



April 6, 2001

Dr. Jon Rosenbaum
Chairman of the GSP Subcommittee
of the Trade Policy Staff Committee
600 17th Street, NW, Room 518
Washington, DC 20508

Re: Post-Hearing Brief for the Country
Practices Review of Brazil in the 2000
GSP Annual Review
Case: Brazil 010-CP-00

To the GSP Subcommittee:

The International Intellectual Property Alliance (IIPA) hereby submits this Post-Hearing Brief for the GSP country practices review of Brazil's intellectual property practices. We re-confirm our March 9 testimony and make additional observations here.

Our Testimony at the Hearing

IIPA would like to reinforce the testimony we provided (IIPA, along with two colleagues, Brendan Hudson of the motion picture industry and Gabriel Abaroa of the recording industry) at the March 9 hearing. There we described the problems of piracy and several key deficiencies in the Brazilian criminal, civil, customs and judicial enforcement structures. Our written submissions have detailed these points.

The copyright industries are initially heartened by the increased attention the Brazilian government has given recently to the problem of copyright piracy, as IIPA and our colleagues have indicated both at the hearing and in our public filings. We were pleased to hear that the Brazilian government, in its February 23, 2001 pre-hearing brief and at the GSP hearing, recognized and expressed the view that it too has a vested interest in addressing the problem of copyright piracy because Brazilian creators also suffer from this theft. Nonetheless, we must emphasize to the Subcommittee that thus far there has been no tangible improvement in Brazil in improving enforcement on-the-ground.

The Inter-Ministerial Committee to Fight Piracy

Mr. Aluisio G. de Lima-Campos of the Brazilian Embassy reported at the March 9 hearing that President Cardoso had not yet signed the decree implementing the Inter-Ministerial Committee to Fight Piracy. On March 13, this decree was published. Attached to this letter is our informal translation of this decree (Appendix A). This Inter-Ministerial Committee will be led by the Ministry of Justice, and will be composed of three representatives from the Ministry of Justice, two from the Ministry of Science and Technology, two from the Ministry of Culture, two from the Ministry of Development, Industry and Foreign Trade, two from the Ministry of Treasury, and two from the Ministry of Foreign Affairs. As of April 5, these officials still need to be appointed and a first meeting of the entire group has yet to take place.

IIPA and its members note that such interagency coordination would be a major, laudable achievement for the Brazilian government. However, it is imperative to keep in mind that such coordination is needed in order to take swift action in the near term to combat widespread copyright piracy and improve enforcement across the responsible Brazilian agencies. The Committee should establish itself quickly and begin its work. Members of this Subcommittee stated at the GSP hearing that the creation of such a coordinating body, in and of itself, does not solve the existing problem of piracy. Our industries are looking for tangible actions to improve enforcement.

The GSP Chairman asked the Brazilian representative to address how this new Committee will work with, or involve, the private sector. We hope the Brazilian post-hearing brief provides a more complete picture on this issue. As of this filing, no meeting between the Committee and copyright industry representatives has taken place. Article 4 of the decree states that the Committee may invite representatives from the private sectors to participate, as consultants, in order to contribute to the improvement of the performance of the Committee's activities. Furthermore, the GSP Chairman indicated that the ultimate question is whether this Committee will be effective. Two other officials on the Subcommittee asked for more information on the role this Committee will play in operational investigations.

Also at the hearing, the GSP Chairman asked the Brazilian representative to address the report of the business software industry that Brazilian ministries and agencies are engaged in the use of unauthorized copies of business applications programs. We look forward to reviewing the government's reply.

Cross-industry Recommendations for Improving Anti-Piracy Efforts in Brazil

As we reiterated at the hearing, the copyright industries are eagerly anticipating working with the Inter-Ministerial Committee and its representative agencies. To assist the Government of Brazil in developing a comprehensive and effective anti-piracy operation,

several of the IIPA member associations that are actively engaged in on-the-ground enforcement around the world have compiled a list of action-oriented recommendations. This is attached as Appendix B to this letter.

We believe these recommendations may be useful to the Government of Brazil by outlining an initial blueprint of actions which the Inter-Ministerial Committee and/or its participating agencies could take in the immediate future. These recommendations reflect the experience of the copyright industries in fighting piracy around the globe, and focus on certain elements that have proven to be successful in other countries.

Conclusion

IIPA and its member associations appreciate this opportunity to provide additional public comments in the context of this GSP review. We will continue to communicate our experiences on-the-ground in Brazil in order to encourage the Brazilian government to provide adequate and effective protection to U.S. copyright holders in Brazil, and to assist in such efforts.

Sincerely,

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President
International Intellectual Property Alliance

Maria Strong
Vice President and Associate General Counsel
International Intellectual Property Alliance

APPENDIX A

Informal translation provided by the RIAA of the Brazilian Decree Establishing the Inter Ministerial Committee to Fight Piracy

PRESIDENTIAL DECREE OF 13 MARCH 2001

Article 1 – It institutes the Inter Ministerial Committee to Fight Piracy

It is understood that piracy, for the purpose of this Decree, is the violation of authorial rights as established in the Law 9.610 from February 19, 1998.

Article 2 – It gives the Inter Ministerial Committee competence:

I – To propose a plan of action from the due agencies to make sure authorial rights are protected as well as to follow up the respective accomplishment.

II – To help the due agencies in planning preventive and repressive actions against violation of works of art protected by authorial rights.

III – To observe, by means of reports from the due agencies, the execution of prevention and repression activities against the violation of works of art protected by authorial rights.

IV – To propose, when necessary, technical and operative reforms and modernization of the involved agencies, as well as changes that permit improvement on the existing laws.

V – To create an efficient system to receive, investigate and analyze denounces authorial rights violation.

VI – To develop campaigns to combat piracy, integrating the main sources of mass communication, with the purpose of elucidating the public opinion about the damaging effect of such crime and concomitant dissemination of legal texts about authorial right and piracy combat.

VII – To propose that covenants be established by due Federal agencies with State Governors in order to implement an ample and incisive combat to the street commerce of illegal merchandise.

VIII – To make statistic survey with the objective of establish efficient mechanisms of prevention and repression over piracy acts.

IX – To follow new forms of piracy introduced in the market, especially those put in practice at the digital network, and to propose dissuasive alternatives of such acts.

X – To promote interchange of information about piracy and illegal traffic of products resulting from this act.

XI – To propose a Federal Police data bank feeding, that allows consultation and dissemination of anti piracy operations as well as the index of imprisonment, seizures and amounts.

XII – To promote seminars, with the participation of the private sector, about authorial rights.

XII – To establish a permanent dialog national and international institutions and entities, whose objectives and activities can bring relevant contributions to the combat against piracy.

XIV – To stimulate and support public and private initiatives that bring value to the authorial right are aimed to deter piracy and

XV – To establish dialog and collaboration mechanisms with the Legislative and Judiciary with the purpose of promoting efficient actions against piracy.

Article 3 – The Inter Ministerial Committee to Fight Piracy will be composed of:

I - Three representatives of the Ministry of Justice, being one from the Federal Department of Police and one from the Public Security National Secretary;

II – Two representatives from the Ministry of Science and Technology;

III – Two representatives from the Ministry of Culture;

IV – Two representatives from the Ministry of Development, Industry and Foreign Trade;

V – Two representatives from the Ministry of Treasury (Fazenda), being one from the Federal Revenue Secretary (Secretaria da Receita Federal);

VI - Two representatives from the Ministry of Foreign Affairs.

Paragraph 1 – The Inter Ministerial Committee to Fight Piracy members will be assigned by the State Ministry of Justice, after each of the above Ministries suggests the respective names.

Paragraph 2 – The presidency of the Inter Ministerial Committee to Fight Piracy will be held by one of the Ministry of Justice representatives.

Paragraph 3 – The presidency of the Inter Ministerial Committee to Fight Piracy shall submit the results of the activities developed the Group to the Ministry of Justice examination.

Paragraph 4 – The members of the Inter Ministerial Committee to Fight Piracy will not be salaried and his/her function will be considered relevant to the public service.

Article 4 – The Inter Ministerial Committee to Fight Piracy may invite representatives from the private sector, whenever their contribution might be necessary to the fulfillment of the Committee's tasks, mainly professionals working in activities related to authorial rights, and may, as consultants, contribute to improve the performance of the Group's activities.

Article 5 – The Ministry of Justice will make sure that the technical and administrative support, essential to the functioning of the Inter Ministerial Committee to Fight Piracy, through the Secretaria Nacional de Segurança Pública, which will also perform the function of the Committee Executive Secretary.

Article 6 – The expenses derived from this Decree will be taken from the Ministry of Justice budget.

Article 7 – This Decree will be enacted when published.

Brasilia, March 13, 2001

Fernando Henrique Cardoso

APPENDIX B

Industry Enforcement Recommendations

GENERAL OBJECTIVES

An effective Brazilian anti-piracy plan should address the following goals:

1. Manufacturing/Distribution: Investigate and raid illegal domestic manufacturing sources, major distribution channels, and key distributors.
2. Transshipment/Distribution: Investigate and intercept transshipments of illegal products via import channels of contraband.
3. Broad Enforcement: Plan, dedicate the necessary resources, and implement comprehensive enforcement measures that create effective and efficient law enforcement work performed by several federal and state authorities, including the judiciary.
4. Statutory Framework: Initiate legislation that strengthens the Brazilian enforcement framework against violations of Intellectual Property Rights, and consider acting against the tax evasion that always accompanies such violations.
5. Best Practices: Establish a few priority government actions that have the potential to demonstrate how the Brazilian government (GOB) acts successfully against identified targets with competent investigation, case development, timely prosecution, and deterrent sentencing.
6. Private Sector Engagement: Achieve efficient coordination among the several public agencies while at the same time including the private sector affected by piracy and counterfeiting.
7. Government Legalization: The Federal Government (and with its encouragement, state and municipal governments) should implement measures to ensure that all use of intellectual property such as computer software within its agencies and instrumentalities is properly licensed, and should enact a decree requiring lawful use within government agencies.

ENFORCEMENT COORDINATION IN BRAZIL

1. The Minister of Justice should chair the recently created Inter-Ministerial Anti-piracy Committee to ensure that the Committee enjoys high-level visibility and is empowered to act with authority.
2. The Anti-piracy Committee should immediately appoint an IPR Executive Coordinator with the power to execute the Committee's decisions. The IPR Executive Coordinator should report directly, and at frequent intervals, to the Minister of Justice and should be held accountable for achieving specific results.
3. The IPR Executive Coordinator should also function as the liaison among the Brazilian government and its federal and state enforcement agencies, the private sector, and for purposes of training, the judiciary.
4. The IPR Executive Coordinator should be responsible for carrying out the following initial steps:

- a. Prepare a detailed and workable IPR Enforcement Plan with concrete goals to reduce piracy levels. Introduce and implement the IPR Plan with State and Federal enforcement agencies. The Plan should establish distinct goals or metrics for all major urban centers in the country.
- b. Schedule quarterly meetings with the IPR Industries to review plans and objectives and establish "next steps."
- c. Incorporate recommendations and training assistance from the IPR Industries. Private industry can assist in training and communication programs with the Ministerio Publico, Police, Customs and the Judiciary.
- d. Personally support and participate in certain police activity, including high priority investigations. Special attention should be given to the incorporation of Receita Federal and Customs resources in all tax evasion, contraband and customs investigations in major ports, airports, and other points of entry.
- e. Establish coordination programs with local police (civil and/or military) to plan general actions against major open and public places.
- f. Work with Federal Government on government legalization of intellectual property such as computer software, and toward a decree mandating lawful use within government agencies.

SPECIFIC INITIAL ANTI-PIRACY ENFORCEMENT ACTIONS BY AGENCY

1. Customs (Receita Federal) should dedicate resources to establish tougher controls in major transshipment points including border crossings, ports, and airports. Imports from certain countries or corporations known to be the source of counterfeit or pirated products should be thoroughly screened. Products from Paraguay, and products shipped to Brazil's free ports of Santos and Paranagua should always be inspected and documented thoroughly.
2. Officials in border areas should be trained, directed, and managed (with performance measured) to devote a substantial amount of their time to the transshipment of pirated and counterfeit IPR products. The main target areas are: Foz do Iguacú - Ciudad del Este; Guaíra - Saltos de Guaíra; Ponta Porã - Pedro Juan Caballero (BR-PY); Corumbá - Puerto Suarez (BR-BO); Uruguaina - Paso de los Libres (BR-AR); Santana do Livramento - Rivera (BR-UR). Major airports and seaports (Santos, Paranagua) should be included.
3. Federal Police should be immediately assigned to investigate major criminal operations in a number of high priority and potentially high impact cases.

4. IPR skills training and seminar programs should be implemented broadly and immediately among the various segments of public enforcement officials with the cooperation of the private and education sectors.
5. The correct and coherent application of Law 9.099/95 requiring the defendant to pay damages as a condition for granting suspension of prosecution should be implemented consistently.

LEGISLATIVE AGENDA

1. The current legislative framework in Brazil has enough elements to allow the government to bring major cases to produce an impact on counterfeiting and piracy. Nevertheless, the Anti-piracy Committee should review the need to amend specific laws to enhance their effectiveness and efficiency.
2. The Anti-piracy Committee should review, and as necessary, request amendments to Bill No. 2.681/96.
3. The Committee should formulate and introduce legislation designed to strengthen Brazil's legal environment vis-à-vis piracy. The Committee should analyze the issues, draft, and propose legislation supporting the following goals:
 - a. For street vendors who are first time offenders, evaluate the convenience of recommending the reduction of current imprisonment terms, provided that, if the Judge suspends a case or converts a sentence and thereby applies an alternative sanction, such alternative sanction be applied effectively.
 - b. Increase the criminal prison term and monetary fines applicable to those pirates who operate in a venue or on a scale other than as street vendors. Special emphasis should be given to adequate punitive sanctions for the manufacturers, importers, contrabandists and distributors (in a venue or on a scale other than simple street vendors) of pirate goods.
 - c. The payment of damages to the victims of the crimes should be effectively pursued and the laws reviewed to assure that the specific provisions can be executed accordingly.
 - d. Allow the immediate disposal of counterfeit product with the existence of: an expert report declaring the illegality of the product; an itemized report specifying all of the product to be destroyed (for court, evidentiary and damages purposes), and the authorization of the Judge.
 - e. Create laws that reflect the principle that medium- and large-scale piracy falls within the definition of an organized crime scheme.