



October 1, 2018

**Filed electronically via [www.regulations.gov](http://www.regulations.gov), Docket No. USTR-2018-0027**

Sung Chang  
Director for Innovation and Intellectual Property  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> St., N.W.  
Washington, D.C. 20508

**Re: 2018 Special 301 Out-of-Cycle Review of Notorious Markets:  
Comment Request, 83 Fed. Reg. 40821 (August 15, 2018)**

Dear Mr. Chang,

We are writing to respond to the above-referenced Federal Register Notice inviting comments on Internet and physical notorious marketplaces that exist outside the United States. As the U.S. association exclusively dedicated to serving the needs of companies that publish interactive games for video game consoles, handheld devices, personal computers, and the Internet, the Entertainment Software Association (“ESA”) regards the out-of-cycle 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**

Linking Websites: These sites provide links to infringing copies of complete versions of copyrighted 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:<sup>1</sup>

**p30download.com** (Global Alexa Rank: 1,258).<sup>2</sup> This site is extremely popular in its home country of Iran, with an Alexa ranking of 25. In August 2018, p30download.com made available over 3,000 links leading to unauthorized copies of ESA member titles, of which only 2.64% were removed.

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<sup>1</sup> The figures that follow are based upon research conducted in August 2018 in anticipation of this filing.

<sup>2</sup> Alexa rank is a measure of a website’s popularity and is used to rank millions of websites in order of popularity, with an Alexa Rank of 1 being the most popular. Alexa.com states that its rank is “calculated using a proprietary methodology that combines a site’s estimated average of daily unique visitors and its estimated number of page views over the [preceding] 3 months.” See <https://www.alexa.com/about>. Traffic and engagement are estimated from the browsing behavior of people in Alexa’s global panel, which is a sample of all Internet users. See <https://blog.alexa.com/marketing-research/alexa-rank/>.

This is a Persian-language site and is hosted by Noavaran Shabakeh Sabz Mehregan Company Limited in Iran.

**darksoftware.net** (Global Alexa Rank: 61,733). This site has experienced a recent surge in traffic due to its focus on circumventing the technical protection measures contained in the latest generation of game consoles in order to play infringing games. In August 2018, darksoftware.net indexed almost 4,800 new links to infringing copies of ESA member video game content. The site uses the services of a U.S.-based content delivery network (“CDN”).<sup>3</sup>

Hosting Websites (“Cyberlockers”): Cyberlockers host the infringing content accessible through links indexed on linking sites. Users visit linking sites to find content on cyberlockers because cyberlockers generally do not support native search functionality. The following sites are notable for the substantial volume of infringing game files that they host and the sites’ limited response rates to notices of infringement:

**rapidu.net** (Global Alexa Rank: 31,990). In August 2018, this site hosted more than 6,900 infringing video game files. This site is very popular in Poland, with an Alexa ranking of 526 in that country. This site operates with the assistance of the U.S.-based CDN referenced above.

**Ifichier.com** (Global Alexa Rank: 1,063). This cyberlocker continues to have an extremely low response rate (*i.e.*, 0.59%) to ESA’s takedown notices. In August 2018, this site hosted over 2,700 links to infringing content, most of which remained live notwithstanding ESA’s infringement notices. The site derives revenue through a subscription service, a referral scheme, and advertising, although some major credit card processors do not service the site due to allegedly illegal activity. The site is hosted by Dstorage S.A.S. in France, where it holds an Alexa rank of 112.

**romuniverse.com** (Global Alexa Rank: 149,487). This site, which bills itself as “the best romsite in the universe with 60,000 roms<sup>4</sup> and 375,000 members,” also hosts illegal copies of recent movies and e-books in addition to video games. This site has seen significant traffic increases over the last two months, owing to the availability of “free downloads” for games on some of the latest video game consoles. The site also offers a premium membership for \$30, and the operator has announced plans to launch an advertising platform in the future. The site is hosted in the U.S. by Frontier Communications and has been blocked in Portugal.

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<sup>3</sup> 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 are not like Internet “backbone” service providers, which act as a mere conduit for traffic that they neither control nor request, but 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. Approximately half of the websites referenced in this document have a business relationship with a single U.S.-based CDN. Therefore, it is important that all U.S.-based CDNs join ISPs, search engines, payment processors, and advertising services that have successfully collaborated with rights holders in recent years to develop reasonable, voluntary measures to prevent sites focused on copyright infringement from using their services.

<sup>4</sup> A ROM file is a computer file that contains a copy of the data from a read-only memory chip, often from a video game cartridge or a computer’s firmware. The term is frequently used in the context of emulation, whereby older games or computer firmware are copied to ROM files on modern computers and can, using a piece of software known as an emulator, be run on a computer. *See* definition of “ROM Image” at [https://en.wikipedia.org/wiki/ROM\\_image](https://en.wikipedia.org/wiki/ROM_image). Accessed September 17, 2018.



**isosland.net** (Global Alexa Rank: 46,696). This site has seen an increase in traffic due to its hosting of illegal copies of games ranging from the latest games to legacy titles, though other types of infringing content are present as well. The site was first registered in November 2017 and, like romuniverse.com, has utilized anonymous domain registration services since its inception. The site is hosted in the U.S. by GoDaddy and is blocked in Italy.

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 following sites are among the most popular sources for infringing copies of ESA member video games and are not responsive to notices:

**thepiratebay.org** (Global Alexa Rank: 142). Despite some recent downtime, this site continues to be a major source of infringing copies of ESA member company video games. Over 2,200 infringing URLs were found on the site in August 2018 alone. It currently operates with the assistance of the U.S.-based CDN referenced above.

**peertorrents.top** (Global Alexa Rank: 158,191). Over 8,100 infringing downloads were found on this site in August 2018. The site emulates the appearance of another popular torrent indexing site, limetorrents.cc, and is similarly unresponsive to ESA’s notices. It currently operates with the assistance of the U.S.-based CDN referenced above.

Unauthorized Private Servers (a/k/a “pirate” servers or “grey shards”): More than ever before, high-quality, compelling video games are offered “free-to-play,” with publishers seeking to monetize the video games through on-screen advertising, micro-transactions involving virtual “in-game” items, or subscription fees. The cloud-based nature of these video games makes them less susceptible to harm associated with traditional forms of infringement, such as the distribution of unauthorized copies of client software.

However, new threats have emerged to these alternative revenue models, including the establishment and operation of unauthorized, third-party, “private” servers. When users are diverted to play on such servers, video game publishers are not able to monetize their online content on as described above and thus face reduced opportunities to recoup their investment in new distribution platforms. Establishing and maintaining unauthorized game servers often involves multiple acts of copyright infringement as well as the circumvention of technological protection measures (“TPMs”).<sup>5</sup> Below are noteworthy examples of servers that have been unresponsive to ESA members’ enforcement efforts to date:

**warmane.com** (Global Alexa Rank: 7,947). This site enables a self-reported 44,000 users to play World of Warcraft without having to pay for the monthly subscription fee established by Blizzard Entertainment, which owns this online video game. The server employs the services of the U.S.-based CDN referenced above.

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<sup>5</sup> When cloud-based video games are distributed, the video game publisher typically incorporates into the client software TPMs that prevent the client from connecting to servers other than those operated by the video game publisher. Operators of unauthorized servers must therefore distribute either hacked versions of the publisher’s client software or circumvention software designed to disable the client’s TPMs that would otherwise prevent the client from connecting to an unauthorized server. Moreover, to enable online gameplay, operators of unauthorized servers must often utilize infringing copies of a publisher’s server software.



**firestorm-servers.com** (Global Alexa Rank: 28,691). This site enables an observed 8,800 active users to play World of Warcraft without having to pay the monthly subscription fee established by Blizzard Entertainment, which owns this online video game. The server employs the services of the U.S.-based CDN referenced above, but is also the destination page for fstorm.cc, which is hosted by Internet-Hosting Ltd in Russia.

### Unauthorized Digital Goods

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 and cheat software has a negative impact on video game companies and consumers in the following ways: (1) sellers of unauthorized digital goods and cheat software divert significant revenue away from video game developers and publishers; (2) sales of digitally-delivered items, like in-game digital items, have the potential for consumer fraud 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, and (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.

Cheats: These sites provide “cheats”, which (using software code) are ways to modify the game in order to allow an advantage for the player. These include: aimbots (which help a player aim in a first-person shooter), trainers (which allow a player to turn on or off features to make the game easier), and one-button setups 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”). These sites generate revenue through sales transactions (where the site itself is the seller), but also through advertisements. The following sites are notable due to their global popularity and the number of cheats available to purchase.

**unknowncheats.me** (Global Alexa Rank: 8,601). This site allows a self-reported 2.4 million users to develop and submit cheats to this forum-based site since 2000. According to the site, between 6,000 and 10,000 cheats are downloaded daily across 100+ titles offered. It does not charge for cheats, instead relying on advertisements to generate revenue. All cheats are created by the community and the site encourages an open, free, and collaborative environment.

**mpgh.net** (Global Alexa Rank: 8,690). According to the site, mpgh.net offers “several hundred thousand” free cheats to over 4 million users. Users can also sell their own cheats and recovery services. The site generates revenue through advertisements and the offering of premium accounts that bypasses restrictions found on free accounts, thereby giving them better visibility for sellers.

**Iwantcheats.net** (Global Alexa Rank: 53,307). On this site, a self-reported 500,000 members can pay for premium access to the site’s forum and download cheats for over 70 video game titles. The site focuses on first-person shooters and cheats that help with aiming as well as in-game information that normally is hidden such as player names, distance, and location of items.

**artificialaiming.net** (Global Alexa Rank: 157,361). A self-reported 220,000 users can purchase cheats for 40 titles including a “Master Package” that gives access to all types of cheats. The site uses a subscription service where a buyer purchases access to the cheat from one week for up to six months.

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, items, skins, accounts, power-leveling, and keys.

The site organizes the listings by game and then usually by type of item. While some prefer an online market aesthetic, other sites use a forum to keep listings organized. Users can set their own price for the product they are selling and many have power sellers with high ratings and positive feedback. The owners of these sites generate revenue through the taking of a transaction fee, 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 Alexa Rank: 9,113). This site provides a marketplace for users to sell in-game currency, items, skins, accounts, CD keys, and power-leveling for over 200 ESA member titles. In addition, physical items are sold on the site. The site charges transaction fees and purports to offer protection against fraudulent purchases. According to the website statistics firm, Similar Web, playerauctions.com had an estimated 4.65 million visits in August of 2018.

**ownedcore.com** (Global Alexa Rank: 12,340). A self-reported total of 600,000 members can gain access to cheats and account resales for many major first-person shooters and MMOs. The site sells its own in-game currency that allows users to boost visibility to their premium listings, eliminate ads, and receive trade feedback. In August of 2018, according to Similar Web, the site received an estimated 4.4 million visits.

Account Resale: These sites sell video game user accounts straight to the user at reduced prices. Often, these transactions include games and/or premium accounts with online subscription services included.

**Psngames.org** (Global Alexa Rank: 57,038). This site purchases digital editions of games and online subscription services (often at a reduced cost because the games and services are developed for use in different regions of the world) for the Sony PlayStation 4, Xbox One, and Nintendo Switch consoles. The site then sells the games and services using an account that can be played in the buyer's region. According to G2A.com, over 26,500 people have left transaction reviews with an average of 94% positive feedback for these purchases. The site also offers a referral system in which a buyer can receive a 7% commission for every product bought by someone they referred to the site.



## Notorious Physical Markets<sup>6</sup>

### Mexico<sup>7</sup>

ESA applauds the Government of Mexico's efforts to focus on mass online infringement, such as through the creation of a cyber unit within the intellectual property enforcement branch of the Attorney General's Office, but urges that the government allocate sufficient resources to make such initiatives meaningful. For example, more than a year after the creation of this cyber unit, we understand that it still lacks basic tools to fulfill its directive, such as computers and a physical location. In addition, we understand that large open-air markets and shopping complexes remain significant sources of infringing products across a range of industries and supports enforcement efforts undertaken to protect intellectual property rights in these locations. Insofar as infringing products are often stored in small storage lockers and other physical premises within these markets, ESA supports the use of enforcement measures, such as asset forfeiture, that target not only vendors, but also the custodians of these storage locations who profit from the sale of counterfeit goods. We respectfully suggest that the proceeds from asset forfeiture be directed to sustain the cyber unit.<sup>8</sup>

**Tepito** (Mexico City). Tepito is an open-air market, 80 square blocks in size in the middle of Mexico City. Despite the decrease in the sale of certain physical goods, such as compact discs, with the rise of electronic downloads, Tepito continues to be the main point of active trafficking of infringing video games, modified consoles, and game circumvention devices as well as countless other infringing items.

**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 Mexican and foreign visitors. More than one third of this market's approximately 3,000 vendors offer video game circumvention devices.

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<sup>6</sup> In light of changing trends in the video game industry, including increased reliance on digital distribution models as well as the proliferation of online infringement more generally, physical markets are becoming less of an enforcement priority for ESA's membership.

<sup>7</sup> 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 experts (*peritos*) be able to conduct inspections of the online records of the U.S. Copyright Office (available at [www.copyright.gov](http://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.

<sup>8</sup> In ESA's 2017 submission for the Notorious Markets List, both the Bazar Pericoapa and Plaza Meave markets were listed as problematic markets for selling infringing copies of video games and circumvention devices. However, since that submission, the Mexican government has undertaken effort to clear these areas of counterfeit products and their vendors and turn them into legal, viable shopping malls. Therefore, ESA removed them from this year's submission.

**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. Infringing copies of video games and circumvention devices are readily available at this market.

## **Brazil**

**Galeria Pagé (São Paulo).** This galleria is a multi-story shopping complex located in the center of São Paulo. Selling a variety of products, this galleria houses over 170 vendors, with 25 percent of them specializing in the sale of electronic products and counterfeit merchandise, including infringing video games, game circumvention devices, and modified consoles (*i.e.*, consoles with circumvention devices pre-installed). It is estimated by local authorities that around 8,000 consumers visit Galeria Pagé daily, and no major raids on this market took place in the past year.

**Santa Efigênia (São Paulo):** Covering eight blocks in downtown São Paulo, this market is famous for offering a wide variety of electronic goods in its over 525 shops and outlets. Approximately 190 shops exclusively offer video game products (a growth of 26 percent in comparison to the previous year and 36 percent of the total of shops), such as infringing video games, game circumvention devices, and modified consoles, as well as smuggled products, ranging from consoles to popular and newly-released game titles. Local police have not conducted any major enforcement operations in the area over the past year, and prices of infringing video game products sold at the market are typically 25 percent higher than those available online.

**Rua Uruguaiana (Rio de Janeiro):** Rua Uruguaiana is one of the most famous outlets from which to buy counterfeit goods in downtown Rio de Janeiro, with over 105 active stores. More than 35 stores exclusively offer video game goods, such as infringing video games, game circumvention devices and modified consoles. Many unregistered street vendors also operate in the area, selling infringing copies of popular video games. Local authorities estimate that approximately 5,000 consumers visit the market daily.

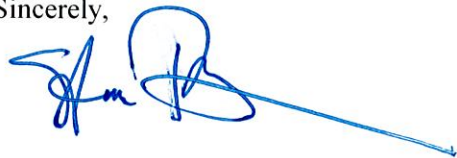
**Feira da Sulanca de Caruaru (Caruaru, state of Pernambuco):** This key market in the northeast region of Brazil supplies other small markets in smaller cities and street vendors with illegal goods, including counterfeit video game products. During the busiest time of year, more than 10,000 shoppers visit this market daily.

**Oiapoque Outlet (Belo Horizonte, state of Minas Gerais):** Also known as ShoppingOi, this market is located in downtown Belo Horizonte, with three floors of outlet shops dedicated to all variety of products, mostly illegal goods. Video games are the third most popular product available in the market, where it is estimated that 25 of the 90 active shops are dedicated to video games (a 20 percent increase compared to the previous year). It is estimated that over 50 percent of all video game-related products available in the market are illegal. The market also has an online marketplace – [shoppingoi.com.br](http://shoppingoi.com.br) – and a Facebook page.



We would like to underscore our appreciation to the U.S. officials who drive and administer the out-of-cycle review of notorious markets. The resulting Notorious Markets List provides important insights that allow national and local policymakers, as well as law enforcement officials, to evaluate and fairly demand accountability from these marketplaces and the services that support them.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Stanley Pierre-Louis', with a long horizontal line extending to the right.

Stanley Pierre-Louis  
Senior Vice President and General Counsel