



October 5, 2015

Filed electronically via [www.regulations.gov](http://www.regulations.gov), docket no. USTR-2015-0016

Christine Peterson  
Director for Intellectual Property and Innovation  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> St., N.W.  
Washington, D.C. 20508

**Re: 2015 Special 301 Out-of-Cycle Review of Notorious Markets: Request for Public Comments, 80 Fed. Reg. 54651 (September 10, 2015)**

Dear Ms. Peterson,

We are writing to respond to the above-referenced Federal Register Notice inviting comments on Internet and physical notorious markets that exist outside the United States. As the U.S. association exclusively dedicated to serving the needs of companies that publish interactive games for video game consoles, handheld devices, personal computers, and the Internet, we regard the “Notorious Markets” out-of-cycle review as an important opportunity to shed light on markets that facilitate piracy or counterfeiting of industry products and services, and which remain either sheltered from or impervious to the deterrent effects of enforcement actions.

**Notorious Internet Markets**

Linking Websites: These sites provide links to infringing copies of copyrighted video games stored on third-party hosting sites/cyberlockers (described below). The links are typically organized by content category (i.e., “Games” sections) and/or supported by a search functionality that enables visitors to find content. Linking sites typically generate revenue from user donations and/or online advertisements. The following linking sites are notable due to their heavy traffic, high volume of infringing links indexed, and non-responsiveness to rights holder notices:<sup>1</sup>

**myegy.to** (Global Alexa 2,272). This site’s operators have been unresponsive to requests for the removal of links to infringing video game content. In August 2015, myegy.to made available 15,340 links leading to unauthorized copies of ESA member titles. Roughly 500 new links to infringing game files are discovered on the site daily. The site is written in Arabic, and has an Alexa ranking of 74 in Egypt, but is hosted in Russia (as noted in USTR’s 2014 Notorious Markets OCR, infringers may employ Russian-based hosting to frustrate enforcement efforts).

---

<sup>1</sup> The figures that follow are based upon analysis performed in August of this year in anticipation of this filing.

**boerse.to** (Global Alexa 8,193). ESA applauds the enforcement action resulting in the takedown of the boerse.bz domain last year, but concurs with USTR's assessment in this past year's Notorious Markets report that the site's reemergence at the ".to" top-level domain only underscores the need for sustained enforcement. The new incarnation of the site is even more active than the previous version; in August 2015, it indexed over 23,000 links to infringing copies of ESA member titles (compared to 17,000 on boerse.bz during the same period last year).

**darkwarez.pl** (Global Alexa 21,649). ESA appreciates the inclusion of this site in the 2013 and 2014 Notorious Markets OCRs. Despite the fact that the site is written exclusively in Polish, it generates significant traffic by virtue of the breadth of infringing content offered. The site is hosted in Poland (which is also the host country for two of the three cyberlockers referenced below, catshare.net and fileshark.pl). In August 2015, darkwarez.pl indexed over 134,000 new links to infringing copies of ESA member game content, several times the volume of links of the two sites referenced above.

Hosting Websites ("Cyberlockers"): Cyberlockers host the infringing content accessible through links indexed on linking sites (users visit linking sites to find content on cyberlockers because cyberlockers tend not to have 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 infringement notices:

**rapidgator.net** (Global Alexa 740). This site is notable for its extremely low global Alexa score, indicating a high volume of traffic. In August 2015, the site was responsible for hosting more than 43,000 infringing game-related files available for download by third parties. It is hosted in Russia.

**catshare.net** (Global Alexa 31,140). This site has the lowest response rate (40%) of all major cyberlockers hosting infringing game files. In August 2015, this site hosted infringing content associated with more than 28,000 links, most of which remained live notwithstanding ESA's infringement notices. The site is in Polish, and appears to be based in Poland.

**fileshark.pl** (Global Alexa 78,175). In August 2015, this site hosted more than 63,000 infringing game files, and approximately 35% of these infringing links stayed available for more than four days after notification. Like catshare.net, it is in Polish, and these two sites together account for approximately 90% of links on the linking site darkwarez.pl.

Torrent Indexing Websites: These sites provide links to torrent files, which enable users to join peer-to-peer "swarms" to share infringing content, including illegal copies of 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 hundreds of different ESA member games, and are not responsive to notices:

**kat.cr** (Global Alexa 74). The "Kickass Torrents" torrent indexing site (kickass.to) has changed domains repeatedly in the recent past in response to enforcement efforts, and is currently accessible at the domain "kat.cr." It is the most well-trafficked torrent indexing site in the world,

and as its Alexa ranking indicates, one of the most popular websites of any kind on the Internet. Kat.cr is currently hosted in Canada by a hosting service called Netelligent.

**torrenthound.com** (Global Alexa 1,989). Torrenthound.com is a torrent indexing site hosted in Sweden. A plurality of the site's visitors are in India, where its Alexa score is 535.

**isohunt.to** (Global Alexa 3,735). Isohunt.to is a successor to the now-defunct isohunt.com, which was taken down as a result of enforcement action. It is still extremely popular; its Alexa ranking is below 2,500 in India, Italy, and the United Kingdom.

Circumvention Device Distribution Sites: A number of sites continue to sell hardware devices (such as "mod chips" or "game copiers") that bypass the technological protection measures in game consoles and handheld devices. Such devices and technologies are a continuing concern for the video game industry, because they enable the use and/or copying of unauthorized copies of game software. Sites that sell software used to defeat technological protection measures (commonly referred to as "soft mods") are also a large and growing problem. Device or soft mod sites may distribute directly to the consumer, or furnish raw materials to online or physical services that install such devices – i.e., circumvention services. Of note:

**San Marino:** The copyright law of the Republic of San Marino (Act 8/1991) does not include anti-circumvention provisions, similar to those included in the Italian Copyright Act and in the European Copyright Directive. As a consequence, San Marino has become a piracy haven for websites like Hardstore.com, which sells large volumes of game copier devices, chips, and modification tools for game consoles. Hardstore.com also offers "courses" on how to sell commercial circumvention devices, and claims to be an "official distributor" of such devices. Hardstore.com appears to sell circumvention devices throughout the world.

**segundamano.es** (Global Alexa 1,782). This marketplace site, based in Spain, allows users to post ads offering circumvention devices and services. It is notable, among other reasons, by virtue of its relatively low Alexa score, both in Spain (Alexa rank 27) and worldwide. The site has been largely non-responsive to notices sent by ESA members. It bears mention that Spain implemented European e-commerce Directive 2000/31/EC into Spanish law in 2002 (which includes a safe harbor regime for hosting companies similar to the DMCA).

Unauthorized Private Servers (a/k/a "pirate" servers or "grey shards"): More than ever before, high-quality, compelling games are offered "free-to-play," with publishers seeking to monetize the games through on-screen advertising, micro-transactions involving virtual "in-game" items, or subscription fees. The cloud-based nature of these games makes them less susceptible to harm associated with traditional forms of piracy, such as the distribution of unauthorized copies of client software.

New threats have emerged to these alternative revenue models, however, including the establishment and operation of unauthorized, third-party, "private" servers. When users are diverted to play on such servers, game publishers are not able to monetize their online games as described above and thus face reduced opportunities to recoup their investment in creating the online game. Establishing and maintaining unauthorized game servers often involves multiple acts of copyright infringement as well

as the circumvention of technological protection measures (“TPMs”).<sup>2</sup> Noteworthy examples that have been unresponsive to ESA members’ enforcement efforts to date include:

**warmane.com** (Global Alexa 28,979). ESA appreciates USTR’s inclusion of the unauthorized server “molten-wow.com” in its 2014 Notorious Markets OCR. Since then, molten-wow.com appears to have gone offline, and the same parties responsible for that site have launched warmane.com. Like its predecessor, warmane.com enables between 10,000 and 20,000 users per day to play World of Warcraft without having to pay for the monthly subscription fee established by Blizzard Entertainment. The server is hosted in France.

### Notorious Physical Markets<sup>3</sup>

#### Mexico<sup>4</sup>

**Tepito** (Mexico City). Tepito is an open-air piracy market, 80 square blocks in size, in the middle of Mexico City. As it has been for years, Tepito continues to be the locus of active trafficking of pirated games, modified consoles and game circumvention devices, as well as countless other pirated 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. More than one third of this market’s approximately 3,000 vendors offer pirated game software in their electronics sections.

---

<sup>2</sup> When cloud-based games are distributed, the game publisher typically incorporates into the client software TPMs that prevent the client from connecting to servers other than those operated by the game publisher. Operators of unauthorized servers must therefore distribute either hacked versions of the publisher’s client software or circumvention software designed to disable the client’s TPMs that would otherwise prevent the client from connecting to an unauthorized server. Moreover, to enable online gameplay, operators of unauthorized servers must often utilize infringing copies of a publisher’s server software.

<sup>3</sup> 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. ESA applauds public sector efforts to focus on online piracy, such as the creation of a cyber unit within the IP enforcement branch of the Mexican Attorney General’s Office, and urges governments to allocate sufficient resources to make such initiatives meaningful. At the same time, ESA appreciates that open-air piracy markets and shopping complexes remain significant sources of infringing products across a range of industries, and supports enforcement efforts undertaken 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 would support the use of enforcement measures, such as asset forfeiture, that target not just vendors but the custodians of these storage locations.

<sup>4</sup> ESA notes that a complicating element in combatting piracy 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 game, rightsholders must submit an equal number of legitimate 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 game can be compared to a single legitimate copy.

## Brazil

**Galeria Pagé** (São Paulo). This building is a multi-story shopping complex located in the center of São Paulo. It houses over 170 vendors that sell a variety of products, and many specialize in electronic goods and counterfeit merchandise including pirated games, game circumvention devices and modified consoles (i.e., consoles with circumvention devices pre-installed).

We underscore our appreciation to those U.S. officials who administer the out-of-cycle reviews of notorious markets. This process allows local and national policymakers to address the issues associated with these markets and the services that support them.

Sincerely,

A handwritten signature in black ink, appearing to read "Stanley Pierre-Louis", written in a cursive style.

Stanley Pierre-Louis  
Senior Vice President and General Counsel