

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE



1747 PENNSYLVANIA AVENUE, NW • SUITE 825 • WASHINGTON, D.C. • 20006-4604 • TEL (202) 833-4198 • FAX (202) 872-0546 • E-MAIL: SMIMET@IIPA.COM

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GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street NW, Room 518
Washington, DC 20508

Re: Request for Review of the Intellectual Property Rights Practices of Uruguay in the 2000 Annual GSP Country Eligibility Practices Review, 65 Fed. Reg. 41514 (July 5, 2000)

To the Subcommittee:

The Trade Policy Staff Committee (TPSC) of the Office of the United States Trade Representative (USTR) published in the July 5, 2000 Federal Register a notice announcing the 2000 Annual Generalized System of Preferences (GSP) Country Eligibility Practices Review. USTR indicated that "interested parties may submit petitions to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in subsections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c))." See 65 Fed. Reg. 41515.

The International Intellectual Property Alliance (IIPA) hereby submits its request that the eligibility of Uruguay as a GSP beneficiary developing country be reviewed, and that its GSP benefits be suspended or withdrawn, in whole or in part, if requisite improvements are not made by Uruguay to remedy the deficiencies (outlined below) which adversely affect U.S. copyright owners. In 1999, Uruguay exported goods valued at \$56.7 million to the U.S. which received preferential duty-free treatment under the GSP Program, which represented approximately 29.4% of its total exports to the U.S., according to U.S. government statistics.

Petitioner and its Interest: The International Intellectual Property Alliance

IIPA is a coalition of seven trade associations that collectively represent the U.S. copyright-based industries -- the motion picture, music and recording, business and entertainment software, and book publishing industries. IIPA's member associations are the Association of American Publishers

(AAP), AFMA (formerly the American Film Marketing Association), the Business Software Alliance (BSA), the Interactive Digital Software Association (IDSA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA) and the Recording Industry Association of America (RIAA).

These member associations represent over 1,450 U.S. companies producing and distributing works protected by copyright laws throughout the world -- all types of computer software including business software and entertainment software (such as videogame CDs and cartridges, personal computer CDs and multimedia products); motion pictures, television programs, home videocassettes and DVDs; music, records, CDs and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media).

These U.S. copyright-based companies are the leading edge of the world's high technology, entertainment, and publishing industries. According to Copyright Industries in the U.S. Economy: The 1999 Report, prepared for IIPA by Economists, Inc., the core copyright industries accounted for \$348.4 billion in value added to the U.S. economy, or approximately 4.3% of the Gross Domestic Product (GDP) in 1997 (the last year for which complete data is available). In 1997, the total copyright industries accounted for \$529.3 billion in value added, or approximately 6.53% of GDP. The "total" copyright industries include the "core" industries plus those that, under conservative assumptions, distribute such products or other products that depend wholly or principally on copyrighted materials. The "core" copyright industries are those which create copyrighted materials as their primary product. The U.S. copyright industries are also among the nation's most dynamic and fast-growing economic sectors. The core copyright industries' share of the GDP grew more than twice as fast as the remainder of the U.S. economy between 1977 and 1997 (6.3% vs. 2.7%). Employment in the core copyright industries grew three times the rate of national employment growth between 1977 and 1997 (4.8% vs. 1.6%). More than 6.9 million workers were employed by the total copyright industries, about 5.3% of the total U.S. work force, in 1997. The core copyright industries generated an estimated \$66.85 billion in foreign sales and exports in 1997, an 11.1% gain over 1996 and larger than the foreign sales and exports of the food, tobacco, apparel, textile, and aircraft industries combined. Preliminary estimates for foreign sales and exports for 1998 are \$71.0 billion. For more detailed information on the IIPA and its members, visit www.iipa.com.

The U.S. creative industries represent one of the few sectors of the U.S. economy that regularly contributes to a positive balance of trade. It is essential to the continued growth and future competitiveness of these industries that our trading partners provide free and open markets and high levels of protection to the copyrights on which this trade depends. Inexpensive and accessible reproduction technologies make it possible for U.S. copyrighted works to be pirated -- stolen -- in other countries, and including specifically for the purposes of this petition, Uruguay. However, the copyright industries represented in IIPA lose an estimated \$20-22 billion annually due to piracy outside the United States. These staggering losses, if not halted, could reverse this path of growth in these sectors, threaten the high wage employment that these industries bring to the U.S. economy, and damage U.S. competitiveness. To combat the problems of inadequate laws and poor enforcement, the U.S. copyright-based industries joined with the Administration and Congress to fashion new legislation and negotiating tools. IIPA and its members have supported various trade tools with intellectual property rights ("IPR") provisions over the years, including the GSP Program, Special 301, Section 301, the Caribbean Basin Economic Recovery Act, the Andean Trade Preferences Act, and the U.S.-Caribbean Trade Partnership Act.

Action Requested by Petitioner

Pursuant to the Trade Act of 1974, as amended (19 U.S.C. 2461 et seq.), IIPA, on behalf of its seven trade association members, hereby petitions the President to review the eligibility of Uruguay as a GSP beneficiary developing country, and if requisite improvements are not made by Uruguay, then IIPA requests the President to suspend or withdraw GSP benefits of Uruguay, in whole or in part, for its failure to provide adequate and effective copyright protection for U.S. copyright owners.

Legal Authority for this Petition and Discussion of the IPR Criteria in the GSP Statute

A full discussion of the legal authority for this petition, and the specific IPR provisions and legislative history of the GSP programs is found in Appendix A. To summarize, in the GSP Renewal Act of 1984, Congress specified conditions that GSP beneficiary countries must meet in order to gain and maintain their preferential trading status. In particular, one of these express conditions (which Congress also delineated as one "purpose" of the GSP Program) was to encourage developing countries "to provide effective means under which foreign nationals may secure, exercise, and enforce exclusive intellectual property rights."¹ The legislation required the President to apply mandatory and discretionary criteria with respect to IPR protection as a condition to a country achieving "beneficiary" status under the GSP Program. When the GSP Program was reauthorized in August 1996, the language of the IPR discretionary criterion for GSP eligibility in Section 502(c)(5) was simplified slightly and now requires the President to "take into account the extent to which such country is providing adequate and effective protection of intellectual property rights."²

Uruguay Fails to Provide "Adequate and Effective Protection" of U.S. Copyrights

To the best of petitioner's knowledge, much of the information describing the deficiencies in Uruguay's legal and enforcement regime has been presented previously to members of various U.S. governmental interagency groups, including the Special 301 interagency group, several members of the GSP Subcommittee, as well as the Trade Policy Staff Committee, in the context of USTR's Annual Special 301 Review. On February 18, 2000, IIPA presented its annual Special 301 submission to Assistant USTR for Services, Investment and Intellectual Property Joseph Papovich; this submission was widely distributed among the interagency for its internal consideration in the 2000 Special 301 Annual Review. IIPA's entire report is available on our website, www.iipa.com.

USTR has consistently highlighted enforcement issues in Uruguay. In her May 1, 2000 Special 301 announcements, Ambassador Charlene Barshefsky, in keeping Uruguay on the "Watch List," remarked:

Reform of outdated patent and copyright legislation has been underway in Uruguay for a number of years. ... We urge the Government of Uruguay to enact TRIPS-consistent copyright legislation and to amend the new patent law to bring it into full compliance with TRIPS Agreement obligations. We will continue to

¹ See Section 501(b)(9)(B) of the GSP Renewal Act of 1984.

²GSP Renewal Act of 1996, Title I, Subtitle J, of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (codified at 19 U.S.C. 2462(c)(5)).

consult informally with the Government of Uruguay in an effort to encourage it to resolve outstanding TRIPS compliance concerns as soon as possible in the coming months.³

1. Uruguay's Copyright Law of 1937 fails to provide "adequate and effective" protection to U.S. copyright owners.

Copyright protection in Uruguay is afforded under its 1937 copyright law, Law No. 9739, as amended in 1938.⁴ Separate anti-piracy legislation to protect sound recording producers was passed in the 1980s.⁵ In its past Special 301 filings, IIPA has highlighted the major deficiencies in Uruguay's copyright law. It is important to note that Uruguay, as a member of the World Trade Organization, was obligated to provide TRIPS-level protection as of January 1, 2000. Below is a summary of the legal, substantive copyright TRIPS deficiencies in the current 1937 copyright law:

- Inadequate term of protection for works, phonograms and performances (TRIPS Arts. 12, 14.5): The term of protection for authors is life plus 40 years, well short of the basic TRIPS minimum of life plus 50. There is no specific term of protection for sound recordings in the law, although they are likely considered to be "works."
- Protection for computer programs (TRIPS Article 10): Computer programs are not expressly protected in the copyright law, but by executive decree. Explicit integration in the copyright law as "literary works" is necessary. Despite this deficiency, BSA has been able to conduct anti-piracy operations, albeit with some procedural difficulties.
- Protection for compilations of data (TRIPS Article 10): It is unclear whether the current copyright law adequately protects "compilations of data or other materials, whether in machine-readable or other form," as described fully in TRIPS. Such specific language does not appear in the 1937 law.
- Incomplete scope of retransmission rights (TRIPS Article 9.1): The "right to disseminate" in Article 2 of the law includes "dissemination by any mechanical means, such as the telephone, radio, television and other like processes." It is not entirely clear from the law whether this article encompasses the specific retransmission rights found in Article 11**bis** of the Berne Convention. IIPA is not aware whether other Uruguayan laws, such as communications or media laws, elaborate on whether or not such retransmission rights are covered. It is important that this Berne Convention/TRIPS right be afforded in the Uruguayan law.
- No express rental rights (TRIPS Articles 11, 14.4): The 1937 law does not have an express rental right for computer programs and sound recordings. Article 2 does contain a broad right of "alienation," along with the specific rights to reproduce, publish, translate, perform and disseminate works "in any form, or to authorize other persons to do so." It is possible, therefore, for the Government of Uruguay to argue that its broader right of "economic exploitation" (as mentioned in Article 33) does encompass a right of rental. MPA reports that in

³ Press Release 00-30, Office of the United States Trade Representative, "USTR Releases Super 301, Special 301 and Title VII Reports," May 1, 2000.

⁴ IIPA does not have any knowledge or text of any major subsequent amendments made to the law.

⁵ See Law No. 15.289 of 1982; Law No. 541 of 1984

Spring 1999 it finally obtained a judicial decision that the rental of pirate videos was a copyright infringement; the appellate court reportedly expanded the term distribution to include sale or rental. IIPA does not have the text of this case. Our point here is to show this rental issue remains of timely concern, and especially as it applies (will apply) to computer programs and sound recordings as required by TRIPS.

- Overbroad broadcasting compulsory license (TRIPS Article 13): One article in the copyright law describes almost a dozen cases involving acts which are “not deemed to be unlawful reproductions.” In particular, Article 45(10) permits the “transmission of sounds or images by broadcasting stations or any other means operated by the State, when such stations have no commercial purpose and operate solely for cultural purposes.” Nowhere does this provision mention anything about remuneration, which could have suggested a Berne-compatible outcome. IIPA and its members are looking to whether this article is currently being invoked as a matter of practice in Uruguay to the detriment of copyright owners. Nevertheless, as written the law violates TRIPS. According to industry counsel, it appears that this compulsory license has not been invoked, to date, as a matter of practice.
- Retroactivity (TRIPS Articles 9.1, 14.5, 14.6): Given the short terms of protection under the 1937 law (above), IIPA harbors concerns over Uruguay’s application of full protection to pre-existing works, phonograms and performances whose term of protection have not expired in the country of origin.

2. Copyright reform in Uruguay has languished for over five years, and the latest copyright bill, while a good improvement over the current law, continues to contain several deficiencies which require attention before passage. Swift passage of this legislation, including amending certain provisions, is needed.

For much of the last decade, Uruguay has been working on draft legislation. There have been numerous versions of copyright legislation over the years, first starting in the early 1990s, then followed by a bill in 1995, again in 1996, 1997, 1999 and another in 2000. To varying degrees, these bills did address many of the basic TRIPS deficiencies. However, all the bills have required additional improvement and refinement on TRIPS issues. It is important to recount, briefly, the history of these bills, since our industries have been able to support the stronger versions of these bills more actively than the weaker ones. In addition, legislation that was marginally acceptable before TRIPS is no longer acceptable. Now that Uruguay is bound by its TRIPS obligations, neither our industries nor the U.S. government should be compelled to support and accept any legislation which, at a minimum, is less than compatible with TRIPS. In fact, if Uruguay is to become the “Silicon Valley” of South America as it aspires to do, several additional amendments to the latest bill are needed to propel upward the level of protection that this bill would afford. The bottom line is that passage of modern legislation is long overdue, from both a bilateral and multilateral perspective, and passage of a new law is needed urgently.

The 1995 Copyright Bill

In 1995, the Uruguay Copyright Council solicited comments from interested parties on a draft law which, in general, represented a distinct improvement over the 1937 copyright law, but contained significant deficiencies which did not comply with international standards. In late 1996,

the Ministry of Education and Culture forwarded another draft to the Presidency for further review. It was hoped that the bill would be forwarded to Congress by the end of 1996, but that did not occur.

The 1997 Copyright Bill

After a revised draft was circulated in early 1997, the bill was presented to Congress in June 1997. Hearings before the Senate Education and Cultural Committee were held in August 1997. After much coordination, numerous parties, including the Copyright Council (comprised of local entities such as authors' rights groups), book publishers, the Business Software Alliance, and the Motion Picture Association (represented by the Uruguayan Video Union), the World Intellectual Property Organization (WIPO) and the Inter-American Development Bank (IDB) agreed to support the copyright bill. The 1997 bill represented a vast improvement over the current 1937 law and the drafts IIPA and the USG had reviewed in 1995 and in prior years. While that 1997 bill certainly was not perfect, the copyright industry representatives agreed that it would provide a fairly solid basis for copyright protection in Uruguay, and that it should be passed "as is."

IIPA reported in our 1998 Special 301 submission our fear that if the copyright bill were not passed by the end of 1998, it would risk becoming lost in the politics of the 1999 presidential campaign. In July 1998, Uruguayan President Dr. Julio Marie Sanguinetti met with Ambassador Charlene Barshefsky to discuss regional issues and intellectual property issues in his country. Reportedly the President responded positively to the Ambassador's entreaties for passage of the long-pending copyright bill, indicating that he would work with the Uruguayan legislature to pass a good law. Unfortunately, IIPA's concerns about timing came true, and copyright reform was not achieved that year.

The 1999 Copyright Bill

In 1999, the copyright bill was revised once again, except this time many of the positive improvements in the 1997 bill were removed. The 1999 bill included changes which lowered the levels of protection found in the 1997 version which industry had supported. For example: the term of protection was shortened; the section on border measures was deleted; the criminal penalties proposed for the unauthorized public communication of films or audiovisual works was made lower than those for infringements for other copyrighted materials; a TRIPS-compatible provision allowing courts to order confiscation and destruction of infringing copies and equipment and precautionary orders was removed. IIPA urged that it was important that the TRIPS-compatible enforcement mechanisms be included in any final legislation. The 1999 bill also continued to contain several troubling issues which industry had identified in the 1997 bill. These included the need to expand exclusive rights for producers of phonograms in on-demand situations, narrowing language affecting exceptions to protection, removing the lengthy provisions regulating contracts and leaving such decisions to private contractual negotiations between the parties, as examples. Despite a flurry of last-minute activity to try to pass the bill, the bill was not passed before the Uruguayan Senate went on recess on September 15, 1999, and the bill was not considered during the following Extraordinary Session.

The 2000 Copyright Bill

The 2000 copyright bill, like its 1997 and 1999 predecessors, does represent an improvement over the current 1937 Copyright Law. However, IIPA remains disappointed in the lack of progress Uruguay has made in addressing the difficulties and deficiencies in the proposed legislation. On January 1, 2000, Uruguay's obligations under the WTO TRIPS Agreement entered into effect. The copyright industries cannot support legislation which fails, at the very minimum, to satisfy TRIPS. It was another matter to support less-than-perfect legislation in the mid-1990s, a time when TRIPS was just concluded and the efforts to conclude the two new "digital" treaties of the WIPO were underway. One of the copyright industries' current challenges around the world is to elevate the levels of substantive copyright laws to account for changes in the digital environment. Modern copyright laws must respond to this fundamental change by providing that creators have the basic property right to control distribution of copies of their creations. Copyright owners must be able to control delivery of their works, regardless of the specific technological means employed. Many of these changes are contemplated by the two WIPO Treaties -- WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). In fact, Uruguay signed both these Treaties in 1996. Uruguay has yet to pass instruments of accession to deposit with WIPO. The Uruguayan government should be encouraged to deposit as soon as possible. As described below, Uruguay should also include the basic rights afforded in both treaties in its new legislation.

This bill was sent to the Congress on May 19, 2000, and is presently pending before the Culture Committee of the Representatives' Chamber of Congress. Some observers have indicated that the Congress may consider the bill in August 2000, but recent reports indicate that the bill may be stalled in Committee, further delaying passage of meaningful copyright reform in Uruguay. There have also been unconfirmed reports that the Committee is delaying consideration of the bill in order to make substantial changes that would strip the bill of many of its key provisions.

Many of the amendments in the 2000 copyright bill reflect raising the levels of protection up to TRIPS-level. For example, improvements include: expanding the scope of protected subject matter to include computer programs and databases; adding a distribution right (which includes both rental and importation); revising the rights of broadcasting and public communication; adding TRIPS-level protection for performers and producers of sound recordings. With respect to civil remedies, the 2000 bill provides that a civil or criminal judge can authorize a judicial inspection without advance notice to the target; this is an essential tool for the industries. The bill does appear to recapture those works and other "productions" (presumably including phonograms) which fell into the public domain by giving them the longer term of protection set forth under the bill.

While a scant few of the historical problems have been addressed in the 2000 bill, most of the deficiencies found in both the 1997 and 1999 bills sadly remain in the 2000 bill. IIPA urges that the bill be amended to address and correct these longstanding deficiencies and be passed swiftly. Below is a description of our key concerns with the pending legislation:⁶

Criminal penalties: some good news, no news and a step backward : The criminal penalties section in the 2000 bill has been revised yet again. In general, the basic sanction for piracy remains the same in both versions -- 3 months to 3 years in jail -- for all the listed offenses, and for

⁶ This summary is based on the Spanish text of the copyright bill which was the version drafted by the Uruguayan Executive and submitted to the Congress this spring.

all protected material (author's rights and neighboring rights alike) with one exception. The copyright industries' experience in Latin America show that significant criminal penalties, sufficient to deter piracy and actually imposed, is a critical element in fighting piracy. High sanctions must be aimed at deterring those involved in piracy, major distributors and labs and organized crime elements, not street vendors. The 2000 bill tracks the 1999 structure, with some variations. Below we identify four key issues regarding criminal penalties:

- First, the good news is that the 2000 bill reinserts several provisions found earlier in the 1997 bill but removed in the 1999 version, including: one which allows the courts to order the confiscation and destruction of infringing copies as well as equipment and packaging used in the manufacture of said copies (Article 164), another requiring publication of the sentence in the newspapers at the defendant's cost (Article 165), and importantly, giving the judicial authority to issue precautionary measures like injunctive orders (Article 166). The first and third elements are TRIPS requirements.
- Second, there has been no change in the article for the unauthorized public communication of audiovisual or cinematographic works, which continues to contain lower penalties than similar infringing acts for other works (see Article 161 which provides 3 to 24 months of prison compared to the general rule of 3 months to 3 years found in Articles 158, 159 and 160). The maximum term in Article 161 should be expanded an additional 12 months to follow the general rule applicable to other works.
- Third, the 2000 bill continues the long silence regarding fines as criminal sanctions. There are no levels of fines including in the copyright bill, and IIPA has no knowledge at this time whether other Uruguayan criminal codes may afford such fines. Ideally both jail terms and fines should be available. In addition, we do not know whether other Uruguayan laws permit defendants to commute/buy-out prison sentences. This is important to know because if Uruguay has mandatory prison terms, they could serve as a deterrent (assuming, of course, that cases actually make it all the way through the Uruguayan judicial system).
- Fourth, deleted from the 2000 bill was a provision which provided technological protection measures. Technological protections to prevent unauthorized access to or use of copyrighted material, or illicit dissemination of protected works, are key enabling technologies for the global electronic marketplace. Article 164 of the 1999 bill prohibited the manufacture, import, sale, lease or circulation in any manner devices or systems that (a) aid in deciphering an encoded satellite signal-carrying programs, and (b) deactivate or evade in any manner technical devices used by rightsholders to protect their rights. The two WIPO Treaties contain virtually identical provisions that require countries to "provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures" that copyright owners use to "restrict acts, in respect of their works, which are not authorized by the authors concerned or permitted by law." IIPA also recommends that Uruguay take steps to include in its legislation text which would implement Uruguay's WIPO Treaties obligations regarding rights management information (RMI). Technological advances offer the prospect that copyright owners will increasingly use technology, not only to prevent unauthorized access to or copying of copyrighted materials, but to provide opportunities for licensed access and use through rights management information systems.

- If Uruguay is to continue to hold itself out as a new “Silicon Valley” of Mercosur, then it is important that it implements the WIPO Treaties (see Article 12 of the WCT, Article 19 of the WPPT).

Border measures: The 2000 Bill reinserts a provision from the 1997 bill which had been deleted in the 1999 version. Article 147 in the pending bill provides that the Customs Department must *ex officio*, or at the request of an interested party, hold suspect shipments entering the country for ten days. This is a positive first step in starting to address Uruguay’s obligations under Part III of the TRIPS Agreement. IIPA points out that Article 147 does contain an exception for articles brought in as “personal use.” While many laws provide such an exception, several Alliance members have expressed concern that this exception may be broadened to a huge loophole, as a matter of practice. We will have to see how well Uruguayan customs officials actually place holds on suspect shipments. Nevertheless, TRIPS Articles 51-60 contain much more detailed information regarding customs procedures at the border. Article 147 as drafted only goes to a small portion of TRIPS. For example, customs does not have the explicit power (at least not under proposed Article 147) to detain the suspect shipments once they have notified the rightsholder. It appears that the copyright holders might have to go to court to obtain a judicial order to detain the goods (see Article 153(2)). IIPA has no knowledge whether the separate Uruguayan Customs law would permit such detention, nor do we have any information on whether the substantive provisions of Uruguay’s customs legislation currently and fully satisfies TRIPS. Given the amount of pirated and counterfeited product which crosses the Uruguayan border with ease, we doubt that such measures, even if on-the-books, are properly enforced.

Exclusive rights for record producers: Like the 1999 bill, the 2000 bill fails to provide producers of phonograms with an exclusive right for public communication of their phonograms as in on-demand situations. As mentioned above, it is critical for copyright owners such as record producers to have the right to control the delivery of their creative materials in the digital age, regardless of the specific technological means employed.

Term of protection: Both the 1999 and 2000 bills shortened the proposed term of protection from life plus 70 years (or 70 years after publication/fixation) in the 1997 bill down to life plus 50 (the TRIPS minima). This shorter term applies to everything -- literary works, audiovisual works, protection for producers of phonograms, for performers and for broadcasting organizations. As a small consolation, it is true that this 50-year term is compatible with TRIPS and does improve on the inadequate 40-year term in the current 1937 Uruguayan copyright law. Interestingly, the 2000 bill affords the longer 70-year term of protection only to orchestras and other choral-type groups (see Article 115). IIPA recommends that the longer terms, which reflect the international trend, be inserted into the 2000 bill for all protected subject matter. In addition, term should be 95 years from first publication in cases where the author is a legal entity and for producers of phonograms.

Broadcast compulsory license: The 1937 Copyright Act contains a TRIPS-incompatible broadcasting compulsory license. Article 45(10) permits the “transmission of sounds or images by broadcasting stations or any other means operated by the State, when such stations have no commercial purpose and operate solely for cultural purposes.” The 2000 bill properly removes that objectionable provision. There is, however, another broadcasting compulsory license proposed in the bill. Article 43 (in both the 1999 and 2000 bills) provides that it is legal for a broadcaster, without authorization from the author (copyright owner) but with the previous payment of remuneration, may publicly retransmit or transmit publicly by cable a work originally

broadcast by the broadcaster with the copyright owner's consent, as long as the retransmission or public transmission was simultaneous with the original broadcast and that the work transmitted by broadcasting or public transmission was unaltered.

IIPA makes a few observations for the record. The preferred approach is for copyright owners and broadcasters to negotiate terms of payment and uses of their works via contract. However, the Berne Convention/TRIPS does permit countries to determine conditions under which the right of broadcasting may be exercised, and this can include compulsory licenses. It is imperative, however, that any compulsory licenses follow the terms of Berne Article 11bis. A key concern with this provision is that it must in no way, shape or form be interpreted or applied in such a manner which would permit broadcasters to transmit or retransmit (via either rebroadcasting or via cablecasting) copyright-protected audiovisual programming over the Internet. Such "streaming" should not be subject to any compulsory licensing scheme. We and our members harbor a concern that Uruguayan broadcasters who also happen to own cable systems may expand the scope of this compulsory license and use their cable infrastructure to transmit programming to the Internet.

Overbroad exceptions to protection: The 2000 bill does not appear to make any changes to the various objectionable provisions IIPA identified in prior draft legislation.

- Article 45 is the catch-all provision which applies to all the exceptions outlined in Articles 38-44. Article 45 appears to be an attempt to reflect TRIPS Article 13 on limitations and exceptions, but as drafted, it falls far short. TRIPS Article 13 requires that member nations "shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder." Article 45 of the bill must be rewritten in this manner.
- Article 39(1) permits photocopying of works for teaching or examination purposes in non-profit institutions without the authorization or payment of a royalty; this is the kind of activity requiring authorization and/or payment.
- Article 38(5) on exceptions to protection would require the Executive Branch to present a bill regarding a "moving image archive" within a year after the new copyright law enters into effect. In the interim while the copyright law has not yet entered into force, the National Archive of Images of SODRE and Cinemateca Uruguay shall be governed by Law 9.739 (the 1937 Copyright Law). The copyright bill should be revised to clearly provide that the deposit of audiovisual works in any archive shall be voluntary.
- Article 42 contains an ephemeral broadcasting exception. However, the article allows broadcast recordings of an "exceptional documentary value" to be archived for an unlimited time. While we object to this broad and subjective language, we recommend that at the very least this be limited to a single copy.

Private copying levy and national treatment: Articles 34 to 37 and Article 44 of the Bill contain a broad private copying exception, and also a "private copy levy." A digital or high definition analog copy is identical to the original master copy and can be easily transmitted to a multitude of other users. The failure to prohibit such private copying of works in these new formats is a serious

omission. The bill should make clear that the exception for private copying does not apply to copying in digital or high definition analog formats. Furthermore, it remains unclear whether the collection and distribution of the blank tape levies collected for reproduction of works in graphic form, by video, by sound recordings will be based on the principle of national treatment. While the bill does provide for the general application of national treatment, it will be important to monitor the process for the collection of such levies, which will be established by regulation within 180 days after the copyright law enters into effect.

Moral rights: Moral rights should be waivable (or said another way, an author should be able to exercise his or her moral rights by consenting to acts that might otherwise violate moral rights). Because these are personal rights, they should not subsist after the author's death, nor should they be transferred to other entities, including government agencies (e.g., Articles 18, 24, 111). Furthermore, both the 1999 and 2000 bills expand the scope of moral rights of attribution and integrity for performers. Article 111.2 explicitly states that the activities of editing, compacting, dubbing and impairing the sound or audiovisual fixations shall avoid "unjustified mutilation" of these performances. Fixations of sounds or audiovisual editing, dubbing and impairing of the fixations of their performances. Activities like dubbing or editing a motion picture (which by definition consist of "mutilating" performances) are normal and reasonable practices of the audiovisual industry. Therefore, they should be explicitly excluded from the scope of the performer's moral right of integrity. In the 1997 bill, these activities were properly and explicitly excluded from the scope of the performer's moral right of integrity. We recommend that the 1997 bill language to exclude these specific moral rights be reinserted.

3. Criminal enforcement in Uruguay is ineffective and fails to deter piracy.

The Criminal Procedures Code finally has entered into effect.

Recent amendments to the Criminal Procedure Code make copyright infringement a "public" action by which the Uruguayan authorities can initiate actions. Although amendments in 1997 changed criminal copyright enforcement from a public to a private penal system, new amendments to the Criminal Procedures Code were passed on December 21, 1999 (Law 17.221), and published in the Official Gazette on January 13, 2000. The law amended the 1997 Criminal Procedures Code to provide the following: (a) Article 91 of the Criminal Procedures Code now establishes a "public" penal action for copyright infringements, and (b) Article 339.8 of the Criminal Procedures Code now permits the extradition of copyright infringers. These amendments are very positive ones. Having a "public" action is essential to involving the State in protecting copyrights. Allowing the extradition of copyright infringers is particularly important because piracy is a multinational enterprise, and not all pirates doing business in Uruguay are Uruguayan nationals. These 1999 amendments were accomplished before the February 1, 2000 deadline, the date on which the new Criminal Procedures Code entered into effect. The Code now provides that litigation will proceed in a hearings format instead of using a code-pleading system; that the prosecutor will play a more active role since his office will handle the complaint; that the Supreme Court of Justice will be required to appoint official experts to assist judges in inspecting suspected premises; and that raids will be conducted by either police or court officials.

While this law is finally in force on the books, there is a great need for improvement on the application of this criminal law to the state of piracy in Uruguay. Piracy continues to be widespread, and adversely affects the development of a market for legitimate copyrighted materials.

Criminal enforcement, in practice, is not effective.

The legal enforcement framework in Uruguay depends on judicial precedent, because the copyright law is antiquated. Such a legal framework is not viable over the long term and cannot be relied on for true investment and marketing decisions. For example, it was only in the Spring of 1999 that MPA was able to secure judicial ratification of an indictment for the rental of pirate videos. Since the law does not specifically state that rental or sale of pirate videos is a violation of copyright, the alleged pirate in this case presented the lack of definition as a defense. MPA acknowledges that although the appellate court did expand the term "distribution" to include sale or rental, it does not provide an adequate and reliable remedy.

The estimated level of video piracy in Uruguay is 65%. Final information on MPA criminal enforcement activities in Uruguay during 1999 are not available at the time of this petition's filing. However, in 1998, MPA initiated 89 investigations and 240 inspections in Uruguay. Thirty-two raids were conducted, resulting in the seizures of 2,180 pirate videocassettes and 7 VCRs. Thirty-two criminal actions were commenced. Although these actions were encouraging at that time, the police still do not provide sustained, reliable cooperation in enforcement actions. In the courts, MPA obtained 15 decisions (14 favorable, 1 unfavorable). The levels of penalties in these cases varied from 3 months to 24 months in prison. However, in most of these cases, the penalties were suspended, and the judges gave the defendants sentences of probation.

The recording industry conservatively estimates that the level of piracy is 35% of the market. The piracy situation remains dark, given the growth of CD burners and CD-R replication in Uruguay. The police have not been instructed to take actions against copyright pirates doing business in the main street markets (known as *ferias callejeras*) of Montevideo, Salto, Paisandu and Tacuarembó, where music, video, business software and entertainment software are easily found. The police departments (*seccionales de la policia*) continue to request search warrants in order to act (even in streets and other public places) despite the fact that the new Criminal Code allows them to take "public actions" on their own initiative. The recording industry has initiated 11 actions in 2000, and one case was produced by the police on its own initiative. In comparison, no criminal actions were taken against record pirates in Uruguay during 1999. Prosecutors are still hesitant to apply the law because they have not received specific guidelines from their superiors regarding these cases.

In addition, increased attention by the police and prosecutors is needed to provide an effective deterrent against piracy. After the copyright bill passes, Uruguayan police, prosecutors and judges will be faced with enforcing these laws in a much more effective manner than at present.

4. Uruguay's border enforcement system does not work, having failed to halt large amounts of pirated product from entering the country.

With its proximity to Paraguay and the growing problem of pirated and counterfeited goods crossing its borders, Uruguay is faced with a major challenge to improve its border measures.

Customs is a key element in the effort to control the contraband of legal and illegal product. Enforcement at the Uruguayan borders needs to be significantly improved, especially given the growth of optical media piracy in the Mercosur region.

5. Civil enforcement is ineffective because of procedural obstacles, including substantial delays and high bond requirements for civil litigation of copyright infringement.

Due in part to Uruguay's outdated copyright law, business software producers have encountered great difficulties in protecting their products. During the last several years, the BSA has sought to conduct an aggressive anti-piracy program in Uruguay. Unfortunately, BSA has run into significant obstacles to software enforcement and, if anything, the legal situation has deteriorated over the last two years. Due to the lack of an effective copyright law, the BSA could not conduct any criminal anti-piracy actions during the last two years in Uruguay.

The Uruguayan courts are imposing substantial delays in copyright enforcement actions. After a BSA investigation uncovers evidence of software piracy, BSA requests the courts to schedule an inspection of the suspected pirate. The courts routinely delay granting judicial inspections of suspected copyright infringers' premises for three or more months. Such delays have recently resulted in ineffective actions because the evidence of piracy may be moved or may have disappeared altogether between BSA's investigation of a suspected software pirate and the actual date of the raid. These delays put software producers at an unnecessary disadvantage when they try to enforce their rights in Uruguayan courts.

Onerous bond requirements -- ranging from \$50,000 to \$100,000 per case -- were imposed in the last half of 1998 and early 1999 in several separate legal actions brought by member companies of the BSA against Montevideo companies suspected of engaging in software piracy. Such onerous bond requirements are "unnecessarily complicated or costly," in contravention of Uruguay's obligations under TRIPS Articles 41 and 50.3. These bonds impose substantial obstacles to the effective enforcement of intellectual property rights by creating an expensive barrier for software producers who are trying to enforcement their rights in Uruguayan courts. Although in practice some courts have recently diminished their bond requirements, it is still within the judges' discretion as to whether the court will require bonds before a BSA raid. High bonds pose a serious obstacle to the BSA's enforcement campaign in Uruguay.

6. Because of the high levels of piracy, the delays in copyright reform and the ineffective operation of the Uruguayan enforcement system, U.S. copyright owners suffer economic losses.

The levels of copyright piracy in Uruguay, and their corresponding losses to U.S. copyright owners, have remained at high levels over the past few years.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1995 – 1999

INDUSTRY	1999		1998		1997		1996		1995	
	Loss	Level								
Motion Pictures	2.0	65%	2.0	65%	2.0	75%	2.0	65%	3.0	43%
Sound Recordings / Musical Compositions	4.0	35%	3.0	25%	2.0	25%	2.0	25%	0.1	19%
Computer Programs: Business Applications ⁷	16.0	70%	13.1	72%	11.0	74%	13.9	80%	14.0	84%
Computer Programs: Entertainment Software	6.9	70%	7.6	74%	7.0	70%	7.2	73%	6.9	71%
Books	2.0	NA								
TOTALS	30.9		27.7		24.0		27.1		26.0	

Attached as Appendix B is the methodology used by IIPA members to calculate estimated losses due to copyright piracy. This methodology was also submitted to USTR in IIPA's 2000 Special 301 submission. Below is an overview of the state of copyright piracy in Uruguay.

The majority of business software piracy in Uruguay revolves around illegal copying of computer programs. The illegal software is then sold in one of two ways. Sometimes pirates will sell illegal software directly to consumers, who may or may not be aware that they are buying illegal products. More commonly, computer resellers load the illegal software onto computer hard drives and the sell the loaded computers. Again, the purchasers may be told that they are buying legal products, or they may be complicit in the piracy. Although the legal and educational campaign of the BSA contributed to a slight reduction in the piracy rate in Uruguay over the last year, the overall growth in the market for legitimate software contributed to an increase in estimated losses due to piracy.

Video piracy continues to be Uruguay's most serious piracy problem for the audiovisual industry, with a 65% piracy rate. The primary problem is back-to-back copying in individual video clubs. Uruguay does not have significant, domestic pirate video duplication laboratories. Pre-video-release pirate tapes in the market are believed to originate mainly in illegal Paraguayan laboratories. Since 1998, television cable piracy has increased, particularly in the interior of the country. Some cable services continue to offer a dedicated film channel using videos that are edited to include advertisements. A continuing seasonal problem is the unauthorized public performance of videos, primarily over closed-circuit cable systems in the tourist hotels in Punta del Este. Limited cable television piracy also exists in Uruguay, primarily in the interior, where small cable operators make unauthorized transmissions of videos to their subscribers. Optical media piracy does exist, and mainly involved the importation of DVD Zone 1 material (of which Uruguay is not part of).

⁷This list includes BSA's final estimates for 1999. In IIPA's 2000 Special 301 report, BSA reported that its preliminary 1999 estimates for Uruguay were \$15.9 million in losses at a 67% level of piracy.

For the recording and music industries, the main piracy problem continues to be the importation of pirate CDs and bootleg recordings. CD-R replication is a real and present threat. Uruguay is being used as a transshipment center for pirate product bound to Brazil via Paraguay. Uruguay is also serving as a center to send infringing products into Brazil via Rio Grande Do Sul / Santa Catarina. Estimated trade losses and levels of piracy due to recording and music piracy significantly increased in 1999, and the situation is likely to worsen in 2000, unless specific action by the government is taken to address this problem on the criminal level.

Piracy of entertainment software (including videogame CD-ROMs and cartridges, personal computer CD-ROMs and multimedia products) declined slightly over the past year. As with other Mercosur countries, Uruguay is beginning to be affected by the influx of pirate optical media product from Asia.

The book publishing industry reports no improvement in reducing levels of book piracy in Uruguay over the past year. Photocopying remains the main source of piracy.

CONCLUSION

For the reasons stated in this submission, IIPA requests that the TPSC initiate a review the GSP country eligibility of Uruguay for its failure to provide adequate and effective copyright protection for U.S. copyright owners. If requisite improvements are not made in Uruguay to remedy these deficiencies soon, then IIPA requests that the U.S. suspend its eligibility or withdraw GSP benefits of Uruguay, in whole or in part.

Respectfully submitted,

Eric H. Smith
President
International Intellectual Property Alliance

APPENDIX A

Statutory Basis for the Country Eligibility Practice Review of the Intellectual Property Rights Practices of URUGUAY under the Criteria of the Generalized System of Preferences

The Generalized System of Preferences (GSP) program of the United States provides unilateral, non-reciprocal, preferential duty-free entry for over 4,650 articles from approximately 140 countries and territories designated beneficiary countries and territories for the purpose of aiding their economic development through preferential market access. The GSP program was instituted on January 1, 1976, and authorized under Title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.) for a 10-year period. Since 1997, an additional 1,770 items are eligible for GSP treatment for specified least developing beneficiary developing countries.

The GSP program has been renewed several times since its establishment. Most recently, in 1999 Congress reauthorized the GSP program through September 30, 2001.⁸ What was unique about this extension was that, for the first time in several years, Congress extended the GSP Program for more than a single year. IIPA has supported a multi-year extension of this program to support the use of the GSP program as a tool to protect the interests of U.S. copyright owners around the world.

Provisions tying intellectual property protection to trade benefits were first added to the Trade and Tariff Act of 1984 [hereinafter "TTA 1984"]. Title V of the TTA 1984, known as the GSP Renewal Act of 1984,⁹ renewed the GSP Program and specifically required the President to consider intellectual property protection in determining whether to designate a developing country as eligible for GSP benefits. While there has been a minor change in the statutory language between the GSP Renewal Act of 1984 and the GSP Renewal Act of 1996, the GSP provisions as related to IPR remain essentially the same as in 1984. The legislative history of the 1984 Renewal Act is particularly instructive on the important link between GSP benefits and strong IPR protection.

The GSP Renewal Act of 1984

In the GSP Renewal Act of 1984, Congress specified conditions that GSP beneficiary countries must meet in order to gain and maintain their preferential trading status. In particular, one of these express conditions (which Congress also delineated as one "purpose" of the GSP Program) was to encourage developing countries "to provide effective means under which foreign nationals may secure, exercise, and enforce exclusive intellectual property rights."¹⁰

⁸ See Extension of Duty-Free Treatment under Generalized System of Preferences, Section 508 of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. No. 106-170 (codified at 19 U.S.C. 2465).

⁹ See the Generalized System of Preferences Renewal Act of 1984, Title V, Pub. L. No. 98-573 (1984) (codified at 19 U.S.C. 2461-2465).

¹⁰ See Section 501(b)(9)(B) of the GSP Renewal Act of 1984.

The legislation required the President to apply mandatory and discretionary criteria with respect to IPR protection as a condition to a country achieving “beneficiary” status under the GSP Program. The mandatory criterion prohibited the designation of a country from becoming a “beneficiary developing country” if, for example, “such country has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens.” See Section 503(b)(4) of the GSP Renewal Act of 1984, now codified at 19 U.S.C. 2462(b)(2)(D).

The GSP Renewal Act of 1984 added as a discretionary criterion, in determining whether to designate a developing country as eligible to receive GSP duty-free trade treatment, that

the President shall take into account ... the extent to which [each] country is providing adequate and effective means under its laws for foreign nations to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights.

Section 503(c)(5) of the GSP Renewal Act of 1984, codified at 19 U.S.C. 2462(c)(5). The Senate Finance Committee Report explained that:

To determine whether a country provides “adequate and effective means,” the President should consider the extent of statutory protection for intellectual property (including the scope and duration of such protection), the remedies available to aggrieved parties, the willingness and ability of the government to enforce intellectual property rights on behalf of foreign nationals, the ability of foreign nationals effectively to enforce their intellectual property rights on their own behalf and whether the country’s system of law imposes formalities or similar requirements that, in practice, are an obstacle to meaningful protection.

S. Rep. No.98-485, 98th Cong., 2d Sess. At 11 (1984). The Senate Report also noted:

In delegating this discretionary authority to the President, it is the intent of the Committee that the President will vigorously exercise the authority to withdraw, to suspend or to limit GSP eligibility for non-complying countries

Where valid and reasonable complaints are raised by U.S. firms concerning a beneficiary country’s market access policy or protection of intellectual property rights, for example, it is expected that such interests will be given prominent attention by the President in deciding whether to modify duty-free treatment for that country.

Id. at 12-13 (emphasis added). The House Ways and Means Committee stated that “countries wishing to reap the benefits of preferential duty-free access to the U.S. market must fulfill international responsibilities” in the intellectual property area. House Rep. No. 98-1090, 98th Cong., 2d Sess. at 12 (1984).

The IPR criteria are a condition, not only for obtaining GSP benefits in the first place, but also for retaining them. The 1984 Act authorized the President to “withdraw, suspend, or limit the application of the duty-free treatment accorded under Section 501 of this title with respect to any

article or any country" and requires the President, when taking any such action, to "consider the factors set forth in Sections 501 and 502(c)." TTA 1984 Section 505(a)(1); TA 1974 Section 504(a)(1), as amended; 19 U.S.C. 2464(a)(1) (emphasis added). The Act also created a system of "general reviews" to ensure that these statutory criteria are met. TTA 1984 Section 505(b); TA 1974 Section 504(c)(2)(A), as amended; 19 U.S.C. 2464(c)(2)(A); see also 15 C.F.R. 2007.3.

IIPA requests that this GSP Subcommittee follow the explicit intent of Congress, and advise the President to "vigorously exercise" his authority to withdraw, suspend or limit GSP eligibility of Uruguay for its non-compliance with the statutory criterion on IPR in the GSP Program.

The GSP Renewal Act of 1996

When the GSP Program was reauthorized in August 1996, the language of the IPR discretionary criterion for GSP eligibility in Section 502(c)(5) was simplified slightly and now requires the President to "take into account the extent to which such country is providing adequate and effective protection of intellectual property rights."¹¹ The expired law specified (as discussed above) that each beneficiary country provide "adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights." Otherwise, the GSP Renewal Act contains identical IPR provisions, including "mandatory" criteria denying GSP status to countries that directly or indirectly expropriate U.S. property (including intellectual property), and authorizing the President to withdraw, suspend or limit GSP privileges based on failure to meet the IPR criteria.

¹¹ GSP Renewal Act of 1996, Title I, Subtitle J, of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (codified at 19 U.S.C. 2462(c)(5)).

APPENDIX B

Methodology Used to Estimate Trade Losses due to Copyright Piracy And Levels of Piracy

Estimated trade losses due to piracy are calculated by the member associations of the International Intellectual Property Alliance (IIPA). Since it is impossible to gauge losses for every form of piracy, we believe that our members' statistics for 1999 (and prior years) actually underestimate the losses due to piracy experienced by the U.S. copyright-based industries. The methodology in this petition is identical to that which has been used by IIPA members in the IIPA's submissions to the U.S. Trade Representative in the annual Special 301 review.

TRADE LOSSES DUE TO PIRACY

In general, pirate production for export for the records and music, computer programs and book publishing industries is included in the loss figure for the country of manufacture, not the country of ultimate sale. For the motion picture industry, losses are generally counted in the country in which the sale of product occurs.

COMPUTER SOFTWARE: BUSINESS APPLICATIONS

The Business Software Alliance (BSA)'s calculation method compares two sets of data -- the *demand* for new software applications, and the legal *supply* of new software applications.

Demand: PC shipments for the major countries are estimated from proprietary and confidential data supplied by software publishers. The data is compared and combined to form a consensus estimate, which benefits from the detailed market research available to these member companies.

Two dimensions break the shipments into four groups. Splitting the PC shipments between Home and Non-Home purchasers represents the market segments of each country. The PC shipments are also compared to the change in the installed base of existing PCs. The part of PC shipments which represents growth of the installed base is called "new shipments" and is separated from the "replacement shipments" which represent new PCs that are replacing older PCs.

A scale of the installed base of PCs by country compared to the number of white-collar workers was developed. PC penetration statistics are a general measure of the level of technological acceptance within a country. The level of penetration, for a variety of reasons, varies widely from country-to-country. This level is then ranked and each country is assigned to one of five maturity classes.

The number of software applications installed per PC shipment is provided by member companies, and the following ratios for the four shipment groups are developed:

Home-New Shipments
Non-Home - New Shipments
Home - Replacement Shipments
Non-Home - Replacement Shipments

For each shipment group, ratios are developed for each of five maturity classes. U.S. historical trends are used to estimate the effects of lagged technological development by maturity class.

Piracy rates can vary among applications. Grouping the software applications into three Tiers and using specific ratios for each Tier further refined the ratios. The Tiers were General Productivity Applications, Professional Applications, and Utilities. These were chosen because they represent different target markets, different price levels, and it is believed, different piracy rates.

Software applications installed per PC shipped are researched and estimated using these dimensions:

1. Home vs. Non-Home
2. New PCs vs. Replacement PCs
3. Level of Technological Development
4. Software Application Tier

From this work, a total software applications installed estimate was calculated for each country.

Supply: Data was collected by country and by the 26 business software applications. Shipment data was limited in some instances, hence, uplift factors were used to estimate U.S. and world-wide shipments.

Piracy Estimates: The difference between software applications installed (demand) and software applications legally shipped (supply) equals the estimate of software applications pirated. The piracy rate is defined as the amount of software piracy as a percent of total software installed in each country.

Dollar Losses: The legal and pirated software revenue was calculated by using the average price per application. This is a wholesale price estimate weighted by the amount of shipments within each software application category.

To develop the wholesale dollar losses for U.S. software publishers, the wholesale dollar losses due to piracy were reduced by the ratio of the software shipped by U.S. software publishers as a percent of software shipped by all software publishers.

COMPUTER PROGRAMS: ENTERTAINMENT SOFTWARE

The calculation method of the Interactive Digital Software Association (IDSA) uses market data of dedicated platform and PC entertainment software in both compact disc and cartridge

formats, and hardware shipments along with an estimate of the level of piracy in the target country. Where possible, losses due to exports and/or online piracy are included. Export losses are attributed to the source country, where possible. Here are the basic steps involved in determining losses to entertainment software publishers:

1. For each dedicated platform, the 1998 entertainment software units are divided by hardware units. This results in the number of applications per dedicated platform.
2. For each multimedia PC, the 1998 entertainment software units are divided by hardware units. This results in the number of entertainment applications per multimedia PC.
3. The number of applications per PC or dedicated platform is estimated (this varies country-to-country). The actual number of applications per dedicated platform or PC is then subtracted, resulting in the number of illegal applications per hardware unit.
4. The number of illegal applications per hardware unit is divided by the estimated number of applications per hardware unit, resulting in the estimated percentage of illegal software units in use.
5. The illegal software units per hardware unit is multiplied by the average wholesale price (which varies country-to-country) which is multiplied by the number of legitimate hardware units. This results in the dollar amount lost to piracy.

MOTION PICTURES

Many factors affect the nature and effect of piracy in particular markets, including the level of development of various media in a particular market and the windows between release of a product into various media (theatrical, video, pay television, and free television). Piracy in one form can spill over and affect revenues in other media forms. Judgment based on in-depth knowledge of particular markets plays an important role in estimating losses country by country.

Video: Losses are estimated using one of the following methods:

1. For developed markets:
 - a. The number of stores that rent pirate videos and the number of shops and vendors that sell pirate videos are multiplied by the average number of pirate tapes rented or sold per shop or vendor each year;
 - b. The resulting total number of pirate videos sold and rented each year in the country is then multiplied by the percent of those pirate videos that would have been sold or rented legitimately and adjusted to reflect the US producers' share of the market.
2. For partially developed markets:
 - a. The number of legitimate videos sold or rented in the country each year is subtracted from the estimated total number of videos sold or rented in the country annually to estimate the number of pirate videos sold or rented annually in the country;

- b. The resulting total number of pirate videos sold and rented each year in the country is then multiplied by the percent of those pirate videos that would have been sold or rented legitimately and adjusted to reflect the US producers' share of the market.
- 3 For fully pirate markets:
- a. Either: (a) the number of blank videos sold in the country annually is multiplied by the percent of those tapes used to duplicate US motion pictures to equal the number of pirate copies of US motion pictures sold in the country each year; or, (b) the number of VCRs in the country is multiplied by an estimated number of US motion pictures on video that would be rented and sold per VCR per year;
 - b. The figure resulting from each of the foregoing calculations is an estimate of the number of legitimate sales of videos of US motion pictures that are lost each year in the market due to video piracy. These estimates are adjusted to reflect the wholesale price of legitimate videos, to equal losses due to video piracy.

TV and Cable: Losses are estimated using the following method:

1. The number of TV and cable systems that transmit U.S. motion pictures without authorization is multiplied by the average number of U.S. motion pictures transmitted without authorization by each system each year;
2. The resulting total number of illegal transmissions is multiplied by the average number of viewers per transmission;
3. The number of viewers of these illegal transmissions is allocated among those who would have gone to a theatrical exhibition or who would have rented or purchased a legitimate video. The number of legitimate transmissions of the motion picture that would have been made is also estimated;
4. These figures are multiplied by the producers' share of the theatrical exhibition price, the wholesale share of the video cost or the license fee per legitimate transmission, as appropriate, to estimate the lost revenue from the illegal transmissions.

Public Performance: Losses are estimated using the following method:

1. The number of vehicles and hotels that exhibit videos without authorization is multiplied by the average number of viewers per illegal showing and the number of showings per year;
2. The resulting total number of viewers of unauthorized public performances is allocated among those who would have gone to a theatrical exhibition or who would have rented or purchased a legitimate video. The number of legitimate TV and cable transmissions that would have been made of the motion pictures is also estimated;

3. These figures are multiplied by the producers' share of the theatrical exhibition price, the wholesale share of the video cost or the license fee per legitimate transmission, as appropriate, to estimate the lost revenue from the illegal performances.

SOUND RECORDINGS AND MUSICAL COMPOSITIONS

RIAA generally bases its estimates on local surveys of the market conditions in each country. The numbers produced by the music industry generally reflect the value of sales of pirate product rather than industry losses, and therefore undervalue the real harm to the interests of record companies, music publishers, performers, musicians, songwriters and composers.

Where RIAA has sufficient information relating to known manufacture of pirate recordings that emanate from a third country, this loss data will be included in the loss number for the country of manufacture rather than the country of sale. In certain instances where appropriate, RIAA employs economic data to project the likely import or sale of legitimate sound recordings, rather than merely reporting pirate sales. In these instances, projected unit displacement is multiplied by the wholesale price of legitimate articles in that market rather than the retail price of the pirate goods.

BOOKS

The book publishing industry relies on local representatives and consultants to determine losses. These experts base their estimates on the availability of pirate books, especially those found near educational institutions, book stores and outdoor book stalls. A limitation here is that experts can only gauge losses based on the pirated books that are sold; it is impossible to track losses for books which are pirated but not available for public purchase. The trade loss estimates are calculated at pirate prices which are generally (but not always) below the prices which would be charged for legitimate books. Also included are conservative estimates of losses due to unauthorized systematic photocopying of books.

PIRACY LEVELS

Piracy levels are also estimated by IIPA member associations and represent the share of a country's market that consists of pirate materials. Piracy levels together with losses provide a clearer picture of the piracy problem in different countries. Low levels of piracy are a good indication of the effectiveness of a country's copyright law and enforcement practices. IIPA and its member associations focus their efforts on countries where piracy is rampant due to inadequate or non-existent copyright laws and/or lack of enforcement.