



October 31, 2003

Via electronic submission: fr0052@ustr.gov

Steven Falken
Chair, GSP Subcommittee
Office of the U.S. Trade Representative
1724 F Street, NW
Washington, DC 20508

Re: GSP Country Practices Review,
019-CP-02, Russia,
Post-Hearing Brief

To the GSP Subcommittee:

The International Intellectual Property Alliance (IIPA) hereby submits this Post-Hearing Brief to follow-up on one matter raised during our testimony at the public hearing held on October 7, 2003 on the GSP country practices review of the Russian Federation. IIPA filed a Pre-Hearing Brief on September 26, 2003; we were the original petitioner of the GSP review of Russia's intellectual property rights practices in the 2000 GSP Annual Review that precipitated the 2003 hearing.

We were disappointed at the October public hearing that the Russian Federation government was unable to adequately respond to questions about a proper course of action to address the optical disc production and distribution problem in Russia, as well as the many other copyright protection and enforcement deficiencies facing the copyright industries in Russia. As a result, IIPA believes that the Russian Federation continues to fail to provide "adequate and effective" copyright protection and enforcement, as required by the GSP trade program, and therefore should lose its eligibility to participate in the GSP program until these matters are clearly and unambiguously improved.

As noted, Russia's copyright piracy problem is one of the most serious of any country in the world. Overall copyright industry losses exceed \$1 billion per year—totaling \$6 billion in losses for the past six years. The only way to combat the organized crime syndicates engaged in optical disc production and distribution, as well as the other forms of piracy in which they engage, is by effective criminal enforcement. This includes the ability to seize, confiscate, and where necessary, destroy the goods and machinery used in illegal operations.

During our testimony at the October 7 hearing, members of the GSP Subcommittee asked Dara MacGreevy (Motion Picture Association) and I about the efficacy of the current Criminal Code of Russia as it pertains to confiscation and destruction of pirate copies and machinery. In sum, we

believe that the current Criminal Code (Art. 146) is clear that it does apply to the confiscation and destruction of pirate and counterfeit goods – that is, to the illegal copies themselves.

However, the Criminal Code (Art. 146) does not explicitly provide for the confiscation and destruction of the “machinery” used in the making of illegal copies. Local counsel advises that the Criminal Code could theoretically be read to apply to the “tools of the crime” such as illegal machinery, but experience shows that Russian courts have not yet applied the Criminal Code in this manner. Thus, as a practical matter there is no application under the criminal enforcement provisions to the “machinery” used to create illegal copies.

There is a provision in the Copyright Law (Art. 49.4) that provides civil remedies for the confiscation and destruction of “materials and equipment.” This provision is applicable only against the “owner” of the materials and equipment. There are two reasons why this provision is not an effective remedy: (1) because elaborate legal veils are put in place to shield the actual criminal syndicate participants from having to avow ownership in the equipment used for illegal production; and (2) because civil remedies have proven in Russia and in many other countries to be ineffective tools when used against criminal syndicates involved in the large-scale production and distribution of illegal materials.

One of the reasons why the IIPA and its members have been calling for a comprehensive optical disc regulatory scheme in Russia is because to date, none of the lines at the optical disc plants caught making illegal copies have been confiscated or destroyed by the Russian criminal authorities. It may be that Article 146 of the Criminal Code needs further legislative change to make crystal clear its application to the confiscation and destruction of the machinery; or perhaps, a favorable judicial ruling will clarify this point. We maintain that the law could be so applied today if the Russian authorities chose to do so, but other serious obstacles to effective enforcement remain.

One of these obstacles is the fact that Russian law does not permit criminal liability to apply to legal entities, thus shielding criminal enterprises from deterrent penalties. As a practical matter, the machinery owned by a legal entity is not being seized or confiscated. The enforcement authorities and the courts are, in our view, using the ownership by the legal entity as an excuse for inadequate enforcement. This is true even though we believe that such machinery is covered by the Criminal Code and is covered without regard to the ownership of the machinery by a legal entity.

The treatment of the issue pertaining to confiscation and destruction of illegal materials and machinery is but one more example of Russia’s failure to provide adequate and effective protection and enforcement as required by its bilateral and multilateral obligations to the United States. It is also, in our view, one more example of why GSP benefits to the Russian Federation need to be suspended.

Respectfully submitted,



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International Intellectual Property Alliance