



## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR-2023-0009]

### 2023 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 2023 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 or facilitate substantial copyright piracy or trademark counterfeiting. The issue focus for the 2023 Notorious Markets List will examine the potential health and safety risks posed by counterfeit goods.

#### DATES:

October 6, 2023, at 11:59 pm ET: Deadline for submission of written comments.

October 20, 2023, 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 Jake Ewerdt at [notoriousmarkets@ustr.eop.gov](mailto:notoriousmarkets@ustr.eop.gov) or (202) 395-6862 before transmitting a comment and in advance of the relevant deadline.

**FOR FURTHER INFORMATION CONTACT:** Jake Ewerdt, Deputy Assistant U.S. Trade Representative for Innovation and Intellectual Property, at

notoriousmarkets@ustr.eop.gov or (202) 395-6862. You can find information about the Special 301 Review, including the Notorious Markets List, at [www.ustr.gov](http://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 or 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 2023 Notorious Markets List will examine the potential health and safety risks posed by counterfeit goods.

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 online markets that engage in or facilitate substantial counterfeiting:

- The domain name(s) of the market, the name(s) of the owner(s) or operator(s), the geographic area(s) where the market operates, and whether the market is owned, operated, or otherwise affiliated with a government entity.
- Estimate of the number of goods sold or otherwise made available on the market and any other indicia of the market's scale, reach, or relative significance in a given geographic area or with respect to a category of goods.

- Estimate of the number and types of goods sold or otherwise made available on the market that are counterfeit, either in aggregate or in relation to the total number and types of goods sold or otherwise made available on the market, a description of the methodology used to create the estimate and the timeframe the estimate was conducted, and information supporting the claims of counterfeiting.
- Estimate of economic harm to right holders resulting from the counterfeit goods and a description of the methodology used to calculate the harm.
- Whether the number and types of counterfeit goods or the economic harm has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Whether the counterfeit goods sold or otherwise made available on the market 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.
- Any actions taken by right holders, such as discussing concerns with the market, submitting takedown notices or requests to remove counterfeit goods, sending cease and desist letters, or requesting that the market enforce its terms of service or terms of use, and the outcome of these actions.
- Any actions taken by the market owners or operators to remove, limit, or discourage the availability of counterfeit goods, including policies to prevent or remove access to such goods, or to disable seller or user accounts, the effectiveness of market policies and guidelines in addressing counterfeiting, and the level of cooperation with right holders and law enforcement.
- Any other additional information relevant to the review.

For online markets that engage in or facilitate substantial piracy:

- The domain name(s) of the market, the name(s) and location(s) of the hosting provider(s), the name(s) and location(s) of the owner(s) or operator(s), the geographic area(s) where the market operates, and whether the market is owned, operated, or otherwise affiliated with a government entity.
- Revenue sources such as sales, subscriptions, donations, upload incentives, or advertising, the methods by which that revenue is collected, and the entities that help facilitate the market's revenue.
- Description and estimate of economic harm to right holders resulting from piracy and a description of the methodology used to calculate the harm.
- Whether the number of pirated goods or files, or the economic harm, has increased or decreased from previous years, and an approximate calculation of that increase or decrease for each year.
- Any known contractual, civil, administrative, or criminal enforcement activity against the market and the outcome of that enforcement activity.
- Any actions taken by right holders, such as discussing concerns with the market, submitting takedown notices or requests to remove URLs or pirated content, sending cease and desist letters, or requesting that the market enforce its terms of service or terms of use, and the outcome of these actions.
- Any actions taken by the market owners or operators to remove, limit, or discourage the availability of 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 piracy, and the level of cooperation with right holders and law enforcement.
- Any other additional information relevant to the review.

For physical markets that engage in or facilitate substantial counterfeiting or piracy:

- The market's name(s), street address, neighborhood or shopping district, city, and the identity of the principal owner(s) or operator(s).
- 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 the market.
- Volume of counterfeit or pirated goods or services or other indicia of the market's scale, reach, or relative significance in a given geographic area or with respect to a category of goods or services.
- Description and estimate 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, such as discussing concerns with the market, sending cease and desist letters, sending warning letters to landlords or requests to enforce the terms of their leases, 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, 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-2023-0009 in the search bar on 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'. You should provide comments in an attached document, and name the file according to the following protocol, as appropriate: Commenter Name or Organization\_2023 Notorious Markets. Please include the following information in the 'type comment' field: 2023 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.

Please include the name, email address, and phone number of an individual who can be contacted if there are issues or questions with the submission. The contact information can be included in the submission or sent to Jake Ewerdt, Deputy Assistant U.S. Trade Representative for Innovation and Intellectual Property, at [notoriousmarkets@ustr.eop.gov](mailto:notoriousmarkets@ustr.eop.gov) or (202) 395-6862.

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 2023 Review of Notorious Markets for Counterfeiting and Piracy' in the 'comment' field. Filers of comments containing BCI also must submit a public version. Begin the file name of the public version with the character 'P'. USTR will place the non-business confidential version in the docket at Regulations.gov and it will 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 Jake Ewerdt at notoriousmarkets@ustr.eop.gov or (202) 395-6862.

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-2023-0009 in the search field on the home page.

**Daniel Lee,**

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Office of the United States Trade Representative.*

