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Public Hearing on the Proposed Free Trade Agreement with the Republic of Korea

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The International Intellectual Property Alliance appreciates this opportunity to provide the perspectives of the U.S. copyright industries on negotiations for a Free Trade Agreement with the Republic of Korea.

IIPA applauds the initiation of negotiations for an FTA with Korea. The copyright sector, like other sectors of our economy, could reap significant benefits from a sound and comprehensive US-Korea FTA. But the full benefits of a U.S.-Korea FTA can only be realized if the FTA includes high standards for copyright law reform; concrete deliverables for strengthening enforcement of copyright in Korea; and firm commitments to reduce or eliminate market access barriers in the copyright sector.

The FTAs that have been previously negotiated with other trading partners in the Asia-Pacific region, notably Singapore and Australia, provide good starting points for the text that the U.S. should seek to achieve in negotiations with Korea. The provisions of these agreements should be refined and expanded to address specific issues where strong FTA provisions are needed to further open the Korean market.

For example, like previous agreements, the Korea FTA should require full implementation of the copyright law reforms that have become part of emerging global consensus minimum standards. Many of these standards are already embodied in international treaty instruments; others are drawn from the clear trends in recent copyright enactments around the world. An FTA with Korea should spell out specifically what Korea needs to do to bring its laws up to these global minimum standards. These requirements should include, among other things, protection for temporary copies, such as those made in RAM of a personal computer; broad exclusive rights for sound recordings, including those disseminated to the public through webcasting and other digital technologies; an effective legal regime to safeguard technological protection measures used by copyright owners; and an extension of copyright terms for all protected subject matter.

Aside from enacting copyright protections, the agreements with Korea must also require the country to upgrade its copyright enforcement practices, with the goal to ensure that copyright owners and law enforcement officials have available to them the tools necessary to impose effective, consistent, predictable and deterrent penalties on copyright pirates. Here, too, the

previously negotiated FTAs provide a good starting point. Needed measures include, among other practices, pre-set statutory damages for infringement; transparent enforcement procedures that allow for the identification and monitoring of known infringers; and the criminalization of “camcording,” a practice which is the leading source of piratical audio-visual products.

Finally, U.S. copyright holders face other obstacles to full and non-discriminatory access to the Korean market. The negotiations should aim to dismantle or significantly reduce these market access barriers and discriminatory practices. Current limitations on delivery of U.S. broadcast programming in Korea, extraneous review procedures for the importation of foreign films, and mandatory source code disclosure for security software are among these barriers. Any FTA with Korea should seek to eliminate these, and other similar, practices.

Virtually all sectors of the copyright industry suffer high levels of piracy in Korea. Last month, the IIPA filed a report in the Special 301 process which highlights the piracy problems in particular sectors, notably massive illegal photocopying and printing of published materials; rising Internet piracy of all kinds of copyrighted materials; and persistent problems with unauthorized CD-R “burning” operations, end-user piracy of business software, and importation of pirate cartridge-based entertainment software products. The IIPA urges that these specific piracy hotspots be kept clearly in view as USG embarks on its FTA negotiations with Korea, and provisions should be considered for inclusion in the FTA itself or in side letters that are specifically targeted at reducing the prevalence of piracy in these areas.

Thank you.