



[Billing Code 3290-F6]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2016–2013]

2016 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Comments

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) requests written comments identifying Internet and physical markets based outside the United States that should be included in the 2016 Notorious Markets List (List). In 2010, USTR began publishing the Notorious Markets List separately from the annual Special 301 Report as an “Out-of-Cycle Review.” The List identifies online and physical marketplaces that reportedly engage in and facilitate substantial copyright piracy and trademark counterfeiting.

DATES: Written comments are due by 11:59 PM (EDT) on October 7, 2016. Rebuttal or other information to be considered during the review is due by 11:59 PM (EDT) on October 21, 2016.

ADDRESSES: You should submit written comments through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in section II below. For alternatives to on-line submissions, please contact USTR at

Special301@ustr.eop.gov before transmitting a comment and in advance of the relevant deadline.

FOR FURTHER INFORMATION CONTACT: Christine Peterson, Director for Intellectual Property and Innovation, Office of the United States Trade Representative, at special301@ustr.eop.gov. 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 they cause significant financial losses for rights holders, legitimate businesses and governments, undermine critical U.S. comparative advantages in innovation and creativity to the detriment of American workers, and potentially pose significant risks to consumer health and safety as well as privacy and security. The Notorious Markets List identifies select online and physical marketplaces that reportedly engage in or facilitate substantial copyright piracy and trademark counterfeiting.

Beginning in 2006, USTR identified notorious markets in the annual Special 301 Report. In 2010, pursuant to the Administration's 2010 Joint Strategic Plan on Intellectual Property Enforcement, USTR announced that it would begin publishing the List as an Out-of-Cycle Review, separately from the annual Special 301 Report. USTR published the first List in February 2011. USTR develops the annual List based upon

public comments solicited through the Federal Register and in consultation with other 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 and counterfeiting to adopt business models that rely on the licensed distribution of legitimate content and products and to work with rights holders and enforcement officials to address infringement. USTR also encourages responsible government authorities to intensify their efforts to investigate reports of piracy and counterfeiting in such markets, and to pursue appropriate enforcement actions. The List does not purport to reflect findings of legal violations, nor does it reflect the United States Government's analysis of the general intellectual property rights (IPR) protection and enforcement climate in the country or countries concerned. For an analysis of the IPR 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

A. Content of Comments

USTR invites written comments concerning examples of Internet and physical notorious markets, including foreign trade zones that allegedly facilitate substantial trademark counterfeiting and copyright piracy.

To receive full consideration, 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 List. Commenters should include the following information, as applicable:

- if a physical market, 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.
- if an online market:
 - 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.
- 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 the rights holder resulting from the piracy or counterfeiting and a description of the methodology used to calculate the harm.
- 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 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 additional information relevant to the review.

B. Instructions for Submitting Comments

Comments must be in English. To ensure the timely receipt and consideration of comments, USTR strongly encourages commenters to submit comments electronically, using the www.regulations.gov website. To submit comments via www.regulations.gov, enter Docket Number **USTR–2016–2013** on the home page and click “Search.” The site

will provide a search-results page listing all documents associated with this docket. Find the reference to this notice and click on the button labeled “Comment Now!” For further information on using the www.regulations.gov website, please consult the resources provided on the website by clicking on “How to Use Regulations.gov” on the bottom of the home page.

The www.regulations.gov website allows users to provide comments by filling in a “Comment” field, or by attaching a document using an “Upload File” field. USTR prefers that comments be provided as an attached document. If a document is attached, please type “2016 Out-of-Cycle Review of Notorious Markets” in the “Comment” field. USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf) format. If the submission is in another file format, please indicate the name of the software application in the “Comment” field. File names should reflect the name of the person or entity submitting the comments. Please do not attach separate cover letters to electronic submissions; rather, 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 comments submitted that contains business confidential information, the file name of the business confidential version should begin with the characters “BC”. Any page containing business confidential information 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 would not customarily be released to the public by the submitter. Additionally, the submitter should type “Business Confidential 2016 Out-of-Cycle Review of Notorious Markets” in the “Comment” field.

Filers of comments containing business confidential information also must submit a public version of their comments. The file name of the public version should begin with the character “P”. The “BC” and “P” should be followed by the name of the person or entity submitting the comments. Filers submitting comments containing no business confidential information should name their file using the name of the person or entity submitting the comments. The non-business confidential version will be placed in the docket at www.regulations.gov and be available for public inspection.

As noted, USTR strongly urges commenters to submit comments through www.regulations.gov. Any alternative arrangements must be made before transmitting a comment and in advance of the relevant deadline by contacting USTR at Special301@ustr.eop.gov.

Comments will be placed in the docket and open to public inspection, except business confidential information. Comments may be viewed on the www.regulations.gov website by entering Docket Number USTR–2016–2013 in the “Search” field on the home page.

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