



October 2, 2024

Filed electronically via www.regulations.gov, Docket No. USTR-2024-0013

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: 2024 Review of Notorious Markets for Counterfeiting and Piracy: Comment Request, 89 Fed. Reg. 66754, pp. 66754 - 66756 (August 16, 2024)

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. trade 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.

Notorious Online Markets

Hyperlinking Websites (“Linking Sites” or “Link Sites” or “Affiliate 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.¹

nsw2u.com (Global Rank: 20,382)². This website indexes, manages, and organizes links to unauthorized copies of ESA member copyright protected content hosted on third-party platforms. In September 2024, the website offered thousands of posts with links to game downloads, including the most recent ESA member video game releases. Many high-profile releases are also made available on the site before their official release. This “pre-release” piracy is particularly harmful to ESA member companies because it allows site users to download a pirated copy of a video game

¹ The figures that follow are based upon research conducted in September 2024 in anticipation of this filing.

² Global Rank as indicated by SimilarWeb’s database of most visited websites in the world.

before consumers have the opportunity to choose to buy a lawful copy. To counter anti-piracy enforcement actions, the website utilizes multiple alternative domains including .com and .org. The website also links to game-2u.com, ps4pkg.com, and BigNGame.com, which makes available pirate games for various other gaming platforms. The website does not respond to ESA take down notices and uses a content delivery network (“CDN”)³ in addition to privacy registration services to conceal the identity of its owners and administrators. In a May 2024 decision, the Audiovisual and Digital Communication Regulatory Authority (ARCOM)⁴ added this website to the list of online public communication services that have been found to seriously and repeatedly infringe copyright or related materials, in violation of the French Intellectual Property Code.

fitgirl-repacks.site (Global Rank: 2,379). This website offers links to unauthorized copies of ESA member copyright protected content hosted on third-party platforms. In July 2024, fitgirl-repacks received 22 million visits, offering visitors access to ESA member personal computer (“PC”) game titles. Internationally, this website has been subject to scrutiny for its failure to comply with takedown notices reporting infringing content. In Spain, the Ministry of Culture and Sport, through its Second Section of the Commission on Intellectual Property, has ordered the site operator to disable access to the site.⁵

dodi-repacks.site (Global Rank: 10,880). This website offers links to unauthorized copies of ESA member copyright protected content hosted on third-party platforms. As of September 2024, the site contained over 2,000 pages with links to downloads of illicit copies of ESA member titles playable on PCs.⁶ The links provided by the site are to copies of video games that have had ESA member anti-piracy and anti-tamper technological protection measures (“TPMs”) circumvented unlawfully. The site operator is non-responsive to ESA take-down notices and runs a backup version of the site at dodirepacks.download. Both domains utilize a CDN.

Hosting Websites (“Cyberlockers”): Cyberlockers host infringing content on cloud storage platforms and are accessible through links indexed on linking sites and posted to other locations online. The following cyberlockers host a substantial number of infringing game files and routinely fail to expeditiously disable access to infringing content brought to their attention.

1fichier.com (Global Rank: 2,426). This cyberlocker platform is a piracy haven for uploaders to disseminate unauthorized copies of the latest video game titles. 1fichier hosted over 1,334 unauthorized copies of copyright protected ESA member video game titles (as of August 2024) and has a 16.64% response rate to ESA’s take down notices. 1fichier’s extremely low compliance rate for the removal of infringing content attracts more unauthorized uploaders to the platform since the content remains active on the platform for longer periods of time. Linking websites that index and manage the links to content hosted on 1fichier also benefit from the platform’s low compliance rate

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 of large files, such as infringing copies of video games.

⁴ ARCOM is a French independent public authority responsible for regulating online platforms and fights against online piracy of cultural and sports content.

⁵ International approach as noted by ESA member company outreach.

⁶ The figures that follow are based upon research conducted in September 2024 in anticipation of this filing.

as these websites derive greater advertising revenue from users clicking on the links to pirate content hosted on 1fichier.

The French based company operating the 1fichier.com website has been found liable in civil courts and been sentenced in criminal courts⁷ in France in two separate cases in 2021 for violations of intellectual property rights. The site was held civilly liable for refusing to remove unauthorized copies of games on its platform and ordered to pay approximately USD 1.1 million in compensation. In April 2023, the Paris Court of Appeals confirmed that 1fichier.com is liable for failing to remove or block access to unauthorized copies of games stored on the platform. The Court ordered the company to pay a total sum of EUR 442,750 in compensation and EUR 25,000 in legal costs. The decision has been appealed to the Court of Cassation, France's highest Court. 1fichier.com was also convicted in criminal court for multiple counts of criminal copyright infringement and fined approximately USD 1.5 million. Despite these actions, the platform continues to generate revenue through online advertising, a subscription service, and a referral structure. Some major credit card payment processing services have terminated the use of the brands on the site.

megaup.net (Global Rank: 8,488). This cyberlocker platform is hosted in Russia, and its domain registration details have been privacy protected since August 2015. Megaup keeps growing in the video game piracy community as a reliable host of infringing files and, therefore, its share in the cyberlocker market has increased. Megaup hosts hundreds of unauthorized copies of copyright protected video game titles and only has a 33.06% response rate to ESA's takedown notices despite receiving numerous removal notices. In addition, when the platform does choose to respond to a takedown notice, it waits an extremely long time before it takes down the notified links. This is problematic because the pirated material remains available for users to access and allows the website to upload identical links on other parts of the site. Linking websites that index and manage the links to content hosted on Megaup also benefit from the platform's low compliance rate as these websites receive more traffic, and thus more advertising revenue, due to the durability of the Megaup links.

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 BitTorrent protocol is one of the most common methods used to copy and distribute infringing video game content. The following torrent indexing sites are among the most popular sources for infringing copies of ESA member video games and are not responsive to notices.

1337x.to (Global Rank: 917). This notorious and very popular torrent indexing site that launched in 2014 impacts multiple content industries, including the video game industry. As of August 2024, this website features over 3,000 URLs that lead to torrents for ESA member video game titles. The site currently utilizes a CDN to conceal the identity of its owners and administrators.

Unauthorized Digital Goods

⁷ The civil case can be found here: <https://www.courdecassation.fr/en/decision/6438f31fa942a604f5e9375b>. The criminal case is not publicly available.

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) they often involve the infringing reproduction of ESA member company copyright protected source code; (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; (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; and (5) sellers of unauthorized digital goods and cheat software divert revenue away from video game developers and publishers.

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 is specifically designed to circumvent and/or defeat security measures 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), as well as through advertisements. The following sites are notable due to their global popularity and the number of cheats available to purchase.

unknowncheats.me (Global Rank: 20,212). This site has allowed a self-reported 4.1 million users to submit, develop, and download cheats to this forum-based site since 2000. The site offers cheats and tutorials for 100+ titles as well as information and links to anti-cheat software and how to circumvent their protocols. It does not charge for cheats, instead relying on advertisements to generate revenue. All cheats are created by the community and the site encourages users to develop and distribute these illegal goods.

cosmocheats.com (Global Rank: 472,594). This site offers cheats for 60 video game titles and sees around 100,000 site visits per month. Users run cheat software downloaded from the site while running the authorized game that allows them to use aimbots, no recoil, and wallhacks. Cosmocheats charges for use of the cheat software in lengths of 1-day, 7-day, or 30-days.

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-style format to keep listings organized. Users can set their own price for the product they are selling, and many designate power sellers based on user ratings and user 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.

playerauctions.com (Global Rank: 16,737). This site provides a marketplace for users to sell in-game currency, digital items, digital cosmetics (skins), accounts, CD keys, and boosting⁸ for over 200 video game titles among over 2 million registered traders. The site charges transaction fees and purports to offer protection against fraudulent purchases. According to the website statistics firm, SemRush, playerauctions.com has an estimated 7 million visits per month.

eldorado.gg (Global Rank: 17,313). This site allows users to sell virtual currency, in-game items, digital accounts, and boosting services for over 50 games. The site promises to facilitate the trade between seller and buyer by holding the funds until the seller confirms they have received the item. A government issued ID or picture of a seller's credit or debit card is required to sell, which could allow personal identifiable information to be used contrary to customers' expectations. The site takes a percentage of each sale ranging from 1.5% to 30% and boasts having over 800,000 satisfied customers.

Notorious Physical Markets

Mexico⁹

In Mexico, hard goods piracy continues at large open-air markets and shopping complexes that remain the most significant sources of infringing video game-related products. Lately, consoles that resemble arcade controllers and that are pre-loaded with pirated copies of video games have become more common. It should be noted that a large volume of importations of counterfeit consoles with preloaded, illegal reproductions of video games has been identified in the ports of Manzanillo and Lazaro Cárdenas. These consoles are typically manufactured in and exported from China, and are sold in illegal markets, as well as in mainstream online marketplaces. Also, illegal circumvention devices remain of great concern across a range of industries, including the video game industry, and there persists a significant lack of enforcement to protect intellectual property rights in these locations. As infringing products are often stored in small storage lockers and other physical premises within these markets, ESA supports the use of enforcement

⁸ "Boosting" is a form of cheating whereby lower-skilled players will grant higher skilled players access to their accounts for the purpose of increasing their rank or obtaining difficult-to-acquire digital items.

⁹ 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 *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.

measures, such as asset forfeiture, that target not only vendors, but also the owners 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 has been 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. Available for sale at this marketplace are refurbished and modified consoles, arcade boards, retro consoles, portable consoles, and circumvention devices pre-loaded with 10,000 retro video games like Game TV Stick.¹⁰ The number of businesses that specialize in the sale of video games and consoles has decreased from 2023, but the marketplace remains a center for piracy.

Tepito (Mexico City). Tepito is an open-air market, which is 80 square blocks in size in the middle of Mexico City, is a main point of active trafficking of pirated copies of video games, modified consoles (*i.e.*, consoles with circumvention devices pre-installed), and circumvention devices. There has not been a decrease in activity over the last year. The sale of circumvention devices has seen an increase due to waning local interest in modified consoles. Tepito remains a dangerous spot in Mexico City, hindering civil enforcement efforts in the area.

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 visitors, domestic and foreign alike. In 2012, the San Juan de Dios market entered the list of the biggest piracy markets in the world and has maintained that position post-pandemic. There is a large section of the market where pirated copies of newly released video games and films are offered, comprising more than one-third of this market's approximately 3,000 vendors. Available for purchase at this market are circumvention devices pre-loaded with over 40,000 games, portable consoles preloaded with over 10,000 games, and arcade boards pre-loaded with over 30,000 games. The circumvention devices and portable consoles range in price from USD 19.00 to USD 51.00 and the arcade boards range in price from USD 105.00 to USD 182.00.

Frikiplaza (Mexico City). Dedicated to specialized pop-culture paraphernalia, Frikiplaza consists of various floors stocked with pirated 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 software and video game console modification software. In addition, the selling of arcade and retro-inspired consoles preloaded with pirated copies of video games has recently become a growing problem at this market. Although there has been a decline in business related to the modification of consoles, there has been an increase in the sale of circumvention devices.

"Santa Cruz Meyehualco" (Mexico City). The Santa Cruz Meyehualco is an open-air market located in Iztapalapa, the oldest and largest municipality in Mexico City. Recent investigations revealed the sale of illicit copies of video games, modified consoles, and circumvention devices and modified consoles both pre-loaded with pirated content.

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, along with the Tepito market, is one of the largest centers where counterfeited goods are manufactured. Pirated copies of video games and circumvention devices are readily available at this market, and recent investigations show no sign of these sales slowing.

¹⁰ These sales were observed by local counsel during recent investigations conducted in anticipation of this filing.

La Pulga Río (Monterrey). Located in downtown Monterrey in northeast Mexico, La Pulga Rio is the biggest market in the area with pirated merchandise, including video games and services, records, footwear, and clothing can be found. This marketplace has also gained an online presence with its own website and a Facebook page, both of which offer deliveries of counterfeit and pirated goods. The sale of circumvention devices and modified consoles are prevalent at this market.

Brazil

In Brazil, low purchasing capacity impacted by the COVID-19 pandemic remains a social and economic problem for consumers. Despite levels of unemployment lowering from 2023 to 2024, inflation is still high and affects pricing for goods. These economic conditions have impacted the video game industry, causing an increase in cheaper illegal products and services at physical shops, and making these markets the first choice for many potential consumers.

Galeria Pagé Centro (São Paulo). Known as “Galeria Pagé 25,” this multi-story shopping complex in business since 1963 and located in the center of São Paulo, saw a decrease in its monthly visitors towards the end of 2023 and into 2024. This decrease was due to the stronger presence of online marketplaces for Chinese and imported products as well as growing competition with other shopping areas throughout the city. This shopping center focuses on offering electronic goods, toys, and fashion accessories, including video game products. Of the 190 vendors in the complex (up from 170 in 2023), approximately 40 shops offer electronics including video game-related products. Approximately 19 of those shops are offering infringing video game accessories and game titles, representing an increase compared to 2023 with 12 identified booths. The average price for circumvention devices pre-loaded with thousands of games ranges from USD 8.00 to USD 50.00 and USD 500.00 for modified consoles. The price for modified consoles has seen a USD 300.00 increase since 2023.

Galeria Pagé Brás (São Paulo). This two-and-a-half-year-old shopping complex, in the well-known shopping neighborhood of Brás, remains very popular due to its modernized facilities and spacious stores spanning four floors. There are more than 600 shops in the complex and 97 of those are focused on electronics (up from 77 in 2023), including game hardware, with another eleven solely dedicated to video game products. A majority of those electronic products’ shop offer some version of retro game consoles pre-loaded with pirated game titles. This market also has a strong online presence, with all shops offering products via WhatsApp business channels. Most shops have an Instagram and TikTok presence, with the Galeria itself running a variety of marketing campaigns. In all, this market is a popular shopping destination.

Santa Efigênia (São Paulo). Covering eight blocks in downtown São Paulo, this popular market offers a wide variety of electronic goods typically at lower prices than regular shops. On the main street of Santa Efigenia, there are approximately 350 shops and outlets, with another 500 shops in the surrounding areas and galleries. Though, during parts of the year it is estimated that upwards of 60% of the booths were vacant. Of these, it is estimated that 83 shops are dedicated solely to offering video game-related products, which is a decrease from 100 shops in 2023. The vacancies and decrease of shops are largely due to the safety concerns surrounding the market. The area has been a focus of concern due to organized crime and drug dealing and has been targeted by multiple police operations. Unfortunately, these police operations have not focused on piracy. The violence surrounding the organized crime and drug presence has made consumers migrate to online versions of the same booths. The shops that remain continue to offer infringing video game titles, game

circumvention devices, console modification services, and modified video game consoles, often at lower prices than legitimate shops. Almost all shops/booths offering original (but) smuggled consoles also have modified devices with thousands of titles in one console. It is estimated that around half of the illegal game shops and booths offer retro games. This market remains the most prolific illegal video game market in the country, with a high concentration of shops, latest technological piracy trends, and title releases.

Rua Uruguaiana (Rio de Janeiro). Remaining one of the most infamous outlet areas to buy counterfeit and other illegal products in downtown Rio de Janeiro. Rua Uruguaiana was the target of a coordinated action by the city of Rio de Janeiro to increase security and decrease the number of illegal products offered in the region, but the effort only lasted from April-July. The market has over 120 registered stores and booths in four warehouse buildings and many other unregistered street vendors. This marketplace has approximately 35 vendors offering video game products and services and includes retro games, game circumvention devices, and modified consoles. They have a low online footprint for e-commerce or marketing purposes.

Oiapoque Outlet (Belo Horizonte, state of Minas Gerais). This market, also known as ShoppingOi, remains a main source of illegal video game products in the city. ShoppingOi is located in downtown Belo Horizonte, with three floors of outlet shops dedicated to a wide variety of products, mostly illegal goods. Among the 900 active shops, 65 shops are actively selling video game-related products, including 20 shops selling illegal consoles pre-loaded with pirated video games with prices ranging from USD 7.00 to USD 16.00.

ESA 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 Catie Shawley at (202) 903-2328 or CShawley@theesa.com.

Sincerely,



Catie Shawley
Counsel, Intellectual Property Protection and
Security