

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE U.S. TRADE REPRESENTATIVE

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2024 SPECIAL 301 PUBLIC HEARING

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WEDNESDAY
FEBRUARY 21, 2024

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The public hearing convened via video
teleconference, at 10:00 a.m. EST, Daniel Lee,
Panel Chair, presiding.

PRESENT

DANIEL LEE, Assistant United States Trade
Representative, Office of Innovation and
Intellectual Property, Panel Chair
CLAIRE AVERY-PAGE, Office of the U.S. Trade
Representative, Director for Innovation and
Intellectual Property
WON CHANG, Treasury Department, International
Economist
ALEXIS CHERRY, Department of Agriculture,
Senior Trade Advisor
MARY CRITHARIS, U.S. Patent and Trademark
Office, Deputy Chief Policy Officer
ALLISON FEDORKA, Department of Homeland
Security
JOSEPH ALEXANDER HAMILTON, State Department,
Deputy Director, Office of Intellectual
Property Enforcement
EMILY LANZA, U.S. Copyright Office, Senior
Counsel
CHRISTOPHER MERRIAM, Department of Justice,
Prosecutor, Computer Crime and Intellectual
Property Section

STEVAN MITCHELL, Department of Commerce,
Director, Office of Standards and Intellectual
Property, International Trade Administration
JESSICA POMPER, Department of Commerce,
International Trade Specialist, Office of
Intellectual Property Rights, International
Trade Administration
ANNE SNYDER, Department of Health and Human
Services, Senior Global Health Officer, Trade
and Health

WITNESSES PRESENT

IVAYLO SHOTEV, Government of Bulgaria
VOLODYMYR MUZYLOV, Government of Ukraine
BRIAN SCARPELLI, ACT - The App Association
GUAN JIAN, China Chamber of International
Commerce
QI RUOYIN, China Chamber of International
Commerce
JONATHAN MCHALE, Computer and Communications
Industry Association
JAIME CASTANEDA, Consortium for Common Food
Names
MATT PRIEST, Footwear Distributors and
Retailers of America
KEVIN ROSENBAUM, International Intellectual
Property Alliance
THOMAS VALENTE, Intellectual Property Owners
Association
CLAIRE CASSEDY, Knowledge Ecology International
PETER MAYBARDUK, Public Citizen
PAUL KILMER, Trademark Working Group
PATRICK KILBRIDE, U.S. Chamber of Commerce,
Global Innovation Policy Center

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1 P-R-O-C-E-E-D-I-N-G-S

2 10:00 a.m.

3 CHAIR LEE: Good morning. I'm going
4 to call this hearing to order.

5 Good morning. My name is Daniel Lee.
6 I am the Assistant United States Trade
7 Representative for Innovation and Intellectual
8 Property.

9 I would like to welcome everyone to
10 the public hearing for the Annual Special 301
11 Review. It's good to see everyone again after
12 the hiatus from holding these hearings in person.

13 Just as a brief overview, the Special
14 301 Review is a statutorily-mandated exercise we
15 undertake each year to develop an overall
16 strategy to ensure adequate and effective
17 intellectual property rights protection and
18 equitable market access in foreign countries for
19 United States persons that rely on protection of
20 intellectual property rights such as copyright
21 and related rights, trademarks, patents, and
22 trade secrets.

1 Ensuring that U.S. owners of
2 intellectual property, or IP, have a full and
3 fair opportunity to compete around the globe is
4 one of the trade priorities outlined in the
5 President's Annual Trade Policy Agenda.

6 This is the 36th Annual Special 301
7 Review and the 12th public hearing that USTR has
8 hosted in connection with the review.

9 I would like to note for the record
10 that today is Wednesday, February 21st, 2024, and
11 that this hearing is taking place at the Office
12 of the United States Trade Representative, or
13 USTR.

14 We will make a transcript of today's
15 hearing available to the public on USTR's website
16 at ustr.gov. This is also being video recorded,
17 and we'll put that up as well.

18 Today's hearing is scheduled to go to
19 approximately 2:30, and we will have an hour-and
20 -a-half break for lunch from 12:00 to 1:30. And
21 I just want to ask for everyone's cooperation,
22 for those of you staying, to keep the hearing on

1 track.

2 So, at this point, I would like to ask
3 all the colleagues at the table -- that is, the
4 hearing panel -- who all come from various U.S.
5 Government agencies that serve on the Special 301
6 Subcommittee to introduce themselves. So, we'll
7 start here with Claire.

8 MS. AVERY-PAGE: Thank you.

9 Good morning, everyone. My name is
10 Claire Avery-Page. I'm the Director for
11 Innovation and Intellectual Property at USTR.

12 MS. LANZA: Good morning. My name is
13 Emily Lanza, and I'm Senior Counsel for Policy
14 and International Affairs at the U.S. Copyright
15 Office.

16 MR. HAMILTON: Good morning. My name
17 J. Alexander Hamilton, and I am the Deputy Office
18 Director in the Office of Intellectual Property
19 at the U.S. Department of State.

20 MR. CHANG: Hi. My name is Won Chang,
21 Department of Treasury, International Affairs,
22 Office of International Trade and Investment

1 Policy. Thank you.

2 MR. MITCHELL: Good morning. I'm
3 Stevan Mitchell. I direct the Office of
4 Standards and Intellectual Property for the
5 International Trade Administration, a bureau of
6 the Department of Commerce.

7 MS. CRITHARIS: Good morning. My name
8 is Mary Critharis. I'm the Deputy Chief Policy
9 Officer and the Deputy Director for International
10 Affairs of the United States Patent and Trademark
11 Office.

12 MR. MERRIAM: Good morning, everyone.
13 Christopher Merriam from the Department of
14 Justice's Computer Crime and Intellectual
15 Property Section. We're part of the Criminal
16 Division.

17 MS. FEDORKA: Good morning. My name
18 is Allison Fedorka. I'm with the Department of
19 Homeland Security, Trade and Economic Security
20 and Trade Policy.

21 MS. SNYDER: Good morning. My name is
22 Anne Snyder. I'm a Senior Global Health Officer

1 in the Office of Global Affairs at HHS.

2 MS. CHERRY: Good morning, everyone.
3 My name is Alexis Cherry. I'm Senior Trade
4 Advisor in the Foreign Agricultural Service at
5 U.S. Department of Agriculture, covering
6 geographical indications.

7 CHAIR LEE: All right. So, to
8 continue, the Special 301 Subcommittee of the
9 Trade Policy Staff Committee, comprised of the
10 agencies you've just heard from and chaired by
11 USTR, conducts the Annual Special 301 Review.

12 Stakeholder contributions and
13 contributions from Washington-based agencies and
14 our embassy-based personnel around the world are
15 critical to this review process. The
16 Subcommittee is currently in the information-
17 gathering phase on behalf of the agencies here.
18 We thank you for the views, inside opinions, and
19 factual information you will share with us today.

20 The schedule of today's hearing is
21 comprised of interested parties from foreign
22 governments, civil society, and the private

1 sector who responded to USTR's notice in the
2 Federal Register published on December 6th, 2023,
3 and voluntarily requested the opportunity to
4 appear at this public hearing.

5 As a reminder, the purpose of today's
6 public hearing is to provide the Special 301
7 Subcommittee with additional information that we
8 can use in the deliberations that will lead to
9 the publication of the 2024 Special 301 Report to
10 Congress on or about April 26, 2024.

11 This year, we have received public
12 filings that address over 65 countries and many
13 country-specific IP protection and enforcement
14 issues that may negatively affect our bilateral
15 trading relationships. These filings are
16 available to the public at [regulations.gov](https://www.regulations.gov), and
17 the Docket No. is USTR-2023-0014.

18 So, just to recall the statutory
19 authority for the Special 301 Review, our Special
20 301 Report is the result of a congressionally-
21 mandated annual review of the state of
22 intellectual property rights protection and

1 enforcement in trading partners around the world,
2 which the Office of the U.S. Trade
3 Representative, USTR, conducts pursuant to
4 Section 182 of the Trade Act of 1974, as amended
5 by the Omnibus -- well, we'll just say "as
6 amended."

7 The provisions of Section 182 are
8 commonly referred to as the Special 301
9 Provisions of the Trade Act; hence, the Special
10 301 Report. Specifically, Section 12 of the
11 Trade Act requires that the United States Trade
12 Representative identify countries that deny
13 adequate and effective protection of intellectual
14 property rights or that deny fair and equitable
15 market access to U.S. persons who rely on
16 intellectual property protection.

17 The statute requires USTR to determine
18 which, if any, countries should be identified as
19 priority foreign countries. Acts, policies, or
20 practices that are the basis of the country's
21 identification as a priority foreign country can
22 be subject to the procedures set out in Section

1 301 to 308 of the Trade Act.

2 In addition to the statutorily-defined
3 priority foreign country definition, USTR created
4 the Priority Watch List and Watch List Categories
5 to assist the Administration in pursuing the
6 goals of the Special 301 Provisions.

7 USTR is also charged with developing
8 Priority Watch List Action Plans, where a country
9 has been placed on the Priority Watch List
10 without a change for at least one year.

11 So, I'd like to go over briefly the
12 format of today's hearing. So, each party --
13 that is, each witness -- has been allotted 10
14 minutes. Each person will start with five
15 minutes of prepared statements, leaving five
16 minutes for panel questions. We will be keeping
17 time, and we'll flash a time to you when one
18 minute remains. It looks like this. And we will
19 be fairly strict with the time limits and may
20 need to cut you off so that we can stay on
21 schedule.

22 The panel will hold its questions

1 until the presenter concludes his or her
2 statement. In some cases, we have prepared
3 questions based on the written filings you
4 submitted. In other cases, we will respond to
5 your testimony today.

6 In general, please keep in mind the
7 purpose of this hearing: to provide information
8 that the Subcommittee can use in satisfying the
9 charge of the Special 301 statute when conveying
10 your testimony and responding to any questions we
11 may ask.

12 So, without further delay, I'd like to
13 invite the government of Bulgaria to start us
14 off. Please go ahead and introduce yourself,
15 including your name, title, and organization, and
16 begin your testimony.

17 Thank you.

18 MR. SHOTEV: Thank you, Mr. Chairman.

19 Dear Hearing Committee, my name is
20 Ivaylo Shotev. I am Deputy Minister of Economy
21 and Industry of Bulgaria. I'm here leading a
22 delegation, pursuant from the decision of the

1 Bulgarian Council of Ministers that was taken the
2 14th of February this year.

3 In this delegation next to me, I would
4 like to say that this is Mariya Pavlova, which is
5 Deputy Prosecutor General of Bulgaria. Our
6 delegation also consists of advisors to the
7 political cabinet to the Prime Minister, head of
8 the Cyber Crime Department, the National
9 Investigative Service, and the Director of
10 Copyright Directorate of the Minister of Culture.

11 One of the aims we have is additional
12 discussions and meetings afterwards, in order to
13 continue working on the topic of IP protection
14 and enforcement.

15 I would like to thank you for having
16 us here. We fairly appreciate our good
17 cooperation, and we wish to continue our
18 strategic partnership. It is important to know
19 that we fully understand that in order to live in
20 this common world, it is not only a matter of
21 privileges, but it's also a matter of
22 responsibilities.

1 And Bulgaria is very proud of its IT
2 sector. It is one of the most highly developed,
3 not only in Eastern Europe, but in Europe as
4 well. We have a great number of American films
5 that are made in our country, films with
6 companies with American capital. We wish to
7 continue working in order to have the environment
8 for these to continue and to develop even
9 further.

10 The Republic of Bulgaria confirms our
11 commitment to ensuring the protection of
12 intellectual property rights in Bulgaria.
13 Concrete expressions of this are the following:
14 we have made recent legislative changes in this
15 direction, and the second is the efforts for the
16 enforcement of these changes.

17 Firstly, it is important to say that
18 we passed through a period of political crisis in
19 Bulgaria. We had five parliamentary elections,
20 and we were able to form a government in the
21 summer. And shortly after, authority was passed
22 to our Parliament, which gives the legislative

1 framework in order for our trade partners'
2 concerns to adopt evidence sampling in our
3 criminal cases.

4 So, after a prolonged period of
5 discussions in the Parliament, we were able to
6 pass this through, and it is already part of our
7 legislative from the 4th of August. So, shortly
8 after the government was formed, we went through
9 this process in order to ensure the framework is
10 there. The amendments are based on, basically, a
11 proposal from an inter-minister working group and
12 the Ministry of Justice.

13 We've had numerous discussions how to
14 obey the law, how to go about this, and they
15 provided for the prosecution of persons who
16 created conditions for online piracy -- for
17 example, through the establishment and
18 maintenance of torrent trackers, web platforms,
19 chat groups online, applications for the exchange
20 of pirated content, and other activities.

21 We have to take into account, though,
22 our specifics of our legal system, because it's

1 different. It's literally different. And the
2 way we went about it in order to make the
3 amendments and to achieve the intended result of
4 evidence sampling, and thus overcome the lack of
5 evidence sampling in our legislative with regard
6 to intellectual property offenses, we have gone
7 through this process. It is completed.

8 So, it's celebratory to get the
9 statistics in because the law was done just quite
10 recently. And I will be happy to answer all
11 possible questions, if I may. If I'm not able to
12 answer, we will be able to submit them in person.
13 So that you get the most information that you may
14 need.

15 Thank you very much.

16 CHAIR LEE: Thank you very much.

17 The first question we have today comes
18 from USTR.

19 MR. SHOTEV: Okay.

20 MS. AVERY-PAGE: Thank you.

21 So, as you just described, we
22 understand that, as an alternative to evidence

1 sampling, Bulgaria made progress in addressing
2 deficiencies in the investigation and prosecution
3 of online piracy cases by passing the August 2023
4 act amending and supplementing the Criminal Code.

5 Your submission identifies Article
6 172a, paragraph 2 of this Act as providing for
7 the criminal prosecution of persons who create
8 conditions for online piracy through the
9 development and maintenance of torrent trackers,
10 web platforms, chat groups, and applications for
11 online exchange of pirated content.

12 So, under this Act, have there been
13 any criminal prosecutions under Article 172a,
14 paragraph 2?

15 MR. SHOTEV: We currently are able to
16 inform that we are working on such. And
17 hopefully, we are able to get it completed and
18 have official people that have been sentenced for
19 criminal activities. From our legislative, it is
20 now a criminal act.

21 MS. AVERY-PAGE: Okay.

22 MR. SHOTEV: So, yes. There is.

1 MS. AVERY-PAGE: Thank you.

2 CHAIR LEE: Okay. Thank you.

3 Our next question comes from the
4 Copyright Office.

5 MS. LANZA: Thank you.

6 In your submission, you note that the
7 Ministry of Culture is preparing draft amendments
8 and supplementations to the Copyright and
9 Neighbouring Rights Act to enable effective
10 counteraction to unauthorized online distribution
11 of objects protected by copyright and neighboring
12 rights. What is the status of these draft
13 amendments?

14 MR. SHOTEV: Currently, they're
15 working. They're pretty much done, as far as I
16 know. And we have also a panel which is a
17 consultation panel, an advisory panel, from the
18 Ministry of Councils. It's all started working.
19 So, from there, we're going to have also a
20 framework which we're going to implement.

21 And also, I would like to share with
22 you that we have done a lot in terms of making

1 the environment for this in order to exist, in
2 terms of there's a lot of work towards -- when a
3 person goes online to look for some type of
4 movie, you go directly, direct to a subscription-
5 based platform, which is the official content is
6 the first thing you see.

7 And from the Minister of Culture,
8 there are numerous activities. For example, I
9 must note that we are part of the EU Intellectual
10 Property Office Project Agorateka, which is also
11 a part of online content. So, basically, there
12 is official online -- you can go and it goes to
13 the subscription-based. So, pretty much the
14 piracy, you don't really see it, no, anymore.

15 CHAIR LEE: Thank you very much.

16 Our next -- yes, we have time for one
17 more question, I think. Our next question comes
18 from the Department of Justice.

19 MR. MERRIAM: Thank you very much for
20 your testimony, and we appreciate the detailed
21 outline of your law enforcement activity and the
22 updates on the laws.

1 MR. SHOTEV: Yes.

2 MR. MERRIAM: In the submission, you
3 note that the Patent Office, the Ministry of the
4 Interior, and the Prosecutor's Office are working
5 together through joint initiatives to reduce the
6 spread of counterfeit goods, both physically and
7 online. Can you provide any details on those
8 joint initiatives and how they're affecting the
9 spread of counterfeit goods?

10 MR. SHOTEV: I think we have done a
11 great amount in this regard, as Bulgaria is one
12 of the possible channels that these goods come
13 through. We have seen a great rate of goods that
14 have been seized and goods that have been pretty
15 much completed, the cases. So, I think in this
16 regard we are very good. In this regard, we are
17 good, yeah.

18 MR. MERRIAM: Thank you.

19 CHAIR LEE: Maybe we have time for
20 just one more question from the Department of
21 Homeland Security.

22 MR. SHOTEV: If I'm able to just share

1 with you some little bit more information, if I
2 am allowed?

3 CHAIR LEE: Okay.

4 MR. SHOTEV: I want to make sure we
5 have to know that we made an intellectual
6 property sector within our newly-formed Cyber
7 Crime Directorate. So, that is very important
8 because we have a new Cyber Crime Unit from 2021,
9 2022 actually, and it will improve the work of
10 the Ministry of Interior in relation to
11 intellectual property crimes.

12 So, pretty much the capacity-building
13 is there. Our prosecutors and this system have
14 gone through a number of educations, I would say,
15 in order to get the knowledge how to go through
16 from beginning to end to get this process done.

17 So, we are pretty much here to confirm
18 our firm stand on this piracy, and I believe we
19 are doing whatever is necessary to combat this,
20 and we will continue doing this. That is all.

21 CHAIR LEE: Okay. Thank you very much
22 for your testimony.

1 MR. SHOTEV: Thank you very much.

2 CHAIR LEE: Next up is the government
3 of Ukraine.

4 Please go ahead and --

5 MR. MUZYLOV: Yes, thank you.

6 CHAIR LEE: -- your name, title, and
7 affiliation for the record, and please begin your
8 testimony.

9 Thank you.

10 MR. MUZYLOV: So, hello, Subcommittee
11 Members and Representatives. It's an honor for
12 me to be here today with you.

13 My name is Volodymyr Muzylov. I am
14 the First Secretary at the Embassy of Ukraine and
15 active head of the Government Section at the
16 Embassy of Ukraine in the U.S.

17 So, on behalf of the government of
18 Ukraine, I'd like to express the highest respect
19 for the Office of USTR and all the government
20 institutions, and for all participants in the
21 Special 301 hearings. The government of Ukraine
22 expresses gratitude to the U.S. Government for

1 unwavering support of Ukrainian applicants and
2 the whole Ukrainian IP and innovation system.

3 The government of Ukraine defines the
4 development of the national IP system as its
5 priority task, despite the ongoing Russian war of
6 aggression against Ukraine.

7 The law of Ukraine of April 1st, 2022
8 -- actually, just months after the beginning of
9 the full-scale invasion -- introduced a legal
10 mechanism for protecting the IP interests of
11 persons, preventing the loss of IP rights during
12 martial law.

13 The implementation of this mechanism
14 is also available for applicants to provide them
15 with maximum assistance for the effective
16 management and enforcement of IP rights under the
17 martial law regime.

18 The government of Ukraine managed to
19 complete the institutional reform of the IP
20 system in Ukraine. The newly-established
21 Ukrainian National Office for Intellectual
22 Property and Innovation began to perform the

1 functions of the National Intellectual Property
2 Authority as of November 8th, 2022.

3 Within the framework of its
4 activities, the Ukrainian IP Office introduced
5 effective instruments of IP and innovation,
6 combined with broad public discussions and
7 transparency of its activities.

8 The government of Ukraine is
9 intensifying the activities of its advisory board
10 in the IP field. On October 6th, 2023, the
11 composition of the IP Council was expanded to
12 include representatives of government and non-
13 governmental institutions.

14 The following regulatory acts were
15 adopted to improve the IP system and strengthen
16 the production of IP rights:

17 The new law on copyright and related
18 rights, which, in addition to harmonization with
19 EU standards, introduced forward-looking
20 provisions. In particular, cases of exception
21 and limitations for content in the digital
22 environment by cultural heritage institutions,

1 and rights to non-regional objects generated by
2 computer programs, including artificial
3 intelligence.

4 Second, procedures for protection of
5 moral rights of authors in respect of work passed
6 into the public domain in the absence of heirs.

7 Third, procedures of acquiring and
8 losing the status of orphan works, of course. On
9 September 8, 2023, Ukraine acceded to the
10 Marrakesh Treaty to increase public interest in
11 protecting the rights of persons with
12 disabilities.

13 And the last one, new rules of
14 procedures of the Appeals Chamber with the
15 Ukrainian IP Office.

16 Also, drafts of new bylaws were also
17 developed, including the rules of filing
18 applications for industrial property rights and
19 conducting their examinations, as well as the
20 legal status of patent attorneys.

21 In order to mobilize support from the
22 international community, the government of

1 Ukraine is taking active measures to cooperate
2 with international, regional, and national IP
3 institutions; in particular, with Commercial Law
4 Development Program of the U.S. Department of
5 Commerce, the USPTO, WIPO, the European Union
6 Intellectual Property Office, and the European
7 Patent Office.

8 In July 2023, the Ministry of Economy
9 of Ukraine signed a Memorandum of Understanding
10 with WIPO aimed at restoring Ukraine's innovation
11 and creative sectors and ecosystem.

12 For planning issues in the sphere of
13 collective management, license software issues,
14 and strengthening IP rights enforcement -- that's
15 a usual problem for Ukraine previously -- in
16 particular, on the internet, the following should
17 be noted:

18 Firstly, the Register of CMOs
19 maintained by the Ministry of Economy, where it
20 now includes 19 CMOs that have the right to carry
21 out voluntary collective management within their
22 catalog.

1 Taking into account the fact that the
2 results of some accreditation competitions were
3 cancelled in 2021, and the three-year period of
4 accreditation in many spheres was about to expire
5 in 2022, the Ministry of Economy of Ukraine
6 planned to start forming a new composition of the
7 accreditation commission at the end of February
8 2022, and then, hold new competitions.
9 Unfortunately, these plans were hindered by the
10 full-scale invasion by Russia in February of
11 2022.

12 At the same time, Ukrainian
13 legislation established during martial law CMOs,
14 TV and radio organizations are released from
15 submitting accounting, financial, and other --

16 CHAIR LEE: I'm sorry to interrupt but
17 the time is up.

18 MR. MUZYLOV: Yes.

19 CHAIR LEE: So, if you have a couple
20 of sentences to wrap up, so that we have time for
21 our questions.

22 MR. MUZYLOV: Thank you. Sure. Yes.

1 As you can see, there are a lot that
2 we could present what was done by the government,
3 despite of Russian aggression, because, for us,
4 it's extremely important to pay special attention
5 to IP protection. Specifically, because, right
6 now, for us, it's essential to support IP rights,
7 especially right now where one of the main assets
8 to defend our country is actually development of
9 intellectual weapons, like drones, occupational
10 intelligence. So, right now, for us, it's even
11 more important than previously to pay special
12 attention to that.

13 So, thank you.

14 CHAIR LEE: Thank you. The first
15 question we have comes from USTR.

16 MR. MUZYLOV: Uh-hum.

17 MS. AVERY-PAGE: Thank you very much.

18 So, we discussed Ukraine's IP reforms
19 during the November 2023 U.S.-Ukraine Trade and
20 Investment Council meeting here at USTR. We
21 appreciated your updates and your Special 301
22 submission, and the commitment to IP issues,

1 despite the full-scale invasion and ongoing
2 aggression by Russia.

3 What IP-related reforms are you
4 finding the most challenging and why?

5 MR. MUZYLOV: Thank you so much for
6 this question.

7 So, it's very broad and important.
8 So, that's why the government of Ukraine will
9 provide its response in written form. Thank you.

10 CHAIR LEE: Thank you. Our next
11 question comes from the Patent and Trademark
12 Office.

13 MS. CRITHARIS: Thank you for your
14 testimony.

15 We would like to inquire, what is the
16 status of implementing the 2022 law entered into
17 force in January of 2023 on copyright and related
18 rights?

19 MR. MUZYLOV: Thank you. We will
20 provide the response in written form.

21 CHAIR LEE: All right. Next is a
22 question from the Department of Homeland

1 Security.

2 MS. FEDORKA: In your submission, you
3 note that, in 2023, Customs made 347 decisions on
4 suspension of customs clearance of goods on
5 suspicions of IPR violations. In 78 cases,
6 counterfeit goods were destroyed under Article
7 401 of the Customs Code of Ukraine. And in
8 another 49 cases, small batches of counterfeit
9 goods were destroyed. Of the 220 cases that did
10 not result in destruction, what was the reason?
11 And do you have specifics concerning the number
12 of cases where the rights-holders chose not to
13 initiate a court action?

14 MR. MUZYLOV: Thank you. We will
15 check with our customs service and get back to
16 you with a written response.

17 MS. FEDORKA: Thank you.

18 MR. MUZYLOV: Thank you.

19 CHAIR LEE: Thank you. And our final
20 question comes from the Treasury Department.

21 MR. CHANG: Thank you.

22 Can you clarify what are non-original

1 objects generated by a computer program that are
2 protected under Law No. 2811's sui generis
3 database rights?

4 MR. MUZYLOV: Thank you. We will get
5 back to you with the original response. Thank
6 you.

7 CHAIR LEE: Okay. Thank you for your
8 testimony.

9 MR. MUZYLOV: Thank you.

10 CHAIR LEE: All right, so, it looks
11 like we are pretty much on schedule, if not a
12 couple of minutes early. At this point, we will
13 be moving from the government witnesses to the
14 non-government witnesses, and the first up is
15 ACT, the App Association.

16 MR. SCARPELLI: Thank you.

17 CHAIR LEE: Please state your name,
18 title, and organization for the record, and
19 please begin your testimony.

20 MR. SCARPELLI: All right. Thanks.
21 Thanks for having me here.

22 Brian Scarpelli, Senior Global Policy

1 Counsel with the ACT, The App Association.

2 On behalf of The App Association,
3 thank you for this opportunity to share our views
4 with you all to inform the review to identify
5 countries that deny adequate federal protection
6 of IP rights or deny fair and equitable access to
7 U.S. persons who rely on IP.

8 As a little background, the The App
9 Association is a global policy trade association,
10 a policy advocacy trade association, a nonprofit,
11 for the small business technology developer
12 community. And our members are entrepreneurs,
13 innovators, independent developers within the
14 global app ecosystem, we call it, global digital
15 economy, and are engaged across consumer and
16 enterprise verticals in between them.

17 So, we have some economic data that we
18 always include in our testimony and things like
19 that. And the value of the ecosystem that we
20 give is approximately \$1.8 trillion annually and
21 responsible for over 6 million American jobs, and
22 our segment of the industry is serving as a key

1 driver of the Internet of Things revolution.

2 So, the global digital economy holds
3 great promise, great opportunity for small
4 technology developers, app development companies,
5 but our members do face an array of trade
6 barriers when entering new markets or staying in
7 some key markets abroad.

8 So, these barriers can take many forms
9 -- laws, regulations, policies, or practices --
10 aimed at protecting domestic goods and services
11 from foreign competition, artificially
12 stimulating exports, et cetera, or in some cases
13 failing to provide adequate and effective
14 protection of IP.

15 So, while these have different forms,
16 they all in our view have the same effect --
17 impeding U.S. exports and investment at the
18 expense of U.S. economic growth and job creation.
19 So, harming American workers.

20 These barriers do include intellectual
21 property violations, and we go into a lot of
22 detail in our testimony, our written testimony,

1 about where we see them and the ones that rise to
2 the top through our membership.

3 But the infringement and theft of IP,
4 whether it's copyright, trademarks, patents, or
5 trade secrets, presents a major threat to our
6 members and the billions of consumers who rely on
7 their digital products and services. So, strong,
8 good, fair protection of IP for each of those
9 four areas is critical to their businesses.

10 Other relevant barriers include
11 requirements to provide source code for market
12 entry. Some governments have proposed or even
13 implemented policies that make legal market entry
14 contingent on the transfer or inspection of
15 proprietary source code. So, for our community
16 -- small business, app developers, and tech
17 companies -- forced disclosure or transfer of
18 source code is an untenable risk for theft and
19 piracy. And there's, sadly, lots of examples
20 where that has come to be. So, it effectively
21 locks them out.

22 The infringement and theft of IP

1 online threatens consumer welfare by undermining
2 the ability of creators like our members to
3 innovate, invest, and hire. App developers that
4 drive the global digital economy are subject to
5 an estimated loss of \$3 to 4 billion in revenue
6 annual due to pirated apps alone.

7 This is a statistic that we've cited
8 before. But between 2013 and 2018, our members
9 and publishers lost an estimated \$17.5 billion to
10 pirated apps alone. This kind of revenue loss
11 presents a major threat to the success of our
12 members, the app economy, and harms consumers.
13 And each of the IP at issue is a distinct utility
14 that our members rely on.

15 These violations lead to customer data
16 loss, interruption of service, revenue loss,
17 reputational damage. And for the smaller
18 members, without the ability to distribute risk
19 across a bunch of different product
20 streams/offerings, it can be an end-of-life
21 occurrence.

22 So, I'd just, finally, note that we

1 want to reiterate our concern with the October
2 25th, 2023 announcement of apparent withdrawal of
3 support for some digital trade policies,
4 including one related to source code in the
5 context of the World Trade Organization and,
6 apparently, the Indo-Pacific Economic Framework
7 for Prosperity.

8 We are seeking to compete and innovate
9 across the digital economy and ask for support
10 from the U.S. Government for the time-tested,
11 bipartisan digital trade principles that have
12 provided a foundation for our growth and job
13 creation here domestically.

14 We appreciate the opportunity to
15 provide our views here. I hope we can assist
16 today and moving forward in taking questions and
17 coming back with statistics, anything at all.
18 Thank you.

19 CHAIR LEE: Thank you. Our first
20 question comes from USTR.

21 MS. AVERY-PAGE: Thank you.

22 So, on China, your submission raises

1 concerns about the Chinese government's
2 application of the controversial Essential
3 Facilities Doctrine for IPR. Have there been any
4 recent developments relating to the Essential
5 Facilities Doctrine in China's courts and at the
6 State Administration for Industry and Commerce,
7 or other agencies?

8 MR. SCARPELLI: Really appreciate that
9 question. Yeah, that remains a huge concern.
10 You know, a slight tangent, but we do go out of
11 our way in our written comments to differentiate
12 with respect to applying the Essential Facilities
13 Doctrine to regular patents. How different it is
14 for a special kind of patents, standard essential
15 patents.

16 And interestingly, we see the policy
17 in China more aligned with global norms,
18 including that of the United States, with SEPs.
19 The broad application of the Essential
20 Facilities Doctrine to -- I guess you could call
21 them NEPs, non-essential patents, remains a
22 concern.

1 I hope it is okay. I'd love to take
2 back and see if there might be some new breaking
3 updates. I think the ones that drive us to
4 continue to include this in our written
5 testimony, the examples are pretty longstanding.

6 CHAIR LEE: Thank you. Next up is the
7 International Trade Administration.

8 MR. MITCHELL: Yes. In your
9 submission, you note that India has not yet
10 implemented various obligations under the WIPO
11 Internet Treaties, WIPO Copyright Treaty and WIPO
12 Performances and Phonograms Treaty. Which
13 obligations under those treaties would you
14 highlight as not yet having been implemented?

15 MR. SCARPELLI: If it's okay, I'd love
16 to follow up with you all on that. I appreciate
17 your question.

18 CHAIR LEE: Great. The post-hearing
19 docket will open this afternoon, so feel free to
20 do a submission.

21 Our next question comes from the U.S.
22 Copyright Office.

1 MS. LANZA: Thank you.

2 ACT's comment mentioned that
3 inadequate frameworks continue to present
4 challenges to App Association members in Vietnam.
5 Can you please explain the comments --
6 specifically, what frameworks and what specific
7 challenges they present to your members?

8 MR. SCARPELLI: Thank you for that
9 question.

10 I think most of our concerns with
11 Vietnam rest in enforcement certainty, in the
12 ability to enforce IP. So, what filters up to us
13 from our membership is inconsistency with respect
14 to that.

15 And I don't want to be dismissive of
16 improvements in that jurisdiction and others, but
17 yes, really, the concerns essentially rest under
18 the existing framework, which I suppose could be
19 improved in the sense that the existing framework
20 is lending to a pretty good deal of uncertainty
21 for digital economy enforcement of copyrights.

22 CHAIR LEE: Thank you. And our final

1 question from the State Department.

2 MR. HAMILTON: Good morning.

3 In your submission, you nominate
4 Mexico for the Priority Watch List because of,
5 quote, "constitutional challenges that are
6 rendering the question of law unusable in Mexican
7 courts." Can you please provide an example of a
8 specific law, provision of the challenged law
9 -- excuse me. Can you please provide an example
10 of a specific provision of the challenged law
11 that has not been usable in Mexican courts? And
12 for that example, did the courts say that the
13 provision was not enforceable because of the
14 constitutional challenge?

15 MR. SCARPELLI: Thank you for that
16 question. I would love to follow up with further
17 testimony on it. I very much appreciate that.

18 CHAIR LEE: All right, thank you.

19 We can squeeze in one more question
20 from the Department of Justice.

21 MR. MERRIAM: Back to SEPs. But,
22 regarding Brazil, on page 7 of your submission,

1 you note that Brazil is seeing an influx of SEP
2 disputes in which injunctions are being rapidly
3 awarded without serious competition
4 consideration. Could you elaborate on that issue
5 a little bit, on the types of things that you're
6 seeing? Specifically, is it connected to flaws
7 in Brazilian law, lack of understanding of the
8 issue by the judiciary, or some other factor?

9 MR. SCARPELLI: Thank you. Yes, a
10 very good question.

11 So, kind of the underlying issue that
12 we see in Brazil, and in other jurisdictions we
13 talk about such as Germany, it is that these
14 standard essential patents are, indeed, unique
15 and different from other patents. With a regular
16 patent, you can arbitrarily exclude at will
17 someone from using a patent generally.

18 With a standard essential patent, that
19 holder is choosing to walk into a standard-
20 setting process and volunteering to all to
21 provide fair, reasonable, and non-discriminatory
22 licenses to the patent in order to enable anyone

1 to use that open standard. So, it does place
2 them in, essentially, a gatekeeping role for
3 access to markets that are reliant on the
4 standard.

5 So, when injunctions are awarded as if
6 that competition dynamic doesn't exist, it does
7 distort competition, and effectively, it locks
8 out, particularly, members like our smaller
9 companies that don't have the resources and
10 experience in this complex area of patent
11 licensing, who are simply trying to use an open
12 standard, like wifi, LTE, 5G, to stand on and
13 invent on top of it, and compete.

14 MR. MERRIAM: Thank you.

15 MR. SCARPELLI: And I'm sorry, I
16 didn't directly answer you. I think Brazil's
17 existing competition law does, generally, provide
18 an adequate framework, and patent law seems to
19 provide an adequate framework for this dynamic to
20 be considered, for, essentially, proportionality
21 to be considered before the awarding of a patent
22 injunction.

1 So, there may be not as much
2 familiarity as you would like to see from the
3 judiciary in awarding these injunctions, where
4 they are, basically, acting as if the standard
5 essential patent is a regular patent.

6 MR. MERRIAM: Thank you. Very
7 helpful.

8 MR. SCARPELLI: Okay. Thank you.

9 CHAIR LEE: Thank you for your
10 testimony.

11 We actually have a couple of last-
12 minute cancellations today. So, unfortunately,
13 the Biotechnology Innovation Organization and
14 Marc Busch, both are not able to make it today.
15 So, if the China Chamber of International
16 Commerce is here, we'll just go ahead and move
17 forward with the schedule.

18 Please go ahead and state your name,
19 title, and organization for the record, and begin
20 your testimony.

21 MR. JIAN: Thank you, Chair, and good
22 morning, Distinguished Members of the Special 301

1 Subcommittee.

2 My name is Guan Jian. I'm a partner
3 of Beijing Global-Law Law Firm, and the lady on
4 my right hand is my colleague. Her name is Qi
5 Ruoyin. And we attend today's hearing on behalf
6 of the China Chamber of International Commerce,
7 and the short name, CCOIC. Thank you for CCOIC's
8 opportunity to testify today.

9 And CCOIC is a national chamber of
10 commerce in China with more than 350,000
11 enterprise members across various sectors, and
12 the CCOIC pays close attention to the
13 intellectual property rights protection in China
14 in its daily work and we regularly host IP forums
15 in China. It also seeks intellectual property
16 protection on behalf of the members.

17 CCOIC and our members have witnessed
18 significant progress that China has made in our
19 protection. Therefore, we would like to assist
20 the Subcommittee to provide more information in
21 this regard through submitting written comments
22 and attending this hearing. We sincerely wish

1 that the efforts made by CCOIC will be helpful
2 for the Subcommittee to draft their report of
3 2024.

4 To avoid repetition with our written
5 comments, our testimony today focuses on three
6 points. First, it's beyond doubt that China
7 nowadays attaches great importance to IPR
8 protection. And to implement China's phase one
9 agreements, China has revised many IPR rules and
10 regulations and has issued judiciary opinions, as
11 have past governments, for the purpose of
12 implementation.

13 We didn't do that in the last six
14 consecutive years which have been witnessed by
15 the CCOIC. China has regularly released or
16 published various things, reports, or guidelines
17 to direct or strengthen IPR protection. A
18 careful reading of those documents, we suggest,
19 is that China is encouraging the technology
20 innovation through IPR protection, instead of
21 requiring or pressuring technology transfer from
22 foreign entities or companies to Chinese

1 companies. This innovation initiative is,
2 obviously, to mitigate the risk of a chokehold or
3 the risk of instability.

4 Secondly, the best efforts made by
5 China to protect IPR should not be ignored by the
6 Subcommittee when making assessments for the 2024
7 report. Taking into account the goods and online
8 piracy as an example, it's not only a big
9 concern, obviously, of the U.S., but it's also
10 that China pays great attention to it.

11 China has taken routine actions, such
12 as a routine action or some other special actions
13 or campaigns to protect IPR relating to such as
14 the Winter Olympics, Asian Games; new plant
15 variety of seeds, and films, et cetera.

16 For the long-term actions to the
17 general administration of customs, China seized
18 61,000 batch of suspected imports and exports
19 infringing groups, which is in total more than 77
20 million pieces of goods. The Minister of Public
21 Security has detected more than 84,000 cases of
22 crimes in the fields of food safety, drug safety,

1 and environmental protection, and arrested a
2 large number of criminal suspects.

3 No one country in this world would be
4 able to 100 percent eliminate piracy. Therefore,
5 we believe that maybe the Subcommittee may also
6 take into account the ongoing base efforts that
7 have been made by the Chinese government.

8 Certainly, the U.S. schedule of
9 concerns should be, obviously, assessed by the
10 Subcommittee against at least the standard prima
11 facie evidence in your decision. For example,
12 one is reduced fees and certain examination time
13 for criminals will lead to the benefits, and
14 trademark resolution will become easier. This
15 allegation has no merits and should be rejected
16 by the Subcommittee.

17 We believe that reduced fees in a
18 certain time period might be might be a kind of
19 echo. It was introduced years ago. However,
20 it's not fair that this incremental reform is not
21 appropriate simply because there is a remote
22 possibility that the decision might go wrong.

1 Thank you very much. This concludes
2 my testimony. Thank you.

3 CHAIR LEE: Thank you.

4 The first question comes from USTR.

5 MS. AVERY-PAGE: Thank you.

6 You write that "China has established
7 relatively complete civil, administrative, and
8 criminal legal systems for the protection of
9 trade secrets." Have there been any updates with
10 implementation of the amended criminal law,
11 including finalization of a draft judicial
12 interpretation or revisions to the prosecution
13 standards that you can share?

14 MR. JIAN: Based on our knowledge at
15 hand, that draft is not finalized yet.

16 CHAIR LEE: And if you do have further
17 information after the hearing, please include it
18 in a post-hearing submission.

19 MR. JIAN: Yes, sir. Thank you.

20 CHAIR LEE: The next question comes
21 from the Department of Justice.

22 MR. MERRIAM: Thank you for your

1 testimony today.

2 Your submission notes that the
3 amendments to the Civil Procedure Law avoid "dual
4 rulings, mitigating dilemmas created by courts
5 competing for jurisdiction in foreign-related IP
6 cases, specifically in standard essential patent
7 disputes." Could you please explain in further
8 detail how these amendments will be implemented
9 in the context of standard essential patent
10 disputes?

11 MR. JIAN: So, you're talking about
12 the SEPs?

13 MR. MERRIAM: Correct.

14 MR. JIAN: Okay.

15 MS. RUOYIN: Sorry, sir, could you
16 repeat the name of the document?

17 MR. MERRIAM: It was referred to --
18 and I apologize because I don't have the full
19 submission in front of me -- but the amendments
20 to the Civil Procedure Law.

21 MS. RUOYIN: Amendments to the Civil
22 Procedure Law. Do you mean to refer to the

1 behavior preservation system in the Article 100
2 of the Civil Procedure Law, to this amendment?

3 MR. MERRIAM: We're talking about the
4 --

5 MS. RUOYIN: SEP?

6 MR. MERRIAM: Yes, the application to
7 SEP disputes.

8 MS. RUOYIN: Oh, yes. So, actually,
9 we have a case which is named the Guangdong Oppo
10 Mobile Telecommunications Corporation v. Sharp
11 Corporation. And in this case, the court has
12 explained the Civil Procedure Law about how they
13 can apply it in the specific cases. And in this
14 case, we considered that in this SEP license. n
15 We focused more on the contractual nature of the
16 case and the core issue in the dispute. It's the
17 determination of the terms of the global license
18 for the portfolio of the SEP in question. And in
19 applying these SEP cases, we used the parallel
20 litigation in the extraterritorial court in
21 principle. And we think that this application of
22 the SEP will not affect the operation of other

1 legal systems in other member countries in the
2 trade agreement, and such application also
3 complies with China's own Civil Procedure Law in
4 deciding the jurisdiction of the cases.

5 MR. MERRIAM: Thank you. That was
6 helpful. It would help us in our further
7 analysis of this question if you could provide
8 the citation to the case you mentioned. Not
9 right now --

10 MS. RUOYIN: Yes, we can provide it
11 post-hearing.

12 MR. MERRIAM: Thank you very much.

13 CHAIR LEE: Thank you.

14 And we have one more question of the
15 Patent and Trademark Office.

16 MS. CRITHARIS: Thank you for your
17 testimony.

18 In your submission, you state that the
19 latest Patent Examination Guidelines of 2023
20 "have established specific and clear rules for
21 the examination of supplementary experimental
22 data in pharmaceutical patent applications." Can

1 you please elaborate what efforts have there been
2 to train patent examiners and ensure consistency
3 among examiners in applying these new rules?

4 MR. JIAN: Sure.

5 MS. RUOYIN: So, actually, the China
6 National Intellectual Property Administration had
7 published a revised Patent Examination Guideline,
8 and such Guideline clearly stipulates that the
9 relative examination standards are required to be
10 considered by the individual patent examiners.

11 And also, there is a series of
12 articles written by the Patent Reexamination and
13 Invalidation Department of the China National
14 Intellectual Property Administration in which
15 there are many views and it provides the views
16 from the point of the examiners to see how they
17 can review the specific cases based on the case-
18 by-case factual.

19 And we actually have provided the
20 specific standard in the article, the
21 Interpretation 5, which we have provided the
22 specific factors considered by those examiners.

1 CHAIR LEE: Thank you so much for your
2 testimony.

3 All right. Next, we have the Computer
4 & Communications Industry Association.

5 Thank you.

6 If you don't mind stating your name,
7 title, and organization, and then, please begin
8 your testimony.

9 MR. McHALE: Good morning.

10 My name is Jonathan McHale, Vice
11 President at the Computer & Communications
12 Industry Association for Digital Trading.

13 Thank you for this opportunity to
14 convey our views in this 2024 Special 301
15 process.

16 CCIA is a trade association of
17 internet and technology firms, many of whom
18 export goods and services that are regulated by
19 the domestic IP laws of trading partners.

20 As rights-holders, CCIA members firmly
21 value intellectual property protection. However,
22 these strong U.S. exporters are discouraged from

1 entering markets where they do not provide
2 equitable treatment or impose extortionist
3 requests for payments to subsidize domestic
4 industries.

5 I would like to focus on two specific
6 issues addressed in our filing.

7 First, the need for USTR to address
8 discriminatory audiovisual quotas, particularly
9 where inconsistent with free trade agreement
10 obligations.

11 And second, continued concern about
12 the rise of ancillary rights and mandatory
13 bargaining codes in foreign markets.

14 First, the Special 301 process should
15 consider measures that introduce content quotas
16 or expenditure requirements, a market
17 intervention that most obviously constitutes a,
18 quote, "discriminatory non-tariff barrier." as
19 defined the Special 301 statute. This includes
20 any investment obligations to acquire or produce
21 local content that affects U.S. IP intents of
22 industries such as streaming providers that are

1 engaged in the global distribution of content.

2 CCIA's written submission details
3 concerns with Canada's Online Streaming Act, as
4 well as Australia's proposed new framework.

5 The nexus between Special 301 and
6 content restrictions is further supported by the
7 special obligations Canada has under the U.S.-
8 Mexico-Canada Agreement, USMCA. Implementing
9 legislation directs USTR to evaluate any
10 discriminatory measures reliant on the cultural
11 industries exception and to consider appropriate
12 actions to compensate for any adverse effects.

13 Since Canada's Online Streaming Act
14 would clearly violate several USMCA provisions,
15 but for Canada's invocation of the cultural
16 industries exception, it clearly implicates
17 19 USC 2242(f)(A). USTR neglected to address
18 this issue last year, when Canada's policy was
19 fully formed. CCIA urges USTR not to repeat this
20 oversight in the forthcoming report to Congress.

21 In fact, the Special 301 Report is a
22 perfect vehicle to begin detailing whether and to

1 what extent the Online Streaming Act adversely
2 affects the United States' economic interests, as
3 a patently discriminatory non-tariff barrier, and
4 begin a process of legal analysis of the measure
5 and consideration of appropriate responses.

6 Like Canada, Australia is subject to
7 rules under AUSFTA designed to prevent
8 discriminatory treatment of U.S. content. Unlike
9 Canada, Australia did not take a broad exception
10 to these rules, but, rather, negotiated a very
11 narrow, quote, "non-conforming measure."

12 These provide in exceptional
13 circumstances a basis to violate the rules;
14 namely, a situation where Australian content is
15 not reasonably available to Australian consumers.

16 In our view, current market conditions
17 in Australia provide no basis for invoking that
18 exception. In fact, Korean content has boomed
19 with the advent of streaming services, and
20 therefore, we urge USTR to ensure that Australia
21 does not introduce measures inconsistent with its
22 obligations.

1 Second, CCIA reiterates longstanding
2 concerns regarding the spread of ancillary
3 copyright in foreign markets in the form of
4 snippet taxes or related regulatory initiatives.
5 CCIA first raised concerns on ancillary copyright
6 in 2012.

7 Since then, the internet industry has
8 witnessed the spread of these detrimental laws
9 throughout Europe, Canada, Australia, and
10 currently being proposed in New Zealand, UK, and
11 Indonesia. These measures -- essentially,
12 private taxes -- will impede market access for
13 U.S. exporters. And many studies have concluded
14 that they are unlikely to achieve their purported
15 goals.

16 In conclusion, the Special 301 process
17 should place a greater emphasis upon
18 discriminatory practices directed at U.S.
19 internet services that create new rights for
20 domestic industries. Where countries fail to
21 implement norms to facilitate the trade, or fail
22 to adhere to commitments made to protect them,

1 U.S. export opportunities are lost.

2 Thank you.

3 CHAIR LEE: Okay. Thank you very
4 much.

5 Our first question comes from the
6 Patent and Trademark Office.

7 MS. CRITHARIS: Thank you very much
8 for your testimony.

9 Regarding Colombia, on page 11 of your
10 submission, you state that "Colombia has not
11 complied with its obligations under the U.S.-
12 Colombia Free Trade Agreement to provide
13 protection for internet service providers, as
14 noted in the 2020 Special 301 Report.
15 Legislation from 2018 that sought to update
16 copyright law and implement the U.S.-Colombia
17 Free Trade Agreement...chapter includes no
18 language on online intermediaries. The
19 legislation that seeks to implement the U.S.-
20 Colombia Free Trade Agreement copyright chapter
21 also does not appear to include widely recognized
22 exceptions such as text and data mining, display

1 of snippets or quotations, and other non-
2 expressive or non-consumptive uses. Without
3 protections required under the Free Trade
4 Agreement, intermediaries exporting services to
5 Colombia remain exposed to potential civil
6 liability for services and functionality that are
7 lawful in the United States and elsewhere."

8 Can you please provide the name and a
9 link to the text of the draft legislation that
10 you identified in your submission? And can you,
11 also, provide the names of the companies'
12 intermediaries that have had issues with
13 enforcing these rights in Colombia?

14 MR. McHALE: Okay. Let me take the
15 second question. With respect to countries that
16 are failing to enforce rights, it really is a
17 question of the risk, moving forward, of not
18 having rights and obligations clearly spelled out
19 in the law.

20 With respect to the specific law being
21 referenced, I'm going to have to get back to you
22 on that, and we'll look to put that in

1 supplementary testimony.

2 Thank you.

3 CHAIR LEE: Yes, just the second part
4 of that question was less about countries, but
5 specific companies or specific intermediaries
6 that are having trouble enforcing law in
7 Colombia. Do you have any further information on
8 that?

9 MR. McHALE: At this moment, I do not.

10 CHAIR LEE: Okay, got it.

11 All right. Our next question is from
12 Treasury.

13 MR. CHANG: Hi. Thank you.

14 So, CCIA states that, based on, quote,
15 "a CRTC proposal to prioritize content whose IP
16 ownership is wholly Canada, it is possible that
17 the majority of U.S. investments would not
18 qualify as meeting mandatory expenditure goals"
19 -- close quote -- in the Online Streaming Act in
20 Canada.

21 Could you explain more about your
22 concerns and how possible is that outcome?

1 Thanks.

2 MR. McHALE: Sure.

3 So, Canada has put in place a series
4 of priorities of what they are attempting to
5 achieve through their cultural policies in order
6 to stimulate the development of content in
7 Canada. What our argument has been in many of
8 these countries is the U.S. firms are big
9 investors in the market. Lots of production
10 takes place in Canada. They are a big
11 contributor to the development of the industry in
12 that nation.

13 One of the abilities of U.S. companies
14 to be able to take advantages of resources in
15 foreign markets is the ability to own the IP of
16 any resulting investment they make. And what
17 Canada has done in its recent rulemaking is to
18 suggest that, in order to qualify as meeting some
19 of the quotas or expenditure requirements that
20 are set, the content that will qualify has to be
21 owned by a Canadian entity, rather than the
22 investor who may not be himself Canadian.

1 So, it's a disincentive for foreign
2 firms, particularly U.S. firms, to invest in the
3 market and create content because, if you can't
4 own the resulting IP, it doesn't really make
5 sense.

6 CHAIR LEE: All right. Thank you for
7 your testimony.

8 MR. McHALE: Thank you very much.

9 CHAIR LEE: Next is Consortium for
10 Common Food Names.

11 MR. CASTANEDA: Good morning.

12 CHAIR LEE: If you don't mind, please
13 state your name, title, and organization, and
14 then, please begin your testimony.

15 MR. CASTANEDA: Sure.

16 My name is Jaime Castaneda. I'm
17 Executive Vice President for the U.S. Dairy
18 Export Council, the National Milk Producers, and
19 I'm also the Executive Director of the Consortium
20 for Common Food Names.

21 I have worked for 25 years promoting
22 the U.S. dairy industry, U.S. rural jobs, and, of

1 course, now with defending common food names.

2 A little over 10 years ago, the U.S.
3 dairy community for a while, as well as several
4 other food sectors, were confronted with a new
5 intellectual property challenge designed to
6 destroy the very basic framework of IP rules and
7 market access commitments. After failing to
8 advance this GI campaign during the Doha Round,
9 the European Union started a direct, full
10 campaign to monopolize common names like
11 Parmesan, port, bologna, and many hundreds more.

12 But, by claiming these generic terms
13 as protected geographical indications or
14 indicators, the EU began a strategic scheme to
15 eliminate competition and appropriate generic
16 terms for cheeses, meats, wines, and beers, among
17 others. Suddenly, all these manufacturers began
18 to lose their ability to market and sell their
19 products in markets around the world.

20 In response to these new challenges,
21 U.S. dairy producers, supported by partners in
22 the food sector, helped us establish the

1 Coalition for Common Food Names to protect
2 producers, consumers, and retailers, and the
3 rights to use the generic terms that have been
4 part of the public domain for generations.

5 Despite the efforts of CCFN, Europe's
6 aggressive campaign and attacks on American
7 exports are growing and escalating. Throughout
8 2023, U.S. producers and exporters faced
9 increased restrictions or attempts to impose
10 restrictions on the use of common food and
11 various terms in various markets. These abuses
12 or geographical indication rules not only
13 contradict international commitments adopted by
14 U.S. trading partners, but call into question the
15 integrity of procedures under the intellectual
16 property systems of the different countries
17 involved.

18 These GI regulations are not
19 impartially written and enforced. Quite the
20 opposite. Unlike most intellectual property
21 rules, the pursuit of GI restriction is done by a
22 foreign government under the table, not through

1 the actions of individual applicants. This
2 creates a deeply imbalanced power and funding
3 dynamic that omits the greater challenge that
4 opponents face in most IP systems versus the
5 advantage provided to applicants.

6 All of these have happened while the
7 United States has stayed still during previous
8 administrations. The IP approach has failed U.S.
9 producers when it comes to negotiations between
10 Europe and trading partners.

11 GI approvals are not dealt with
12 objectively through an impartial and objective
13 process. The results of EU trade agreements are
14 made in obscurity. Even where a public
15 opposition process is conducted, the decisions
16 about how, not whether, to register the EU's
17 requested GIs are conducted at the trade
18 negotiating table. These are government-driven
19 barriers to trade that require a government-
20 driven response to counteract.

21 Despite years of advocacy from
22 Congress and CCFN members with the U.S.

1 Government, we have yet to stop the European
2 Union from bullying other countries into agreeing
3 to their demands, hurting U.S. jobs. We applaud
4 the Biden Administration for showing a strong
5 interest in restoring some balance in the
6 discussions, but we need to be even more resolute
7 in making sure that any country that violates its
8 straight commitments just to appease the EU --
9 example, Chile recently -- will pay the
10 consequences.

11 For years, the United States had not
12 much EU and bilateral agreements. In fact, we
13 have seen how the EU forces countries to
14 disregard their own IP rules and hurt their own
15 producers and consumers without acting with equal
16 force.

17 It is the right time to be loud and
18 clear to the world. If any country damages the
19 interests of the United States by giving into the
20 EU unreasonable demands, there will be
21 consequences. It is time for the United States
22 to have a clear policy to defend consumers,

1 manufacturers, and retailers, including many of
2 American small businesses, and fight the
3 monetization of generic food and general names.

4 Going forward, we expect the EU to
5 continue its false narrative that GIs are sacred
6 protections that cannot be questioned. The
7 reality is that GIs in the EU represent a
8 minuscule portion of their own agriculture and
9 represent ever-moving goal posts.

10 Fortunately, we're not resigned and
11 accepting whichever fate the EU assign us. The
12 U.S. Government has made strides to grapple with
13 this topic recently, but there is more to do.
14 The United States has unmatched economic and
15 political influence. It is time to use it.

16 We applaud the Biden Administration
17 for increasing the awareness and we hope that,
18 actually, this is going to turn into specific
19 results and outcomes.

20 Thank you so much.

21 CHAIR LEE: Thank you.

22 The first question comes from USTR.

1 MS. AVERY-PAGE: Thank you.

2 Your submission describes how
3 increased restrictions on the use of common food
4 and beverage terms in various markets have called
5 into question the integrity of procedures under
6 the intellectual property system of the different
7 countries involved. Please elaborate on how such
8 restrictions have impacted the integrity of
9 procedures under IP systems and provide some
10 examples from the trading partners discussed in
11 your submission.

12 MR. CASTANEDA: Sure.

13 As I explained, it's, basically, very
14 clear. The EU negotiates and
15 overcomes/supersedes any IP rule with respect to
16 any country in the negotiating table. Examples
17 are many, many, many. So, let me give you one.

18 Feta, for instance, was an absolutely
19 generic term in Canada. Canada, in fact, had a
20 trademark for prosciutto di parma. And, in fact,
21 Canada completely disregards the fact that,
22 actually, they have something that we will never

1 do here, something that, actually, they had a
2 trademark and they disregard that. They had,
3 actually, generic terms and they completely
4 disregard and provide, actually, protection
5 exclusively for feta for Europe.

6 Chile, for instance, they just
7 actually -- Parmesan has been a generic term for
8 almost 100 years. And Europe and Chile
9 negotiated a trade agreement in which Chile
10 decided that, actually, there was only protection
11 for anybody who was in the market prior to,
12 actually, 2000 -- whenever they negotiated the
13 trade agreement.

14 So, I can go on and on and on, but,
15 for us, this is the type of things that actually
16 intellectual property officers around the world
17 that are negotiating with the EU are, actually,
18 undermining the IP rules, something that the
19 United States would never, never do.

20 CHAIR LEE: Thank you.

21 The next question comes from USDA.

22 MS. CHERRY: Thank you.

1 On China, your submission notes that,
2 "In February 2023, CCFN opposed the recognition
3 of 'Fontina' as a GI, however, Chinese
4 authorities have not released the result of the
5 opposition process." Unquote.

6 Please share your experience from
7 participation in the opposition process, such as
8 whether Chinese authorities have engaged with
9 your concerns or whether there were procedural
10 deficiencies that Chinese authorities should
11 address.

12 MR. CASTANEDA: Thanks for your
13 question.

14 China is a great trading partner for
15 the U.S. dairy industry and we have a lot of
16 communications with them. However, within China,
17 there is, I think, a couple of confusions within
18 what the Department of Commerce does in the
19 intellectual property. There are different,
20 actually, organizations that deal with GIs in
21 China.

22 So, we have seen that there has been

1 very strong conflict of opinions within China.
2 And a perfect example is, for instance, the
3 United States negotiated with China to protect
4 Parmesan, but, then, the IP Office may actually
5 have approved some exclusivity on Parmesan with
6 the European Union, which actually should have
7 been clear that they could never do that.

8 In addition, with respect to Fontina,
9 we have, actually, many, many cases in which our
10 trademarks still continue to be rejected and
11 there is no specific reason.

12 I mean, going back to the previous
13 question, I mean, there are countries that are
14 opposing a trademark simply because, actually, of
15 a GI in another country. I mean, if that is not
16 actually a basic break of the rules of IP in
17 which the United States is not going to accept a
18 trademark only because there is a GI in Italy or
19 in Greece, I mean that's absurd.

20 So, basically, with China, we're
21 working; we're trying to understand a little bit
22 more. So, we encourage, actually, USTR and the

1 other agencies of the United States to talk a
2 little bit more for clarity on China, on how they
3 actually are accepting or rejecting trademarks.

4 CHAIR LEE: Thank you.

5 We have time barely for one more
6 question. So, I'm going to ask USDA to ask a
7 second question.

8 MS. CHERRY: Sure.

9 For Vietnam, your submission notes
10 that Vietnam failed for more than two years to
11 confirm in writing these companies that have met
12 the grandfathering clause provision under the
13 Vietnam-EU FTA. Are there any details you can
14 share about the difficulties that these companies
15 have encountered due to the lack of such written
16 confirmation?

17 MR. CASTANEDA: Yes. We can put all
18 of that in writing. So, I'd be more than happy
19 to submit further information.

20 And it is not just Vietnam. I mean,
21 we have it in many other situations, and we have
22 significant problems, as USTR knows, in Brazil,

1 in which, actually, they don't even have an
2 approved EU agreement and they are still,
3 actually, operating as if they do have the
4 implementation of the EU agreement.

5 So again, we encourage, actually, USTR
6 and the rest of the interagencies to talk to
7 these countries and manage these situations.

8 CHAIR LEE: Thank you very much for
9 your testimony.

10 Next, we have the Footwear
11 Distributors and Retailers of America.

12 MR. PRIEST: Good morning.

13 CHAIR LEE: Good morning.

14 Please state your name, title, and
15 organization for the record, and then, please
16 begin your testimony.

17 MR. PRIEST: My name is Matt Priest.
18 I'm the President and CEO of the Footwear
19 Distributors and Retailers of America.

20 On behalf of FDRA, thank you for the
21 opportunity to testify today. It's great to be
22 back in person after so many years.

1 FDRA is the footwear industry's
2 business and trade association, representing 95
3 percent of the American footwear industry. Our
4 member companies work hard to design, produce,
5 and deliver shoes to consumers in markets all
6 over the world. That is why the U.S. must work
7 to address the failure of other nations to
8 protect patents, trademarks, and copyright in
9 both law and practice, because this supports U.S.
10 footwear jobs and communities.

11 Fighting counterfeiting is also
12 particularly important in key sourcing locations,
13 given the large volume of manufacturing,
14 machinery, and footwear production knowledge in
15 each of these countries.

16 My testimony will highlight several
17 key sourcing countries, but our full written
18 comments provide information on additional
19 countries of concern.

20 First and foremost, China. China
21 should remain on the Priority Watch List since
22 there has not been significant change or

1 effective progress on IP in the past year.

2 Because China is a first-to-file jurisdiction, a
3 well-established U.S. brand may discover that an
4 unrelated Chinese party has already registered
5 the brand's trademark. Bad actors do this to
6 exploit the reputation of the U.S. brand or to
7 force the American company to pay a fee to buy
8 back the rights to its own trademark.

9 FDRA members continue to see a high
10 volume of bad-faith, infringing trademark
11 applications allowed to publish for register.
12 Online-to-offline enforcement brings numerous new
13 challenges, and there is a need for greater
14 collaboration from platforms.

15 Counterfeit products sold via
16 livestream channels are very popular in China.
17 The timing of the broadcast is unpredictable and
18 the transactions are often diverted to private
19 domains. Many counterfeit sellers also promote
20 themselves and their agent's ability to order and
21 ship counterfeits on social media platforms like
22 TikTok, YouTube, and Reddit.

1 It is our understanding that China may
2 soon enact the Anti-Unfair Competition Law. We
3 are hopeful this will serve as a possible new
4 tool for digital enforcement against rampant
5 online infringement and knockoffs.

6 Turning to Mexico, FDRA strongly
7 recommends USTR elevate Mexico to the Priority
8 Watch List in the 2024 Special 301 Report. The
9 current administration in Mexico has not
10 prioritized IP enforcement and protection. When
11 outlining government priorities, it left out
12 relevant IP institutions. In addition, the lack
13 of enforcement actions and support from most of
14 the relevant law enforcement agencies in Mexico
15 is alarming.

16 Existing provisions in Mexico's
17 customs law provides authorities with ex officio
18 power to initiate border measures, but limit this
19 authority to detention of suspicious products.
20 The law does not effectively allow customs
21 officials to make a determination to seize and
22 destroy IP-infringing goods. From a legislative

1 perspective, Mexico also lacks a clear approach
2 to tackle ecommerce and the impact of small
3 parcels at the border.

4 Indonesia should reinforce the need to
5 maintain consistency, recognize trademarks, and
6 provide realistic enforcement processes and
7 implementation. FDRA member companies have seen
8 an increase in the local manufacturing of
9 counterfeit shoes. FDRA believes Indonesia
10 should work to train law enforcement agents and
11 customs officers on product inspections and take
12 proactive measures to investigate and enforce
13 counterfeit activities.

14 Indonesia's trademark office continues
15 to have a very, very, very narrow interpretation
16 of trademark rights and opposition procedures.
17 The trademark office should also promote a
18 thorough review of its appeals process. Today,
19 once a decision is made, the only additional
20 recourse by the brand owner is to file costly and
21 time-consuming civil litigation.

22 Turning our focus to Vietnam,

1 Vietnam's IP legal system and enforcement
2 practices continue to change for the better.
3 Authorities in Vietnam remain open and willing to
4 make changes to harmonize IP laws with
5 international standards.

6 Vietnam needs to harmonize its
7 approach to well-known mark status to make it
8 consistent with international norms. They should
9 also provide greater clarity for the recognition
10 of non-traditional marks on both the examination
11 process and enforcement.

12 Law enforcement agencies of Vietnam
13 are willing to cooperate and actively support
14 investigations raised in criminal prosecutions
15 against online sellers who have large quantities
16 of counterfeits seized in their connected
17 physical warehouses.

18 Vietnam's review of its current
19 ecommerce policies provides an opportunity to
20 clearly define platform liability in case of IPR
21 infringements.

22 In cases of transshipments, rights-

1 holders are now required to prove damages from
2 counterfeit goods, which conflicts with current
3 law in Vietnam and puts additional burdens on
4 brands.

5 Lastly, a focus on India. FDRA
6 recommends India undertake efforts to implement
7 existing IP laws, reduce bureaucracy, and
8 simplify processes. Currently, the 10-year
9 trademark backlog at the courts and the trademark
10 office prevents brands from filing to protect IP
11 rights. The trademark office should modernize
12 the highly manual data process for registering
13 trademarks in India.

14 FDRA members have noticed an
15 increasing number of counterfeiting distribution
16 hubs in India. Enforcement remains very
17 challenging for brands. Delays in adjudication
18 and low penalties do not deter counterfeiters.

19 FDRA members are closely monitoring
20 the implementation of India's new ecommerce law.
21 The law provides an opportunity to increase
22 protection for rights-holders and define the

1 terms for platform liability in case of IPR
2 infringement.

3 FDRA appreciates the opportunity to
4 submit comments on the challenges faced by our
5 member companies around the world in protection
6 of their IP rights. We stand ready to work with
7 USTR to bolster respect for, and enforcement of,
8 IP by our trading partners. Doing so protects
9 American jobs and benefits U.S. consumers.

10 CHAIR LEE: Thank you.

11 Just for our panelists, I'm actually
12 going to switch up from the questions because
13 you've kind of covered some of them already in
14 your testimony, although we may still go to those
15 to have you further elaborate.

16 MR. PRIEST: Sure.

17 CHAIR LEE: But I would like to start
18 with the State Department with a followup
19 question on Vietnam.

20 MR. HAMILTON: Good morning.

21 MR. PRIEST: Good morning.

22 MR. HAMILTON: So, regarding Vietnam,

1 on page 6 of your submission, FDRA cites the rise
2 of counterfeiting as a concern, as brands have
3 shifted production from China to Vietnam, stating
4 that "counterfeiters have moved manufacturing to
5 the country." Do you have any statistics that
6 reflect this asserted correlation?

7 MR. PRIEST: I don't have a statistic
8 per se. What I can do is go back and see what's
9 available to provide to you at the State
10 Department and to the broader panel here.

11 Now, I do know, and I think a theme
12 that you'll find in both my written submission as
13 well as my statement is that, as production moves
14 around and becomes more sophisticated,
15 counterfeiters follow suit. And so, there's
16 almost a maturation process that happens when a
17 country takes on more production for I think any
18 type of good, but, in particular, footwear,
19 where, then, it becomes also the landscape for
20 counterfeit and knockoff activity. We see that
21 in China in places like Fujian Province and
22 Guangdong Province, which have been production

1 hubs for many, many years.

2 And so, it's not a surprise, but we'll
3 do some digging and see if we can find a
4 statistic for that.

5 CHAIR LEE: Thank you.

6 The next question is from USTR.

7 MS. AVERY-PAGE: Thank you.

8 In regards to Algeria, have you seen
9 any results from the 2022 creation of a
10 specialized commerce court responsible for
11 litigation relating to IP and international trade
12 disputes? And how have your members engaged with
13 the judicial system in Algeria?

14 MR. PRIEST: That's a great question.
15 And I'll have to come back to you on how members
16 have, specifically, engaged with the legal system
17 in Algeria.

18 I think Algeria is on a list of other
19 countries -- Morocco and Egypt, and others, Saudi
20 Arabia -- where we want to at least inform our
21 U.S. Government just to keep an eye on those.
22 Because, as we talk to our member companies, and

1 we are selling in markets all over the world,
2 these kind of second- and third-tier markets are
3 ones to keep an eye on because they're maturing;
4 because counterfeits flow in very frequently.
5 And because of ecommerce and the lack of
6 enforcement, that's a theme that happens, I
7 think, in every country we do business in. And
8 so, I think Algeria is no different.

9 And so, what I'll do is go back to our
10 members and see what kind of success they've had
11 in engaging with Algeria.

12 CHAIR LEE: Thank you.

13 Well, turning maybe to a bigger
14 market, I'd like to ask the Justice Department
15 for a question, please.

16 MR. MERRIAM: Thanks.

17 And I appreciate your testimony.
18 You've led with this and really talked about the
19 growing challenge of the Chinese agents getting
20 involved in various commerce schemes in
21 increasing their footprint.

22 MR. PRIEST: Yes.

1 MR. MERRIAM: But could you provide
2 for DOJ and my colleagues at DHS a little bit of
3 a detail on how that's working and areas that
4 would target this sort of action, online
5 marketplaces, as you mentioned, TikTok, or their
6 physical marketplaces, and where should we look?
7 Very relevant to this process, but also to our
8 broader mission.

9 MR. PRIEST: Yes. You know, it's
10 interesting you ask this because it doesn't take
11 someone who is very astute in law enforcement or
12 even footwear to stumble across access to
13 counterfeit goods on these platforms, as a
14 consumer here in the U.S. And it's something we
15 consistently monitor.

16 And so, for us, it's better
17 understanding how the platforms particularly will
18 engage with us and collaborate on information-
19 sharing, to value what the brands are saying when
20 they engage with those platforms. And we've
21 taken steps here in the U.S. The challenge is
22 the Chinese don't seem to be as serious in

1 engaging with those platforms, when, in all
2 honesty, purchasing through these channels is
3 much more even popular than it is here.

4 And so, it's like a dam that's very
5 leaky and we're trying to plug all these holes.
6 And you can see that, as brands -- we call it
7 kind of "high heat" -- as brands market certain
8 products, that they have new drops, new sneaker
9 drops.

10 There's the All-Star Game, which was
11 this pass weekend, is on TV in a global
12 marketplace, that those activities increase and
13 the demand for those types of really
14 sophisticated counterfeits increase, and
15 consumers have access to it.

16 No longer do you have to go down to a
17 market in New York City behind a curtain or under
18 a blanket with knockoff sneakers. You can get
19 very quality-made counterfeits out of these same
20 production markets that we have.

21 And I think as much as the platforms
22 feel the heat from DOJ, the Biden Administration,

1 the U.S. Congress on ways to collaborate with the
2 brands, the better I think we'll all be.

3 CHAIR LEE: Thank you.

4 I think we can squeeze in one more
5 question. So, I'd like to ask my colleague from
6 DHS, Department of Homeland Security, to ask it.

7 MR. PRIEST: Thank you.

8 MS. FEDORKA: Okay. On Indonesia, you
9 describe numerous challenges with Indonesian
10 customs regarding the recordation system for
11 trademarks, including complex procedures, high
12 guarantees, and requirements for immediate
13 responses. Please elaborate on whether foreign
14 companies in Indonesia encounter greater
15 difficulties under the recordation system.

16 MR. PRIEST: I haven't heard
17 necessarily that foreign companies per se
18 encounter greater difficulty. What we do
19 understand is that Indonesia has a very kind of
20 slim interpretation of what constitutes a
21 counterfeit. So here, in a lot of markets, a lot
22 of mature markets, it doesn't have to be

1 identical, right? It can be a trade dress
2 question. It could be something that is
3 "inspired by." And we have those debates amongst
4 our industry all the time.

5 Indonesia is very finite on what they
6 think is counterfeit and what is not. And so, as
7 a Western brand engaging in Indonesia -- and by
8 the way, it's our No. 3 supplier to the U.S.
9 market -- so again, the knowhow and the activity
10 is there to make really high-quality shoes. The
11 system seems to be not as efficient and engaging.
12 I don't think it matters where you're actually
13 from necessarily, where the brand is from.

14 But because these are Western brands
15 with high demand, those are the ones that see the
16 most activity in this space. And I think that's
17 where our members have had challenges with
18 Indonesia.

19 MS. FEDORKA: Thank you.

20 MR. PRIEST: Sure. No problem.

21 CHAIR LEE: Thank you for your
22 testimony.

1 MR. PRIEST: Yes, thank you.

2 CHAIR LEE: Okay. So, the Global Data
3 Alliance is also not available to testify today.
4 So, we will be moving next to the International
5 Intellectual Property Alliance.

6 All right. Please state your name,
7 title, and organization, and begin your
8 testimony.

9 MR. ROSENBAUM: Thank you. Thank you
10 all.

11 My name is Kevin Rosenbaum. I'm the
12 Executive Director of the International
13 Intellectual Property Alliance, the IIPA.

14 Thank you for the opportunity to
15 present the views of the IIPA in this year's
16 Special 301 process.

17 We applaud the U.S. Government for
18 making the Special 301 review a catalyst for
19 positive change to address the challenges faced
20 by the U.S. creative industries in key markets
21 abroad. We welcome the chance to participate
22 again in this crucial annual dialog.

1 IIPA is a private sector coalition
2 formed in 1984 of five trade associations
3 representing U.S.-copyright-based industries.
4 According to a December 2022 study, the core
5 copyright industries contribute over \$1.8
6 trillion to the U.S. economy, including over 52
7 percent of the total U.S. digital economy, and
8 provide over 9.6 million U.S. jobs, including
9 over 48 percent of the employment in the U.S.
10 digital economy.

11 Our members are the Association of
12 American Publishers, the Entertainment Software
13 Association, the Independent Film and Television
14 Alliance, the Motion Picture Association, and the
15 Recording Industry Association of America. These
16 associations comprise over 3200 companies
17 producing and distributing materials protected by
18 copyright laws throughout the world.

19 To reach foreign markets through the
20 legitimate, state-of-the-art distribution
21 channels, these companies rely on copyright
22 protection and enforcement that meet current

1 global standards and fast-developing best
2 practices, and the elimination of market access
3 barriers. Progress in these areas benefits U.S.
4 creators, producers, publishers, workers, and
5 consumers, while enabling our trading partners to
6 develop and expand their own cultural and
7 creative output.

8 The ultimate objective is to promote
9 markets where the creative industries can bring
10 even more products and services than they
11 currently offer in an increasing variety of ways
12 from a greater diversity of players before an
13 ever-growing global audience. Advancing that
14 objective is a proven means to grow U.S. exports,
15 create good American jobs, and enhance U.S.
16 global competitiveness.

17 With this broad vision in mind, IIPA
18 has participated in every Special 301 review
19 since the 1988 Trade Act created this process.
20 Given some of the other comments provided, it is
21 worth reiterating the specific statutory language
22 and purpose of the Special 301 review; namely, to

1 identify "foreign countries that deny adequate
2 and effective protection of intellectual property
3 rights or deny fair and equitable market access
4 to U.S. persons who rely on intellectual property
5 protection."

6 It is critical for the Special 301
7 process to maintain this focus on intellectual
8 property protection -- in our case, copyright
9 protection and enforcement -- rather than, as
10 some suggest, used to weaken our trading
11 partners' copyright regimes, especially in
12 countries where legitimate rights-holders cannot
13 get a toehold due to inadequate copyright
14 protection or enforcement.

15 In this year's submission, IIPA
16 recommends that 23 countries be identified in the
17 2024 Special 301 Report, including nine countries
18 for inclusion on the Priority Watch List:
19 Argentina, Chile, China, India, Indonesia,
20 Mexico, Russia, South Africa, and Vietnam.

21 Our submission also highlights
22 additional serious concerns with legal reform

1 efforts in several other markets. As our
2 submission emphasizes, the copyright regimes of
3 many U.S. trading partners are inadequate,
4 including a failure to meet obligations to the
5 United States, evolving global norms, or the
6 minimum standards of the WIPO Internet Treaties,
7 which set global minimum standards for copyright
8 protection in the digital environment.

9 The U.S. Government should press U.S.
10 trading partners to adhere to well-established
11 global norms, including the requirement to
12 confine all exceptions and limitations to
13 copyright protections within the three-step test.

14 The U.S. Government should also take
15 advantage of recent trade initiatives, which
16 include a focus on digital economy-related
17 matters, to make progress on these issues.

18 Our submission also lists six
19 enforcement challenges confronting the U.S.
20 copyright industries seeking to compete in
21 overseas markets, starting, of course, with
22 internet and mobile network piracy, an

1 overarching challenge for all businesses that
2 depend on copyright. This infringement threatens
3 the viability of licensed platforms and makes it
4 much harder for creators and producers to earn a
5 living from their craft.

6 We applaud the U.S. Government for its
7 annual review of notorious markets, which has
8 made a significant contribution in combating
9 systematic online copyright theft, and we urge
10 you to redouble efforts to encourage our trading
11 partners to adopt legal frameworks to prevent the
12 operation or emergence of illegal services,
13 including by fostering cooperation among all
14 industry stakeholders in the online supply chain.

15 Finally, all efforts to address
16 copyright infringement will be unsuccessful if
17 legitimate products and services cannot be
18 brought into a market to meet consumer demand.
19 Whatever form they take, market access
20 restrictions that unfairly impede the entry of
21 legitimate products makes it easier for pirate
22 operations to fill the void.

1 Special 301 remains a cornerstone of
2 the U.S. effort to advance modern levels of
3 protection for copyright, more effective policies
4 and tools to enforce that protection, and freer,
5 more open markets. We look forward to our
6 continued work with USTR and the other U.S.
7 agencies to advance these goals.

8 Thank you, and I look forward to your
9 questions.

10 CHAIR LEE: Thank you.

11 And to begin questions, our first one
12 comes from USTR.

13 MS. AVERY-PAGE: Thank you very much.

14 You state that you expect China to
15 adopt implementing regulations on the copyright
16 law revisions in late 2024. Can you have more
17 information on the possible processes that will
18 be followed, including the opportunity for public
19 input? What are the primary issues you would
20 want to see in implementing regulations?

21 MR. ROSENBAUM: Thank you for that
22 question. I'll certainly check and see if we

1 have additional information on the processes that
2 may be followed.

3 You know, the copyright amendments
4 were an important step forward in protection in
5 China, and it's critical that the implementation
6 is done properly. There are additional
7 protections of technological protection measures
8 that need to be clarified in the implementing
9 regulation and additional enforcement measures as
10 well, as we have laid out in our submission.

11 CHAIR LEE: Thank you.

12 The next questions comes from the U.S.
13 Copyright Office.

14 MS. LANZA: Thank you.

15 IIPA noted that, in Brazil, quote,
16 "Recent positions vocalized by the Ministry of
17 Culture and ANCINE's official concerning the
18 protection of copyrights became cause for
19 concern." End quote.

20 Can you please elaborate on the
21 positions taken by the Ministry and your specific
22 concerns?

1 MR. ROSENBAUM: I will probably need
2 to get back to you with additional information in
3 writing. I appreciate that question.

4 In Brazil, while we have seen some
5 positive improvements on the enforcement front,
6 there does need to be sort of a whole-of-
7 government approach that needs to be taken. And
8 there are several concerning legislative
9 proposals in Brazil that we've highlighted. And
10 so, there's additional work to be done on the
11 legislative framework.

12 Thank you.

13 CHAIR LEE: Okay. The next question
14 is from the Patent and Trademark Office.

15 MS. CRITHARIS: Thank you for your
16 testimony.

17 Can you please elaborate whether IIPA
18 members over the past year have engaged with
19 Turkey on the issues raised in the 301 Report?
20 And what roadblocks have IIPA members run into
21 that have prevented progress?

22 MR. ROSENBAUM: Thank you.

1 I'm happy to go back and check with
2 our members on this, but there are several, as
3 we've laid out, longstanding concerns in Turkey
4 that we're hopeful can be addressed. But I will
5 get back to you on the specific steps that we've
6 taken to move forward in that country.

7 Thank you.

8 CHAIR LEE: Thank you.

9 The next question is from Treasury.

10 MR. CHANG: Hello.

11 IIPA's nomination for Paraguay to
12 remain on the Watch List focuses on a single
13 issue --

14 MR. ROSENBAUM: Yes.

15 MR. CHANG: -- the pending legislation
16 that was last introduced in May 2023. Your
17 submission recognizes that this pending
18 legislation was introduced without a sponsor and
19 without support from Paraguay's copyright office.
20 Your submission also recognizes that two of the
21 original authors of the 2022 version of the draft
22 legislation have withdrawn their support.

1 Can you please further explain your
2 Watch List recommendation for Paraguay and what
3 you expect to happen in 2024 that will seriously
4 impede the ability of your members that rely on
5 IP protection to operate in Paraguay?

6 Thank you.

7 MR. ROSENBAUM: Thank you. I
8 appreciate the question.

9 Yes, Paraguay has this legislative
10 proposal for an unwaivable remuneration right
11 which would make licensing in that country
12 -- which is, essentially, how our members do
13 their business -- it would make it extremely
14 challenging and create all kinds of uncertainty.
15 And so, that is the basis for our recommendation
16 for the Watch List in Paraguay. Even though the
17 bill, I think as it currently stands, is dormant,
18 there is risk that it could move, and that would,
19 again, create all kinds of uncertainty with
20 existing contractual relationships in Paraguay.

21 And also, this is something we're
22 seeing throughout South America, is similar

1 proposals that would create all kinds of
2 uncertainty and undermine the business models for
3 the creative industries.

4 CHAIR LEE: All right. Thank you for
5 your testimony.

6 MR. ROSENBAUM: Thank you.

7 CHAIR LEE: Okay. So, we are through
8 the morning schedule. We are scheduled to take a
9 break until 1:30 p.m., and that's when we will
10 restart.

11 For those coming back, please keep in
12 mind the time it takes for our security screening
13 and processing. So, please make sure to come
14 back early, so that we can start on time.

15 So again, we are adjourning the
16 hearing until 1:30 p.m. Thank you.

17 (Whereupon, the above-entitled matter
18 went off the record at 11:38 a.m. and resumed at
19 1:30 p.m.)

20 CHAIR LEE: All right. Good
21 afternoon, everyone.

22 It's 1:30. So, I'd like to get the

1 hearing started again.

2 My name is Daniel Lee. I'm the
3 Assistant U.S. Trade Representative for
4 Innovation and Intellectual Property.

5 Welcome to the afternoon session of
6 the Special 301 public hearing.

7 Usually, I don't go over this again in
8 the afternoon, but since it looks like pretty
9 much a different group of people, I'll just
10 mention again briefly the format.

11 So, each testifier will get 10 minutes
12 -- five minutes for their prepared statement, and
13 then, five minutes of questions from the
14 panelists up here.

15 We will be keeping track of time. You
16 will get a one-minute remaining notice, as well
17 as a time expired notice.

18 I will warn everyone that I think we
19 are going to be fairly strict on that, and I may
20 interrupt you if you're going over time, so that
21 we can stay on schedule.

22 So, with that, next up is Intellectual

1 Property Owners Association.

2 Thank you.

3 Could you please state your name,
4 title, and organization for the record, and then,
5 begin your testimony?

6 MR. VALENTE: Thank you. Thank you.

7 My name is Tom Valente, and I'm the
8 Senior Director for Global Affairs for the
9 Intellectual Property Owners Association, also
10 known as IPO.

11 I'm pleased to be with you today and
12 would like to thank you for the opportunity to
13 testify, and for your continued work ensuring
14 U.S. trading partners provide adequate and
15 effective protection of IP rights and fair and
16 equitable market access to companies who rely on
17 IP protection.

18 IPO is an international trade
19 association representing a big tent of diverse
20 companies, law firms, service providers, and
21 individuals in all industries and fields of
22 technology that own or are interested in IP

1 rights. IPO's membership includes over 125
2 companies and spans over 30 countries. IPO
3 members make vital contributions to America's
4 economic success by developing the advances that
5 drive exports and create jobs.

6 Innovators assume considerable risks
7 and rely on IP to protect investments in new
8 technology. In our comments to the Subcommittee,
9 IPO notes numerous deficiencies in, and
10 challenges presented by, IP laws around the
11 world.

12 It also notes improvements. We thank
13 you for your work that has made these
14 improvements possible. IPO remains optimistic
15 that further progress can be made in 2024 and
16 beyond.

17 My testimony today will address two
18 impediments to appropriate protection of IP
19 rights abroad: inadequate protection of trade
20 secrets and compulsory licensing.

21 For years, Article 39 of TRIPS has
22 required WTO members to ensure effective

1 protection of trade secrets. Since Article 39
2 was agreed, there have been insufficient efforts
3 in many WTO member countries to bring the laws,
4 regulations, and enforcement environment up to
5 compliance with the required standard.

6 Further, our members are concerned
7 with the significant risk of trade secret
8 disclosure that could result from administrative
9 investigations or data legislation, if sufficient
10 protection for trade secrets is not in place
11 abroad. IPO suggests that improving the global
12 environment for protection of trade secrets be
13 one of the top priorities for the Special 301
14 Report and for further actions.

15 Turning to compulsory licensing, the
16 patent system drives and enables research and
17 development that is delivering valuable, new
18 innovations to society and has facilitated an
19 unprecedented amount of collaboration that is
20 advancing solutions to the most pressing issues
21 facing society today. However, several countries
22 have adopted or are considering resolutions,

1 laws, or regulations that promote or provide
2 broad discretion to issue a compulsory license.

3 The European Commission has proposed
4 draft legislation for the grant of EU-wide
5 compulsory licenses. Compulsory licenses have
6 also been issued in previous years in several
7 countries.

8 IPO strongly opposes compulsory
9 licensing of IP rights with respect to all
10 industries and technologies. Although IPO
11 recognizes that compulsory licenses may be
12 legally permissible in limited and rare
13 situations, IPO believes that licensing of IP
14 rights is best accomplished through voluntary
15 efforts. This is because granting compulsory
16 licenses undercuts the importance of a
17 predictable and reliable patent system and
18 undermines investment in innovative solutions
19 that benefit society. Our members are also
20 concerned with proposals to include forced tech
21 transfer, along with compulsory licenses.

22 In conclusion, innovation-driven jobs

1 depend on high-quality IP systems. IP protection
2 in foreign markets is vital for American
3 innovators. It enables research, R&D, and
4 technology that results in important offerings in
5 the global marketplace.

6 We look forward to working with you to
7 build a global IP environment that encourages
8 innovation and safeguards quality, high-paying
9 jobs in innovative industries.

10 We again thank the Subcommittee for
11 its efforts to promote the protection of IP
12 rights globally, which will sustain and grow
13 America's economy.

14 Thank you.

15 CHAIR LEE: Thank you.

16 The first question today is from USTR.

17 MS. AVERY-PAGE: Yes, thank you.

18 On China, your submission states that,
19 quote, "Transparency in IP enforcement in China
20 appears to have declined severely and commentary
21 in the Chinese legal community suggests that
22 publication of judicial decisions of all kinds

1 will come to a halt in 2024." End quote.

2 Please share any additional
3 information you have about notices or other
4 measures issued by Chinese authorities that
5 appear to impose this change.

6 MR. VALENTE: Thank you

7 This is actually a very important
8 issue for IPO. In fact, our Board passes very
9 few resolutions, and you'll notice in the last
10 couple of years this is a resolution that was
11 passed dealing with transparency generally of IP
12 decisions around the world.

13 Our members have reported to us that
14 they are seeing a consistent decline in court
15 decisions being published. I cannot tell you
16 that we know of any particular court or
17 government decisions that have been published
18 that have issued that announcement. However, our
19 members are finding it's very difficult to find
20 out anything about the court decisions unless you
21 are involved in them.

22 This creates a lot of issues for us.

1 First, our members want to be able to track
2 what's going on, so that they can better decide
3 whether or not to participate in the Chinese
4 economy, based on the products they have and
5 whether or not those products would infringe.

6 Also, they want, of course, to better
7 understand the Chinese legal system and how it is
8 addressing IP issues, and they want to learn from
9 the cases.

10 From a policy perspective, it makes it
11 very difficult, for example, with respect to
12 anti-suit injunctions. That's an issue that has
13 been very concerning to our members, but because
14 of the lack of published judicial decisions, it
15 is unclear at this point what the state of the
16 anti-suit injunctions are in China.

17 CHAIR LEE: Thank you.

18 The next question is from ITA,
19 International Trade Administration.

20 MS. POMPER: On Vietnam, your
21 submission recommends that USTR elevate Vietnam
22 to Priority Watch List. Have there been any

1 developments in Vietnam's implementation of IP
2 code amendments or issuance of new measures that
3 impact your recommendation?

4 MR. VALENTE: I am unaware of that
5 recommendation by IPO. I can say our
6 organization's primary concern with Vietnam has
7 been in the trademark area, where there's been a
8 significant backlog.

9 CHAIR LEE: Okay. Thank you.

10 The next question is from the Patent
11 and Trademark Office.

12 MS. CRITHARIS: Thank you for your
13 testimony.

14 For Brazil, your submission identifies
15 patent and trademark application backlogs as a
16 concern, but, then, you recognize that trademarks
17 are being granted in six months on average and
18 the patents backlog has decreased, with a goal to
19 reach an average of two years from application to
20 grant. Does IPO still consider the patent and
21 trademark application backlog a serious concern
22 in Brazil that should be considered for including

1 in the Special 301 Report?

2 MR. VALENTE: Thank you for the
3 question.

4 IPO is very, very happy to see the
5 reduction in the backlogs in Brazil. This is
6 something that has been a real issue, as you
7 know. We do believe that there's still more work
8 to be done, particularly on the patent side. So,
9 I believe on the patent side there's a seven-year
10 backlog currently. And so, we would love to see
11 that backlog be further reduced.

12 You know, in addition, we believe that
13 there should be patent term adjustment. Since
14 the decision in Brazil that eliminated the full
15 paragraph of Article 40, which had an extension
16 of a minimum of 10 years from the granting date,
17 there's a significant issue there for members
18 because of the continuing backlog. But we do
19 applaud their efforts and we hope that they
20 continue, but we think we should stay on it.

21 MS. CRITHARIS: Thank you.

22 CHAIR LEE: Okay. Thank you for your

1 testimony.

2 MR. VALENTE: Thank you.

3 CHAIR LEE: Next, we have Knowledge
4 Ecology International, please.

5 Hello. Please state your name, title,
6 and organization for the record, and then, please
7 start your testimony.

8 MS. CASSEDY: Hi. I'm Claire Cassedy.
9 I'm a Senior Researcher with Knowledge Ecology
10 International.

11 The USTR approached the use of
12 exceptions to exclusive rights and patents data,
13 biological resources, and other knowledge should
14 be consistent with paragraph 4 of the WTO Doha
15 Declaration on TRIPS and public health.

16 In 2001, the WTO adopted the Doha
17 Declaration which stated the TRIPS Agreement,
18 quote, "can and should be interpreted and
19 implemented in a manner supportive of WTO
20 members' rights to protect public health and, in
21 particular, to promote access to medicines for
22 all." End quote.

1 The Declaration also reaffirmed the,
2 quote, "right of WTO members to use, to the full,
3 the provisions in the TRIPS Agreement, which
4 provide flexibility for this purpose."

5 In reviewing public comments submitted
6 to the 2024 Special 301 review, many industry
7 organizations cite grievances concerning
8 countries' use or even consideration of
9 compulsory licenses. One commenter phrased it as
10 "under the guise of TRIPS flexibilities that
11 countries are seeking compulsory licenses," when,
12 instead, it should read, "under the rights
13 legally afforded them by the TRIPS Agreement and
14 Doha Declaration."

15 Several commenters noted that the
16 recent Special 301 Reports have softened the tone
17 used in discussing compulsory licensing,
18 acknowledging countries' freedom to use the TRIPS
19 flexibilities in order to respond to the COVID-19
20 pandemic.

21 KEI welcomes this development and
22 encourages the USTR to reaffirm countries' rights

1 to seek compulsory licenses in accordance with
2 TRIPS.

3 In drafting the Special 301 Report,
4 the U.S. should address the threats to two
5 important copyright exceptions as well: the
6 quotation right and the news of the day
7 exception, both mandatory exceptions in the Berne
8 Convention.

9 Rights or fees attached to quotations
10 or news of the day create harmful and,
11 potentially, dangerous limits on access to
12 knowledge. USTR should oppose the global adoption
13 of ancillary copyright regimes and other laws
14 that place liabilities on links to news stories.

15 The U.S. should also defend the right
16 for other countries to draft and include fair use
17 provisions, such as stated in U.S. copyright law,
18 according to which uses of copyrighted works for
19 purposes such as criticism, comment, news
20 reporting, teaching, scholarship, or research is
21 not an infringement of a copyright.

22 Trade-related aspects of funding

1 biomedical R&D should focus less on intellectual
2 property norms and more on the direct and
3 indirect funding of research by the public
4 sector. The trade-related aspects of biomedical
5 R&D include many topics, including the levels and
6 character of public sector funding, the rights
7 that governments acquire, and transparency of the
8 value chain.

9 USTR needs to develop policy
10 objectives for global public sector funding of
11 biomedical R&D. By taking a more balanced
12 approach in the trade-related aspects of
13 biomedical R&D, it becomes more feasible to
14 consider innovations and business models that are
15 consistent with universal access, fiscal
16 discipline, and innovation. Going forward, far
17 more attention needs to be given to the trade-
18 related aspects of funding biomedical R&D and not
19 just the granting of patents on inventions.

20 Additionally, trade-related aspects of
21 public goods continue to be a neglected area of
22 trade policy. Climate change, refugee

1 assistance, pandemic preparedness and response,
2 global poverty reduction, famine relief, policing
3 poverty on the high seas, open sources biomedical
4 research, locust control, and countless other
5 global challenges are costly to address.

6 KEI has proposed a WTO agreement on
7 the supply of public goods that is based upon a
8 schedule that enables WTO members to voluntarily
9 make binding commitments to provide or resource
10 heterogeneous public goods.

11 Even without a new WTO Schedule for
12 Public Goods, USTR can and should develop a
13 policy on trade-related aspects of the supply of
14 public goods.

15 In their comments, many industry-
16 related organizations were critical of ongoing
17 negotiations at the international level to
18 address COVID-19 and prepare for future pandemics
19 and advocated for the use of only voluntary
20 licensing mechanisms.

21 It should be noted that the U.S.
22 Government itself regularly includes in its

1 contracts language for authorization and consent
2 to non-voluntary use of third-party patents.
3 This authorization is done through 28 USC 1498
4 and Federal Acquisition Regulation 52227-5.

5 This was done in dozens of COVID-19
6 contracts and many more government contracts.
7 KEI has gathered more than 350 examples of
8 contracts with a FAR authorization and consent
9 clause from agency web pages and SEC filings.

10 The eighth meeting of the WHO INB for
11 the pandemic treaty is happening this week, and
12 the USTR should support efforts to safeguard
13 public health, including the obligation for a
14 country to review and update, as necessary, its
15 national legislation for flexibilities in
16 intellectual property laws that are relevant to
17 dealing with a pandemic. The pandemic agreement
18 should include an obligation to use exceptions,
19 when necessary to achieve the objectives of the
20 treaty, particularly for flexibilities like
21 compulsory licenses when they require decisions
22 by government supports.

1 Thank you.

2 CHAIR LEE: Thank you.

3 The first question that we have for
4 you comes from the Department of Health and Human
5 Services.

6 MS. SNYDER: Thank you for your
7 comments on global public sector funding of
8 biomedical R&D.

9 You mentioned the need to develop
10 policy objectives on this issue. What policy
11 objectives do you have in mind and how would
12 those objectives relate to the denial of adequate
13 and effective protection of intellectual property
14 rights or the denial of fair and equitable market
15 access to U.S. persons that rely on intellectual
16 property protection?

17 MS. CASSEDY: I can definitely come
18 back -- thank you for the question -- I can
19 definitely come back with further response in
20 written comments.

21 But I would just say, for us, I think
22 it's also about, basically, looking at how we

1 incentivize governments to behave in a way that
2 we would like through looking at the biomedical
3 funding side of things, rather than just looking
4 at IP policy. So, like, how do we get countries
5 to grant more rights or share more and kind of
6 share the burden of funding biomedical R&D, as
7 well as sharing benefits?

8 CHAIR LEE: Thank you.

9 The next question is from the
10 Copyright Office.

11 MS. LANZA: Thank you for your
12 submission and your testimony today, taking note
13 of the news of the day and quotation exceptions,
14 the copyright protection from the Berne
15 Convention.

16 And you asked us to defend these
17 exceptions against certain actions by our trading
18 partners to create taxes, fees, or ancillary
19 rights associated with these exceptions.

20 Can you please put this part of your
21 submission in the context of the Special 301
22 Report, including by identifying intellectual

1 property rights at issue; who owns those rights,
2 and how the actions by our trading partners are
3 denying adequate and effective protection of
4 those IP rights, or are denying fair and
5 equitable market access to U.S. persons that rely
6 on IP protection?

7 MS. CASSEDY: Thank you for the
8 question.

9 I am not the copyright expert in my
10 office. However, we definitely see the issue of
11 countries wanting to incentivize supporting
12 journalism, and things like that, through
13 suggesting taxes, but we think there can be
14 better ways to support journalism than through
15 these means.

16 CHAIR LEE: Okay. Thank you.

17 Our final question is from USTR.

18 MS. AVERY-PAGE: Thank you.

19 In your submission, you say that
20 copyright-holders of information in the legal and
21 medical fields should not be able to opt out of
22 allowing their copyrighted materials to be used

1 to train commercial artificial intelligence
2 models.

3 If a country allows all copyright-
4 holders to opt their works out of training
5 commercial AI models, do you recommend that USTR
6 list that country in the Special 301 Report? If
7 so, what would be the basis for listing that
8 country?

9 MS. CASSEDY: I will consult with my
10 colleagues and I'll fully answer back to you.

11 MS. AVERY-PAGE: Thank you.

12 CHAIR LEE: Great. Thank you so much
13 for your testimony.

14 And again, since we're in the new
15 afternoon session with a lot of different people,
16 just a reminder -- and I'll say this at the end
17 again -- that the docket will reopen, The Federal
18 Register docket will reopen after this hearing
19 for post-hearing submissions.

20 So, next up, we have Public Citizen.

21 Okay. Please state your name, title,
22 and organization, and then, please begin your

1 testimony.

2 MR. MAYBARDUK: Peter Maybarduk. I'm
3 the Access to Medicines Director of Public
4 Citizen.

5 We're a consumer advocacy organization
6 with more than 500,000 members and supporters and
7 a 50-year history of protecting the public's
8 interest before federal agencies, Congress, and
9 the courts.

10 So, we believe Special 301 is in need
11 of continued reform to protect access to
12 medicines.

13 My testimony is rooted in years
14 providing technical assistance on the ground,
15 working with developing country governments to
16 overcome price and supply barriers to access to
17 medicine -- HIV/AIDS, cancer.

18 It's also rooted in our efforts to
19 support a robust global response to the COVID
20 emergency, which was marred by vast inequity in
21 access to medical tools, at the expense of
22 millions of lives.

1 Among other challenges, despite rapid
2 publicly-funded research and development for
3 medical tools, pharmaceutical companies
4 overwhelmingly prioritized high-income country
5 markets.

6 Like many access-to-medicines
7 advocates, I have witnessed developing country
8 health agencies and political authorities weigh
9 health needs against the criticism and
10 consequences they expect from Washington and
11 Brussels on behalf of patent-based prescription
12 drug corporations. I have seen new health
13 efforts blocked for these fears.

14 Now, historically, Special 301 has
15 undergirded this negative pressure, giving the
16 opponents of an access-to-medicine policy or
17 opponents of particular governments the means and
18 the substance to threaten support. And so, we've
19 appeared before you many times to express our
20 concerns.

21 I'm glad to be able to say today that
22 we have seen improvements under this

1 Administration. You've stopped including
2 objections related to compulsory licensing.
3 You've acknowledged countries' rights to the full
4 range of flexibilities under the TRIPS Agreement.
5 You've acknowledged exceptions to data
6 exclusivity to protect public health. This is
7 welcome progress -- progress that can support
8 health.

9 To take just the example of compulsory
10 licensing, my own experience, Ecuador combined
11 licensing with drug price negotiation to save
12 nearly half a point of GDP in a single year.

13 Colombia used leverage from a
14 compulsory licensing process to lower AIDS drug
15 prices 90 percent; in Peru, it was 30 percent.
16 Both countries reintroduced parallel importation
17 and number of other cost-saving tools as a
18 result.

19 Today, Colombia is considering a
20 compulsory license for a first-line AIDS
21 treatment and wants to buy generic dolutegravir
22 from the Pan American Health Organization and

1 save more than 80 percent off the list price, and
2 be able to attend to the Venezuelan migrant
3 crisis. There's a medicines patent license on
4 this drug; a voluntary license, to IPO's point.
5 But Colombia and most upper/middle-income
6 countries were excluded from the licenses, and
7 so, aren't able to benefit from the benefits of
8 that voluntary process, unless they pursue a
9 compulsory measure.

10 Now, domestically, the Biden
11 Administration has taken increasingly assertive
12 steps to rein-in drug prices as well through the
13 Inflation Reduction Act, limiting prices Medicare
14 will pay for patented drugs. The Federal Trade
15 Commission is using competition law to go after
16 high drug prices. Reasonable pricing conditions
17 over at ASPR and BARDA. And importantly,
18 President Biden recently announced a framework
19 for "march-in rights," which is compulsory
20 licensing for publicly-funded medicines.

21 Again to IPO's point, there are
22 countries experimenting with compulsory

1 licensing. We are one of them. The White House
2 says its policy will put drug companies on notice
3 if products developed using federal funds are not
4 made available to the public on reasonable terms,
5 including based on price. The proposal would
6 promote the federal government's ability to
7 license a patent such as those used to create
8 lifesaving drugs to a competitor -- with the goal
9 of increasing competition, bringing down costs
10 for families. That's U.S. policy; it's changed.

11 And so, Special 301 should continue to
12 change with it. Recent reports still include a
13 swathe of criticisms that harm access to
14 medicines, applying standards required neither by
15 WTO nor U.S. agreements with other countries.

16 For example, the most recent report
17 lists 11 countries for data protection issues;
18 seven countries for patent linkage issues; four
19 for patentability -- all of which delay price-
20 cutting generic competition beyond the rules;
21 rules, by the way, that industry played a
22 dominant role writing in the first place.

1 Special 301 in recent years also seems
2 to be giving increasing focus to areas such as
3 injunctions, trade secrets, competition law, tech
4 transfer. We don't object to all this, to the
5 extent it focuses on rule of law. There are
6 legitimate interests in each of these points.

7 However, when abused, we have to be a
8 little bit careful about how far we go in these
9 areas, because injunctions too liberally granted
10 can be used to delay generic competition. Trade
11 secrets have been used to block pricing and
12 medicine safety data, including in Europe.
13 Competition law, the FTC is using it. And
14 technology transfer can encourage local
15 production, which is sort of a global consensus
16 ever since the COVID emergency, that we need to
17 encourage.

18 Now, finally, it's a core principle
19 that we should be distinguishing between
20 trademark counterfeiting and copyright piracy, a
21 question of rule of law or enforcement of law
22 with the substance of law. Right? It's

1 appropriate to go after counterfeiting and
2 piracy. It's not appropriate, in our view, to
3 criticize developing countries for their WTO-
4 compliant health policy.

5 We thank you for the progress. We
6 think you can go just a little bit further, and
7 must go further, given current U.S. policy
8 commitments.

9 We appreciate your work and time.

10 CHAIR LEE: Thank you.

11 The first question we have today comes
12 from USTR.

13 MS. AVERY-PAGE: Thank you.

14 So, your submission states that the
15 Special 301 Report, quote, "should not criticize
16 countries for a lack of transparency or due
17 process, unless such criticism clearly
18 articulates the alleged violation of a TRIPS
19 standard." End quote.

20 What transparency and due process
21 standards from the TRIPS Agreement should the
22 USTR consider when assessing other countries'

1 processes? And is there any value in considering
2 best practices from U.S. Government processes as
3 well?

4 MR. MAYBARDUK: I'm going to have to
5 think upon that for a bit.

6 As I recall, our specific concern
7 there is related to the listing of some countries
8 for their pharmaceutical reimbursement policies
9 over time, without a specific allegation that it
10 was discriminatory in nature against U.S.
11 countries or linking back to the TRIPS Agreement.
12 So, I think that's the particular concern.

13 Regarding TRIPS Articles, I'll have to
14 come back, but I think, you know, sort of the
15 value that's at stake is, if we're complaining
16 about transparency and due process, then we
17 really need to put countries and the public on
18 notice exactly what the concern is, so that there
19 can be a reply. A concern about transparency
20 needs to be fully transparent in itself.

21 Thanks.

22 CHAIR LEE: Thanks.

1 The next question is from the State
2 Department.

3 MR. HAMILTON: Good afternoon.

4 My office at the State Department, the
5 Office of Intellectual Property Enforcement, is
6 charged with compiling and coordinating the TRIPS
7 Article 66:2 Report annually.

8 And so, in your submission, you
9 mentioned a lack of implementation of TRIPS
10 Article 66:2 and a lack of clarity on how
11 developed country members should provide
12 incentives to enterprises and institutions in
13 their territories for the purpose of promoting
14 and encouraging technology transfers to lesser-
15 developed or least-developed country members.

16 What changes do you recommend that the
17 United States make its TRIPS Article 66:2
18 programs or reporting? Do you have any
19 suggestions as to how WTO members can improve or
20 add clarity around how TRIPS Article 66:2 is
21 implemented?

22 MR. MAYBARDUK: Toward technology

1 transfer, specifically? So, I think another
2 value that's come out of the COVID emergency is
3 that local production and technology transfers
4 are, essentially, global consensus points, and we
5 need those tools in order to ramp up local
6 production and avoid another situation of extreme
7 inequity.

8 The United States has tools under law,
9 such as the Defense Production Act, that can
10 facilitate that. But there are many voluntary
11 efforts, and we would think that putting those on
12 record in the report; putting those on record at
13 the TRIPS Council, and elsewhere, helps compile a
14 global record of practices that everyone can
15 agree are helpful.

16 The United States Government has been
17 supportive of the mRNA technology transfer
18 program, backed by the World Health Organization,
19 with producers of mRNA vaccines in 15 countries.
20 We welcome that. We think it's very positive.
21 It's been undertaken without any compulsory
22 measures whatsoever, but, rather, it's an

1 exchange of knowledge among scientists and
2 practitioners. And we love to see that
3 documented and encouraged through the many tools
4 that the U.S. Government has, which includes
5 technical assistance, among others.

6 I hope that's helpful, but I'm happy
7 to come back to each question in writing as well.

8 CHAIR LEE: Thank you very much.

9 The next question is from the Patent
10 and Trademark Office.

11 MS. CRITHARIS: Thank you.

12 In your submission, you make several
13 arguments as to why this Special 301 Report
14 should not identify country policies or practices
15 that are compliant with the TRIPS Agreement.
16 Congress has told USTR that a country, quote,
17 "may be determined to deny adequate and effective
18 protection of intellectual property rights,
19 notwithstanding the fact that the foreign country
20 may be in compliance with the specific
21 obligations of the TRIPS Agreement." End quote.
22 In 19 USC Section 2242.

1 How do your arguments align with this
2 statement?

3 MR. MAYBARDUK: Well, from what I
4 gather from what you just read -- and I'd have to
5 go back and look at the provision -- it doesn't
6 necessarily -- what would be the standard for
7 requiring a criticism under that framework? It
8 doesn't seem to compel USTR or other agencies to
9 describe inadequate protection.

10 And as we're describing, a number of
11 the policies that are at issue are increasingly
12 favored in the United States. So, I'm sort of
13 unsure what the criteria would be, then, in order
14 to list a country.

15 And please feel free to follow up.
16 Okay?

17 CHAIR LEE: Yes. We're out of time
18 for questions, but maybe if you want to take
19 another look at 19 USC 2242, and then, if you
20 want to address anything further in your post-
21 hearing submissions, that would be great.

22 MR. MAYBARDUK: Happy to do so.

1 CHAIR LEE: Thank you very much.

2 Next up is the Trademark Working
3 Group.

4 MR. KILMER: Good afternoon.

5 I am Paul Kilmer. I am the leader of
6 the Trademark Working Group. We appreciate the
7 opportunity to address you this afternoon.

8 This year, the Trademark Working
9 Group's participants highlighted four priorities.

10 And the first is the absence of
11 default judgments in contentious proceedings. In
12 China, the lack of default judgments in
13 opposition and in validation proceedings
14 continues to be a big money- and time-waster for
15 U.S. companies. They are forced to submit
16 evidence and arguments in proceedings that are
17 not defended.

18 I, personally, in my private practice,
19 have had dozens of cases in the last year that
20 were not defended, specifically, in China, where
21 my clients ended up spending thousands of dollars
22 producing evidence and arguments, where the other

1 party didn't bother to appear, and in some cases,
2 couldn't even be served because their address was
3 either fake or had changed, and they hadn't
4 updated it in the CTMO's records.

5 Other jurisdictions that do not enter
6 judgment by default include the EUIPO and a
7 number of its member nations, as well as Brazil,
8 Chile, Indonesia, Japan, Saudi Arabia, South
9 Korea, and Switzerland.

10 As to what might constitute a default,
11 we suggest that, at a minimum, applicants and
12 registrants be required to submit a form or a
13 letter indicating that they wish to maintain
14 their application or registration, even if no
15 formal defense, like our answer, is required.

16 The second issue. The absence of ex
17 parte relative grounds refusals. The EU and many
18 of its member nations, as well as the United
19 Kingdom, lack relative grounds refusals based on
20 likelihood of confusion. This costs American
21 trademark owners millions of dollars every year
22 in what would otherwise be needless opposition

1 proceedings.

2 I have had a dozen cases myself in the
3 last year where we represented a client against
4 an applicant in the EUIPO, and the marks were
5 identical and the services were identical. And
6 yet, of course, because there were no relative
7 grounds refusals, the mark got through. My
8 clients spent thousands of dollars in each
9 proceeding. In fact, two-thirds of them were not
10 defended.

11 So, it's another instance in which
12 just a simple procedure like a search of the
13 trademark office records and an examiner's citing
14 conflicting marks would have prevented that loss
15 of time and money.

16 There are some other jurisdictions
17 outside the EU that also lack ex parte relative
18 grounds refusals, such as Mozambique, OAPI, and
19 Switzerland.

20 The third issue. The inability to
21 collect statutory or enhanced damages for
22 counterfeiting and bad-faith infringement. Where

1 actual damages or the infringer's profits cannot
2 be reasonably demonstrated, statutory and
3 enhanced damages are the only way in which
4 trademark owners can recover their losses.

5 Nations that do not have statutory or
6 enhanced damages for counterfeiting or blatant
7 infringement include Brazil, Egypt, Germany,
8 Japan, Kenya, Kuwait, Nigeria, Pakistan, South
9 Africa, and Turkey -- in other words, developed
10 and developing nations.

11 The fourth issue highlighted by our
12 participants is certification marks.
13 Certification marks are still not protectable in
14 dozens of jurisdictions from Algeria to Yemen,
15 including Argentina, Indonesia, Italy, and
16 Kuwait. Certification marks are fundamental to
17 ensure safe and effective goods and services.

18 There are also a wide range of often
19 conflicting approval processes in place for
20 certification marks, unduly burdening certifying
21 entities. Harmonization of certification mark
22 practice would ensure that goods and services, no

1 matter where they are provided, comply with
2 uniform standards. It may, therefore, be time to
3 consider a multilateral certification mark
4 treaty.

5 There are quite a number of issues, in
6 addition to these, cited in our Global Trademark
7 Report Card. And I hope you will take the time
8 to review it.

9 Thank you.

10 CHAIR LEE: Thank you.

11 Our first question for you comes from
12 USTR.

13 MS. AVERY-PAGE: Thank you.

14 So, which countries would you identify
15 as your top three countries of concern and why?

16 MR. KILMER: Okay. I think, as
17 always, China -- one, two, and three. No, not
18 true. China is mentioned as to improvements in
19 certain areas. I don't think there's any
20 question about that.

21 I think even with CTMOs becoming
22 somewhat more sophisticated in their review of

1 opposition proceedings, which is certainly very
2 welcome, we're also starting to see some
3 improvements in their adjudication of non-use
4 cancellation proceedings. It used to be, if the
5 registrant presented any evidence that they had
6 ever used their mark, even if it was obviously
7 false, the CTMO would accept it and sustain the
8 registration. So, we are seeing improvements
9 there.

10 But, that having been said, the lack
11 of default judgments, as I indicated, is a big
12 one for China. We really would like to see them
13 come around to the idea that having default
14 judgments is not just good for foreign companies,
15 but these days it's also good for Chinese
16 companies.

17 I have had instances where both my
18 client's trademark and a Chinese company's
19 trademark were both infringed by the same
20 applicant or registrant, or even in a commercial
21 setting, where we ended up in the IP Court. And,
22 you know, the Chinese company was equally

1 adversely affected by the absence of a default
2 judgment. So, I think that is certainly a big
3 one.

4 In terms of the European Union,
5 relative grounds refusals, we would love to see
6 them do that. And the irony is that the EUIPO
7 conducts a search and they provide the search
8 results, but they don't cite marks against one
9 another. It is a situation that could easily
10 evolve into relative grounds refusals.

11 They, obviously, have the tools to do
12 the searches. They're, obviously, capable of
13 producing the results to the parties. The next
14 step is simply refusing registrations to
15 identical marks for identical goods or services,
16 and that step seems fairly easy.

17 And the UK is now, unfortunately, in
18 the same position. The odd thing is, both the UK
19 and the EUIPO used to have relative grounds
20 refusals and in the early 2000s gave them up. It
21 was just too hard, "and we can't cite national
22 registrations," and there are a multitude of

1 excuses, but I write them down, unfortunately,
2 simply to excuses.

3 I think the third area is, certainly,
4 the statutory damage area. As I indicated, you
5 know, we have a counterfeiting situation right
6 now in the Dominican Republic, for example, where
7 there are no statutory or enhanced damages
8 available. Thousands of my client's products
9 were counterfeited. They're sitting in a
10 warehouse awaiting destruction, and they will be
11 destroyed. And, in fact, the government can
12 impose a fine, but my client can't get a monetary
13 recovery. And this is something that happens all
14 the time in many, many countries.

15 Sorry, I may have gone too long on it.

16 CHAIR LEE: No. I'm just wondering,
17 I think we asked for the top three countries of
18 concern. And I think, the third, you gave
19 statutory damages. Do you have a particular
20 country in mind? Or is the Dominican Republic
21 your third --

22 MR. KILMER: The Dominican Republic is

1 just for the example. I think probably the best
2 one is -- where we experience all the
3 counterfeiting, of course, is Brazil. So, Brazil
4 probably would be the top one; Dominican just
5 being a readily available example.

6 CHAIR LEE: Thanks.

7 The next question comes from Treasury.

8 MR. CHANG: Hi. Your submission notes
9 recent amendments to the laws in Mexico and Chile
10 to create requirements for maintenance of a
11 trademark registration to substantiate use of a
12 mark, and the offering of non-use cancellation
13 proceedings to be lodged by third parties.

14 MR. KILMER: Uh-hum.

15 MR. CHANG: Can you see these as
16 positive developments? And where would adoption
17 of similar procedures and requirements be
18 impactful in Latin America?

19 MR. KILMER: Okay. In terms of the
20 opposition proceedings, yes, obviously, in
21 Mexico, having an opposition proceeding is a
22 valuable tool. Unfortunately, the Mexican

1 process is a bit more like our Letter of Protest
2 proceeding rather than a real opposition.

3 A client can oppose an application.
4 The documents are forwarded to an examining
5 attorney and they're treated as part of the
6 examination process. It's not a real inter
7 partes proceeding. So, I would love to see that.

8 I'm expired.

9 (Laughter.)

10 CHAIR LEE: But you can always submit
11 further comments in the post-hearing docket.

12 MR. KILMER: Happy to do so. Thank you.

13 CHAIR LEE: Thank you.

14 I think we are to our final witness.
15 So, it's the United States Chamber of Commerce.

16 Good afternoon.

17 Please state your name, title, and
18 organization for the record, and then, please
19 start with your testimony.

20 MR. KILBRIDE: Good afternoon.

21 I'm Patrick Kilbride. I'm the U.S.
22 Chamber's Senior Vice President for the Global

1 Innovation Policy Center, GIPC.

2 I'd like to leave you with four
3 points, just in summation of our submission.

4 First, in terms of the broader global
5 environment for IP, especially at the MLOs, the
6 multilateral institutions, we're very concerned
7 about an eroding respect for IP captured in a
8 narrative that poses intellectual property as a
9 barrier to access, a barrier to global production
10 of innovative and creative solutions. We think
11 that's, actually, in stark contrast to the
12 reality, which is intellectual property enabling
13 investment in those long-term, high-risk,
14 capital-intensive areas of activity.

15 We would note that authorities are
16 built into national laws and multilateral
17 commitments on IP that enable a nimble response
18 to crisis situations. Such authority should be
19 the last resort, the exception that makes the
20 rule.

21 Instead, what we see through the
22 proliferation of proposals for IP waivers, forced

1 technology transfer measures, that this quickly
2 becomes the rule; that IP becomes discretionary,
3 which, essentially, erodes the basis for
4 investment, certainly, by the private sector. We
5 see this spilling over into critical and emerging
6 technologies that are absolutely critical to U.S.
7 national interests.

8 What's more, it's cloaked in the guise
9 of a development agenda, when, in fact, it is
10 these proposals would prevent developing
11 countries from participating effectively in the
12 innovation ecosystem that delivers solutions. In
13 other words, they're forced to wait on the
14 sidelines.

15 Unfortunately, U.S. support for the IP
16 waiver lent credence to this narrative. And
17 while, in May 2021, a reasonable person could
18 have said, as part of an "all of the above," no
19 stone left unturned strategy, that this makes
20 sense. By June 2022, that was clearly not the
21 case. There was no evidence of IP as a barrier.
22 In fact, we saw IP solutions delivered to the

1 world.

2 Further entrenching this problem,
3 we've seen the European Union undertake a series
4 of legislative measures, including their general
5 pharmaceutical legislation, the patent package
6 that further weakens the basis for investment and
7 innovation. And frankly, we've seen similar
8 legislative proposals and administrative
9 proposals here in the United States.

10 The result is uncertainty for our
11 diplomats working on the frontlines overseas.
12 They're trying to read the tea leaves in
13 Washington. They lack a clear mandate. And so,
14 we've seen a lessened ability to intervene
15 effectively in foreign markets when there are
16 critical IP challenges for U.S. industries.

17 Among those -- it was already
18 mentioned -- the Colombian compulsory precedent,
19 which I guarantee U.S. patients end up making up
20 the difference.

21 We've seen in Brazil, unfortunately,
22 some backsliding on what was a real improvement

1 in the patent backlog with no longer a minimum
2 guaranteed term of patent, even when those are
3 granted.

4 In South Africa, we've seen the
5 government continue to pursue copyright reform
6 that would broadly expand exceptions and
7 limitations, and really eviscerate the ability to
8 protect copyrights there.

9 And in Russia, we note that online
10 book and journal piracy websites like Sci-Hub
11 jumped from domain to domain and are able to
12 evade any type of enforcement.

13 All of this really calls for stronger
14 U.S. enforcement of trade agreements. That
15 begins right here at home with the USMCA. With
16 transition periods approaching in 2025, we would
17 note that Mexico has yet to implement key
18 provisions of that agreement, including on
19 patentability and patent term restoration, and
20 especially maybe the pending implementation of
21 copyright provisions that are currently under
22 constitutional review, and without which that

1 agreement has little value at all for America's
2 creative industries.

3 Strong U.S. leadership to address all
4 of these concerns is indispensable to our
5 economic growth and our national security. We're
6 living in a world that may soon be reshaped by
7 artificial intelligence, and we know that
8 intellectual property will play a key role in
9 ensuring trustworthy and responsible AI.

10 So, for all of these reasons, we urge
11 the United States to reassert U.S. global
12 leadership on IP at the multilateral level;
13 correct this narrative that has gone off the
14 rails; empower U.S. diplomats to address country-
15 specific challenges, and actively enforce the IP
16 provisions in U.S. trade agreements.

17 All of this begins with an affirmation
18 of U.S. support for IP at the Ministerial
19 Conference for WTO.

20 Thank you.

21 CHAIR LEE: Thank you.

22 The first question we have for you

1 comes from the Copyright Office.

2 MS. LANZA: Thank you for your
3 testimony today.

4 Does the Chamber expect that the
5 expected adoption of implementing regulations for
6 the copyright law revisions in China will provide
7 an opportunity to address the concerns about the
8 lack of recognition for live sports events
9 broadcast as copyrightable audiovisual work?

10 MR. KILBRIDE: You know, I would have
11 to tell you we'll believe it when we see it.
12 We're still looking at the phase one agreements
13 and waiting to see implementation for those. So,
14 you know, while we're hopeful -- and I would
15 comment that what we have seen over the years,
16 and we've measured this in the Chamber's IP
17 index, is that China has made steady progress in
18 folding sort of the technical administrative
19 capabilities to have an effective IP system, but
20 that the thumb remains on the scale, and maybe
21 particularly in that space.

22 CHAIR LEE: Thank you.

1 The next question is from the Patent
2 and Trademark Office.

3 MS. CRITHARIS: Thank you for your
4 testimony.

5 Your submission states that the 2022
6 ministerial decision on the TRIPS Agreement,
7 which is sometimes referred to as a TRIPS waiver,
8 quote, "gives away America's technology to create
9 innovative vaccine to its economic competitors."
10 End quote.

11 Yet, other submissions state that no
12 country has used the TRIPS waiver. What evidence
13 do you have to support your statement that the
14 TRIPS waiver gives away America's technology to
15 its economic competitors?

16 MR. KILBRIDE: Thank you for the
17 question.

18 Our view is that just by enacting the
19 waiver, the so-called waiver, the reduction of
20 commitments in TRIPS Agreement, that we have
21 effectively conceded critical ground in what's
22 really an existential debate about the role of

1 intellectual property rights; and that that
2 position is contrary to longstanding, bipartisan
3 U.S. advocacy at the global level.

4 So, when you create additional
5 uncertainty in the system, investments that take
6 many years to materialize are much less likely to
7 take place. That investment is going to go
8 elsewhere when we're reducing the strength of IP
9 here.

10 CHAIR LEE: Thank you.

11 The next question is, oh, from USTR.

12 MS. AVERY-PAGE: Thank you.

13 Your submission recommends that India
14 modify its strict registration requirements for
15 licensing and technology transfer. Could you
16 please describe the registration requirements you
17 feel should be adjusted?

18 Thank you.

19 MR. KILBRIDE: And thank you for the
20 question.

21 One of the indicators that we measure
22 in the U.S. Chamber International IP Index is

1 government intervention in licensing and
2 technology transfer. So, it's a graded scale
3 where we look at, is there a requirement to
4 register? Is the requirement to register
5 specific? You know, what may be proprietary
6 details of a contract? Is there government
7 intervention in price-setting relative to that
8 contract? And each of these are considered, you
9 know, a demerit, in effect. So, the score in
10 that indicator goes down proportionately.

11 And the principle here is that freedom
12 of licensing is critical to a seamless technology
13 transfer environment, and government intervention
14 actually gets in the way -- I think a point that
15 really applies more broadly to the innovation
16 ecosystem and to all of these proposals for
17 forced technology transfer.

18 CHAIR LEE: Thank you.

19 Next, we have a question from the
20 Justice Department.

21 MR. MERRIAM: Thanks so much for your
22 testimony today.

1 In the discussion of Brazil, the
2 Chamber mentioned Anatel's recent campaign to
3 combat illegal set-top boxes and the piracy
4 ecosystem there, but that was a positive
5 development in the comments.

6 How long is that campaign intended to
7 last? Do you see it as a positive development?
8 And is there a model that could be used in other
9 places?

10 MR. KILBRIDE: Yes, thank you for the
11 question.

12 I think no country is monolithic. And
13 I noted a moment ago some criticisms of events in
14 Brazil. By the same token, we have seen an
15 investment in copyright enforcement, in
16 particular, that we think is valuable.

17 And I should note, in fairness, Brazil
18 was, with Nigeria and Saudi Arabia, one of the
19 three biggest gainers on the Chamber's index for
20 the edition that will be released tomorrow.

21 So, yes, we do see that as a positive
22 development. We would have to get back to you on

1 whether or not it's a template, but appreciate
2 what's happening there.

3 MR. MERRIAM: Thank you.

4 CHAIR LEE: All right. Thank you for
5 your testimony.

6 MR. KILBRIDE: Thank you.

7 CHAIR LEE: So, that closes out the
8 testimony for today.

9 I'll try to be very brief in terms of
10 some closing remarks.

11 So, on behalf of the Special 301
12 Subcommittee, thank you to all the participants
13 for taking time out of your day to have this
14 exchange with us.

15 We appreciate the comprehensive
16 research, the thought, the problem-solving
17 efforts that went into your written submissions
18 and oral testimony.

19 In terms of post-hearing comments, the
20 Special 301 docket will reopen this afternoon and
21 will remain open until 11:59 p.m. Eastern
22 Standard Time on February 28th.

1 Post-hearing briefs by interested
2 parties that testified today are optional. If
3 you decide to do that, though, please follow the
4 instructions on the agenda or in the original
5 Federal Register notice, which is at
6 regulations.gov with a Docket No. of
7 USTR-2023-0014.

8 As noted earlier today, a transcript
9 and video of today's hearing will be available at
10 ustr.gov. We will do our best to get that posted
11 within the next two weeks or so.

12 So, thank you, everyone, including my
13 colleagues on the panel here and those who
14 testified today, for your contributions and your
15 time and attention.

16 And finally, a thanks to the personnel
17 at USTR who took care of today's logistics and
18 setup.

19 At this point, ladies and gentlemen,
20 the 2024 Special 301 hearing is now adjourned.

21 (Whereupon, the above-entitled matter
22 went off the record at 2:22 p.m.)

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Before: USTR

Date: 02-21-24

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