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600 17th St., NW  
Washington, DC 20508

**30 January 2023**

**Submission by The Football Association Premier League Limited for the  
2023 Special 301 Review**

**(Docket No. USTR-2022-0016)**

Dear Mr Lee

### **Introduction**

The Football Association Premier League Limited ("**Premier League**") appreciates the opportunity to assist the Office of the United States Trade Representative ("**USTR**") in identifying countries that deny adequate and effective protection of intellectual property ("**IP**") rights, pursuant to the USTR's 2023 Special 301 Review. In this submission, the Premier League respectfully requests that the USTR retains Argentina and China on the Priority Watch List and adds Iraq to it. The Premier League also recommends that Vietnam and Thailand remain on the Watch List.

The Premier League is the organising body of the top-level competition for football clubs in England and Wales and is authorised by its twenty member Clubs to license broadcasters throughout the world to provide audio-visual coverage of the 380 matches that are played in the competition during each season (the "**Matches**"). The Premier League is broadcast to almost 800 million households around the world and a high proportion of the Premier League's revenue is generated from the sale of exclusive audio-visual broadcasting rights to the Matches.

Abuse of the Premier League's IP rights occurs through many forms, both physical and online. However, due to the scale of infringement, the Premier League has focussed this submission on the infringement of its copyright over the internet. The scale and nature of online piracy, such as that detailed below, continues to place the Premier League's revenue at significant risk. This in turn threatens the Premier League's ability to continue investing



in, and contributing to, the quality of the competition, the sport more generally, community projects and the wider global economy.

The Premier League has committed to investing £1.6 billion in community and wider football initiatives between the 2022/23 and 2024/25 Seasons and since 2007 has reached 45 markets through its community work, training over 36,000 adults and benefitting almost 2 million young people. In the United States, this has included running Premier League Primary Stars USA, a digital learning programme for elementary schools that has been active across 679 schools in 7 states with approximately 75,000 students involved.

## Priority Watchlist

### Argentina

The Premier League notes that Argentina was named on the USTR's Priority Watch List in the 2021 Special 301 Report<sup>1</sup> and 2022 Special 301 Report (the "**2022 Report**")<sup>2</sup>, partly due to continuing challenges with the enforcement of IP rights. In particular, the 2022 Report concluded that *'prosecutions can stall and languish in excessive formalities'* and *'infringers rarely receive deterrent sentences'*<sup>3</sup>. It was similarly named in the European Commission's State of Intellectual Property in Third Countries Report in 2021 (the '**2021 Third Countries Report**'), which noted that enforcement measures in Argentina with regards to copyright piracy are reported by stakeholders as *'ineffective, with hardly any administrative or criminal actions'* and that *'sanctions and sentences actually imposed appear not to deter further infringements'*<sup>4</sup>. These conclusions remain consistent with the Premier League's experience of enforcing its IP rights in Argentina.

In particular, in October 2018 the Premier League filed an official notification of crime in relation to a number of high-profile online streaming platforms that enabled pirates to upload infringing live streams of sports events for onward mass distribution via various means, including unauthorised openly accessible websites. At the time the case was filed,

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<sup>1</sup> [https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20\(final\).pdf](https://ustr.gov/sites/default/files/files/reports/2021/2021%20Special%20301%20Report%20(final).pdf)

<sup>2</sup> [2022 Special 301 Report.pdf \(ustr.gov\)](#)

<sup>3</sup> [2022 Special 301 Report.pdf \(ustr.gov\)](#), p.40

<sup>4</sup> [https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc\\_159553.pdf](https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159553.pdf), p36



the streaming platforms operated by the suspects were the largest source of free-to-access infringing live streams of Matches in the world.

After years of delays, involving the case being passed between multiple courts over a technical question, the Premier League learnt that the Defendants in the case were notified about the live investigation by the Court, despite the risks that created with destruction of evidence and obfuscation of operations. The Premier League has made substantial efforts to progress the case at every turn, including submitting a detailed investigative report with the complaint, appealing jurisdictional challenges, identifying new domains being used for continued infringement and introducing new evidence demonstrating that a US court had previously found the suspects to have infringed copyright by operating sports-related piracy sites. Despite these efforts, the suspects were recently acquitted.

It is vital that an effective IP enforcement framework enables legitimate rights owners to bring and conclude deterrent enforcement actions in a timely manner and before pirate technology has evolved, and that courts are willing to give due consideration to evidence and expertise offered by copyright owners. Unfortunately, in the Premier League's experience, which we have been advised by local legal counsel is by no means unique, the current framework in Argentina does not offer the support rights owners require to protect their IP rights.

The Premier League therefore proposes that Argentina remains on the Priority Watch List.

### China

The 2022 Report identified that '*China continues to be the world's leading source of counterfeit and pirated goods*<sup>5</sup>. Similarly, the 2021 Third Countries Report noted that '*China reportedly remains also the main source of illegal IPTV receivers and set-top boxes destined for the EU market*<sup>6</sup>. These excerpts reflect the Premier League's experience that China remains a key centre for global digital piracy and copyright infringement. Chinese-based operations continue to play a prominent role in the global piracy ecosystem, from the manufacturing of illicit streaming devices for distribution around the world, to supplying key technical infrastructure and unauthorised video content to pirate operations, and the

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<sup>5</sup> <https://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf>, p47

<sup>6</sup> [https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc\\_159553.pdf](https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159553.pdf), p22



development of technology to enable pirate operators to evade the various methods deployed by legitimate rights owners to identify infringers.

A prominent example of an internationally popular Chinese-based service is EVPAD<sup>7</sup>. Its branded illicit streaming devices and apps, although produced in China, do not appear to be available for purchase there. They can, however, be found in a large number of countries around the world, particularly in South East Asia, and offer thousands of channels, including those of US broadcasters. It was recently added to the European Commission's Counterfeit and Piracy Watch List 2022 (described as an '*Android app from China that incorporates P2P technology as well as EVPAD -branded apps...it operates through a network of online and physical resellers around the world*'<sup>8</sup>) and has previously been found to infringe copyright by the High Court of Singapore<sup>9</sup>.

The Premier League welcomed the USTR's previous call for China to '*take sustained action against websites and online platforms containing or facilitating access to unlicensed content, illicit streaming devices (ISDs), and piracy apps that facilitate access to such websites*'<sup>10</sup>. Whilst recent changes in the amended Copyright Law appear positive, in the Premier League's experience there is still minimal proactive enforcement action being taken by Chinese authorities to address issues of infringement, and it remains extremely difficult to enforce against Chinese-based pirates.

For the reasons above, the Premier League recommends that China remains on the Priority Watch List.

### Iraq

The Premier League is aware of a number of prominent piracy networks that continue to openly operate from Iraq and provide unauthorised access to audio-visual content, including live broadcasts of Matches and a range of channels originating from the United

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<sup>7</sup> Example website offering EVPAD services: <https://www.evpadpro.com/evpad-tv-box-c0118>

<sup>8</sup>European Commission Counterfeit and Piracy Watchlist, 2022, p31 (accessible via here: [https://policy.trade.ec.europa.eu/news/commission-publishes-latest-counterfeit-and-piracy-watch-list-2022-12-01\\_en](https://policy.trade.ec.europa.eu/news/commission-publishes-latest-counterfeit-and-piracy-watch-list-2022-12-01_en))

<sup>9</sup> The Football Association Premier League Limited & Ors v M1 Limited & Ors (Case No: HC/OS 399/2020) (

<sup>10</sup>[2022 Special 301 Report.pdf \(ustr.gov\)](#), p.48



States. This includes two services previously identified by the USTR as notorious markets in its 2021 Notorious Markets Report<sup>11</sup>:

- i. Shabakaty, a pirate service also recently named on the European Commission's Counterfeit and Piracy Watchlist 2022<sup>12</sup>, which the Premier League understands is operated by Iraq's largest internet service provider, Earthlink, and essentially offered as a free promotion for Earthlink's internet service; and
- ii. Chalooos, a major source of pirate streams which the Premier League believes is linked to several major piracy operations, including Mediastar, Forever IPTV and Livedream<sup>13</sup>.

However, despite being named on the 2021 Notorious Markets Report, and attempts from local rights owners to raise the issue with the Iraqi authorities, the Premier League is still not aware of any enforcement action taken against them.

The Premier League also notes that Iraq is not a WTO member or contracting party to the Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS Agreement"), nor a signatory to key IP-related treaties such as the Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention").

The Premier League therefore requests that Iraq be added to the Priority Watch List.

## **Watch List**

### Thailand

The Premier League has previously experienced considerable support from law enforcement authorities in Thailand, particularly from the Department of Special Investigations ("DSI"). For example, in 2017 they assisted with raids against a large-scale piracy network operating across South East Asia<sup>14</sup> (which subsequently led to a successful

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<sup>11</sup> <https://ustr.gov/sites/default/files/IssueAreas/IP/2021%20Notorious%20Markets%20List.pdf>

<sup>12</sup> [Circabc \(europa.eu\)](#), p32

<sup>13</sup> [2020 Review of Notorious Markets for Counterfeiting and Piracy \(final\).pdf \(ustr.gov\)](#), pp.20 and 30

<sup>14</sup> <https://www.bangkokpost.com/thailand/general/1250582/two-brits-thai-arrested-for-pirating-epl-broadcasts>



criminal prosecution with significant sanctions<sup>15</sup>) and in February 2021 they raided and shut down one of the biggest piracy operations in Thailand<sup>16</sup>. There has however since been a notable and concerning lack of progress in other cases referred to law enforcement authorities for investigation.

A longer-term issue remains the shortage of deterrent prosecutions and sanctions following raids. Whilst the Premier League appreciates large scale copyright infringement actions are complex and time-consuming, it is only aware of one high-profile successful prosecution for a case of this type in Thailand, back in November 2019<sup>17</sup>. As was noted in the 2021 Third Countries Report *'judicial and administrative proceedings are slow and inefficient. Even in cases where the law enforcement agencies are engaged and take action against counterfeit and piracy networks, the judicial proceedings are particularly complex'*<sup>18</sup>.

The impact of a lack of prosecutions is exacerbated by the continued absence of an effective blocking regime. Such a regime needs to enable quick and effective blocking of various forms of piracy, including through infringing apps and websites. The Premier League appreciates that the Government in Thailand, primarily through the Ministry of Digital Economy and Society, continues to engage in discussions with rights owners around blocking, and recognises that some blocking orders have been granted by the courts. However, in the Premier League's experience, the orders have targeted the wrong part of pirate infrastructure and in any event have not been effectively implemented by internet service providers.

The Premier League therefore recommends that Thailand remains on the Watch List.

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<sup>15</sup> Public Prosecutor, Department of Special Litigation 1 and The Football Association Premier League Limited v Jin Chang Global Company Limited by Mr Daryl William Lloyd (Black Case No. 1522/2560) (<https://www.premierleague.com/news/1507303>)

<sup>16</sup> <https://www.pattayamail.com/thailandnews/thai-dsi-cracks-down-on-major-pirate-movies-and-tv-programs-website-342847>

<sup>17</sup> Public Prosecutor, Department of Special Litigation 1 and The Football Association Premier League Limited v Jin Chang Global Company Limited by Mr Daryl William Lloyd (Black Case No. 1522/2560) (<https://www.premierleague.com/news/1507303>)

<sup>18</sup> [https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc\\_159553.pdf](https://trade.ec.europa.eu/doclib/docs/2021/april/tradoc_159553.pdf), p50



## Vietnam

The Premier League notes that Vietnam was included on the Watch List in the 2022 Report, in part because *'the online sale of pirated and counterfeit goods remains a serious problem'*<sup>19</sup>. Over the last 12 months there continue to be positive developments in the administrative site blocking process overseen by the Authority of Broadcasting and Electronic Information. The new copyright legislation<sup>20</sup> which came into force earlier this year also offers further encouragement for future enforcement actions. In the meantime, however, significant issues remain with pursuing deterrent IP enforcement cases within Vietnam.

As noted in our previous submission, in August 2020 the Premier League filed a criminal complaint in relation to an internationally renowned illicit streaming service operating on a large commercial scale that carries channels from over 40 different countries (including the United States), following a detailed and sophisticated investigation to identify and locate the operator. The case has since been moved between various law enforcement bodies and has still yet to be meaningfully progressed. The Premier League therefore respectfully submits that this provides a further example of concerns raised by the USTR in the 2022 Report that a *'Lack of coordination among ministries and agencies responsible for enforcement remains concerning, and capacity constraints related to enforcement persist, along with a lack of political will to prioritise IP enforcement'*<sup>21</sup>.

The Premier League therefore recommends that Vietnam remains on the Watch List.

## **Conclusion**

In light of the above, the Premier League respectfully requests that Argentina, China, Iraq are on the Priority Watch List for 2023, with Vietnam and Thailand on the Watch List.

Legitimate rights owners require legal systems that enable impactful enforcement action against all parties involved in the piracy ecosystem. For live sports rights owners, such as the Premier League, it is critical that this includes the ability to take action during the live

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<sup>19</sup> [2022 Special 301 Report.pdf \(ustr.gov\)](#), p82

<sup>20</sup> <https://chinhphu.vn/?pageid=27160&docid=206240&classid=1&typegroupid=3>)

<sup>21</sup> <https://ustr.gov/sites/default/files/IssueAreas/IP/2022%20Special%20301%20Report.pdf>, p82



event. In the Premier League's experience, such a framework can largely be achieved through the following key features:

- i. Clear and technology-neutral provisions under the copyright legislation that clearly establish civil and criminal liability for pirate operators, with sufficient sanctions to reflect the severity of infringement and act as a genuine deterrent;
- ii. A blocking regime which enables rights owners to block website and device-based piracy, and allows for swift and dynamic reaction to circumvention measures, without prejudicing those legitimately operating on the internet;
- iii. Engaged and sufficiently resourced law enforcement authorities that are able and prepared to swiftly investigate, dismantle and seize necessary evidence to prosecute pirate services operating from within their jurisdiction; and
- iv. The ability to use the tools provided by the framework to bring and conclude enforcement actions before technology has developed and the piracy problem has evolved.

The Premier League would be happy to assist the USTR with more detailed commentary on any of the countries covered within this submission.

Yours sincerely,

FAPL

The Football Association Premier League Limited