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**TO: Susan F. Wilson, Director for
Intellectual Property and Innovation,
Office of the United States Trade
Representative**

600 17th Street N.W. Washington, DC 20508

RE: 2014 Out-of-Cycle Review of Notorious Markets (Docket Number USTR-2014-0017)

Dear Ms. Wilson,

"V Kontakte" Ltd (hereinafter referred as "VK" or "VK.COM") hereby submits these comments in response to the Office of the U.S. Trade Representative's 2014 Special 301 Out-of-Cycle Review of Notorious Markets Request for Public Comments, 79 Fed. Reg. 58026 (Sept. 26, 2014).

As you know, in previous years VK.COM has been included in the Notorious Markets List. Historically VK.COM has been quite widely used in Russia and Ukraine by users to upload audio content owned by music studios illegally. But over the last years, especially in 2013-2014, VK took numerous steps to address copyright holders' concerns. These steps were part of the VK long-term plan of improvement and co-operation with the rightholders and copyright industry associations. VK continues to actively engage with the copyright industries, Russian and Western.

Now therefore we would like to inform you and to draw your attention to our efforts and actions taken in order to engage in dialogue with the rightholders of audio and video content focused on reducing and removing any copyright piracy and trademark counterfeiting on VK.com site.

- VK's site (<http://vk.com>, Site) is a network project uniting people on the basis of education or employment places. VK does not itself initiate the publishing of information to the Site, does not select the recipients of the information, and does not modify the content of the Site's pages. Furthermore, VK does not have the technical capability to pre-moderate, filter, or otherwise prevent the uploading of works due to the enormous volume of information being uploaded by users on a daily basis and the fact that VK does not have reliable information confirming violation of copyright in advance.

The VK Terms of Service (<http://vk.com/terms>) contain a variety of very specific provisions which imply that users must first and foremost respect and observe the rights of third parties, including the rights of copirightholders. This includes the following provisions:

"6. Obligations of VK User

6.1. When using the Site Services the User is obliged:

- to comply with the provisions of effective Russian legislation, these Terms and other special documents of the Site Administration;

- not to post on his/her personal page such information and objects (including links thereto) which may infringe the rights and interests of other persons;
- before posting information and objects (including but not limited to other people's images, texts of various content, audio records and videos), to assess in advance whether such posting is lawful;

6.2. In case of doubts as to whether it is legal to take any actions, including posting of information or provision of access, the Site Administration recommends desisting from such actions.

6.3. When using the Site the User is prohibited from:

6.3.5. illegally loading, storing, publishing, distributing, making available or otherwise using the intellectual property of other Users and third parties;

6.4. The User bears personal responsibility for any information he/she posts on the Site or communicates to other Users as well as for any contacts with other Users on his/her own risk.

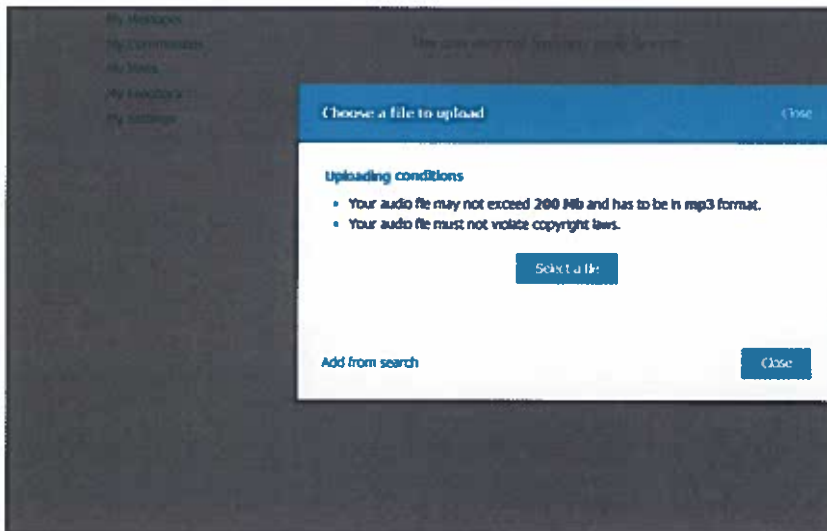
7. Intellectual Rights

7.1.5. Except his/her own Content, the User does not have the right to upload or otherwise make available to the public (publish on the Site) the content of other sites, databases and other intellectual activity results without the express consent of the right owner.

7.2. Liability for the infringement of exclusive rights.

7.2.1. The User bears personal liability for any Content or other information he/she uploads or otherwise makes publicly available (publishes) on or via the Site. The User does not have the right to upload, transfer or publish Content on the Site unless he/she has appropriate rights to do so, such rights being acquired by or transferred to him/her in accordance with Russian legislation".

Moreover, a special notification is shown to the user immediately prior to uploading content (for example, an audio file) to the Site:



- Nevertheless, VK now takes all necessary measures in order to prevent and stop any violations after receiving reasonable requests from concerned parties. Site provides a special procedure for removal of illegal audio and video content. This procedure is described in detail in the "Rules for Processing Claims Connected with Placement of Content on the VK Site" (hereinafter referred to as "Takedown Rules") placed on http://vk.com/help?page=cc_terms.

In accordance with such Takedown Rules, there is an electronic form <https://vk.com/dmca> for filing a claim concerning posting of audiovisual works, musical works, and sound recordings that infringe intellectual property rights (illegal content). Rightholders who are willing to file a claim on the violation of their exclusive intellectual property rights may fill in the form online. For submitting the above mentioned form rightholders shall:

- enter audio or video titles and attach relevant documents if necessary;
- enter links to disputed content;
- specify the information identifying a certain rightholder including its name, email, contact address;
- put the ticks against the following statements:

- I am the copyright holder for the content in question.
- I state that the specified user is using said content without my consent.
- I understand that a wrongful accusation in copyright violations by using this form may result in negative legal consequences for me.
- I agree that the specified email address will be used by the Site Administration for further communication regarding the complaint.
- I agree that the above information about the right holder, about me (including my personal data) and my complaint will be sent by the Site Administration to the person specified by me as the user who uploaded the arguable content.
- I agree with the conditions of the Regulations for Investigating Complaints Concerning Content Distributed on VK.

Such procedure fully corresponds to the DMCA procedure, which is widely recognized in the world and is employed, for example, by YouTube.

The procedure promotes efficiency when considering applications and maintains the balance of interests among all parties.

After receiving a claim VK excludes the possibility to search the disputed content on the Site and removes such content from public access.

The users also receive a special notification when they try to get access to such content.

As of today VK has already handled over 450,000 of claims submitted through <https://vk.com/dmca>. Only 60,000 of them were declined cause of irrelevancy (the claim does not meet the technical requirements of the form). All others were satisfied in full.

- It is important to note that apart from online claims through <https://vk.com/dmca> VK also reviews the copyright holders' applications submitted via email and by post. 50 to 100 applications are handled per month.
- A very large amount of VK's content is uploaded absolutely legitimately. For instance, lots of famous musicians, singers, authors and other IP owners enthusiastically use VK.com for their own purposes of promotion.

Below is a list of some selected public pages of different celebrities (Russian and Western):

<https://vk.com/shakira>

<https://vk.com/moby>

<https://vk.com/arcticmonkeys>
<https://vk.com/offspring>
<https://vk.com/coldplay>
<https://vk.com/enrique>
<https://vk.com/craigdavid>
<https://vk.com/bgofficial>
<https://vk.com/paulvandyk>
<https://vk.com/sophieellisbextor>
<https://vk.com/theprodigy>
<https://vk.com/arminvanbuuren>
<https://vk.com/tiesto>

Furthermore, VK.COM is No.1 destination in Russia and Ukraine for the young talents - musicians, DJs, singers share their productions with the world and promote themselves. Most of the very popular entertainers in Russia and Ukraine are now people who started their careers in VK. In other words, legitimate rightholders upload their content to VK.com themselves.

VK.COM that is so big on these markets is very commonly used by people as a file sharing instrument or as a file storage (instead of DropBox or iCloud) – people upload their own files, including audio files (private or public classes, speeches, stories, etc.), in order to store and sometimes to share them (depends on privacy settings on the Site).

So, a significant amount of audio and video content is legitimately created and uploaded by individual users themselves, streamed 100% legally and it forms the backbone of the site.

- **As for other important changes VK has taken the following steps to address copyright industries' concerns:**

VK has entered into several partnership agreements with the largest content providers, such as television networks and streaming providers. These providers represent roughly around 30-40% of all content uploaded over time to VK and include, inter alia, VGTRK (a group of major Russian TV channel), CTC, TNT / RuTube, National Music Publishing House and many others. Agreements stipulate sharing of advertising revenue between content provider and VK when using the content transferred to VK under such partnership.

We are also currently negotiating licenses with Sony/ ATV, Warner Chappell and Music Publishing Group as well as BMG Music Publishing.

We have retained the law firm Greenberg Traurig and are represented by Mr. Joel Katz to specifically deal with the western music majors in New York, Los Angeles and London. It's making every effort to reach out license agreements in a most respectful fashion.

VK upgraded its notice and takedown procedures, reducing response time to less than 24 hours.

VK introduced the system of "fingerprints" for recognition of music content that prevents repeated uploads of audio files with respect of which VK had already obtained the claims from their rightholders.

This system of content identification is based on determination of digital acoustic sound prints that (being in tabloid form) characterise key parameters of audio signal, that include duration and amplitude-frequency characteristics. Acoustic sound print is unique for each object and can be used for identification of other audios that were recorded with modified quality with little distinguishments of duration and other unessential deformations.

VK's plans are to improve its interaction with the rightholders. VK is constantly in negotiations with content providers on improvement of interaction. VK is open to negotiations with new content providers, including on introduction of streaming and subscription models, using best world practices.

- We also would like to rebut some statements contained in public comments posted on <http://www.regulations.gov/>, including the statements of RIAA, additionally:

Obviously VK cannot be responsible for third parties' software developed on the base of VK.COM. Such software's integration with VK.com has not been approved by VK. Furthermore, VK undertakes all possible measures in order third parties' applications developed on VK's base without VK's consent to be deleted from any platforms including any mobile application stores (such as AppStore).

Based on the foregoing we kindly ask USTR to take into account the above mentioned progress and not to include VK to its list of "notorious markets" during the upcoming 2014 Out of Cycle Review of Notorious Markets.

Sincerely,



Dmitry Sergeev
Director
VK.COM