

Kraków, October 16, 2024

Mr. Daniel Lee
Assistant US. Trade Representative
for Innovation and Intellectual Property
Office of the U.S. Trade Representative
600 17th Street, NW Washington, D.C. 20508

Re: Rebuttal to the letter of the Motion Picture Association on the 2024 Special 301 Out of Cycle Review of Notorious Markets, dated October 2, 2024, Docket No. USTR-2024-0013

Dear Mr. Lee:

Acting on behalf of CDA S.A. [joint-stock company], seated in Wrocław, Poland (hereinafter referred to as: the “**Company**”, the “**Client**” or “**CDA S.A.**”), copy of the power of attorney is attached hereto, referring to the letter of the Motion Picture Association (MPA), dated October 2, 2024, I submit this rebuttal comment in response to the request for rebuttal comments scheduled in the announcement of the Office of the U.S. Trade Representative published on August 16, 2023 [Docket Number USTR-2024-0013] in order to address all the unsubstantiated, misleading and untrue statements in the said letter concerning the website cda.pl, operated by my Client.

Most importantly, it should be noted MPA has already submitted almost identical statements regarding cda.pl in previous years. This year’s submission of MPA is almost a copy paste of previously rebutted claims from the 2023 Special Out of Cycle Review of Notorious Markets dated October 6, 2023, Docket No. USTR-2023-0009, 2022 Special Out of Cycle Review of Notorious Markets dated October 7, 2022, Docket No. 2022-0010 and 2021 Special 301 Out of Cycle Review of Notorious Markets dated October 8, 2021, Docket No. 2021-0013. Similar allegations have been made by MPA in the comment on the 2020 Special 301 Out-of-Cycle Review of Notorious Markets, dated November 6, 2020, Docket No. 2020-21723, 2019 Special 301 Out-of-Cycle Review of Notorious Markets, dated September 30, 2019 and in the comment on the 2018 Special 301 Out-of-Cycle Review of Notorious Markets, dated October 1, 2018. In response to all those letters, my Client successfully and extensively rebutted MPA’s claims in letters to the Office of the U.S. Trade Representative and what is worth underlining is that cda.pl was not included in none of the Out-of-Cycle Reviews of Notorious Markets in those years.

In the comment on 2024 Special 301 Out of Cycle Review of Notorious Markets, dated October 2, 2024, Docket No. USTR-2024-0013 however, MPA either repeats the same debunked statements, modifying them only to a minimal extent in relation to statistics of visits on the cda.pl website, not without

avoiding providing yet another false information regarding the cda.pl website operator. Nevertheless, in order to prevent further exposure of the Company to damage to its reputation and credibility, I hereinafter reiterate all the relevant information regarding my Client and operation of cda.pl. Above all, it must be strongly stated once again that:

1. **Cda.pl is not a piracy website**, it operates in full accordance with the Polish and European legal regulations;
2. CDA S.A. is a public joint-stock company, with its business seat in Wrocław (Poland), operating in full transparency, fulfilling all of its legal obligations, registered in public registers kept by Polish authorities and publishing all relevant information in the way determined by the law and internal stock exchange regulations;
3. CDA S.A. is constantly seeking to ensure the best possible copyright protection, specifically by developing its takedown policies and tools and fully cooperating with relevant associations and authorities in that regard;
4. **The MPA's letter includes numerous misleading and false information regarding cda.pl;**
5. Publication of the MPA's letter causes significant damage to reputation and credibility of my Client.

I. Legitimacy of the Cda.pl website

First of all, MPA's claims that cda.pl is a "piracy website" is unsubstantiated and false. Cda.pl website includes several separate sections, all legitimate and operating in full compliance with the law. One is a VOD service (sVOD, which stands for "subscription VOD"), operated in cooperation with verified organizations providing legal content, which (together with CDA TV) generates the vast majority of CDA S.A. profits (ca. 90 % as of June 30, 2024, according to the financial report submitted to the Warsaw Stock Exchange for the second quarter of 2024¹). Starting from August 9, 2021, the Company also offers a television access service in the OTT model - CDA TV. Profits from those sections are divided between the Company and the owners of the intellectual property rights, who receive over half of the revenue as a commission.

Due to the activity of this sections of the cda.pl platform, CDA S.A. is classified as VOD provider in the meaning as defined in Polish Act on Radio and Television and is entered into the Register Book of Distributed Programs kept by the Chairman of Krajowa Rada Radiofonii i Telewizji (KRRiT, National Broadcasting Council). Krajowa Rada Radiofonii i Telewizji is a Polish broadcasting regulator which supervises operations of all broadcasters and VOD providers, including CDA S.A.

The other section includes aVOD (which stands for "advertisement VOD") service, which generates revenue from advertisements displayed with the content uploaded by verified partners. At the same time, the portal also operates as a separate hybrid, hosting internet social platform, which relies on user generated content and is generally accessible, also by unverified users who can add various types of materials on their own after confirming the declaration of having copyright to the content posted on the portal (the so-called User Generated Content). Access to this content is free for all recipients and users. It must be emphasized that the Terms and Conditions of the Website strictly prohibit providing content to which the user does not have intellectual property rights. Moreover, the Company fully cooperates with legal authorities and holders of intellectual property rights in order to combat content that infringes on copyright. Due to the introduction of the Client's policy re. sale of advertising space without the intermediaries, the Company maintains more control as to where the ads are displayed. As a result, crowning the several-year process of limiting the revenues from advertising

¹ available on the Warsaw Stock Exchange website:

<https://newconnect.pl/ebi/files/163076-raport-cda-s.a.-za-ii-kw.-2024-r..pdf>

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displayed with user generated content, since May 2018 CDA S.A. generates revenue from advertisements displayed solely with the content from verified users and partners.

Due to the activity of this section of the cda.pl platform, CDA S.A. is classified as a Video Sharing Platform provider in the meaning as defined in Polish Act on Radio and Television, included in the List of Video Sharing Platform (VSP) providers entered into the register of the Chairman of the Krajowa Rada Radiofonii i Telewizji (National Broadcasting Council)².

Operations of CDA S.A. are regulated by (among others) Polish Act of December 29, 1992 on Radio and Television (hereinafter referred to as "ART"), Act of 18 July, 2002 on Providing Services by Electronic Means (hereinafter referred to as "APSEM"), Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October, 2022, on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) (hereinafter referred to as "DSA").

Obviously, since cda.pl includes the generally accessible hybrid, hosting internet social platform, there is a risk that some of the unverified users post content that infringes on copyright or violates the law in some other way. This problem is common for all the websites which contain user generated content, including such giants as YouTube or Dailymotion, that far outpace the Company in terms of users, revenue and employees, not mentioning the funds that can be spent on combating copyright-abusing content from the website. Nevertheless, the Company strives to detect such infringements and respond to them by removing illegal content and blocking users persistently violating the rules, as well as developing tools and policies that make it easier to detect and combat illegal content.

Moreover, having regard to the implementation of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, and in particular Article 17 thereof, which regulates the use of protected content by online content sharing service providers consisting in storing and providing public access to a large number of works and other protected subject matter uploaded by users and introduces a number of obligations regulating the conduct of business activities in this area, the Company has taken a number of actions and introduced mechanisms necessary to implement and adapt to the provisions resulting from the adopted Directive and its implementation at national level.

According to Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 (Digital Services Act), in Article 6 paragraph 1 letter b, which states that the Company shall not be liable for information stored at the request of the recipient of the service, provided that it takes immediate appropriate action to remove or prevent access to illegal content when it obtains such knowledge or information. The Company, as a hosting service provider, in accordance with Articles 7 and 8 of the DSA, has no general obligation to monitor and filter stored content and actively determine facts or circumstances indicating illegal activity. There is also no basis to establish the Company's liability in a situation where, with due diligence and on its own initiative, it conducts voluntary verification activities.

Despite the lack of a general obligation to monitor and filter stored content, the Company develops and implements mechanisms to effectively combat the dissemination of illegal materials. A proven and effective tool used by the Company since 2015 and cooperating entities is the *Direct Take Down Tool*, which allows for independent search and direct deletion of all materials infringing copyright, without

² <https://www.gov.pl/web/krrit/lista-dostawcow-platform-udostepniania-wideo-wpisanych-dowyzkazu-przewodniczacego-krrit-na-podstawie-art-1a-ust7-urt>

the need to involve the website administrator. As a result film distributors, TV publishers and anti-piracy organizations are given possibility to gain free access to all content uploaded by the users of cda.pl and enabling them to delete the copyright-infringing content on their own, without the need to wait for the response from the Company's employees. This additional mean of protection of copyright is available for all interested parties and is already in use, including by the Polish branches of American corporations (e.g. Warner Bros. or Fox).

Moreover, in order to exercise due diligence, the Company has implemented the *CDA Fingerprint* tool, the primary purpose of which is to prevent access to protected works and prevent their further public disclosure in the future. The tool was developed on similar principles to solutions used by other industry entities - including Content ID on the YouTube platform developed by Google LLC.

Also other specific tools introduced by my Client enable to promptly respond to the reported infringements. The Company provides the "report abuse" form on its website, which is located under a link in the menu and also next to every displayed material. Also, the Company informs all the users about their rights and possibilities to combat illegal content and how to provide reliable information to properly identify copyright-infringing materials.

My Client wants to underline, that in December 2022, MPA contacted CDA S.A. by sending a Notice of Copyright Infringement ("**Notice**"). MPA once again stated, that my Client infringes the copyright law by allowing cda.pl users to perform an unauthorized communication to the public within the meaning of EU law. They mentioned some examples of copyrights infringing content on cda.pl, expressively stating that the list is not complete. However the information provided to CDA S.A. did not meet the requirements of credibility and reliability. Despite my Client's best efforts, CDA S.A. did not receive a minimally required level of cooperation from MPA's side. My Client needed at least an unambiguous confirmation from the MPA that the specific, identifiable material in question is copyright infringing. For that purpose my Client asked for specific links to copyright infringing materials but did not receive them. It must be said that it is not the obligation of the operator of the website to search for and identify such content, but to ensure, on best effort basis, possibility to take down illegal content after obtaining credible and reliable information about the breach.

Together with response to MPA, in order to meet the needs of MPA, my Client provided this organization with access to the direct takedown tool, creating and configuring an account that allows MPA to freely access content on the platform, search for copyright infringing content and delete it. Despite this and despite subsequent reminders, to date MPA has neither provided links to the infringing materials nor exercised the option to remove them on its own.

To highlight the Company's compliance with European regulations it is important to mention the Judgement of the Court of Justice of the European Union (CJEU) dated June 22, 2021 in Joined Cases C-682/18 and C-683/18. In that ruling, CJEU answered to questions whether the operator of a video-sharing platform on which videos containing content protected by copyright are made publicly accessible by users without the consent of the rightsholders carry out an act of communication within the meaning of Article 3(1) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonization of certain aspects of copyright and related rights in the information society ("the Copyright Directive") and liability of the operator of the website on which occur infringements of intellectual property based on Directive on electronic commerce setting the European standards for activity of entities such as the Company (the ruling was given in favor of YouTube).

Polish regulations are fully compliant with the CJEU ruling. The Company meets all the requirements necessary to not be seen as a copyright infringer, e.g. users uploading the content to cda.pl must accept

terms & conditions, stating clearly that they have copyrights to it, uploaded videos are not pre-viewed and accepted by the Company, CDA S.A. offers set of tools for rightsholders to take down illegal content and react when such content occurs on its platform.

The Company is aware, that there is some degree of danger that users might breach the terms & conditions and upload illegal videos, but that is exactly why it implemented technical means, described in previous part of this letter, to take down such materials. It has to be emphasized, that the tools offered by CDA S.A. as copyright protection measures are more than enough to meet the criteria required by law. Also, my Client fully and willingly cooperates with legal authorities, including law enforcement, in any case involving violation of law, provides requested data and information. The Company assures that its intention is to operate in compliance with the law, therefore the Company declares that will meet its obligations and adapt to new regulations if there is any new legislation introduced, either Polish or European, which adopts stricter legal rules than observed by my Client.

From the perspective of Polish and European law there are no grounds for stating that CDA S.A. infringes anyone's copyright. Furthermore, the Company helps to promote art and culture in Poland and undertakes all rational and adequate actions to make sure that content offered on its platform is fully legal.

II. CDA S.A. is a legal entity, operating transparently

Furthermore, CDA S.A. is a legal entity, a public joint-stock company, registered in the Register of Entrepreneurs of the National Court Register (KRS), under the no. 0000671280, with its registry files kept by the District Court for Wrocław-Fabryczna, Division VI for the National Court Register and pays taxes in Poland. Since May 8, 2019, The Company is listed on the NewConnect stock exchange, an alternative trading system organized and operated by Giełda Papierów Wartościowych S.A. in Warszawa [Warsaw Stock Exchange]. Therefore, the Company is subject not only to reporting obligations for tax and registration purposes, but also to provide information required by the stock exchange and the Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC Text with EEA relevance (hereinafter referred to as: "**MAR Regulation**"). On the website spolka.cda.pl the Company provides extensive and comprehensive information about its structure, operations and finances, which includes publishing current reports, as required by MAR Regulation. All the information provided herein can also be obtained from the above mentioned website (reports and Information Document for the purposes of listing the Company and its shares on the NewConnect stock exchange).

Also, as described above, CDA S.A. is subject to supervision by Krajowa Rada Radiofonii i Telewizji and is subject to registration in registers kept by the Chairman of this council.

To date, no irregularities in the activities of CDA S.A. have been identified by supervisory authorities.

III. Introducing effective tools and new means of copyright protection

As described above, the Company is constantly seeking to introduce the most effective tools and policies aimed at more comprehensive copyright protection. The Company is working on improving verification and response time as part of the "notice & takedown" procedure. Moreover, going significantly beyond its legal obligations it has introduced an additional tool enabling the holders of the intellectual property rights to delete content that may violate their rights. Also, in order to clear

any potential doubts as to its business model, the Company introduced a new advertisement sale policy which excludes advertisements from being viewed with the content generated by unverified users. Going even further, the Company has added yet another tool (CDA Fingerprint) as part of its best efforts to combat copyright-infringing materials. Summarizing, the Company makes every effort to respond to any copyright infringement that may occur.

IV. Misleading and false statements in the MPA's letter

The letter submitted by the MPA includes a number of misleading and false statements aimed at hurting my Client's reputation. Most obviously, it was prepared with the false preconceived assumption that cda.pl is a "piracy website", which was already extensively rebutted herein.

Also, one of the main claims made specifically against cda.pl was that it uses Cloudflare services in order to "mask the IP location of the main domains and subdomains". The Company uses Cloudflare services, but for legitimate purposes, since Cloudflare services are used on cda.pl exclusively for two reasons. Firstly, in order to secure the website from the DDoS (Distributed Denial of Service) hacking attacks, to which it was already exposed in the past, and secondly, for the website to be generated quicker on the end users' side. Moreover, the Company masks only IP of the cda.pl website, in order to prevent DDoS attacks, whereas **the servers that host video materials are not supported by Cloudflare**. It is also worth emphasizing that Cloudflare services are used for the very same reasons by numerous, fully legitimate websites around the world, including giants in the industry such as Cisco, Microsoft Azure and IBM Cloud, as well as many big websites on the Polish market. All those arguments and more have been presented by Cloudflare itself in its rebuttal to MPA's comments on the 2019 301 Out-of-Cycle Review of Notorious Markets.

Furthermore, MPA compares my Client in contradiction with "legitimate video-on-demand (VOD) services in the country". As it was widely described herein, my Client is operating in compliance with the Polish and European law, is a public joint-stock company and thus, is obligated by provisions of the law and regulations of the stock exchange to provide extensive information about its operations, structure and finances. Therefore there are no grounds for implicating that it is not a legitimate VOD service.

Except for the singular contact in December 2022 (described above), no representative of the MPA had contacted the Company before the publication of their letters, what might have prevented the publication of their hasty and not supported by facts opinion. However, even though in December 2022 MPA contacted CDA S.A. directly, the response from my Client was ignored by MPA. They also did not respond to the letter from the Company, which was sent to them after the publication of the MPA's comment on the 2018 Special 301 Out of Cycle Review of Notorious Markets, dated October 1, 2018, correcting false claims MPA's letter was riddled with and which were also reported in subsequent years and again in this year comment.

However, it should be noted, not without satisfaction, that some of the misleading and untrue statements used by the MPA in previous notifications has been abandoned this time.

It is also worth noting that some of the members of the MPA can be considered as competitors of the Company and its services, who develop their own VOD services on the Polish market, where cda.pl currently has the significant share (sVOD section). Therefore, MPA's opinion re. cda.pl presented to this Office cannot be treated as objective but rather as a means of pressure on competition.

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V. The Company was subject to significant damage resulting from the publication of MPA's letter

Already the publication of previous MPA's comments, especially on the 2018 Special 301 Out of Cycle Review of Notorious Markets, dated October 1, 2018 has caused significant reputational and financial damage to the Company as then it was awaiting on its debut on the NewConnect stock exchange in Warszawa and had to submit to the stock exchange authorities rebuttals of the untrue and misleading statements from the said letter. As a result, the debut of the Company on the New Connect stock exchange was delayed and it finally took place only just on May 8, 2019. Furthermore, the publication of the said MPA comment involving unsubstantiated, misleading and untrue statements caused a series of press articles in Poland, whose authors unreflectively cited the said letter wrongly as a verified source and repeated the same unsubstantiated, misleading and untrue statements, which resulted in significant reputational damage to the Company.


Needless to say, also the MPA comment on 2024 Special 301 Out of Cycle Review of Notorious Markets, dated October 2, 2024, has a highly negative impact on the reputation and credibility of my Client. The MPA's letter which indicates cda.pl website as a pirate site and unfairly lists it along with other websites widely known for their notoriety in copyright violations, which cases, contrary to cda.pl, are well-documented and founded on strong factual basis. Such actions negatively affect the image of the Company and thus negatively influence the interest of potential investors which may lead to occurring significant financial losses by my Client.

VI. Summary

Summarizing, the Company, once again, strongly objects against considering its website, cda.pl as a Notorious Market, as MPA comment implies. Also, the Company strongly believes that the unsubstantiated, misleading and untrue statements regarding cda.pl mentioned in the MPA's letter do not constitute basis for even considering cda.pl as a Notorious Market.

Please do not hesitate to contact me should you need any further information or clarification.

Sincerely,



.....
Attorney at law Łukasz Wieczorek

Attachments:

- Copy of the power of attorney

Cc:

- Mr. Adam Krzywosądzki, Charges d'affairs of Embassy of the Republic of Poland in the United States of America, Embassy of the Republic of Poland in Washington, DC, 2640 16th St NW Washington, DC 20009

Wrocław, dnia 25 września 2024 r.

PEŁNOMOCNICTWO

Ja, niżej podpisany Jarosław Ćwiek – Prezes Zarządu spółki pod firmą CDA Spółka Akcyjna z siedzibą we Wrocławiu (54-204), ul. Legnicka 50, posługującej się NIP: 8982201542 oraz REGON: 021976118, zarejestrowanej w Rejestrze Przedsiębiorców Krajowego Rejestru Sądowego przez Sąd Rejonowy dla Wrocławia - Fabrycznej we Wrocławiu, VI Wydział Gospodarczy Krajowego Rejestru Sądowego pod numerem KRS: 0000671280, o kapitale zakładowym wynoszącym 1.015.464,50 zł, opłaconym w całości (dalej jako: „Spółka”), uprawniony do jej jednoosobowej reprezentacji, niniejszym upoważniam:

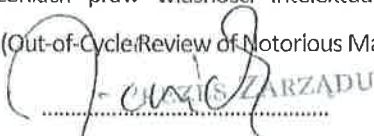
Radcę prawnego Michała Koniecznego,

Radcę prawnego Marcina Wierzbickiego,

Radcę prawnego Łukasza Wieczorka

działających w ramach kancelarii KWKR Konieczny Wierzbicki i Partnerzy S. K. A. z siedzibą w Krakowie (30-549), ul. Kącik 4,

do występowania w imieniu Spółki we wszystkich sprawach przed United States Trade Representative Office, a także organami administracji oraz przedstawicielstwami dyplomatycznymi Rzeczypospolitej Polskiej oraz Stanów Zjednoczonych Ameryki w związku z przygotowywanymi przez U.S. Trade Representative Office corocznymi raportami o naruszeniach praw własności intelektualnej na świecie (Out-of-Cycle Review of Notorious Markets).


.....
Jarosław Ćwiek – Prezes Zarządu

CDA Spółka Akcyjna
ul. Legnicka 50, 54-204 Wrocław
of Directors

NIP: 8982201542; REGON: 021976118
KRS: 0000671280
konto: 86 1050 1575 1000 0090 3014 2484

Wrocław, September 25, 2024

POWER OF ATTORNEY

I, the undersigned Jarosław Ćwiek – President of the Board of Directors of the Company operating under the business name CDA Spółka Akcyjna [joint-stock company], seated in Wrocław (54-204), ul. Legnicka 50, using the tax identification number [NIP]: 8982201542 and REGON no.: 021976118, registered in the Register of Entrepreneurs of the National Court Register [KRS], under the no. 0000671280, with its registry files kept by the District Court for Wrocław-Fabryczna, Division VI for National Court Register, with the share capital amounting to 1.015.464,50 PLN, paid in full, hereinafter referred to as: (the “Company”) entitled to its one-man representation, I hereby authorize:


Attorney at Law Michał Konieczny,

Attorney at Law Marcin Wierzbicki,

Attorney at law Łukasz Wieczorek

operating within the law office KWKR Konieczny Wierzbicki i Partnerzy S. K. A., seated in Kraków (30-549), ul. Kącik 4,

to act on behalf of the Company in all cases before the United States Trade Representative Office, as well as administrative authorities and diplomatic missions of the Republic of Poland and the United States of America, regarding the annual special reports issued by the U.S. Trade Representative Office on worldwide copyright infringements (Out-of-Cycle Review of Notorious Markets).


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Jarosław Ćwiek - President of the Board

POŚWIADCZAM ZA ZGODNOŚĆ
ZORYGINAŁEM
dnia 2024-10-15 Kraków
Łukasz Wieczorek
TAKKA PRAWNY

