

Testimony of:

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Chairman Smith, Ranking Member Sanchez, and members of the Subcommittee, thank you for the opportunity to testify before you on American Trade Enforcement Priorities.

Introduction

I am Kevin Rosenbaum, the Executive Director of the International Intellectual Property Alliance, a 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.¹ Collectively, IIPA's five member associations represent over 3,200 U.S. companies producing and distributing copyrightable content. The materials produced and/or distributed by IIPA-member companies include: video games for consoles, handheld devices, personal computers, and online; motion pictures and television programming distributed in all formats (including cinema, television, online, mobile, DVD, etc.); music recorded in all formats (from digital files to CDs and vinyl) for streaming and other online services, as well as broadcasting, public performance, and synchronization in audiovisual materials; and fiction and non-fiction books, educational, instructional and assessment materials, and professional and scholarly journals, and databases.

Trade Agreements Have Contributed to the Growth of the Copyright Industries

There is little doubt that U.S. trade agreements have meaningfully contributed to the growth of the copyright industries. For the past 35 years, the IIPA has commissioned a series of

¹ 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).

studies documenting in detail the economic contributions of the U.S. copyright industries to the U.S. economy.² These studies are derived from the most authoritative, publicly available, U.S. Government statistics. According to the latest study released in February 2025, the core copyright industries added over \$2 trillion in value to the U.S. economy and created more than 11.6 million U.S. jobs, or 5.43% of the entire U.S. workforce, with total compensation for copyright workers 50% above the national average.³ A key element of each of these reports is an estimate of the annual foreign sales and exports of selected major U.S. business sectors that depend on copyright protection. Because the sectors surveyed are but a subset of the group of “core copyright industries” (as defined in the studies) for which economic contributions and employment figures are calculated in each study, the foreign sales and exports estimates are exceptionally conservative.⁴

According to these studies, foreign sales and exports from these selected sectors of the U.S. copyright industry grew from \$22.3 billion in 1989 to \$272.6 billion in 2023. Even discounting for the fact that all figures are provided in nominal dollars from the year in question,⁵ this is a remarkable story of U.S. export power and growth, one that translates directly into strong U.S. global competitiveness, good U.S. jobs, and growth in the overall U.S. economy.

This period of extraordinary growth in foreign sales and exports of U.S. copyright materials has occurred across roughly the same time range as the U.S. adoption of numerous bilateral, regional, and multilateral trade agreements. IIPA has monitored closely the genesis, development, ratification, implementation, and enforcement of each of these agreements, from the North American Free Trade Agreement (NAFTA) in 1994, through its replacement, the U.S.-Mexico-Canada Free Trade Agreement (USMCA), which entered into force in July 2020. 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.

The significance of these agreements cannot be overstated: a 2024 OECD study on services trade observed substantial market access barriers for all services and that barriers for digitally-enabled services, which includes the creative industries, grew by 25% over the past 10 years. The OECD drilled down in its investigation of services trade restrictiveness for the motion picture industry finding that over 30% of the countries covered in its study impose restrictions on streaming and downloading platforms. U.S. Free Trade Agreements (FTAs) are one of the very few tools available to improve the creative industries’ ability to compete overseas on a level playing field. These agreements have been in operation during a period of rapid market transformation in many countries, but the goals of better physical and digital copyright protection

²The studies, prepared by Economists Inc. (now known as Secretariat), have been issued periodically since 1990, most recently in February 2025. See [IIPA-Copyright-Industries-in-the-U.S.-Economy-Report-2024_ONLINE_FINAL.pdf](#).

³Id.

⁴As explained on page 17 of the 2024 Report, *see* fn. 2 *supra*, the selected core copyright sectors whose foreign sales and exports are estimated are “recorded music; motion pictures, television and video; software publishing; and non-software publications including newspapers, books, and periodicals.”

⁵ According to one source, using the Consumer Price Index, one 1989 dollar was worth \$2.46 in 2023 <https://www.in2013dollars.com/us/inflation/1989?endYear=2023&amount=1>. By that concededly unsophisticated metric, the foreign export and sales figure for 1989 was about \$54.9 billion in 2023 dollars—less than one-quarter of the actual 2023 estimate.

and enforcement, especially online, to address piracy, and removing market access barriers remain valid and should spur U.S. trading partners to act.

Since the 2001 U.S.-Jordan Free Trade Agreement, one key element of U.S. trade agreements, which has helped to open markets for the U.S. creative industries, is a prohibition against imposing customs duties on electronic transmissions. Similarly, the World Trade Organization (WTO) established a moratorium prohibiting such duties in a 1998 Declaration on Global Electronic Commerce, which has been periodically renewed ever since. More than any other sector in the U.S. economy, the creative industries have moved aggressively to digitally produce and deliver their products and services across borders to meet worldwide consumer demands. Indeed, the economic study IIPA released in February 2025 highlights the significant contributions the copyright industries make to the U.S. digital economy, as that concept is defined by the U.S. Bureau of Economic Analysis (BEA). In 2022, the core copyright industries accounted for nearly 52% of the digital economy value added and over 49% of digital economy employment.⁶ As a result, the creative industries depend on unrestricted access to digital marketplaces around the world. IIPA urges the U.S. Government to continue to ensure trading partners refrain from imposing duties on electronic transmissions, which would significantly harm the creative industries and threaten U.S. jobs.

While it is difficult to definitively differentiate the market-opening impacts of free trade agreements (including but not limited to higher copyright law and enforcement standards) from other factors that influence market success, there is at least some anecdotal evidence of a correlation. For example, figures compiled by IIPA member RIAA show that global growth in digital delivery of recorded music from 2007 to 2014 was 124% in markets outside the United States. Growth over the same period in seven key markets subject to FTAs was 258%. Similarly, growth in income from performance rights of sound recordings over the same period was 31% worldwide (excluding the United States), but 102% in the seven FTA markets.

Korea presents an interesting case study. In 1985, when IIPA first reported on South Korea to the U.S. Trade Representative's office, U.S. works and products received virtually no copyright protection in Korea, and we reported that "pirates have all but taken over the sale of records and tapes, videocassettes, books, and computer software." Today, Korea boasts a world-class copyright law, which in several respects exceeds U.S. law in its robust protections for creative works. This dramatic improvement in legal standards, and corresponding (though lagging) upgrades to Korean enforcement efforts against piracy, have been a continual process, but the implementation of the WTO TRIPS Agreement and the U.S.-Korea Free Trade Agreement (KORUS) have been critical. Almost contemporaneously with Korea entering into these major trade agreements, Korea responded by adopting major upgrades of its copyright laws and enforcement regime. It seems indisputable that a primary motivation for Korea to bring its laws and practices into line with global norms was the incentive of greater access to the U.S. market, as provided by WTO accession and the entry into force of KORUS.

The experience of the film and television industry in Korea illustrates the dramatic improvements spurred by KORUS. Prior to the entry into force of KORUS, the Korean home video market had been decimated by rampant online piracy. Indeed, the Korean Film Council

⁶ See fn. 2 *supra*.

estimated that the Korean industry alone had suffered losses of \$1 billion in 2007 as a result of online piracy. In June of 2007, shortly after KORUS was signed, Korea enacted the first significant changes to its Copyright Act to counter online piracy, including greatly strengthened provisions against online infringement. While these legislative improvements came too late to save the home video market, today Korea has a robust legitimate online market for audio-visual content—the over-the-top (OTT) market was estimated to have contributed 780 billion won (\$541 million) to Korea’s economy in 2021—that likely would not have developed in the absence of the changes resulting from KORUS.

In addition to opening markets, trade agreements can help forestall efforts to close markets. Since the conclusion of the U.S.-Australia Free Trade Agreement (AUSFTA), Australia has several times considered imposition of quotas on the online marketplace. These proposed quotas were rejected in part because they would be inconsistent with Australia’s trade obligations, including under AUSFTA. Similarly, since the 2004 entry into force of the U.S.-Chile FTA, Chile has several times considered expanding its theatrical screen quota, but this expansion has been consistently stalled in part because it would violate Chile’s FTA obligations. NAFTA helped to forestall various efforts in Mexico to expand the theatrical screen quota and impose quotas on the online marketplace.

The USMCA and KORUS both include a provision that criminalizes the unauthorized camcording of films in theaters. It is notable that since KORUS has entered into force, only three MPA-member company films have been camcordered from theaters in Korea. MPA has long sought criminalization of unauthorized camcording in Mexico, but criminalization of this form of source piracy had proved elusive until the USMCA. Mexico has criminalized camcording as part of USMCA implementation, but this provision has not yet been fully enforced.

Failure of U.S. Trading Partners to Fully Implement Agreements

As impressive as this progress has been, the copyright industries have not fully benefited from these agreements because of the ongoing failure of many U.S. trade agreement partners to fully implement their agreement obligations. For example, in the U.S. system, the set of secondary liability doctrines under which service providers may be held responsible for infringements carried out by third parties (i.e., individual users of their services or networks) provides the necessary legal incentives for cooperation with copyright rights holders to address copyright theft. Unfortunately, this requirement has never been fully implemented by any U.S. trade agreement partner.

Regarding legal remedies and safe harbors, for example, in the wake of the U.S.-Chile Free Trade Agreement, Chile established a safe harbor system for IP infringement that has resulted in a completely ineffective notice-and-notice system, whereby a daisy-chain of notices is passed from rights holders to platforms to IP-infringing users, without consequences to the infringer or a requirement to take down the infringing materials. In fact, the system does not even require notifying rights holders that a notice was ever delivered to the IP infringer, and there are no provisions to deter repeat infringers. The cost and ineffectiveness of Chile’s ‘notice-and-notice’ system has prompted the music industry to discontinue using it altogether.

Turning to the USMCA, the most recent U.S. trade agreement, the benefits for the copyright industries have been severely limited because neither Canada nor Mexico have fully implemented the agreement. For example, despite its USMCA commitments, Canada is advancing implementation of the Online Streaming Act, which conditions market access for streaming services on making financial contributions into certain government-linked funds intended for domestic industry. It is also unfortunate the USMCA effectively grandfathered in Canada's clearly inadequate notice-and-notice system. As a result, the copyright industries have not reaped any benefit in Canada from the obligations on legal remedies and safe harbors. In addition, the exception for Canada's obligations regarding the "cultural industries" threatens to undermine many, if not all of the benefits of the agreement for the copyright sector in Canada.

In Mexico, even after a definitive May 2024 decision by the Mexican Supreme Court upholding the Constitutionality of Mexico's 2020 reforms addressing its USMCA copyright obligations, Mexico still has not fully implemented these provisions. Mexico has not introduced implementing regulations that are essential to putting these new laws into practice. The regulations were required within 180 days of enactment. It is now well after the Supreme Court's decision and the new administration has shown no indication implementation regulations are forthcoming.

The failure to implement its USMCA copyright obligations means that Mexico has yet to provide much needed protections for technological protection measures (TPMs), including civil and criminal penalties for acts of circumvention and trafficking in circumvention devices. TPMs are critical protections that enable digital delivery of copyrighted works, including films, music, video games, and printed materials (books and journals). TPMs, through access controls, regulate access so that only authorized users can view, watch or listen to copyrighted content, and, through copy controls, protect rights including the unauthorized copying of such materials, all of which support various business models that deliver products and services to consumers online. TPMs are thus a fundamental enabling technology for legitimate digital trade in copyrighted materials, and specifically have been indispensable to the proliferation of licensed online delivery of content that has transformed the entire copyright marketplace.

Unfortunately, TPM circumvention is commercially significant in Mexico because Mexico has not yet fully implemented the WIPO Internet Treaties (WIPO Copyright Treaty (WCT) and WIPO Performances and Phonogram Treaty (WPPT)), which were concluded in 1996. There are business models—in Mexico and in other countries—built entirely around providing services and/or manufacturing and distributing technologies, software, devices, components, or tools to circumvent TPMs in order to gain unlawful access to copyrighted materials or to copy them without authorization. In particular, the proliferation of devices to circumvent TPMs that protect video games is a major problem for the video game industry and undermines many of the legitimate business models mentioned above. These devices are manufactured primarily in China, but they are exported and sold around the world, including in Mexico. Proper implementation of legal protections for TPMs enables effective enforcement actions against distributors of unlawful circumvention technologies. This is why it is critical for Mexico to fulfill its USMCA obligations and its obligations under the WIPO Internet Treaties by fully implementing adequate protections for TPMs, including civil and criminal liability for circumvention of TPMs.

Legal protections for TPMs and enforcement actions against those who make it their business to negate these protections will encourage greater investment in new content services and delivery channels. Such measures will therefore bring even more U.S. works to broader audiences in Mexico, benefitting U.S. publishers, producers, creators, and workers.

Furthermore, Mexico's 2020 implementing legislation adopted important notice and takedown procedures, with measures to prevent infringing content from being uploaded again, as well as safe harbors for services and platforms to comply with the notices. These provisions also should be implemented for Mexico to meet its USMCA obligations.

IIPA encourages Mexico to follow through on its USMCA commitments and to take additional steps to fully implement the agreement. For example, IIPA strongly urges Mexico to provide for secondary liability. As noted above, secondary liability is needed to provide the legal incentives for cooperation between ISPs and rights holders to combat online IP infringement.

The U.S. Government should ensure that both Mexico and Canada fully meet their USMCA obligations. Only after Mexico and Canada have properly implemented these obligations into their laws, regulations, and policies will the copyright industries enjoy the full economic benefits of the USMCA.

Other Trade Concerns Faced by the Copyright Industries

I would like to highlight a few additional notable trade concerns that the copyright industries currently face. IIPA welcomed the U.S.-China Phase One Agreement, which included several enforceable commitments on intellectual property rights enforcement and important services purchasing obligations, including IP licensing of audiovisual works. Unfortunately, China has not fully implemented the Agreement, and the creative industries continue to face significant market access restrictions that also drive persistent, evolving, and rampant piracy in China, piracy that continues to be exported worldwide. In addition, China's failure to fully implement the 2012 U.S.-China Film Agreement has undermined market access for U.S. film producers.

IIPA also remains concerned with two copyright reform bills that South Africa's President Ramaphosa recently referred to the Constitutional Court. If enacted, these bills would violate South Africa's multilateral trade obligations as well as the eligibility criteria of both the Generalized System of Preferences (GSP) and the African Growth and Opportunity Act (AGOA) regarding intellectual property.

Conclusion

Based on IIPA's more than three decades of experience with the role of U.S. trade agreements in opening up markets to U.S. goods and services protected by copyright, we believe that the potential positive impacts of these agreements on U.S. jobs, economic growth, and access to open foreign markets, when countries fully implement their obligations, are as significant today as they have ever been. In sum, agreements that: (i) incorporate evolving global

norms and best practices for copyright protection and enforcement; (ii) include provisions aimed at dismantling barriers to U.S. participation in digital and physical marketplaces around the world; (iii) are faithfully implemented by our trading partners; and (iv) have obligations that are vigorously enforced—play a critical role in U.S. exports and foreign sales, and will continue to do so in the future.

Thank you for this opportunity to present the views of the IIPA in this important hearing. I look forward to your questions.