

UNITED STATES TRADE REPRESENTATIVE

IN THE MATTER OF  
2013 SPECIAL 301 REVIEW:  
IDENTIFICATION OF COUNTRIES UNDER SECTION 182 OF THE TRADE ACT OF 1974

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ON BEHALF OF:

Dr Jeremy Malcolm, Senior Policy Officer, Consumers International  
Professor Sean M. Flynn, Program on Information Justice and Intellectual Property  
Alberto Cerda, Professor in Law, University of Chile Law School,  
David Levine, Associate Professor, Elon University School of Law  
Erik Josefsson, Sweden  
John T. Mitchell, Washington DC  
IP-Justice, San Francisco, CA  
Electronic Frontier Foundation, San Francisco, CA  
Public Knowledge, Washington, DC  
Derechos Digitales, Santiago, Chile  
Fundación Karisma, Bogotá, Colombia

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Prepared by:

Sean Flynn

Mike Palmedo

Matthew Webb

Ama Ayivor

Program on Information Justice and Intellectual Property

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## MAIN ARGUMENT

The Program on Information Justice and Intellectual Property at American University Washington College of Law (PIJIP) is an academic and research program devoted to promoting the public interest in national and international intellectual property policy.

PIJIP has made submissions to the USTR Special 301 process over the last five years on behalf of its faculty and staff, and sometimes representing other public interest organizations. All of the comments in those submissions remain applicable and largely unresponded to within the 2013 process. These submissions are archived at [www.pijip-impact.org/special-301](http://www.pijip-impact.org/special-301)

These submissions have had an emphasis on several core concerns:

- that the 301 process and report fails to implement stated U.S. policy promoting balanced intellectual property policy on major public interest issues, including on policies affecting access to affordable medications in poor countries and promotion of users' rights in copyright policy;
- the definition of what is “adequate and effective intellectual property protection” cannot follow a one size fits all model where every country in the world is expected to have the same rules and interpretations as possessed by the United States – such a norm ignores the painful fact of gross income disparity in developing countries which incentivizes monopoly holders to price the great majority populations (at least 90%) out of the market;
- the process for considering public submissions is inadequate and leads to arbitrary and capricious outcomes in the report; and
- the current use and operation of the program as a set of increasingly serious “watch lists” ending in a priority foreign country listing with a specific trade sanction process violates the World Trade Organization’s ban on unilateral adjudication of trade disputes.

This submission re-articulates many of these concerns and then concludes with a list of countries that would be included in the 2013 report if it was drafted through a process committed to promoting balance in copyright legislation.

### **1. Adequate and effective intellectual property must be balanced**

Under Section 182 of the Trade Act of 1974 (Trade Act) ([19 U.S.C. 2242](http://www.uscourts.gov/19-U.S.C.-2242)), USTR is required to identify foreign countries whose policies fall under two criteria: those which “deny adequate and effective protection of intellectual property rights”<sup>1</sup> and those which “deny fair and equitable market access to U.S. persons who rely on intellectual property

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<sup>1</sup> [19 U.S.C. 2242](http://www.uscourts.gov/19-U.S.C.-2242)(a)(1)(A)

protection.”<sup>2</sup> Both of these requirements should be interpreted by USTR to include consideration of the degree to which countries deny adequate and effective intellectual property users’ rights, which it has failed to do in past reports.

As USTR recognized in its recent position in the Trans-Pacific Partnership Agreement negotiations, for copyright policy to serve its dual objective of promoting the creation of protected works and also to promote the creation of new works that may transform or excerpt from the prior works – copyright policy must contain a balance between owners’ and users’ rights. As noted by USTR, “the balance of rights and exceptions and limitations achieved in U.S. law provides diverse benefits for large and small businesses, consumers, authors, artists, and workers in the information, entertainment, and technology sectors.”<sup>3</sup> And this is true as well of the balance required in foreign laws. If other countries provide only strong protections of copyright owners, with insufficient protections of the rights of users, then U.S. businesses large and small will be negatively effected in their ability to access foreign markets.

Accordingly, in defining what is an “adequate and effective” copyright system abroad, USTR should use the definition that it articulated in conjunction with its TPP proposal:

A robust copyright framework ensures that authors and creators are respected, investments (both intellectual and financial) are promoted, that limitations and exceptions provide an appropriate balance, and that enforcement measures are effective.<sup>4</sup>

In this definition, as in US law, limitations and exceptions to rights are an integral part of the overall policy – “[a]n important part of the copyright ecosystem”<sup>5</sup> -- not a subversion of a general rule.

In applying this principle going forward, the 301 Process should examine limitations and exceptions just as it does other aspects of foreign law – using principles of U.S. law as a benchmark against which others are measured.

In the United States, for example, consumers and businesses rely on a range of exceptions and limitations, such as fair use, in their businesses and daily lives. Further, under the U.S. Digital Millennium Copyright Act (DMCA), the United States provides safe harbors limiting copyright liability, which help to ensure that legitimate providers of cloud computing, user-

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<sup>2</sup> [19 U.S.C. 2242\(a\)\(1\)\(B\)](#)

<sup>3</sup> <http://www.ustr.gov/about-us/press-office/blog/2012/july/ustr-introduces-new-copyright-exceptions-limitations-provision>

<sup>4</sup> Id.

<sup>5</sup> Id.

generated content sites, and a host of other Internet-related services who act responsibly can thrive online.<sup>6</sup>

Countries that lack major elements of such limitations and exceptions to rights should be identified and encouraged to change their laws, just as the process does for countries that lack U.S. style patent protections or copyright protections. The 301 process should, for example, advise countries to consider adopting limitations and exceptions that have the hallmark of fair use – its flexibility to adapt to new technology and contexts. The lack of such flexibility should be flagged as an element of a copyright system that makes it less adequate and effective in protecting the rights of businesses and users that rely on users rights in copyright systems, and such deficiencies should also be flagged as posing a potential market barrier to US businesses – especially internet and technology businesses.<sup>7</sup>

A list of countries that would receive listing for inadequately balanced copyright systems is included in an appendix.

The pursuit of balanced copyright systems abroad should also be described in the introductory section of the 301 report where general policies and purposes of the U.S. government are described, including in its statement of best practices for IP policy. In the [2012 Report](#), for example, the list of identified countries does not begin until page 25. The preceding section includes a variety of information, including health policy and best IPR practices that are not statutorily applied. At minimum – and has been requested in previous submissions – the identification of “best practices” in the report should reflect the U.S. commitment to balance and should describe the benefits of flexibly limitations and exceptions similar to U.S. fair use.

**2. USTR statements on “Best Practices” should include practices that are best for consumers, technology companies, libraries, people in need of access to affordable medicines, the meeting of human rights obligations, and other public interest considerations.**

The Special 301 authorizing statute does not require USTR to identify “best practices” in intellectual property policy. This is an entirely discretionary activity, and as such should be informed by the full range of policies that animate U.S. intellectual property and foreign policy. This must include, but has not in the past, considerations of what policies are best for a full range of U.S. businesses as well as public and consumer interests.

We recommend that the following best practices in public policy be recognized in the 301 report:

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<sup>6</sup> Id.

<sup>7</sup> See CCIA, Fair Use in the US Economy, <https://docs.google.com/viewer?url=http://www.cciainet.org/CCIA/files/ccLibraryFiles/Filename/000000000526/CCIA-FairUseintheUSEconomy-2011.pdf&pli=1>

*a. Copyright in the Digital Environment*

- Adoption of “notice and notice” systems for limiting ISP liability that do not rely on censorship of online material without a court order, including in Chile and Canada.<sup>8</sup>
- Implementing open ended, flexible exceptions that can adapt to technology and use changes, including in Korea, Israel, Philippines, and Malaysia, and are under consideration in countries including Australia.<sup>9</sup>
- Offering flexible and open ended limitations and exceptions to liability.<sup>10</sup>
- Protecting free expression by promoting exceptions to copyright for non-commercial user-generated content, such as in Canada.<sup>11</sup>
- Promoting exceptions to copyright for temporary reproductions for technological purposes (e.g. cache and RAM copies on internet), such as in Canada.<sup>12</sup>
- Encouraging protections for cross border sharing of copyrighted works created under an exception for visually impaired, as proposed by the World Blind Union.<sup>13</sup>

*b. Remedies and Enforcement*

- Limiting criminal remedies to infringing conduct that is both willful, for profit and on a commercial scale, as is proposed for the U.S. under the Aaron Swartz Act and as exist in Canada.<sup>14</sup>

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<sup>8</sup> See Copyright Modernization Act, [Bill C-11](#), 41st Parliament § 47 (60 Elizabeth II, 2011) (Canada) [hereinafter Canada Bill C-11] (introducing § 41.25) (provides protections against liability where “[a] person described in paragraph 41.25(1)(a) or (b) who receives a notice of claimed infringement that complies with subsection 41.25(2) shall, on being paid any fee that the person has lawfully charged for doing so, (a) without delay forward the notice electronically to the person to whom the electronic location identified by the location data specified in the notice belongs and inform the claimant of its forwarding or, if applicable, of the reason why it was not possible to forward it”).

<sup>9</sup> See [Washington Declaration](#) (calling for “efforts to defend and expand as appropriate the operation of limitations and exceptions in the years to come,” including “efforts to assure that international law is interpreted in ways that give States the greatest possible flexibility in adopting limitations and exceptions”).

<sup>10</sup> E.g. E.g. Canada [C-11 sec. 41.21\(a\)](#) permits the government to prescribe “additional circumstances in which” TPM paragraph 41.1(1)(a) does not apply.

<sup>11</sup> E.g. Canada Bill [C-11 §22 creating 29.21](#). providing that it is “not an infringement of copyright for an individual to use an existing work . . . in the creation of a new work . . . or to authorize an intermediary to disseminate it, if . . . the use of, or the authorization to disseminate, the new work or other subject-matter is done solely for non-commercial purposes” and other factors, such as attribution, are met.

<sup>12</sup> E.g. Canada [Bill C-11 § 32](#), creating a new § 30.71, providing that it “is not an infringement of copyright to make a reproduction of a work or other subject-matter if (a) the reproduction forms an essential part of a technological process; (b) the reproduction’s only purpose is to facilitate a use that is not an infringement of copyright; and (c) the reproduction exists only for the duration of the technological process.”

<sup>13</sup> E.g. World Blind Union, [Proposed] WIPO Treaty for Improved Access for Blind, Visually Impaired and other Reading Disabled Persons (Oct. 23, 2008), available online at [http://www.keionline.org/misc-docs/tvi/tvi\\_en.html](http://www.keionline.org/misc-docs/tvi/tvi_en.html) (Articles 4 & 8)

- Promoting restrictions on damages to ensure proportionality to harm to right owner, such as in Canada.<sup>15</sup>
- Promoting safeguards on internet enforcement policies to avoid threats to free expression, business innovation and free trade.<sup>16</sup>
- Promoting explicit human rights checks and balances on intellectual property enforcement measures, such as would be required under the U.S. due process guarantees.

*c. Promotion and protection of Human Rights*

- Countries may promote the actualization of human rights and further public interest objectives by refraining from TRIPS+ demands for intellectual property norms on medicines in trade agreements, such as commanded by the EU Parliament for EU trade agreements.<sup>17</sup>

*d. Research and Development*

- Promoting incorporation of WHA Global Strategy and Plan of Action into research and development policies.<sup>18</sup>

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<sup>14</sup> E.g. Canada [Bill C-11 § 46\(1\)](#), introducing a new § 38.1(1)), limiting statutory damages to “a sum of not less than \$100 and not more than \$5,000 that the court considers just, with respect to all infringements involved in the proceedings for all works or other subject-matter, if the infringements are for non-commercial purposes.”

<sup>15</sup> E.g. the [Washington Declaration](#) calls for “proportional approaches to enforcement that avoid excessively punitive approaches to enforcement, such as disproportionate statutory damages; undue expansion of criminal and third party liability; and dramatic increases in authority to enjoin, seize and destroy goods without adequate procedural safeguards.”

<sup>16</sup> See e.g. [White House statement](#), Victoria Espinel, Aneesh Chopra, and Howard Schmidt, Combating Online Piracy while Protecting an Open and Innovative Internet, WE THE PEOPLE (Jan. 14, 2012) (calling for “any enforcement of copyright on the internet must be narrowly targeted to cover activity clearly prohibited under existing laws, provide strong due process and be focused on criminal activity,” “any provision covering Internet intermediaries such as online advertising networks, payment processors, or search engines must be transparent and designed to prevent overly broad private rights of action that could encourage unjustified litigation that could discourage startup businesses and innovative firms from growing,” laws to “not tamper with the technical architecture of the Internet through manipulation of the Domain Name System (DNS), a foundation of Internet security.”).

<sup>17</sup> See European Parliament resolution of 12 July 2007 on the TRIPS Agreement and access to medicines, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0353+0+DOC+XML+V0//EN>; [Report](#) of the Special Rapporteur on the Right to Health, Anand Grover, The Right to Health and Access to Medicines (2009); [Report](#) of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue (2011).

<sup>18</sup> Sixty-First World Health Assembly, [Global strategy and plan of action on public health, innovation and intellectual property](#) (“Each country shall explore and, where appropriate, promote a range of incentive schemes for research and development including addressing, where appropriate, the de-linkage of the cost of research and development and the price of health products.”); Free Trade Agreement between Colombia, Peru, and the European Union (25 March 2011) (“The Parties also recognise the importance of promoting the implementation of Resolution WHA 61.21 Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property, adopted by the World Health Assembly on 24 of May 2008”).

- Promoting public benefits from publicly funded research, including by promoting accessibility, availability, affordability and access to data and information from government funded research.<sup>19</sup>

*e. Protection of Test Data*

- Permitting countries the full range of avenues to meet TRIPS Art. 39.3 data protection requirements, including cost sharing mechanisms.<sup>20</sup>
- Promoting exemptions from data exclusivity requirements.<sup>21</sup>

*f. Doha Declaration and TRIPS Flexibility*

- Incorporating language from the high level UN meeting on non-communicable diseases, affirming US understanding that Doha Declaration principles and flexibilities are not restricted to communicable diseases.
- Affirming Doha Declaration Para 4 right to use TRIPS flexibilities “to the full.”
- Promoting the Doha Declaration in all interpretations of TRIPS or other international intellectual property policy standards.
- Acknowledging that domestic flexibility to define patentability standards leaves countries free to define an invention so as to exclude “the mere discovery of a new form of a known substance which does not result in the enhancement of the known efficacy of that substance or the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.”<sup>22</sup>
- Promoting and affirming Trips Art. 30 solutions to enable supply of needed medicines to countries with insufficient manufacturing capacity.<sup>23</sup>

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<sup>19</sup> See <http://www.federalregister.gov/articles/2010/09/20/2010-23395/request-for-comments-on-incentivizing-humanitarian-technologies-and-licensing-through-the>; March-in requirements of the Bayh-Dole legislation (for a failure to make the product “available to the public on reasonable terms,” 35 U.S.C. § 201(f) (defining “practical application”) or to “alleviate health or safety needs.” 35 U.S.C. § 203(a)(2)).

<sup>20</sup> E.g. Agreement Between the EFTA States and the Republic of Korea, Annex XIII (Article 3), E.F.T.A.- S. Kor., Dec. 15, 2005 (“Any Party may instead allow in their national legislation applicants to rely on such data if the first applicant is adequately compensated.”)

<sup>21</sup> [Peru-EU FTA](#), Chapter 3 §6 Art 231 (parties may adopt exceptions for reasons of public interest)

<sup>22</sup> India Patent Act Sec. 3(d).

<sup>23</sup> E.g. [letter from the U.S. to Canada](#) on July 16, 2004 (agreeing that NAFTA permits: “Where a compulsory license is granted by a Party in accordance with such terms, the Parties agree that, as between themselves, adequate remuneration pursuant to Article 1709(10)(h) of the NAFTA will be paid in the exporting Party taking into account the economic value to the importing country of the use that has been authorized in the exporting Party.”)



### 3. The 301 Report Should Reply to Public Interest Comments

In last year's opening statement at the Special 301 hearing, AUSTR Stanford McCoy described how the Special 301 Committee decides which countries to include in the Report. According to McCoy, listing decisions are "the result of deliberation among all the relevant agencies within the U.S. Government, including those represented here today, informed by extensive consultations with affected stakeholders, foreign governments, the U.S. Congress, and other interested parties... *Input from the public is critical to ensuring that we make the most effective and appropriate use of the Special 301 process*" [emphasis added]. Nonetheless, in every report since PIJIP began making submissions, the concerns raised by PIJIP and other public interest representatives have rarely been mentioned or responded to in the report itself.<sup>24</sup>

The USTR has a great deal of discretion in deciding between interpretations of law and fact that may arise between submissions. But it must do so rationally; and a hallmark of rational government action is being able to articulate the reasons that submission is rejected while another adopted. This minimum standard for just administrative action has not been followed in Special 301. Not only do public interest concerns rarely carry the day in terms of actually effecting the listing decisions or policy discussions in the report – the 301 report has not even acknowledged the submissions with an explanation of why procedural and substantive concerns raised by public interest advocates are not addressed.

It has been repeatedly submitted in the past that the construction of the 301 Report is an informal agency adjudication under the Administrative Procedures Act, and that to avoid the appearance of arbitrary action by the 301 committee, the report should respond to public interest comments – including especially comments that the Committee disagrees with.

Special 301 is an informal adjudication, which includes any statutorily required decision making process, especially including applying statutory standards to past conduct, that may or may not require a hearing and is neither formal adjudication nor rulemaking. Informal adjudication includes action, like 301, done by "inspections, conferences and negotiations."<sup>25</sup> The APA requires that such processes be operated in a reasonable fashion – free of action that is "arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law."<sup>26</sup> This process acts arbitrarily, and is legally vulnerable for so doing, when it accepts inputs from public interest organizations and businesses with competing views and challenges to the program and ignores them in the report itself. The APA rules in §555(e) require an agency to provide a brief statement of the grounds for

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<sup>24</sup> Stan McCoy. Transcript of Special 301 Review Public Hearing, February 23, 2012. <http://www.ustr.gov/sites/default/files/Special301%2002-23-12.pdf>

<sup>25</sup> [Final Report of the Attorney General's Committee on Administrative Procedure](#) (Senate Document No. 8, 77th Congress, First Session, 1941).

<sup>26</sup> 5 U.S.C. § 706(a)(2).

denying an application or petition received as part of an informal adjudication.<sup>27</sup> In particular – the 301 Committee has refused to respond to the following substantive issues raised on multiple occasions by public interest representatives and other submissions:

- The 301 listing process violates the WTO dispute settlement understanding by unilaterally deciding through an administrative adjudication what countries are in violation of WTO and other trade agreement mandates.<sup>28</sup>
- The 301 statute’s definition of “adequate and effective intellectual property” must include a balanced conception of the field and address the interests of businesses and users that rely on rights granted by fair use rights, limitations on patent rights, and other user rights provisions of U.S. and international law.

Specific countries have been listed in previous submissions that would not be listed if the process implemented a balanced conception of intellectual property policy. But such submissions have not been referenced anywhere in past reports. We ask that, going forward, the 301 Report respond to the submissions it received, even, and especially, where it does not adopt the substance of their petitions.

In the part of the report that describes the administration’s use of this program, it should explain how the continued use of Special 301 in alleging violations of TRIPS or threatening trade sanctions for countries that do not adopt TRIPS-plus policies complies with the WTO dispute settlement understanding.

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<sup>27</sup> §555(e): “Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.”

<sup>28</sup> WTO DSU, art. 23.2 states:

“Members shall not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this understanding.”

In the Panel Report in United States – Sections 301-310 of the Trade Act of 1974, a WTO panel upheld the continuation of Section 301 after the WTO only if used after, and as a means to implement, DSU findings. It also clearly signaled that it is not a valid justification to say that sanctions themselves will only flow from the DSU. The panel said:(¶ 7.89)

“Members faced with a threat of unilateral action, especially when it emanates from an economically powerful Member, may in effect be forced to give in to the demands imposed by the Member exerting the threat... To put it differently, merely carrying a big stick is, in many cases, as effective a means to having one's way as actually using the stick. The **threat alone** of conduct prohibited by the WTO would enable the Member concerned to exert undue leverage on other Members. It would disrupt the very stability and equilibrium which multilateral dispute resolution was meant to foster and consequently establish, namely equal protection of both large and small, powerful and less powerful Members through the consistent application of a set of rules and procedures.”

## **APPENDIX: COUNTRIES LACKING ADEQUATE AND EFFECTIVE COPYRIGHT USERS RIGHTS**

Below is a list of deficiencies in the limitations and exceptions in the copyright laws of selected nations. Most of the examples are drawn from Consumers International's country surveys that are used in the development of the IP Watchlist Report 2012.

### **1. ARGENTINA**

The United States should be concerned that general user rights in Argentina do not include a set of balancing criteria, such as a "fair use" right. Quotation is only allowed for educational or scientific purposes. No exemption is provided for temporary or transient copies incidental to lawful use, or for parody or satire. Quotations are only allowed for educational or scientific purposes.

### **2. ARMENIA**

The United States should be concerned that Armenian law allows for quotations only for a narrow set of purposes, and those purposes do not appear to embrace the full range of digital technology that the U.S. exports.

### **3. AUSTRALIA**

The United States should be concerned that Australia's general user right based on a set of balancing criteria only applies to educational and library uses and for those with disabilities. Incidental inclusion of artistic works is permitted only for film and television broadcasts. Australia should be applauded for its serious consideration of user rights issues in its ongoing copyright reform process.

### **4. BELARUS**

The United States should be concerned that Belarus does not provide copyright exceptions for transient copies. Belarus only allows for quotations as illustrations in publications, radio and television broadcasts, audio and video recordings of educational nature. These narrow limitations threaten electronic commerce business from the U.S.

### **5. BELGIUM**

The United States should be concerned that a Belgian court has found the practice of providing short quoted in web searches to infringe upon Belgian copyright law.<sup>29</sup>

### **6. BRAZIL**

The United States should be concerned that Brazilian law does not allow a whole copy, even for purposes that would be permitted under US fair use law. No exceptions are provided permitting temporary or transient copies. Brazil should be applauded for its

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<sup>29</sup> <http://www.ccianet.org/CCIA/files/ccLibraryFiles/Filename/00000000202/Internet-Protectionism.pdf>

current consideration of a flexible fair-use like limitation and exception in its current copyright reform proposal.

## **7. CAMEROON**

The United States should be concerned that general user rights in the Cameroon do not include a set of balancing criteria, such as a “fair use” right. Cameroon does not allow computer software to be reproduced or transformed for the purpose of reverse engineering interoperable software.

## **8. CANADA**

The United States should be concerned that Canada’s exception for the incidental inclusion of a work in other work does not protect deliberate incidental inclusion. Canada should be applauded for its recent court decisions that have made the interpretation of their fair dealing clause much more flexible and also for its new and innovative copyright reform that has expanded users rights and protections.

## **9. CHILE**

The United States should be concerned that Chilean copyright law lacks any general user right that is based on a set of balancing criteria. Chile should be applauded for hosting workshops on limitations and exception with the ASEAN countries.

## **10. CHINA**

The United States should be concerned that that Chinese copyright law lacks a general user right that is based on a set of balancing criteria. Users’ rights regarding the incidental inclusion of a work in other material is limited to specific circumstances. The quotation right for the press is subject to limiting factors. China should be applauded for its current consideration of a flexible exception (based on Berne Convention 3 step test) in its current copyright reform proposals.

## **11. COSTA RICA**

The United States should be concerned that Costa Rica lacks any general user right that is based on a set of balancing criteria. The law does not explicitly allow the incidental inclusion of a copyrighted work in the creation of other materials. Costa Rica also does not have a copyright exception for parody or satire.

## **12. EGYPT**

The United States should be concerned that Egypt does not exclude or limit the liability of intermediaries such as ISPs for copyright infringements carried out on their network. Egyptian law does not provide explicit provision for the purpose of reverse-engineering interoperable software. However, a single copy is allowed only for archiving purposes or to replace a lost, destroyed or invalid original copy. Incidental inclusion of a work in other

materials is not permitted. Egyptian law also restricts quotations for the purpose of criticism, discussion or information.

### **13. FRANCE**

The United States should be concerned that France does not exempt from copyright temporary or transient copies that are incidental to a lawful use, and does not permit the incidental inclusion of a work in other material. Furthermore, there are limits on the quotation right assigned to the press. The United States should be concerned that France is considering a law that would give copyright owners an exclusive right to prevent quotation of their works on search or news aggregating services. This law would be a direct contravention of the Berne Convention quotation right. The US should express its concern that a French court has recently used French trademark law to find eBay liable for the actions of all counterfeiters who use its service, and held E-bay liable for uses of trademarks that would be a fair use in the U.S.

### **14. GERMANY**

The United States should be concerned that Germany is considering a law that would give copyright owners an exclusive right to prevent quotation of their works on search or news aggregating services. This law would be a direct contravention of the Berne Convention Quotation right.

### **15. INDIA**

The United States should be concerned that India's fair dealing provisions do not cover sound recordings or cinematographic films. The law does not clearly exclude or limit the liability of intermediaries such as ISPs for copyright infringements carried out on their network.

### **16. INDONESIA**

The United States should be concerned that Indonesia has no copyright exception for parody or satire.

### **17. ISRAEL**

The United States should be concerned that Israeli copyright law does not provide explicit limitations to copyright for the purpose of reverse-engineering. Incidental inclusion of copyrighted work may be allowed in a limited manner, but this excludes musical works. The U.S. should further be aware that there is an explicit copyright exclusion for satire, but not for parody. Israel should be applauded for adopting a U.S. style fair use clause which will greatly benefit many U.S. businesses seeking access to their market.

## **18. JAPAN**

The United States should be concerned that Japanese law does not allow for reverse-engineering of software for compatibility, but consideration is being given to amend the current law. Japan does not provide a copyright exception to parody or satire.

## **19. JORDAN**

The United States should be concerned the Jordan's Copyright Law does not allow making temporary copies in RAM. The author is given the right to control all reproduction of his work whether temporary or permanent. It also does not contain any provisions that allow the "interoperability of software." The Copyright Law does not permit incidental inclusion of a work in other materials, and does not provide an exception for parody or satire.

## **20. LEBANON**

The United States should be concerned that Lebanese law does not except temporary or transient copies, incidental to a lawful use, from copyright. Furthermore, computer software may not be legally reproduced or transformed for the purpose of reverse-engineering interoperable software.

## **21. MALAWI**

The United States should be concerned that copyright law in Malawi does not exclude or limit the liability of intermediaries such as ISPs for copyright infringements carried out on their network. Computer software may not be reproduced or transformed for the purpose of reverse-engineering interoperable software. The incidental inclusion of a work in other material is not permitted.

## **22. MALAYSIA**

The United States should be concerned that Malaysia does not exclude or limit the liability of intermediaries such as ISPs for copyright infringements carried out on their network. Nor does Malaysian law allow computer software be reproduced or transformed for the purpose of reverse-engineering interoperable software.

## **23. NEW ZEALAND**

The United States should be concerned that nothing in New Zealand's law limits the right of the copyright owner to injunctive relief in relation to a user's infringement or any infringement by the Internet service provider. Additionally, there is no copyright exception for parody or satire, though the Green Party has introduced legislation with such an exception.

## **24. PHILIPPINES**

The United States should be concerned that the Philippines does not allow computer software to be reproduced or transformed for the purpose of reverse engineering interoperable software. There is no specific mention of satire in the limitations on copyright, though its recent fair use provision includes criticism and comment. Philippines should be applauded for adopting a U.S. style fair use clause which will greatly benefit many U.S. businesses seeking access to their market.

## **25. SLOVENIA**

The United States should be concerned that Slovenian Law only allows quotation if it is necessary for the purpose of illustration, argumentation or referral. Additionally, quotations are allowed to be made only of parts of a disclosed work and of single disclosed photographs, works of fine arts, architecture, applied art, industrial design and cartography.

## **26. SOUTH KOREA**

The United States should be concerned that South Korean copyright law has no provisions to exempt the incidental infringement from liability. It also does not except satire from copyright infringement and the court is very strict in recognizing an exception for parody. South Korea should be applauded for adopting a U.S. style fair use clause which will greatly benefit many U.S. businesses seeking access to their market.

## **27. SPAIN**

The United States should be concerned that Spain lacks any general user right that is based on a set of balancing criteria – the Spanish Intellectual Property Act expressly states that the author’s rights are to be limited only “in cases this law provides.” Liability is limited for intermediaries only under certain specific circumstances. There are strict limits to how computer software may be reproduced or transformed for the purpose of reverse-engineering interoperable software. Quotations may be used only for educational and research purposes.

## **28. THAILAND**

The United States should be concerned that Thai law does not exempt temporary or transient copies incidental to a lawful use from copyright infringement. Computer software may be reproduced or transformed for the purpose of reverse engineering interoperable software only if for research or study of the computer program.

## **29. UNITED KINGDOM**

The United States should be concerned that UK copyright law does not provide for fair use or private copying exceptions. No copyright exemption is provided for parody or satire.

### **30. UKRAINE**

The United States should be concerned that general user rights in the Ukraine do not include a set of balancing criteria, such as a “fair use” right. Temporary, transient copies are covered by definition of reproduction in the Law on Copyright and Related Rights, and therefore they are subject to copyright protection. No exception for copyright infringement is provided for satire or parody. Quotations are limited to information, polemic, scientific and criticism purposes.

This list is not a complete review of every country in the world. Others that deserve to be on the list may have been excluded.