

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE



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May 18, 2001

Section 301 Committee
Office of the U.S. Trade Representative
1724 F Street, N.W., Room 217
Washington, D.C. 20508

Attention: Sybia Harrison, Staff Assistant

**Re: Post-Hearing Brief to Supplement IIPA's
Appearance at the April 2001 Public
Hearing Pertaining to the Identification of
Ukraine as a Priority Foreign Country,
Initiation of a Section 302 Investigation, and
Proposed Determinations and Action, 66
Fed. Reg. 18,346 (2001).**
Case: Docket 301-121: Ukraine

To the Members of the Section 301 Committee:

The International Intellectual Property Alliance (IIPA) submits this Post-Hearing Brief to supplement our appearance at the April 27, 2001 public hearing on the Identification of Ukraine as a Priority Foreign Country (PFC), the Initiation of a Section 302 Investigation, and Proposed Determinations and Actions by the U.S. government as a result of the PFC designation. In short, this filing responds to three questions posed by the Section 301 Committee at the April 27 hearing wherein IIPA promised a written follow-up response.

The three questions posed, and our responses, are as follows:

1. Question from Section 301 Committee: In the written testimony, IIPA noted that the recording industry losses resulting from the Ukraine practices (according to the Recording Industry Association of America, RIAA) are estimated to be \$160 million. Does that \$160 million figure include losses that occur only within Ukraine, or losses that result from Ukraine's piratical activities anywhere in the world?

IIPA Response: This includes losses to American repertoire that result from Ukraine practices anywhere in the world. As we noted in our testimony, \$160 million is the amount that would have been repatriated back into the U.S. economy but for the piratical activities occurring in Ukraine; that is why this only pertains to losses for U.S. repertoire. For example, illegal Ukraine-produced CDs sold anywhere in the world were included in the \$160 million. The question posed by a Committee member at the hearing was of the sale of illegal Ukraine-produced “Beatles 1” CD materials that were sold in London. Since “Beatles 1” is British and not U.S. repertoire, the sales of this disc were not part of the loss figures; however, the sale of American repertoire sold in London was counted in the \$160 million.

2. Question from Section 301 Committee: Please provide the list of countries (markets) where illegal Ukraine CDs have been found outside of Ukraine.

IIPA Response: We noted in our testimony that illegal Ukraine-produced CDs have been seized in “at least 12 countries” other than Ukraine. In fact, the countries where the International Federation of Phonogram Producers (IFPI) has reported various-sized seizures of Ukraine-pirated product by law enforcement agencies are: Romania, Hungary, Poland, Bulgaria, Peru, United Kingdom, Finland, Germany, Italy, Lithuania, Moldova, Slovak Republic, Greece, Israel, New Zealand and the United States – a total of 16 countries. The IFPI reports that there are additional countries where discs identifiable as pirate-Ukraine product were acquired in local markets or retail outlets by IFPI representatives; however, these acquisitions were made without the formal involvement of law enforcement officials.

3. Question from Section 301 Committee: How much does professional optical media machinery cost to commence production?

IIPA Response: The IFPI estimates that the machinery used to produce professional-quality CDs (or other optical media including DVDs, VCDs, and CD-ROMs), without the raw materials, costs about \$500,000, and up to \$1 million, depending on the quality of the equipment. So, obviously, as we noted in the hearing, this is equipment owned and operated for large-scale commercial operations either legally as in the United States and other countries, or as in Ukraine to-date, illegally by organized criminal syndicates.

Last, IIPA wishes to re-iterate our support for legislation to fully implement the Joint Action Plan, including the adoption of a proper optical media licensing regime (the so-called “Cabinet Licensing Draft”). Unfortunately, a much weaker alternative approach is under consideration; this alternative would use commercial law to regulate optical media production under the General Licensing Laws without imposing adequate sanctions for illegal operations. At the April hearing, we noted our opposition to this alternative approach because if adopted, it would not provide effective controls against unauthorized production, and because it is contrary to the agreed-upon approach by the U.S. and Ukraine governments in the Joint Action Plan.

There is an additional development we wish to bring to your attention since the April 27 hearing. That is, on April 28, 2001 there was a proliferation of Executive Decrees aimed at implementation of the as-yet-unadopted General Licensing Law Amendments (because the

Licensing Law is not in effect, the Decrees cannot take effect). The Decrees are inconsistent with each other, contrary to existing Ukraine law according to Ukraine legal experts, and most importantly, they fail to lay an adequate framework for eliminating optical media piracy.

One example is Decrees #412 and #413, which are inconsistent with the Ukraine Customs Code. More troubling, they would create a burdensome and expensive registration system and fee structure under the aegis of Ukraine Customs, covering all works of copyright and neighboring rights protection, and would deny customs protection to unregistered objects. As one example of the burdensome nature of these decrees, all international musical repertoire would have to be individually registered every six months at an initial cost of \$200, and a subsequent cost of \$100 for each phonogram.

In sum, we thank the members of the Section 301 Committee for their hard work on the problems of piracy in Ukraine. We continue to hope that the proposed actions of the U.S. government, including the withdrawal or suspension of trade benefits and sanctions against the most vulnerable exports of Ukraine to the U.S., will result in positive steps being taken by the Ukraine government to eradicate the optical media production problem and the development of a proper copyright legal and enforcement regime. Once properly implemented, we expect a fully developed copyright regime in Ukraine will encourage investment for the benefit of U.S. and other foreign investors, as well as for Ukraine copyright industries. Thank you again for the opportunity to make our case on this important matter.

Sincerely,

Eric J. Schwartz
Counsel, International Intellectual Property Alliance