

**Before the
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
Washington, DC 20508**

In the Matter of)	
)	
2022 Review of)	Docket No. USTR-2022-0010
Notorious Markets for)	
Counterfeiting and Piracy)	

Comments of the Internet Infrastructure Coalition

Pursuant to the request for comments published by the Office of the United States Trade Representative (USTR) in the Federal Register at 87 FR 52,609 (Aug. 26, 2022), the Internet Infrastructure Coalition (i2Coalition) submits the following comments concerning the 2022 Review of Notorious Markets for Counterfeiting and Piracy. The i2Coalition is made up mainly of small to medium-sized businesses, which are cloud providers, data centers, web hosting companies, registrars, registries, and other foundational Internet enterprises.

I. Introduction

The i2Coalition appreciates this opportunity to renew our recommendations on USTR's process for reviewing online markets and to provide further clarity about the role of the Internet's infrastructure in this analysis. Our industry believes strongly that a robust intellectual property protection framework with elements supporting technological and commercial innovation is critical to the expansion of US global digital trade and the export of Internet-enabled goods and services. Our member companies include rights holders who value and depend upon intellectual property protection and who have invested significant resources to develop and implement tools to combat online piracy.

As such, the i2Coalition's views clearly align with the USTR's intent to hold intellectual property rights violators accountable as part of an overarching strategy of protecting and advancing innovation in the United States. Through our recommendations, i2Coalition offers the commercial and policy perspectives of the Internet's technical intermediaries who provide the digital tools that drive the vast majority of that innovation.

The i2Coalition wishes to again thank and commend the USTR for continuing to make significant progress on the specific assessment of the issue of notorious markets in the global digital world, and we hope to continue our engagement with USTR policy staff. The i2Coalition welcomes ongoing opportunities to offer our perspectives to USTR as your work progresses.

II. Neutral Intermediaries Are Not Notorious Markets

The i2Coalition commends the significant evolution of the USTR's perspective on what constitutes a notorious market and what neutral intermediaries are. We note and applaud that the 2021 list made a specific reference to the use and abuse of intermediaries in the complex Internet ecosystem, as opposed to labeling them as notorious markets en masse. We thus appreciate the continuing focus on the identification of explicit types of online e-commerce platforms on the list while shifting away from naming companies and organizations that provide and operate generic third-party digital technologies.

It is important to note that at times in the past, the list had been predicated on a broad depiction of intermediaries that did not always align with the liability norms found in the U.S. We are encouraged by the work of the 2021 Notorious Markets List, which has corrected such overbroad perspectives from the past. We want to ensure that USTR continues down this path of making distinctions between notorious markets and neutral intermediaries such as Internet infrastructure providers. The neutral intermediaries represented within the Internet infrastructure industry process millions of transactions every day, all at the direction of their users, and are not independent "marketplaces" in any sense of the word. The i2coalition strongly believes that there is a significant difference between Internet intermediaries and providers who directly manage content, and we are thankful that this is now evident in the list as well. Internet intermediaries do not have the same ability to easily remove content as providers who directly manage content, and it is imperative that the USTR continues to underscore this critical point.

Why Internet intermediaries are not notorious markets is not just a semantic difference. It is crucial to understand the underlying technologies and limitations when discussing the obligations of providers. For instance, DNS and cybersecurity service providers, like some i2Coalition companies, route requests through a globally distributed network. Their technology creates the pathway between a series of numbers and signals and the "web." By their nature, these businesses have limited access to the content information they transmit; they lack the capacity to access it or make qualitative analyses or judgments about it. Moreover, because they are neutral third-party intermediaries, those functions are not part of their proper role.

The i2Coalition has continuously engaged in a productive dialogue with USTR about these distinctions and appreciates the opportunity to do so. We hope that this dialogue, coupled with our advocacy with other contributors to the report, will continue to help build on top of what is now evident as a solid foundation for understanding how our businesses differ from traditional "marketplaces." Internet transmissions are not notorious markets based simply on the information they transmit.

III. Continuous Work by All Stakeholders is Crucial

i2Coalition believes that the identification of notorious markets is a key aspect of the work USTR does. However, it is worth mentioning that when this important study is used to accomplish goals outside of the regulation, its effectiveness is undermined. The i2Coalition encourages

USTR to work with those submitting comments to this report to narrow the scope of submissions to ensure that the intent of Congress in creating this process is met.

Notorious markets are “online and physical markets” where large-scale intellectual property infringement takes place. The regulation creating the notorious markets report clearly intended that USTR focus its analysis on this definition. While technology and what constitutes copyright and other intellectual property infringement have changed dramatically since the 1990s, the definitions and understandings underlying the regulation still apply.

The i2Coalition hopes to work with other stakeholders participating in the notorious markets analysis to update the laws underpinning the notorious markets report. Global digital businesses, including Internet intermediaries, would benefit from Congress revisiting and rewriting this definition in a clear way that accurately accounts for how Internet technologies function today in enabling global e-commerce. Until that time, the i2Coalition continues to believe that it is vital that USTR’s assessments of what constitutes a “notorious market” reflect technological changes that have transpired since it first began these reviews.

When international trade frameworks and policies change, and new enforcement methods take effect—which has happened frequently in the recent past—what exactly needs to be enforced is not evident to all stakeholders. This lack of clarity in the past few years has tended to result in numerous parties filing comments with USTR as part of this process alleging infringement and proffering submissions to the notorious markets list either erroneously or in a manner intentionally meant to mischaracterize those who are responsible for the alleged violations. We are concerned that while the final 2021 notorious markets list has significantly moved away from this context, this same dynamic may occur during this year’s comment periods. As we have underscored in our past submissions, providing a precise, well-informed conception of a notorious market in the digital space (beyond broad phrases such as “e-commerce platforms and other third-party intermediaries”) as an element for more effective enforcement of our IP laws is neither straightforward nor easy work. It takes good faith participation from a variety of stakeholders.

To that end, the i2Coalition and its members have also worked diligently to make sure that responsible technology use is highlighted, supported, and encouraged as a standard across the industry. For example, in an attempt to bolster consumer confidence and provider accountability, the i2Coalition has launched the VPN Trust Initiative (VTI) and with it, the [VTI Principles](#). The principles are practical policy guidelines for VPN providers that can ensure policymakers, regulators, and the wider market have access to criteria for evaluating these technologies. Making industry best practices transparent, and informed by input from civil society, can lead to a better understanding of why a technology is not, in any sense, notorious.

IV. Conclusion

The USTR has made further meaningful progress towards more concrete differentiation of online markets in its most recent review cycles, moving away from generally identifying

intermediaries as markets to expressly noting their importance and role in the general ecosystem. The i2Coalition believes that the spirit and letter of the relevant IP laws are best advanced by ensuring that enforcement resources focus on the true and direct bad actors in notorious markets and that enforcers do not diminish the utility of the report by sweeping in neutral, third-party Internet infrastructure providers.

The original purpose of the Review of Notorious Markets for Counterfeiting and Piracy, and the successes that the process has engendered, should be recognized by USTR and stakeholders. USTR should also continue to recognize the concerns of neutral intermediaries such as Internet infrastructure providers, who hold intellectual property and value its protection and continue to develop and implement methods of thwarting online piracy. The i2Coalition appreciates and looks forward to opportunities for continued engagement with USTR on this matter.

Respectfully submitted,

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