



February 5, 2016

Mr. Probir Mehta
(Acting) Assistant U.S. Trade Representative for
Intellectual Property and Innovation
Office of the United States Trade Representative
600 17th Street, NW
Washington, DC 20508

RE: Docket Number USTR-2015-0022: 2016 Special 301 Review: Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment and Announcement of Public Hearing (81 Fed. Reg. 1277, January 11, 2016)

Dear Mr. Mehta:

These comments are submitted by Advanced Access Content System Licensing Administrator, LLC (“AACS LA”) in the above-captioned matter. AACS LA requests that the United States Trade Representative name Antigua and Barbuda (“Antigua”) a priority watch country under the provisions of Section 182 of the Trade Act of 1974 for its failure to provide adequate remedies to enforce its prohibition on circumvention of technological protection measures (“TPMs”) and thereby to protect the intellectual property protected by such TPMs. The experience of AACS LA in relation to Antigua’s failure to provide adequate remedies and the consequent adverse effect on the copyrighted motion pictures distributed on Blu-ray Discs (“BDs”) is set forth below in support of our request.

By way of background, AACS LA is a limited liability company established by eight companies (IBM, Intel, Microsoft, Panasonic, Sony, Walt Disney, Toshiba, and Warner Bros.) from three different industries – motion picture content providers, consumer electronics, and information technology – to develop and license content protection technology to protect high definition, and now ultra-high definition, motion picture content from unauthorized reproduction and distribution. AACS LA’s technology has been applied to prerecorded Blu-ray Discs (“BDs”) distributed in the United States and around the world since February 2006 and prerecorded Ultra HD BDs since September 2015 (with market launches for both Ultra HD BD players and prerecorded discs having been made in late 2015 and continuing into 2016). AACS LA operates on a cost recovery basis, with its primary mission being to facilitate the market for prerecorded high definition content and ultra high definition content distributed on BDs and other types of media. The success of AACS LA’s efforts is demonstrated by the fact that to date, more than 1.4 billion BDs have been sold worldwide protected by AACS Technology. AACS Technology is currently licensed by over 1000 companies worldwide.

AACS Technology consists of a combination of strong cryptography, using the Advanced Encryption Standard with 128-bit keys and state of the art media key block technology and revocation of compromised keys using an efficient, tree-based broadcast encryption system. The Ultra HD version of AACS Technology (called "AACS2") has added a number of additional features to enhance the protection of this highest value motion picture content, including some features to thwart those who would seek to circumvent the technology and some techniques to contribute to our ability to combat any efforts to circumvent the technology. Because AACS2 is so new and the market for Ultra HD Blu-ray Discs is just starting, our comments necessarily relate to our original technology and the market for HD Blu-ray Discs. However, the importance of the new technology and emergence of the Ultra HD Blu-ray format underscore the critical nature of the protection for such technologies. Failure to adequately maintain and effectively enforce the circumvention prohibitions in the laws of countries around the world will be an even greater problem as the Ultra HD formats roll out across the globe.

As with any encryption-based technology, AACS Technology can be defeated by determined hackers using sufficiently powerful tools. AACS LA anticipated this possibility and built in the capability to revoke keys that are exposed due to such hacking. Moreover, circumvention of implementations of AACS Technology, and distribution of products incorporating circumvention capabilities, are prohibited under the Digital Millennium Copyright Act's Section 1201 provisions. Those provisions implement the World Intellectual Property Organization's 1996 WIPO Copyright Treaty, now implemented by 94 countries around the world. Under the US DMCA regulation, we are aware of no tools or programs for the circumvention of AACS Technology that are sold or distributed by entities located in the United States.

A company called SlySoft has developed and offered for sale the best known, and to our knowledge the most widely used, program for circumventing implementations of AACS Technology and gaining access to the motion picture content protected by our technology, namely, the *AnyDVD HD* program. When applied to a motion picture distributed using AACS Technology on a prerecorded BD, SlySoft's product enables a consumer to access the content "in the clear," thereby allowing the user to make unlimited, unauthorized copies of the content and to redistribute the content, including over the Internet. All of these unauthorized actions are prevented when AACS Technology is used in its normal operation on licensed, compliant Blu-ray players.

Circumvention through programs such as SlySoft's AnyDVD HD is a source for widespread, large-scale and commercial copyright infringement by users located in the United States, as well as Antigua & Barbuda, and many other countries. Such circumvention also harms the legitimate consumer electronics and information technology companies that build compliant content playback devices that "play by the rules." The effect is that the intellectual property rights in the AACS technology and the copyrights in the content distributed on BDs protected by AACS Technology are infringed and misused to a very significant degree.

SlySoft is headquartered in and operates its major business activities from Antigua, according to its website and our investigation. The AnyDVD HD program is developed in and hosted on computer servers that are located in and operated from Antigua, again, based on our investigation. Accordingly,

AACS LA looked to Antiguan law to remedy the adverse effects of SlySoft's circumvention of AACS Technology.

Antigua's Copyright Act, in Section 46(6) of that Act, makes it illegal to manufacture or import for sale or rental any circumvention device. This provision makes such actions criminal and provides no civil remedy (and, hence, no ability for the proprietor of the Technological Protection Measure, such as AACS LA, or holder of the copyrights in the content that is infringed, such as the movie companies using AACS Technology in their BDs, to bring their own private suits to enforce this law).

Despite having been convicted of violating these criminal provisions two years ago, Giancarlo Bettini (the owner of SlySoft) and Slysoft have been allowed to continue their illegal activity during that time. This situation has been particularly frustrating, in light of the extensive and prolonged AACS LA efforts to obtain relief noted below:

- AACS LA first appealed to the criminal enforcement authorities in Antigua in 2007 to enforce Section 46(6) of its Copyright Act against SlySoft's distribution of its AnyDVD HD product that circumvents implementations of AACS Technology.
- Within a few months of our first contact with the authorities, AACS LA had supplied them with evidence sufficient to bring charges.
- Notwithstanding that, and despite our continued efforts, it took nearly an additional three years, to December 2010, before charges were brought against SlySoft and its founder, Giancarlo Bettini.
- Once charges were brought, trial was not convened until two and a half years later.
 - During that period, the trial was scheduled and postponed numerous times, never on account of any delay by AACS LA.
 - One particularly troubling and lengthy delay was caused by the theft of evidence from a police facility. Nevertheless, AACS LA provided a complete replacement for the evidence that was lost within a period of two months. Despite this replacement, trial continued to be repeatedly delayed.
- Once the trial was commenced in June 2013, it was adjourned twice and finally concluded in January 2014. AACS LA supplied two witnesses for the trial, and counsel for AACS LA flew to Antigua for each part of the trial, providing direct assistance throughout the process.
- The judge ruled in February 2014, finding Bettini guilty of violating the Antiguan law and sentenced him to fines of \$5,000 each for six separate violations or, if he failed to pay the fines, imprisonment of six months for each of the violations (with a maximum term of twelve months, since some of the prison terms were to run concurrently). SlySoft was also found guilty, although at a lesser punishment level, and was not additionally fined.
- Immediately following this ruling, counsel for Bettini filed an appeal, effectively staying enforcement of the convictions, and allowing Bettini and Slysoft to continue their illegal business practices .
 - That appeal has been pending for nearly two years at this point.

- No action has been taken on the appeal due to the fact that the judge has not yet issued her written ruling in the case and has not certified the record of the trial for appeal.
- In our effort to get enforcement action, counsel for, and other representatives of, AACSLA made more than a dozen separate trips to Antigua over a period of seven years to meet with Antiguan authorities, held numerous telephone conversations with such authorities, engaged in regular email discussions with these authorities, and supplied significant evidentiary materials to the authorities (including, as noted above, recreating the evidentiary file after it was stolen from a police facility).

While AACSLA was encouraged that SlySoft and Bettini were found guilty, we were, and continue to be, dismayed by the manner in which the matter concluded—essentially with no effect on the activities of SlySoft or Bettini.

As a result, SlySoft has continued to operate on essentially the same basis as before the conviction, with no interruption of its “business” and no relief for AACSLA and the content companies whose movies are the subject of SlySoft’s circumvention activities. In that period, we believe that SlySoft’s AnyDVD HD program has been downloaded and used by tens of thousands of individuals around the world. While there is no way to calculate the harm done to U.S. intellectual property interests, the harm done has undoubtedly been extremely high.

The net effect is that Antigua has denied AACSLA and those who distribute audio-visual content on BDs protected using AACSLA’s technology “adequate and effective protection of intellectual property rights.” Accordingly, AACSLA respectfully requests that the USTR place Antigua on its Priority Watch List, which will permit AACSLA and the USTR’s Office to evaluate Antigua’s activities in the coming months, including its prosecution of SlySoft and its founder.

AACSLA is prepared to respond to any questions or supply any additional information that you or your colleagues may need to pursue this request.

Respectfully submitted,

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