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November 5, 2010

Kira Alvarez
Deputy Assistant USTR
Intellectual Property and Innovation
Office of the US Trade Representative
600 17th Street, NW
Washington, DC 20508

Re: Request for public comment on the 2010
Special 301 Out of Cycle Review of Notorious
Markets. Docket No. USTR-2010-0029

Dear Ms. Alvarez:

The Motion Picture Association of America submits the following response to the request for written submissions issued October 1, 2010, by the Office of the US Trade Representative, inviting submissions from the public on notorious markets outside of the United States.

The American motion picture and television industry is a major U.S. employer that supported 2.4 million jobs and over \$140 billion in total wages in 2008 in all 50 states. Over 296,000 jobs were in the core business of producing, marketing, manufacturing and distributing motion pictures and television shows, across every major occupational group. These include people employed in film and television production-related jobs on a free-lance basis, part time or full time at major studios, independent production companies, and core industry suppliers like film labs, special effects and digital studios, location services, and prop and wardrobe houses dedicated to the production industry, among others.

Another 453,000 jobs were in the related businesses that distribute motion pictures and television shows to consumers, including people employed at movie theaters, video retail and rental operations, television broadcasters, cable companies, and new dedicated online ventures. The industry also supports over a million indirect jobs in the thousands of companies that do business with the industry, such as caterers, dry cleaners, florists, and hardware and lumber suppliers, and retailers.

The American motion picture and television production industry remains one of the most highly competitive around the world. In 2008, the enduring value and appeal of U.S. entertainment around the world earned \$13.6 billion in audiovisual services exports, over 30 percent more than in 2004. Moreover, this industry is one of the few that consistently generates a positive balance of trade. In 2008, that surplus was \$11.7 billion, or seven percent of the total U.S. private-sector trade surplus in services.

The industry distributes its films to over 150 countries and in 2007, 46 percent of MPAA's member companies' revenue came from overseas. MPAA has a strong interest in the health and sustainability of these international markets and appreciates USTR's interest in indentifying notorious markets that threaten legitimate commerce, impair legitimate markets' viability and curb U.S. competitiveness and hurt our overall economic strength. It is critical that our trading partners protect and enforce intellectual property rights.

Below, the MPAA has identified both online and physical notorious markets. To the best of our ability, we have attempted to respond to the five indicators identified in the NOI. In most instances, however, criminal enterprises work to obfuscate identifying information. This list should not be understood to be comprehensive. It does, however, indicate the scope and scale of global content theft and it introduces some of the ongoing challenges rights holders confront in protecting their intellectual property. The list also introduces several forms of content theft which, despite their differences, all have a serious impact on the ability of the U.S. motion picture and television industry to compete successfully overseas, underscoring the need for a focused, strategic US policy.

For all of the workers in our industry and their families, copyright theft means declining incomes, lost jobs and reduced health and retirement benefits. Copyright theft is not a victimless crime. The criminals who profit from the most notorious markets throughout the world threaten the very heart of our industry and in doing so they threaten the livelihoods of the people who give it life. These markets do not represent a problem that lies on the far horizon, they are here now and they are here in volume.

I. Online Notorious Markets

In the online space, the theft of creative content has evolved rapidly. In the late 1990s, infringing content primarily was traded via small private online networks. With the introduction of peer-to-peer technologies, online content theft largely moved first to centralized peer-to-peer protocols, such as Napster, and then to de-centralized technologies such as BitTorrent. Today the online market has further fragmented and content thieves are taking advantage of new online technologies, with streaming sites and cyberlockers representing a growing share of unlawful conduct. Moreover, a secondary market has arisen in the form of "linking sites", which are professional-looking sites that facilitate content theft by indexing stolen movie and television content hosted on other sites. There has also been a rapid increase in the export and transshipment of pirate optical discs by Chinese Internet businesses. The quality of the

counterfeits' packaging is shockingly sophisticated and nearly indistinguishable from legitimate product. The products come in many forms, including large box sets of TV series or movie collections that do not even exist in the legitimate market, single DVDs and single Blu-ray discs.

The below discussed online markets were identified based on USTR's request for information on markets "where counterfeit and pirated products are prevalent to such a degree that the market exemplifies the problem of marketplaces that deal in infringing goods and help sustain global piracy and counterfeiting." This is not intended to be a comprehensive list but, rather, reflects an attempt to identify sites that are demonstrative of the nature and scope of the problem, consistent with the USTR's stated objective.

In many cases, an Alexa rank has been included for many of the sites. Alexa rank represents the approximate number of web sites in the world that have a popularity higher than the given site--the more popular a site, the smaller the number. To put this in context, Wikipedia is ranked seventh in worldwide traffic and Newyorktimes.com ranks 93.

Peer-to-Peer Networks & Torrent Portals: A peer-to-peer network provides a method for users to exchange files quickly and easily between the individual computers on the network – other users or "peers." While there are many different peer-to-peer technologies available, "BitTorrent" or "torrent" technology is the technology most commonly used to distribute illegal movie and television files because it breaks large files into smaller pieces. BitTorrent or torrent sites allow users to locate and download files directly from the computers of other users in the BitTorrent network. BitTorrent websites facilitate the downloading of files among peers by maintaining information about the names and locations of files on the computers of each peer in the network and initiating the download process. The below sites were identified in part because they make available to downloaders high-quality, recently-released illegal content and in some cases, coordinate the actual upload and download of that content.

- btjunkie.org – Sweden. This BitTorrent indexer with an Alexa ranking of 385 aggregates content "torrents", which are executable instructions that initiate the download process. Btjunkie offers nearly 100,000 active torrents that are identified as copyrighted movie or television files. Unique to btjunkie.org is its ability to make available both public and non-public infringing content. With most release groups posting new content to non-public torrent websites, this indexing capability is particularly challenging for rightsholders. The site is currently hosted by Sweden's NetworkSpiration.
- Demonoid.com – Ukraine. Demonoid is a very active, semi-private BitTorrent tracker and website with servers located in the Ukraine. Individuals can view what is available but downloading the torrent metadata requires the user to log in. A review of the accessible content on the site lists nearly 100,000 copyrighted movies and television files. Demonoid's Alexa ranking is 516 which is extremely high for a semi-private environment.
- IsoHunt – Canada. This is the most popular BitTorrent site in the world after The Pirate Bay. IsoHunt boasts of having 12.51 million peers and 3,743,581 active torrents and has

an Alexa rank of 227. A U.S. Court issued a permanent injunction against IsoHunt after finding that over 90% of the downloads made using IsoHunt's services related to infringing content and that the defendants were liable for inducing infringement. Yet, its Canadian operator continues to run the site with impunity. The site's operator has commenced an action in Canada seeking a declaration that its operations do not violate Canadian law. IsoHunt can be found at 208.71.112.30. Its corporate address is IsoHunt Web Technologies, Inc., 820 Broadway West, Vancouver, BC V8Q 4K1.

- Kickasstorrents.com – Sweden. This BitTorrent portal has a commercial look and feel that could deceive users into thinking it is legitimate. It has been gaining popularity since 2009. The site is hosted by Sweden's Dedicated Network, Luxembourg's Root, and France's OVH. This infrastructure creates redundancy to defend against successful litigation, raids or other actions that may threaten the service. Its current Alexa ranking is 457 and it appears to offer access to 8.1 million torrent files.
- Rutracker.org – Russia. This BitTorrent portal is the clone to Torrents.ru, which was taken down by the Russian criminal authorities. It is an indexing site that serves four million users and it has over one million active torrents. It has a global Alexa ranking of 297 and a shockingly high local ranking – 15. Torrent.ru had its domain name suspended by RU-Center, the nation's largest registrar and web-host, but for now the site is back up at Rutracker.org and it remains to be seen whether the new domain will be taken down by the authorities. Its IP address is 195.82.146.114 and it is hosted by Avtomatizatsiya Business Consulting.
- ThePirateBay.org – Sweden/Netherlands. This BitTorrent portal has servers in both Sweden and the Netherlands. The Pirate Bay (TPB) comprises a BitTorrent tracker and websites which facilitate the exchange of vast amounts of infringing content. The Pirate Bay operators proudly claim that it is the biggest tracker of its kind in the world, with over one million users. Since its establishment in 2004, the website has grown exponentially and is now accessible in some 39 separate languages. It has facilitated the illegal exchange of untold millions of protected copyright works. Rightsholders, their trade associations and collecting societies have made countless complaints about the TPB's activities. The Pirate Bay contains significant and lucrative third-party advertising, much of it promoting the porn industry and US green cards. Advertising revenue is typically a function of number of unique site visits per day. With more than one million hits per day – the Pirate Bay takes in an estimated \$60,000 per month from advertisers in addition to thousands of dollars collected from user "donations." In May 2006, the Swedish Police executed search warrants at 10 separate locations and seized 17 computer servers and made three arrests, closing down the site for a brief period. Although the site operators were ultimately convicted by a Stockholm court, the site has not been shut down. Only the Italian government has taken such action vis à vis Italy. This site has also sparked numerous civil proceedings.

Cyberlocker: A cyberlocker is a website that allows users to upload and distribute files. A user uploads a file and the cyberlocker provides the uploader with a link to that file. Clicking the link will either initiate a download of the uploaded file, a stream of the uploaded file or offer both options. It is very common for links to illegal copies of movies and television shows stored on cyberlockers to be widely disseminated across the Internet via linking websites, forums, blogs or email. Some cyberlockers offer both legitimate and infringing content. The cyberlockers listed below were identified because traffic to their sites is driven by the vast amounts of infringing premium content available to users.

- Ba-k.com – Mexico. This direct download site with servers in Mexico and that targets Latin American users with a significant amount of subtitled illegal content. While its global Alexa ranking is 1,756, its local ranking is 39.
- Megaupload.com/Megavideo.com – Netherlands. Many linking sites post vast numbers of URLs referring to content hosted on the MegaUpload infrastructure, which is accessible in 19 languages. MegaUpload and its sister site Megavideo store a massive amount of data estimated at nearly 26 petabytes, including hundreds of thousands of copyrighted works. Megaupload pays users who upload popular files based on the number of times that file is downloaded up to \$10,000. These websites are hosted, in part, on 500 servers in the Netherlands. Some servers are in the US and the company is registered in Hong Kong. The throughput data of the Mega operation in the Netherlands is approximately 150 Gigabit per second which is comparable to half of the average throughput caused by the Internet users of one very large EU member state. *Torrent Freak* did a story on Megaupload, “The Mega-Money World of MegaUpload” which describes MegaUpload as “one of the most prominent file-hosting services on the Internet. It is owned by an unbelievably colorful individual who is probably better known for his multiple convictions for computer fraud, embezzlement and insider trading.” Megaupload has a 73 Alexa ranking and Megavideo’s Alexa ranking is 82.
- Rapidshare.com – Switzerland/Germany. Rapidshare is the world’s largest cyberlocker, ranking around the 50th most popular website in the world. Rapidshare has approximately 41 million unique users. Rapidshare is a subscription service, popular because of the infringing premium content it makes available to its members. In the last four years, several right holders groups have brought successful legal actions against Rapidshare before the German courts. At last count, 23 injunctions have been granted which require Rapidshare to take action. In contrast, a court in Germany exonerated Rapidshare; and, a court in California refused to issue a preliminary injunction against Rapidshare.
- Webhards – Korea. Webhards are web-based cyberlockers that offer high-volume storage space, some up to a terabyte, for sharing pirated material. Most webhards specialize in stolen movies and television programs, as well as music. The illegal webhard business is prospering as most webhards charge for downloads. The Korean government has taken laudable strides to address webhards, prosecuting some webhard operators. (Fourteen webhard sites are currently before the criminal appellate court.)

Unfortunately, the problem is vast and numerous webhards continue to operate in Korean webspace, providing consumers easy access to illegal content.

Linking Websites: Linking websites aggregate, organize and index links to files stored on other sites. The linking site typically organizes the illegal copies of movies and television shows by title, genre, season and episode, and provides an active link so the user can access the infringing content. Depending on the website, users are commonly presented with the option to either stream the content in a video-on-demand format or download a permanent copy to their computer.

- Kino.to – Russia. This linking site specializes in illegally making available large amounts of copyrighted cinema films and TV series in German and other languages. There are currently over 300,000 infringing TV shows and over 66,000 infringing movies available. It has an exceptionally high Alexa ranking in Germany (70), with a global Alexa ranking of 932. *WirtschaftsWoche* ran a story on Kino.to, describing it as “the biggest German language portal for pirate films,” earning approximately 3.5 million Euro a year. Its hosting provider is Wahome/Webalta and the site is currently using IP addresses: 91.217.178.196, 91.217.178.205, 91.217.178.214, 91.217.178.222, 91.217.178.230 and 91.217.178.242. Legal actions in the Netherlands, where the site was originally hosted, to take down the site and reveal the operator’s identity have been unsuccessful.

Newsgroup: Newsgroups originated as text-based Internet discussions forums. Over time, newsgroup technology evolved from transmission of text only messages for purposes of general Internet based discussions to allow for the transmission of large media files. Newsgroup users post messages to a news server which then shares that message with other participating news servers around the world. This worldwide collection of servers is known as the Usenet, a high-speed direct download service offering access to a searchable global file exchange network. Today, illegal copies of movies and television shows are commonly posted in newsgroups for download by users around the world.

- UseNext.de – Germany/Netherlands. This Usenet service markets to mainstream P2P users much more heavily and directly than do traditional subscription Usenet services. UseNext claims that over 1.2 million videos are available and proclaims “There is nothing you won’t find here.” High-quality Blu-ray rips of MPAA members’ content can be found on UseNext. UseNext has approximately 200,000 regular users. UseNext provides a free trial period to users and then subscription plans start at approximately \$10 USD a month and go up based on the quantity of content users wish to download. It is estimated that UseNext clears around 100,000 EUR a month. UseNext is a German operation with indexing servers in the Netherlands. Its Alexa rank is 5,845 and its German rank is 2,811.

Online markets: The distribution and sale of illicit hard goods through online markets, such as auction sites, business-to-business (B2B), and business-to-consumer (B2C) exchanges is a growing concern. These sites may offer legitimate consumer goods, but intermingled with the

sale of legitimate goods are sellers that specialize in illegal merchandise. Well constructed offerings can fool the savviest of consumer, selling well packaged but poor quality counterfeit copies of movie and television programming at retail prices. Some sites take active steps to stop and deter the sale of counterfeit goods, while others tacitly condone (and profit from) the illegal conduct. The sites below are in the latter category.

- **DHGate -- China.** DHGate is an online marketplace site focusing on wholesale and bulk purchases of consumer goods. Founded in 2004 and with an Alexa rank of 1,402, DHGate is currently the most popular China-based site using this business model. The site is specifically designed to connect Chinese suppliers with overseas customers. Customers can purchase single items but are encouraged to buy in bulk. This is reflected in the tiered pricing offered on each listing. All types of consumer goods are available on DHGate. DHGate is used extensively by counterfeiters to market their products, and the vast majority of Hollywood movies offered for sale on the site are counterfeit. A number of notorious sellers have been operating on the site for years, and have built substantial reputations, giving the appearance of legitimacy. Response to outreach and enforcement efforts by rights holders has been mediocre. While DHGate will respond to takedown requests for specific listings, they have not shown a willingness to suspend sellers or to provide access to a takedown tool which would significantly increase takedown efficiency and response time. Therefore, counterfeiters continue to operate freely on the site and can quickly restore listings which have just been taken down, without any negative consequences. Minimal enforcement and low prices for stolen goods combine to make DHGate a place where legitimate sellers have no chance to operate and compete with counterfeiters, and where customers are frequently duped into making large purchases of goods which turn out to be counterfeit.
- **TaoBao -- China.** TaoBao is a Business-to-Consumer site targeting consumers directly, with listings usually for a single item, although bulk purchases are sometimes possible at significant savings. TaoBao, which has an Alexa rank of 13, is different from the other sites described in that it is a Chinese-language site targeting the Chinese market. All types of consumer goods are available on the site. Nearly all listings for Hollywood movies on TaoBao are counterfeit. A recent trend has been the explosive growth of counterfeit Blu-ray products offered for sale on TaoBao. As part of the Alibaba Group, we have seen a significant improvement in cooperation from Taobao in recent months. However, Taobao has not yet joined its partners at Alibaba and AliExpress in demonstrating a willingness to go further than removing specific infringing listings provided by the right holder. Allowing for a takedown tool and creating a mechanism for suspending notorious sellers would significantly help alleviate this problem in addition to making Taobao a more attractive location for legitimate sales of all kinds.
- **Tradetang – China.** As larger online markets have begun to crack down on counterfeiters, smaller Chinese marketplace sites like Tradetang.com are increasingly utilized by counterfeiters to market their products. Tradetang, founded in 2007, is a popular site, with an Alexa ranking under 7,000. Tradetang is very similar to DHGate in that it offers bulk purchasing brokered by the site itself. All types of consumer goods are

offered for sale on the site. As with DHGate, the vast majority of Hollywood films sold on the site are known to be counterfeit. Tradetang has only recently become high-profile and has, therefore, not been the target of extensive enforcement efforts and outreach though enforcement efforts to date have proven frustrating.

MPAA is pleased to report that Alibaba -- listed in last year's notorious market report -- has made significant progress in 2010 in addressing counterfeiting on its sites. Takedown requests sent to Alibaba and AliExpress are acted upon quickly and efficiently, and we have seen major efforts to purge the sites of notorious sellers. Alibaba is also working to make it easier for rights holders to identify and refer counterfeit listings, as well as making Alibaba and AliExpress much more attractive for legitimate sales of all kinds. As a result of these efforts, counterfeit listings are only a fraction of what they were last year. We applaud the Alibaba Group for their efforts and look forward to similar progress with Taobao.

II. Physical Notorious Markets

Perhaps more familiar are the myriad physical markets located around the world that offer consumers burned or pressed infringing optical discs. Many of the markets discussed below are particularly challenging for rightsholders because of the strong connections with organized criminal syndicates. The Rand Report, *Film Piracy, Organized Crime and Terrorism*, found "Counterfeiting is widely used to generate cash for diverse criminal organizations. In the case of DVD film piracy, criminal groups are moving to control the entire supply chain, from manufacture to distribution to street sales, consolidating power over this lucrative black market and building substantial wealth and influence in virtually every region of the globe." Examples of Notorious Physical Markets include:

- 7 Kilometer Open Market – Odessa, Ukraine. There is a large amount of pirated replicated discs sold at this market because it is near a major seaport and railway terminal from Russia.
- Cheriomushkinsky Market – Moscow, Russia. At least 11 kiosks openly sell counterfeit optical discs in this market.
- Czech border with Germany and Austria – Czech Republic. There are at least 54 open markets along the border with Germany and Austria selling an array of counterfeit products. This market notably attracts tourists from Germany who are literally bused in to buy infringing movies and other counterfeit products.
- Golden Horseshoe Area – Toronto, Canada. The Toronto area flea markets are a hot bed for counterfeit DVDs. In 2009, more than one million counterfeit DVDs were seized by local law enforcement. From January to September 2010, more than 600,000 counterfeit DVDs were collected in similar actions. With more than 30 vendors openly displaying counterfeit DVDs at various Flea Markets and shopping malls in the greater Toronto area, this area is the most notorious place in Canada to purchase pirated films on optical disc.

Law Enforcement and CMPDA efforts have helped to eliminate the open display of Counterfeit DVDs at the Pacific Mall and First Markham Place, but as many as 10 vendors continue to operate at the Oriental Center. Flea markets housing multiple vendors include 747 Flea Market, Brampton Town Market, 255 Queen Street East market, Dixie 401/Flea Market, and Mississauga Flea Market.

- Harco Glodok – Jakarta, Indonesia. This is the largest market in Indonesia for counterfeit content and is well-known for pirated optical discs. Enforcement officials are reportedly reluctant to conduct regular enforcement actions because of the presence of organized criminal gangs.
- Jonesborough Market – North Ireland. Infamous within the UK, this market sits on the border of North Ireland and Ireland. As a consequence, the market falls under UK law but sellers cross the unmanned border during raids, making them untouchable by UK authorities. Operators of this market have strong ties to paramilitary groups and sell an array of counterfeit products, including pirated optical discs.
- Mayak Open Market – Donetsk, Ukraine. There is a large amount of pirated replicated discs sold at this market, largely because it is a major transport link from Russia.
- Mutino Market – Moscow, Russia. Currently, there are at least 10 kiosks selling counterfeit discs operate in this market. The market was raided in the October 2010 and 29 kiosks were closed. Ten of these have reopened.
- Nehru Place, Palika Bazaar (Delhi); Richie Street and Burma Bazaar (Chennai); Manish Market, Heera Panna, Lamington Road, Fort District, Andheri Train Station, Thane Train Station Borivli Train Station, and Dadar Train Station (Mumbai); Chadni Chowk (Kolkata) – India. These markets contain clusters of street vendors known for their high volume of pirated DVDs and other counterfeit products. These are high volume pedestrian areas, particularly during commuting times. While there has been some recent enforcement action in Mumbai and Delhi, these remain problem areas. Because India is to some extent still a hard goods market, cleaning up these areas is a priority for the Alliance Against Copyright Theft, a Bollywood-Hollywood Content Protection Coalition.
- Panthip Plaza, the Klom Thom, Saphan Lek, Baan Mor shopping area, Patpon and Silom shopping area, Mah Boon Krong Center, Sukhumvit Road area – Bangkok, Thailand. These locations are notorious for openly selling pirated and counterfeit goods and all have been designated as “red zones” by Thai authorities. Unfortunately, the situation further declined through 2010 with many vendors openly selling child pornography.
- Petrovka Open Market – Kiev, Ukraine. There are at least 100 stalls selling counterfeit movies and other infringing copyrighted material, which are mostly replicated in Russia.
- Pulga Mitras, Pulga del Rio, Mercado del Norte and Zona Centro (Monterrey); San Juan de Dios, Parian and La Fayuca or La 60 (Guadalajara); La Cuchilla, Murat, la Fayuca, la

Central Camionera and zona centro (Puebla); Las vías and Salinas Hidalgo (San Luis Potosi); Premises located at 54 por 65 Street and 56A por 65 Street, (Merida); Central Camionera, Mercado Pescadería, Jalapa Centro and Veracruz Centro (Veracruz); Central camionera, Lerma and Zona Centro (Toluca); Las carpas 1 and 2, Siglo XXI, Fundadores and Mercado de todos (Tijuana) – Mexico. This long list of notorious markets is merely a small subset of the nearly 90 well-known markets specializing in pirate and counterfeit product and operating across Mexico. These markets were identified because they are all controlled by organized criminal organizations.

- San Andresitos – Bogota, Colombia. There are approximately 800 pirate shops operating in this area. Unfortunately, the presence of organized criminal networks has complicated enforcement efforts in this market. The markets are at highway 20 and 13 street, highway 7 and 17 street, San Andresito on highway 38 and 12 and Cali at Cali 2 and Fortuna.
- San Li Tun District – Beijing, China. Most shops in the San Li Tun shopping district openly sell pirate movies and television programs. This market is especially popular with foreign tourists.
- Savelosky Market – Moscow, Russia. Twelve kiosks openly sell pirated optical discs in this market.
- Tepito, Lomas Verdes, Salto del agua, and Toreo Markets -- Distrito Federal, Mexico. These are the main suppliers of pirated optical discs in Distrito Federal. Labs and warehouses are also located in these markets. All are controlled by organized criminal gangs.
- Tri-border Region – Paraguay, Argentina, Brazil. The tri-border region between these three countries has a long standing reputation for piracy and counterfeiting. Most of the product found in this area is manufactured in Asia and notably China.

MPAA is pleased to report progress at several of the physical markets cited in last year's notorious market report. The Gorbushka market in Russia is now clean of pirated optical discs and the Lowu Market in Shenzhen, China, is no longer openly displaying pirated movies.

III. Closing

The six major studios of the MPAA support the US economy by generating billions of dollars from filmed entertainment distributed around the globe. Notwithstanding this singular achievement, the US motion picture and television industry faces relentless challenges to the integrity of its product, challenges extracting an increasingly unbearable cost. The economic and cultural vitality of the creative industries is one of our nation's most valuable assets.

MPAA supports USTR's efforts to identify foreign notorious markets. These markets are an immediate threat to legitimate commerce, impairing legitimate markets' viability and curbing U.S. competitiveness. We strongly support efforts by the US government to work with trading partners to protect and enforce intellectual property rights and, in so doing, protect U.S. jobs.

MPAA appreciates the opportunity to comment and is ready to provide further information or answer questions as required.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Robert Pisano'. The signature is stylized with a large loop at the beginning and a long horizontal stroke extending to the right.

A. Robert Pisano