



BILLING CODE 3290-F0

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR-2020-0035]

2020 Review of Notorious Markets for Counterfeiting and Piracy: Comment

Request

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) requests comments that identify online and physical markets to be considered for inclusion in the 2020 Review of Notorious Markets for Counterfeiting and Piracy (Notorious Markets List). The Notorious Markets List identifies examples of online and physical markets that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting. The issue focus for the 2020 Notorious Markets List will examine the use of e-commerce platforms and other third-party intermediaries to facilitate the importation of counterfeit and pirated goods into the United States.

DATES: November 8, 2020 at 11:59 pm ET: Deadline for submission of written comments. November 22, 2020 at 11:59 pm ET: Deadline for submission of rebuttal comments and other information USTR should consider during the review.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: <http://www.regulations.gov> (Regulations.gov). Follow the instructions for submitting comments in section III below. For alternatives to online submissions, please contact Jacob Ewerdt at NotoriousMarkets@ustr.eop.gov or (202) 395-4510 before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Jacob Ewerdt, Director for Innovation and Intellectual Property, at NotoriousMarkets@ustr.eop.gov or (202) 395-4510. You can find information about the Special 301 Review, including the Notorious Markets List, at www.ustr.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The United States is concerned with trademark counterfeiting and copyright piracy on a commercial scale because these illicit activities cause significant financial losses for right holders, legitimate businesses, and governments. In addition, they undermine critical U.S. comparative advantages in innovation and creativity to the detriment of American workers, and can pose significant risks to consumer health and safety and privacy and security. Conducted under the auspices of the Special 301 program and the authority of the U.S. Trade Representative to address practices that have significant adverse impact on the value of U.S. innovation, the Notorious Markets List identifies examples of online and physical markets that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting that infringe on U.S. intellectual property (IP).

Beginning in 2006, USTR identified notorious markets in the annual Special 301 Report. In 2010, USTR announced that it would publish the Notorious Markets List as an Out-of-Cycle Review, separate from the annual Special 301 Report. USTR published the first Notorious Markets List in February 2011. USTR develops the annual Notorious Markets List based upon public comments solicited through the *Federal Register* and in

consultation with Federal agencies that serve on the Special 301 Subcommittee of the Trade Policy Staff Committee.

The United States encourages owners and operators of markets reportedly involved in piracy or counterfeiting to adopt business models that rely on the licensed distribution of legitimate content and products and to work with right holders and enforcement officials to address infringement. USTR also encourages foreign government authorities to intensify their efforts to investigate reports of piracy and counterfeiting in such markets, and to pursue appropriate enforcement actions. The Notorious Markets List does not purport to reflect findings of legal violations, nor does it reflect the U.S. Government's analysis of the general IP protection and enforcement climate in the country or countries concerned. For an analysis of the IP climate in particular countries, please refer to the annual Special 301 Report, published each spring no later than 30 days after USTR submits the National Trade Estimate to Congress.

II. Public Comments

USTR invites written comments concerning examples of online and physical markets that reportedly engage in and facilitate substantial copyright piracy or trademark counterfeiting that infringe on U.S. intellectual property. USTR also invites written comments for the Notorious Markets List 'issue focus' that highlights an issue related to the facilitation of substantial trademark counterfeiting or copyright piracy. The issue focus for the 2020 Notorious Markets List will examine the use of e-commerce platforms and other third-party intermediaries to facilitate the importation of counterfeit and pirated goods into the United States. The rapid growth of e-commerce platforms has helped fuel the growth of counterfeit and pirated goods into a half trillion-dollar industry. This illicit

trade has an enormous impact on the American economy by eroding the competitiveness of American workers, manufacturers and innovation.

To facilitate the review, written comments should be as detailed as possible.

Comments must clearly identify the market and the reasons why the commenter believes that the market should be included in the Notorious Markets List. Commenters should include the following information, as applicable:

For physical markets:

- The market's name and location, *e.g.*, common name, street address, neighborhood, shopping district, city, etc., and the identity of the principal owners/operators.

For online markets:

- The domain name(s) past and present, available registration information, and name(s) and location(s) of the hosting provider(s) and operator(s).
- Information on the volume of Internet traffic associated with the website, including number of visitors and page views, average time spent on the site, estimate of the number of infringing goods offered, sold, or traded and number of infringing files streamed, shared, seeded, leeches, downloaded, uploaded, or otherwise distributed or reproduced, and global or country popularity rating (*e.g.*, Alexa rank).
- Revenue sources such as sales, subscriptions, donations, upload incentives, or advertising and the methods by which that revenue is collected.

For physical and online markets:

- Whether the market is owned, operated, or otherwise affiliated with a government entity.

- Types of counterfeit or pirated products or services sold, traded, distributed, or otherwise made available at that market.
- Volume of counterfeit or pirated goods or services or other indicia of a market's scale, reach, or relative significance in a given geographic area or with respect to a category of goods or services.
- Estimates of economic harm to right holders resulting from the piracy or counterfeiting and a description of the methodology used to calculate the harm.
- Whether the volume of counterfeit or pirated goods or estimates of harm has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Whether the infringing goods or services sold, traded, distributed, or made available pose a risk to public health or safety.
- Any known contractual, civil, administrative, or criminal enforcement activity against the market and the outcome of that enforcement activity.
- Additional actions taken by right holders against the market such as takedown notices, requests to sites to remove URLs or infringing content, cease and desist letters, warning letters to landlords and requests to enforce the terms of their leases, requests to providers to enforce their terms of service or terms of use, and the outcome of these actions.
- Additional actions taken by the market owners or operators to remove, limit, or discourage the availability of counterfeit or pirated goods or services, including policies to prevent or remove access to such goods or services, or to disable seller or user accounts, the effectiveness of market policies and guidelines in addressing

counterfeiting and piracy, and the level of cooperation with right holders and law enforcement.

- Any other additional information relevant to the review.

III. Submission Instructions

All submissions must be in English and sent electronically via Regulations.gov. To submit comments, locate the docket (folder) by entering the docket number USTR-2020-0035 in the 'Enter Keyword or IP' window at the Regulations.gov homepage and click 'search.' The site will provide a search-results page listing all documents associated with this docket. Locate the reference to this notice by selecting 'notice under 'document type' on the left side of the search-results page, and click on the link entitled 'comment now!' You should provide comments in an attached document, and name the file according to the following protocol, as appropriate: Commenter Name or Organization_2020 Notorious Markets. Please include the following information in the 'type comment' field: 2020 Review of Notorious Markets for Counterfeiting and Piracy. USTR prefers submissions in Microsoft Word (.docx) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the 'type comment' field. For further information on using Regulations.gov, please select 'how to use Regulations.gov' on the bottom of any page.

Please do not attach separate cover letters to electronic submissions. Instead, include any information that might appear in a cover letter in the comments themselves. Similarly, to the extent possible, please include any exhibits, annexes, or other attachments in the same file as the comment itself, rather than submitting them as separate files.

For any comment submitted electronically that contains business confidential information (BCI), the file name of the business confidential version should begin with the characters 'BCI'. Any page containing BCI must be clearly marked "BUSINESS CONFIDENTIAL" on the top of that page and the submission should clearly indicate, via brackets, highlighting, or other means, the specific information that is business confidential. A filer requesting business confidential treatment must certify that the information is business confidential and that they would not customarily release it to the public. Additionally, the submitter should type 'Business Confidential 2020 Review of Notorious Markets for Counterfeiting and Piracy' in the 'comment' field.

Filers of comments containing BCI also must submit a public version of their comments. The file name of the public version should begin with the character 'P'. The non-business confidential version will be placed in the docket at Regulations.gov and be available for public inspection.

As noted, USTR strongly urges submitters to file comments through Regulations.gov. You must make any alternative arrangements in advance of the relevant deadline and before transmitting a comment by contacting Jacob Ewerdt at NotoriousMarkets@ustr.eop.gov or (202) 395-4510 before transmitting a comment and in advance of the relevant deadline.

USTR will post comments in the docket for public inspection, except properly designated BCI. You can view comments on Regulations.gov by entering docket number USTR-2020-0035 in the search field on the home page.

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Office of the United States Trade Representative.*

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