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Daniel Lee
Assistant U.S. Trade Representative for Innovation and Intellectual Property
Office of the United States Trade Representative
600 17th St., N.W.
Washington, D.C. 20508

Re: 2020 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, 85 Fed. Reg. 62006, pp. 62006-08 (October 1, 2020)

Dear Mr. Lee,

We are writing to respond to the above-referenced Federal Register Notice inviting comments on online and physical notorious markets that exist outside the United States. As the U.S. association that represents companies that publish interactive games for video game consoles, handheld devices, personal computers, and the Internet, the Entertainment Software Association (ESA) regards the review of notorious markets as an important opportunity to shed light on markets that facilitate mass infringement or counterfeiting of industry products and services and that remain either sheltered from, or impervious to, the deterrent effects of enforcement actions.

Unauthorized Digital Goods

Unauthorized sales of in-game digital items have become a growing concern for the video game industry. Closely related to these in-game items are software products (collectively known as “cheat software”) that enable the unfair and rapid collection and aggregation of virtual goods, such as bots, hacks, and “cheats”, or which otherwise tilt the scales in favor of one player over another. The rise of Unauthorized Digital Goods (UDGs) and cheat software have a negative impact on video game companies and consumers in the following ways: (1) sellers of unauthorized digital goods and cheat software divert significant revenue away from video game developers and publishers; (2) sales of digitally-delivered items, like in-game digital items, have the potential for consumer fraud (such as stolen payment methods or compromised accounts) and the facilitation of money laundering schemes; (3) the unchecked sales of cheat software can threaten the integrity of game play, alienating and frustrating legitimate players; and (4) video game publishers and developers are forced into a perpetual virtual “arms race” to update their products and security technology before the sellers can update theirs.

Cheats: The sites listed below provide “cheats”, which (using software code) are ways to modify the game in order to allow an advantage for the player. Examples of cheats include: aimbots (which help a player aim in a first-person action game); trainers (which allow a player to turn on or off features to make the game easier or more difficult); and one-button maneuvers that allow a player to complete a task in-game with a

single click that normally would take extended gameplay (like “Instant Build,” “Always Run”). Cheats can infringe ESA member IP in instances where the cheat software code copies the underlying code of the game software. In addition, cheat software often circumvent console/pc technological protection measures (TPMs) and/or anti-cheat TPMs meant to prevent unfair player advantages within the game. The sites referenced below generate revenue through sales transactions (where the site itself is the seller), but also through advertisements. The following sites are notable due to their global popularity and the number of cheats available to purchase.

unknowncheats.me (Global Alexa Rank: 15,381).¹ This site has allowed a self-reported 3.4 million users to develop and submit cheats to this forum-based site since 2000. According to the site, between 6,000 and 10,000 cheats are downloaded daily across 100+ titles offered. It does not charge for cheats, instead relying on advertisements to generate revenue. All cheats are created by the community and the site encourages an open, free, and collaborative environment to develop and distribute these unauthorized goods. It has a U.S. Alexa ranking of 11,185.

mpgh.net (Global Alexa Rank: 26,725). According to the site, mpgh.net offers “several hundred thousand” free cheats to over 4 million users. Users can also sell their own cheat software. The site generates revenue through advertisements and the offering of premium accounts that bypasses restrictions found on free accounts, thereby making them attractive to sellers. It has a U.S. Alexa ranking of 9,352.

iwantcheats.net (Global Alexa Rank: 133,109). On this site, over 500,000 members can pay for premium access to the site’s forum and download cheats for over 70 video game titles. The site focuses on cheats for first-person action games that help with aiming as well as in-game information that normally is hidden such as player names, distance, and location of items. It has a U.S. Alexa ranking of 50,590.

engineowning.com (Global Alexa Rank: 52,088). A self-reported 141,000 members can purchase cheats for 14 popular action video games. The cheats include automatic aiming, auto fire, and other hidden information. The site sells access to the cheats from three days to one year and uses servers in five different countries. It has a U.S. Alexa ranking of 16,412.

Unauthorized Online Marketplaces: These sites provide a platform for users to list and sell (depending on the site’s focus) unauthorized digital items including in-game currency, in-game items, game accounts, and the unlicensed sale of potentially fraudulent game keys, which can provide access to features within a game or to the game itself. Each site organizes the listings by game and then usually by type of item. While some sites prefer an online market aesthetic, other sites use a forum to keep listings organized. Users can set their own price for the product they are selling and many have power sellers with high ratings and positive feedback. The owners of these sites generate revenue through transaction fees, advertisements, or the sale of their own currency, which users can then use to boost their profile. The following sites are notable due to their global popularity and the number of games available.

¹ Alexa rank is a measure of a website’s popularity and is used to rank millions of websites in order of popularity, with an Alexa Rank of 1 being the most popular. Alexa.com states that its rank is “calculated using a proprietary methodology that combines a site’s estimated average of daily unique visitors and its estimated number of page views over the [preceding] 3 months.” See <https://www.alexa.com/about>. Traffic and engagement are estimated from the browsing behavior of people in Alexa’s global panel, which is a sample of all Internet users. See <https://blog.alexa.com/marketing-research/alexa-rank/>.

playerauctions.com (Global Alexa Rank: 13,714). This site provides a marketplace for users to sell in-game currency, digital items, digital cosmetic (skins), accounts, CD keys, and power-leveling for over 200 ESA member titles. In addition, physical items are sold on the site. The site charges transaction fees and purports to offer protection against fraudulent purchases. According to the website statistics firm, Similar Web, playerauctions.com had an estimated 1.825 million visits over the past six months.

G2G.com (Global Alexa Rank: 7,512). A self-reported 1 million members can access over 1 million listings that include in-game items, virtual currency, boosting, and digital accounts offered by other users of the site. The site charges a fee from 4.99% to 9.99% per successful transaction. According to Similar Web, the site had 2.8 million visits in its most recent month.

ownedcore.com (Global Alexa Rank: 26,331). A self-reported 1.2 million members can gain access to cheats and account resales for many major first-person shooters and Massively Multiplayer Online (MMOs) games. The site sells its own in-game currency that allows users to boost visibility to their premium listings, eliminate ads, and receive trade feedback. In its most recent month, according to Similar Web, the site had 920,000 monthly visits.

Notorious Online Markets

Hyperlinking Websites (“Linking Sites” or “Link Sites”): These sites provide hyperlinks (“links”) to infringing copies of complete versions of copyright protected video games stored on third-party hosting sites known as “cyberlockers” (described below). The links are typically organized by content category (*i.e.*, “Games” sections) and/or are supported by a search functionality that enables visitors to find content. These sites typically generate revenue from user donations and/or online advertisements. The following link sites are notable due to their heavy traffic, high volume of infringing video game file links that are indexed, and non-responsiveness to rights holder notices.²

oceanofgames.com (Global Alexa Rank: 5,629). This games-focused site’s popularity is global in nature, based on its high Alexa ranking. It is also extremely popular in Pakistan with an Alexa ranking of 726 in that country. In September 2020, oceanofgames.com made available over 10,100 links leading to unauthorized copies of ESA member titles, of which less than 1% were removed based on infringement notices sent. Previously hosted in Ukraine as of last year, this site is now hosted by Host Europe GmbH in France

nxbrew.com (Global Alexa rank 97,427). This website indexes, manages and organizes links to unauthorized copies of ESA member copyright protected content hosted on third-party platforms. In September 2020, the website offered over 1,700 active links to ESA member video game titles including the very latest releases. The website does not respond to ESA take down notices and uses U.S.-based content delivery network (“CDN”)³ in addition to privacy registration services to conceal the identity of its owners and administrators.

² The figures that follow are based upon research conducted in September 2020 in anticipation of this filing.

³ A content delivery network (also known as a content distribution network) (“CDN”) is a service that provides a system of proxy servers and data centers, often global in scope, for resiliency services and DDOS protection for websites. CDNs enter into service agreements with websites to effectively ensure that the content of those sites is always available and that site visitors enjoy an optimal user experience. Among other functions, CDNs cache copies of web pages to ensure the availability of site content in the event of web server malfunction. While CDNs are used by legitimate services, infringers may make specific use of these services both to hide true hosting information (*i.e.*, public registries reference only the CDN, and not the actual host cached by the CDN) and to speed the transmission

darkw.pl (Global Alexa Rank: 71,802). Although this site is exclusively written in Polish, it links to a large volume of infringing content from multiple creative industries. In September 2020, darkw.pl indexed over 67,000 new links to infringing copies of ESA member video game content and has over 158,000 registered users. The site also employs the services of the U.S.-based CDN referenced above.

Hosting Websites (“Cyberlockers”): Cyberlockers host the infringing content on cloud storage platforms and are accessible through links indexed on linking sites. Users visit linking sites to find content on cyberlockers because cyberlockers generally do not support native search functionality. The following sites are notable for the substantial volume of infringing game files that they host and the sites’ limited response rates to notices of infringement.

rapidu.net (Global Alexa Rank: 110,099). In September 2020, this site hosted more than 3,000 infringing video game files. Data Invest in Poland hosts this site, which has an Alexa country ranking of 2,311.

1fichier.com (Global Alexa Rank: 1,880). This cyberlocker platform is a piracy haven for uploaders to disseminate unauthorized copies of the latest video game titles. 1fichier hosted over 500 unauthorized copies of copyright protected ESA member video game titles (as of September 2020) and has a 0.39% response rate to ESA’s take down notices. One ESA member reports that the platform does not respond to any of its take down notices.

1fichier’s extremely low compliance rate for the removal of infringing content attracts more unauthorized uploaders to the platform due to the fact that the content will remain active on the platform for longer periods of time. Websites that index and manage the links to content hosted on 1fichier also benefit from the platform’s low compliance rate as these websites derive greater advertising revenue from users clicking on the links to pirate content hosted on 1fichier.

The platform derives revenue through a subscription service, a referral scheme and advertising; although some major credit card processors do not service the platform due to its allegedly illegal activities. The platform is operated by DStoage SAS in France where it holds an Alexa rank of 158.

Torrent Indexing Websites: Torrent indexing sites provide links to torrent files that enable users to join peer-to-peer “swarms” to share infringing content, including illegal copies of video game software files. In contrast to the linking site/cyberlocker model, torrent indexing sites do not link to content hosted on a single server, but rather to torrent files that facilitate downloads from multiple peers in infringing swarms using the BitTorrent protocol. The following sites are among the most popular sources for infringing copies of ESA member video games and are not responsive to notices.

torlock.com (Global Alexa Rank: 18,954). Approximately 15,000 infringing URLs that initiate the download of ESA member video game titles were found on this site in September 2020 alone. It is hosted by Hurricane Electric, LLC in the U.S.

of large files, such as infringing copies of video games. Approximately half of the websites referenced in this document have a business relationship with a single U.S.-based CDN. Therefore, it is important that all U.S.-based CDNs join ISPs, search engines, payment processors, and advertising services that have successfully collaborated with rights holders in recent years to develop reasonable, voluntary measures to prevent sites focused on copyright infringement from using their services.

monova.org (Global Alexa Rank: 113,656). Over 3,500 infringing downloads of ESA member video game titles were found on this site in September 2020. This site is hosted by PE Ivanov Vitaliy Sergeevich in Ukraine, but is popular in the U.S. with an Alexa country rank of 64,179 in Ukraine.

Circumvention Device Distributors: To help prevent piracy, video game software and hardware have security features built into them, known as “technological protection measures” or digital locks, to prevent the play of unauthorized video game content. Circumvention devices and associated software bypass the technological protection measures (TPMs) of video game consoles and authentic games, allowing for the use of unauthorized software and pirated video games. Multiple groups manufacture these devices for nearly every console, and one of the most prolific groups is known as “Team Xecuter.” Team Xecuter is particularly notorious because their devices target the latest and most popular video game consoles.

R4ds.com.br. This website is a distributor of Team Xecuter circumvention devices and modification (mod) services in Brazil. As other resellers shut down, R4ds.com.br continues to gain in popularity and is offering the full line of Team Xecuter products, mod services for Team Xecuter’s SX Core/Lite chips as well as circumvention devices for other video game platforms (R4i Gold, Sky3DS, R4i RTS, etc.). The site refers to itself as the “**#1 Mod Specialist in Brazil.**”

Notorious Physical Markets⁴

Mexico⁵

In Mexico, large open-air markets and shopping complexes remain significant sources of infringing products and illegal modification devices across a range of industries, including the video game industry, and there remains a significant lack of enforcement efforts to protect intellectual property rights in these locations. Insofar as infringing products are often stored in small storage lockers and other physical premises within these markets, ESA supports the use of enforcement measures, such as asset forfeiture, that

⁴ In light of changing trends in the video game industry, including increased reliance on digital distribution models as well as the proliferation of online infringement more generally, physical markets are becoming less of an enforcement priority for ESA’s membership.

⁵ ESA notes that a complicating factor in combatting mass infringement in Mexico is the cumbersome requirement that each copy of an infringing game disc be accompanied in prosecution files by a copy of a legitimate original for comparative examination by *peritos* (experts). Under this system, when the comparison involves multiple copies of the same infringing video game, rights holders must submit an equal number of legitimate video game copies for the *peritos* to compare to the infringing copies. ESA encourages Mexican IP enforcement authorities to create a reference library of legitimate originals so that multiple copies of the same infringing video game can be compared to a single legitimate copy. Additionally, we recommend requesting that the prosecutors (*Ministerios Públicos*) and the experts (*peritos*) be able to conduct inspections of the online records of the U.S. Copyright Office (available at www.copyright.gov) in order to validate that video games are duly registered, according to existing case law, and that judges accord such inspections with the fullest probative weight permitted under Mexican procedural laws. Currently, prosecutors and judges require rights holders to submit certified copies of U.S. copyright registrations (“Additional Certificate”) and have them apostilled by the U.S. State Department. The time and expense of obtaining Additional Certificates from the U.S. Copyright Office in person and then having the State Department apostille the documents could be easily alleviated by allowing the *peritos* to inspect and verify the online copyright registration records for video games maintained by the U.S. Copyright Office.

target not only vendors, but also the custodians of these storage locations who profit from the sale of counterfeit goods.

Plaza Meave (Mexico City). Plaza Meave is located in the historic center of Mexico City and is considered the main marketplace for video games and related items, both legal and illegal. In its three floors and more than 250 vendors, this market receives an approximate average of 70,000 visitors weekly. Even during access restrictions, such as during COVID-19, activities in this market are carried out clandestinely for the continued sales of circumvention devices and console modifications.

Plaza de la Computación (Mexico City). A popular market within the nation's capital, Plaza de la Computación offers video game and game console circumvention services and mod devices, as well as infringing video game copies, consoles, and other video game accessories. The market consists of three levels and approximately 250 vendors, some of those vendors offer circumvention devices installing or infringing products but not openly.

Tepito (Mexico City). Tepito is an open-air market, 80 square blocks in size in the middle of Mexico City. Despite the decrease in the sale of around 3.3 million infringing products due to the rise in electronic downloads, Tepito continues to be the main point of active trafficking of infringing video games, modified consoles, and game circumvention devices, as well as countless other infringing items.

Mercado San Juan de Dios (Guadalajara). Mercado San Juan de Dios is the largest marketplace in Latin America, and its notoriety attracts a significant number of Mexican and foreign visitors. The San Juan de Dios market entered the list of the biggest piracy markets in the world a few years ago and has retained its position to date. There is a large section of the market where pirated current films and newly released video games are offered. More than one-third of this market's approximately 3,000 vendors offers video game circumvention devices.

Frikiplaza (Mexico City). Dedicated to specialized pop-culture paraphernalia, Frikiplaza consists of various floors stocked with illegal video games and other legitimate and illegitimate collectible items. It is well-known as a location where vendors will openly offer to "hack" video game consoles through the installation of circumvention devices and video game console mods. This market receives an approximate average of 20,000 visitors weekly.

Pericoapa (Mexico City). Pericoapa is a well-known bazaar in Mexico City located in a three-level semi-inhabited building that offers video game circumvention devices and mods, as well as other original and questionably legal products.

La Cuchilla (Puebla). La Cuchilla, which is approximately 10 square blocks, contains an average of 120 warehouses and more than 150 stores. This is the biggest market for infringing goods in southeastern Mexico and one of the largest centers where counterfeited goods are manufactured, along with the Tepito market. Infringing copies of video games and circumvention devices are readily available at this market.

La Pulga Río (Monterrey). Situated in downtown Monterrey in northeast Mexico, La Pulga Río is the biggest market in the area with pirated merchandise, including video games, records, footwear, and clothing.

Brazil

Galeria Pagé (São Paulo). This galleria is a multi-story shopping complex located in the center of São Paulo. Selling a variety of products, this galleria houses over 170 vendors, with approximately 25 booths solely dedicated to the sale of infringing video games, game circumvention devices, and modified consoles (*i.e.*, consoles with circumvention devices pre-installed). It is estimated by local authorities that around 8,000 consumers visit Galeria Pagé daily, but due to COVID-19 and temporary facility closures, it is estimated that attendance decreased by 60 percent while online shopping increased by 110 percent. A number of enforcement raids took place during the year, including the seizure of illegal video games and related products. The Brazilian Association of Electronic Commerce noted that compared to 2019, the number of seizures of counterfeit and infringing products, including video game-related items, increased by 10 percent. During the year, there was a noticeable increase in the volume of visits and popularity at the secondary, more upscale location of Galeria Pagé in the Bras neighborhood in central Sao Paulo. This new location has 300 shops, with only five shops solely dedicated to video game products, including counterfeit controllers and multiple types of consoles with preloaded titles (from 100 to 22,000 titles) or circumvention devices, ranging from USD 5.00 – USD 300.00.

Santa Efigênia (São Paulo). Covering eight blocks in downtown São Paulo, this popular market remains famous for offering a wide variety of electronic goods in its over 525 shops and outlets. More than 160 shops exclusively offer video game products, such as infringing video games, game circumvention devices, and modified consoles, as well as smuggled products, ranging from consoles to popular and newly-released game titles. This increase in the volume of infringing video game content being offered is due to the increased number of street vendors offering products to pedestrians and directing these customers to the illegal booths inside the galleries. Prices of infringing video game products sold at the market are typically 25 percent higher than those available online. Due to the pandemic and lockdown, Santa Efigênia suffered a massive decrease in sales, including those online due to a lack of an e-commerce structure. So far in 2020, no police raids have been executed, most likely due to the pandemic emergency period.

Rua Uruguaiana (Rio de Janeiro). Rua Uruguaiana remains one of the most famous outlet areas to buy counterfeit goods in downtown Rio de Janeiro with over 198 registered stores and booths. There are an estimated 41 shops exclusively offering video game services and products, including infringing video games, game circumvention devices, and modified consoles. Many unregistered street vendors also operate in the area, selling infringing copies of popular video games. No major police raids took place in this area since March when the lockdown in Rio de Janeiro was implemented. Rua Uruguaiana e-commerce activities were poor compared to similar markets or areas in São Paulo with no major marketplaces or websites instituted during the lockdown.

Oiapoque Outlet (Belo Horizonte, state of Minas Gerais). Also known as ShoppingOi, this market is located in downtown Belo Horizonte, with three floors of outlet shops dedicated to all variety of products, mostly illegal goods. Video games remain popular among the products available in the market. It is estimated that the pandemic reduced the number of active booths dedicated to video games from 30 to 16 out of the 90 active shops/booths dedicated to video game products and electronic goods, and around 13 percent of all products available/offered in the galleria are infringing games. It is estimated that most of all video game-related products available in the market are illegal (counterfeit or smuggled). During the pandemic emergency period, merchants report that online sales increased by 80 percent despite prices for circumvention devices and preloaded consoles being approximately 20 percent higher than in similar markets elsewhere in Brazil.

We would like to underscore our appreciation to the U.S. government officials who: (1) drive and administer the review of notorious markets; (2) implement and coordinate the use of policy tools that enhance intellectual property protection and enforcement domestically and overseas; and (3) encourage foreign government officials to investigate reports of piracy and counterfeiting and bring relevant enforcement actions. The resulting Notorious Markets List provides important insights that allow national and local policymakers, as well as law enforcement officials, in other countries to evaluate and fairly demand accountability from these markets and the services that support them, including through appropriate enforcement actions.

Should the Office of the United States Trade Representative have any questions or comments concerning ESA's response, please contact David Thomas at (202) 903-2368 or dthomas@theesa.com.

Sincerely,

A handwritten signature in dark ink that reads "David Thomas". The signature is written in a cursive, slightly slanted style.

David Thomas
Senior Counsel, Global Policy and International
Trade