation to address the concerns of all of the copyright sectors.

Thank you again for the opportunity to contribute to this study. I look forward to answering your questions.