

Warsaw, 21th of October, 2021

**To:** Mr. Jacob Ewerdt  
Director for Innovation and Intellectual Property  
U.S. Trade Representative  
Office of the U.S. Trade Representative  
600 17th Street, NW Washington, D.C. 20508

**From:** Tomksoft Sociedad Anonima  
Represented by:  
Attorney-at-law  
Robert Nogacki  
Kancelaria Prawna Skarbiec R. Nogacki sp.k.  
ul. Maciejki 13  
02-181 Warszawa  
Poland

### **Request of not including Tomksoft S.A. on the Notorious Markets List**

Dear Mr Edwert,

Acting on behalf of Tomksoft Sociedad Anonima Company in regards to the letter by Motion Pictures Association to USTR dated 8 October 2021, I request for a recognition of arguments included in this letter concerning my Principal as completely unjustified and not including the company Tomksoft Sociedad Anonima and it's website PopAds on the Notorious Markets List.

#### Legitimization

My Principal has become aware of the letter dated 8 October 2021 addressed to USTR by Motion Pictures Association (hereafter "MPA"). The letter has a public nature and it is publicly available. On the 18th page of this letter, in the section titled as „Ad Network and Online Advertising Entities” is a following description:

*” PopAds and PopCash – Costa Rica; Poland. PopAds and PopCash are ad networks owned by Tomksoft in Poland but incorporated in Costa Rica. PopAds generates advertising revenue for copyright infringing sites including gomovies123.org, megafilmeshdplus.org, video.az, and mega1080.com, while PopCash is currently used by watchmoviestream.me. PopAds had previously been generating advertising revenue for Openload and Streamango, two of the most popular video file hosting services with over 136 million and 32 million visits per month, respectively, according to SimilarWeb (Openload and Streamango were shut down in October 2019).. ”*

It shall be indicated that the vast majority of information included in aforementioned paragraph is completely false. My Principal has nothing to do with PopCash and has never had. My

Principal has no idea why is he connected with PopCash at all. This information is completely false and misleading for the general public and your institution. Also information like *"and PopCash is currently used by [watchmovestream.me](http://watchmovestream.me)"* does not concern my Principal - despite what MPA is signaling.

My Principal also does not understand, why PopAds is linked with Poland. Tomksoft Sociedad Anonima had a representative office in Poland (which in accordance with polish legislation shall not conduct economic activity in Poland; representative offices may only operate in terms of marketing and promotion of a foreign company; which however was removed from the registry of representative offices of foreign entrepreneurs with effect on 11 July 2020). PopAds is not registered in Poland. My Principal has residence in Costa Rica.

It shall be noted as well that my Principal has a webpage "Report DMCA" on his website which serves as a tool for qualified copyright entities to submit relevant requests. DMCA legislation does not cover advertising networks nor require or even suggest them to handle DMCA complaints. Yet, my Principal offers such tool in order to actively participate in actions reducing piracy.

PopAds was the first and still is the only advertising network with a modern system of reporting copyright infringement available at the internet address <https://www.popads.net/dmca-claim.html> which from year 2015 has processed hundreds of complaints concerning copyrights.

In accordance with the information from the subject website *"PopAds strictly condemns online piracy and advocates for fair an online economy we are part of. Because of that, we have created an automated DMCA complaint system which ensures that all complaints are handled within 48 hours, including weekends and holidays"*.

All sorts of complaints are automatically processed within 48 hours.

The copyright complaint system works in the following way:

1. As soon as a complaint is received, PopAds system automatically identifies the website owner account within PopAds system. A notification is sent to my Principal as well as the website owner.
2. The website owner is given a choice of:
  - a) Removal of PopAds advertising code (so that URL cannot be monetized) – the system will verify if our code was removed automatically and will close the complaint in such case.
  - b) Removal of content from reported URLs – the system will verify if the content was removed and will close the complaint if it was.
  - c) Dispute - the complaint is forwarded to my Principal for final judgment. As automatic and swift handling of complaints is paramount for my Principal, in case the website owner decides to dispute the complaint despite hosting/linking to copyrighted content, my Principal will permanently ban such user's account.
3. In case the website owner does not take any action within 48 hours, the system will automatically block the website from serving any advertisements.

Of course, repeated offenders, anyone who tries to cheat the system (for example by removing reported URLs and putting them back online after the complaint is closed) is immediately and permanently banned. My Principal also operates a Multi-Account Control System that will

automatically detect and ban new accounts opened by a person who had an account banned in the past.

My Principal also has a new, additional Adscore Compliance Intelligence system that automatically detects and blocks websites with illegal content, including torrents, child sexual abuse or terrorism. The system works by analysing website visitors behaviour, so even websites with cloaked(hidden) content will be identified. My Principal is the first and only advertising network with such a system.

Apart of actively handling copyright complaints, this last my Principal also implemented a realtime filtering based on a number of industry recognized piracy blacklists in which Tomksoft S.A. directly or indirectly participates:

- Operation Creative IWL blacklist maintained by City of London Police's Intellectual Property Crime Unit,
- WIPO ALERT blacklist maintained by World Intellectual Property Organization (filtering done through our compliance and quality control provider, Adscore Technologies DMCC).

My Principal's advanced filtering system ensures that PopAds does not display any advertisements on websites included on any of these blacklists. Apart from that, PopAds does not display any advertisements on websites framed or loaded by any of blacklisted websites.

This again, is something that none of my Principal direct competitors is doing. Also please note that companies or organizations that accuse my Principal of supporting piracy in their letters to USTR are participants of one or all of these blacklists. This means that if they only wanted to, with a click of a button they could prevent my Principal from displaying advertisements on websites they believe contain stolen content. For example, MPA seems to be participating in Operation Creative as per <https://www.mpa-emea.org/2016/11/working-with-operation-creative-is-part-of-mpas-multi-faceted-strategy-to-tackle-online-piracy-in-the-uk/>. If the information presented on MPA website is true, MPA can just list any website that they believe is illegally hosting copyrighted content on the Operation Creative IWL blacklist. Once that happens, PopAds system will automatically stop displaying any advertisements on the reported website within 24h without any human involvement.

Regarding the claim „ *PopAds had previously been generating advertising revenue for Openload and Streamango, two of the most popular video file hosting services with over 136 million and 32 million visits per month, respectively, according to SimilarWeb (Openload and Streamango were shut down in October 2019.*”, it cannot be overlooked that when it comes to cooperation with Openload / Streamango – as per publicly available information, these websites were closed as per an agreement between the owner and MPA/RIAA, without the participation of court. During operation of these two sites my Principal has never had any complaints and to his knowledge both sites handled DMCA complaints efficiently.

In reference to four portals indicated in MPA letter, ie. gomovies123.org, megafilmeshdplus.org, video.az, and mega1080.com –my Principal has never received any DMCA complaints on any of these websites, neither they are listed on any of the piracy website blacklists my Principal participates in. It should be added that my Principal does not cooperate with any of these websites.

Above all shall be indicated that putting my Principal in MPA letter on an equal footing with entities such as ThePirateBay.org, or Clipwatching.com is unjustified and unfair. My Principal neither hosts nor shares and takes no other actions connected with copyrighted works.

In addition to all shall be notified that the MPA request does not fulfil formal requirements which should be fulfilled in accordance with information from the USTR website:

*“To facilitate the review, written comments should be as detailed as possible. Comments must clearly identify the market and the reasons why the commenter believes that the market should be included in the Notorious Markets List. Commenters should include the following information, as applicable:*

*For online markets:*

*- The domain name(s) past and present, available registration information, and name(s) and location(s) of the hosting provider(s) and operator(s).*

*- Information on the volume of internet traffic associated with the website, including number of visitors and page views, average time spent on the site, estimate of the number of infringing goods offered, sold, or traded and number of infringing files streamed, shared, seeded, leeches, downloaded, uploaded, or otherwise distributed or reproduced, and global or country popularity rating (e.g., Alexa rank).*

*- Revenue sources such as sales, subscriptions, donations, upload incentives, or advertising and the methods by which that revenue is collected.”*

Meanwhile the information indicated by MPA letter dated 8 October 2021 is in vast majority false, is incredibly scant, vague and cursory.

As an aside, it should be pointed out that MPA basically pasted unsubstantiated accusations from last year's letter to USTR.

My Principal sincerely hopes that USTR does not take any action basing on such a vague complaint.

Respectfully,  
r. pr. Kamil Nagrabski