



PIJIP Snapshot of Industry Influence on the 2008 Special 301 Report

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American University's Program on Information Justice and Intellectual Property has compared the 2008 Special 301 Report to industry submissions to US Trade Representative by the International Intellectual Property Association (IIPA)¹ and the Pharmaceutical Research and Manufacturers Association (PhRMA). The comparison show that:

- Most of the countries which the industry groups request that USTR place in the Special 301 Report are in it.
 - 86% of the nations IIPA singled out are in the USTR report.²
 - 75% of the nations PhRMA singled out are in the USTR report.³
- Two related important concerns for both industry groups were a lack of timely, effective prosecutions of IP infringers, and sentences handed down by court which the industries viewed were not tough enough to deter further infringement. 65% of the countries listed in the Special 301 Report are cited for one or both of these offenses.⁴
- The top concern for the copyright industry is piracy (especially internet and book piracy). 79% of the countries IIPA asked to have cited for piracy are included in the Special 301 Report.⁵
- A top concern for the pharmaceutical industry is the protection of test data. 61% of the countries PhRMA asked to have cited for inadequate data protection are included in the Special 301 Report.⁶
- However, USTR was less responsive to some of the industries' other concerns. Only 41% of the countries cited by IIPA for having open air counterfeit-good markets were included in the report. Only 36% of the countries cited by PhRMA for regulatory approval of generic versions of drugs still on patent ("linkage") were included in the report,⁷ and none of the 7 countries cited by PhRMA for parallel imports were included.

PIJIP's tables comparing the industry submissions and the Special 301 Report are available on the PIJIP 301 Watch page.⁸

¹ The IIPA describes itself on its website as "a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials."

² 37 out of 43 nations.

³ 36 out of 48 nations.

⁴ 30 out of 46 nations.

⁵ 34 out of 43 nations. In its submission to USTR, IIPA complains about different types of piracy in different countries (book piracy, music piracy, business software piracy, etc.). In the Special 301 Report, USTR is sometimes specific about the types of piracy in a country which led to its inclusion on the list, but at other times it cites countries for the less specific "copyright piracy."

⁶ 20 out of 33 nations.

⁷ 9 out of 25 countries.

⁸ <http://www.wcl.american.edu/pijip/go/research-and-advocacy/301-watch>

The Special 301 Report, released annually by USTR lists nations that “deny adequate and effective protection of intellectual property rights, or deny fair and equitable market access to United States persons that rely upon intellectual property protection.”⁹ In preparing its report, USTR solicits advice from interested parties. Any person or group can submit comments, but the majority come from firms and industry groups representing IP owners. In some cases, countries included in previous reports submit comments to USTR outlining steps they’ve taken to toughen intellectual property rules. Each year, IIPA and PhRMA submit the most detailed comments to USTR, asking it to include various countries for specific offenses.¹⁰

Nations included in the Special 301 Report are typically subjected to further pressures the US government, and inclusion on the Special 301 may discourage foreign investment.¹¹ This year, nine countries were identified as “Priority Watch List,” which is the most serious ranking a country is given before USTR designates it a Priority Foreign Country, at which time USTR is required to begin the process of setting up formal trade sanctions.¹² Another 36 countries are identified on the “Watch List,” indicating that the US government will continue to monitor their behavior. Paraguay was included under section 306, meaning that USTR is monitoring its compliance with an agreement meant to resolve a former 301 dispute.

⁹ 19 USC 2242(a)

¹⁰ USTR has placed all of the comments it received online:

http://www.ustr.gov/Trade_Sectors/Intellectual_Property/Special_301_Public_Submissions_2008/Section_Index.html?ht=

¹¹ Assistant USTR for Intellectual Property and Innovation Stan McCoy. April 25, 2008.

¹² 19 USC 2412(b)(2).