

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE



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September 26, 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,
022-CP-02, Uzbekistan,
Pre-hearing Brief and Request to Appear at the
GSP Public Hearing

To the GSP Subcommittee:

The International Intellectual Property Alliance (IIPA) hereby submits this Request to Appear at the public hearing on the GSP country practices review of Uzbekistan, on October 7, 2003. As you know, IIPA was the original petitioner of the GSP review of Uzbekistan's intellectual property rights practices in June 1999. Attached to this letter is IIPA's Pre-Hearing Brief.

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Thank you.

Sincerely,

Eric J. Schwartz



Pre-hearing Brief of the International Intellectual Property Alliance in the GSP Review of the Intellectual Property Rights Practices of Uzbekistan

Before the GSP Subcommittee
Case 022-CP-02, Uzbekistan
September 26, 2003

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to provide the GSP Subcommittee with this brief summary of the ongoing problems that the government of Uzbekistan must address in its efforts to update and properly enforce its copyright laws. In sum, we believe that Uzbekistan continues to fail to provide “adequate and effective” copyright protection and enforcement, as required by the GSP trade program.

I. Interest of the IIPA in this GSP IPR Review

The International Intellectual Property Alliance is an “interested party” in this GSP review. IIPA represents associations and companies that have a significant economic interest in the adequate and effective protection of copyrights in Uzbekistan. Specifically, the IIPA is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. The IIPA is comprised of six trade associations: the Association of American Publishers (AAP), AFMA, the Business Software Alliance (BSA), the Entertainment Software Association (ESA), the Motion Picture Association of America (MPAA), and the Recording Industry Association of America (RIAA).

These member associations represent over 1,300 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media). The copyright-based industries are a vibrant force in the American economy.¹

¹ According to Copyright Industries in the U.S. Economy: The 2002 Report, prepared for the IIPA by Economists, Inc., the core U.S. copyright industries accounted for 5.24% of U.S. GDP or \$535.1 billion in value-added in 2001. Between 1977-2001 (24 years), the core copyright industries’ share of GDP grew at an annual rate more than twice as fast as the remainder of the economy (7.0% vs. 3.0%). Also over those 24 years, employment in the core copyright industries more than doubled to 4.7 million workers (3.5% of total U.S. employment), and grew nearly three times as fast as the annual employment growth rate of the economy as a whole (5.0% vs. 1.5%). In 2001, the U.S. copyright industries achieved foreign sales and exports of \$88.97 billion, a 9.4% gain from the prior year. The copyright industries’ foreign sales and exports continue to be larger than almost all other leading industry sectors, including automobiles and auto parts, aircraft, and agriculture. IIPA’s 2002 economic report can be accessed in its entirety at http://www.iipa.com/copyright_us_economy.html.

Inadequate copyright laws and ineffective anti-piracy enforcement adversely affects employment, job creation and revenues, both in the United States as well as abroad. As the GSP Subcommittee is aware, the challenges faced by the copyright industries and national governments to enforce copyright laws grow exponentially as the forms of piracy shift from hard-goods and toward digital media and unauthorized electronic transmissions. Countries with weak copyright law and ineffective enforcement mechanisms are often targets for the pirate community to establish their illicit businesses.

In June 1999, the IIPA filed a petition with the U.S. government to initiate a review of Uzbekistan's eligibility to participate in the GSP program due to its failure to provide adequate effective copyright protection for U.S. copyright owners, as required by Sections 502(b) and 502(c) of the 1974 Trade Act.² Hearings were held in April 2000 in Washington, D.C.

II. Inadequate and Ineffective Copyright Law Protection in Uzbekistan

There are serious deficiencies in the Uzbek copyright regime and virtually no enforcement. It is clear that Uzbekistan is not providing "adequate and effective" copyright protection as required by its bilateral and multilateral commitments. In fact, at present under Uzbek law, not a single work or sound recording of U.S. origin is even protected in Uzbekistan. Thus, since the 2000 GSP hearings, Uzbekistan has made no progress (with the exception of two copyright amendments applicable at present only to domestic works) toward meaningful legal reform, much less engaged in any enforcement activity.

International/Bilateral Treaties

In November 1993, Uzbekistan and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights (details of the 1993 Trade Agreement are provided in the IIPA 2003 Special 301 filing of February 14, 2003). That agreement entered into force on January 13, 1994.

Uzbekistan is neither a member of the Berne Convention, nor any of the neighboring rights conventions – these are requirements (by no later than December 31, 1995) of its bilateral trade agreement with the United States. Thus at present, Uzbekistan is not providing any protection for any U.S. work or sound recording – nine years after it committed to do so, and for which as a *quid pro quo*, it is receiving Normal Trade Relations (NTR) treatment, as well as GSP benefits.

Uzbekistan was not a signatory to either of the two new WIPO digital treaties. The Uzbek government should be encouraged to ratify and then fully implement both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

The government of Uzbekistan should be required to meet its now nine-year-old obligations under the Bilateral Trade Agreement, to amend the relevant IPR laws and engage in effective protection and enforcement of U.S. works and sound recordings and to join the international treaties. It should not be permitted to benefit under the GSP program until and unless it fully meets these obligations.

Uzbek Copyright Law 1996

On August 30, 1996, the Uzbek Parliament adopted the Law on Copyright and Neighboring Rights, providing a comprehensive revision of the copyright law in Uzbekistan; the law went into force on September 17, 1996. Since that time, there have not been any thorough revisions to the copyright act, or to the relevant

² The intellectual property rights provisions in the GSP statute appear at 19 U.S.C. §§ 2462(b) and (c).

enforcement laws, even though Uzbekistan obligated itself to undertake important changes in the bilateral agreement over nine years ago. The exception was in December 2000, when two amendments to the copyright law were adopted, but major deficiencies remain.

The Uzbek Law on Copyright and Neighboring Rights of 1996 established protection for the first time of computer programs, databases, and sound recordings (further amended by the December 2000 provisions). The exclusive economic rights provided to authors (Article 22) included “the right to exploit the work in all forms and by all means” such as by reproduction and dissemination; public presentation; rental; public performance; broadcasting, including cable distribution or satellite transmission; recording of a work by technical means, and communication of a technical recording (including by radio or television); and translation or transformation. Unfortunately, the copyright law also contained many onerous provisions that over-regulate the terms and conditions of authors’ contracts.

Producers of phonograms are now afforded the exclusive rights of public reproduction (unclear, but likely including a “communication” right as well), adaptation or other transformation, distribution (including commercial rental), and importation. Until 2001, the neighboring rights section of the law did not provide for a basic right of reproduction for producers of sound recordings; one of the two December 2000 amendments added “copying of a record” to the enumerated rights of producers to fix that glaring deficiency. Another 2000 amendment added a broad national treatment obligation into the law (Article 56.3), but not a clear point of attachment for all works and sound recordings. The copyright law provides a right of remuneration only for producers of sound recordings for the public performance of the recording, the broadcasting, or the communication to the public by cable. The law should be further amended to provide producers with a broader exclusive public performance (or making available) right, at a minimum, for digital transmissions.

Of course, since Uzbekistan is not presently a member of ANY international copyright or neighboring rights treaty, the rights detailed above for authors or producers of phonograms do NOT apply to U.S. or any other foreign author or producer.

Uzbek law does not clearly provide protection for pre-existing works (or sound recordings, since it provides no protection for new or old foreign recordings). When Uzbekistan extends protection for foreign works and sound recordings, it must clearly protect pre-existing works, and sound recordings that are at least 50 years old and preferably 70 years (upon accession to any treaty, the U.S. will provide this level of protection for all Uzbek works and recordings) to meet Uzbekistan’s bilateral and multilateral obligations, and in order to create an environment for the development of the copyright industries there.

Criminal Code

Uzbekistan did not amend its criminal code following passage of the 1996 Copyright Act to adopt deterrent penalties for intellectual property violations, in breach of the bilateral agreement’s obligation to provide “adequate and effective” protection and enforcement. The Criminal Code (Article 149) does provide for liability for infringement of copyright and patent violations, but does not include neighboring rights violations. In any case, the existing penalties are too weak and must be amended to strengthen and broaden the provisions for all copyright and neighboring rights violations. For the past several years, Uzbek officials reported to the U.S. government and the IIPA that Article 149 would be revised, but that has yet to occur.

Customs Code

The customs code must be amended to provide customs officials with *ex officio* authority to seize suspected infringing material at the border, as required by the WTO TRIPS Agreement and as is necessary to conduct effective border enforcement. Current Uzbek law does not include these essential tools for enforcement.

III. Inadequate and Ineffective Copyright Enforcement in Uzbekistan

The Uzbek copyright regime is currently not providing “adequate and effective” enforcement as required by the bilateral trade agreement – in fact, it is currently not providing any protection or enforcement for U.S. works or sound recordings. In addition to the many deficiencies in the enforcement legal regime (basic civil, administrative, criminal and customs provisions must be adopted), there is essentially no on-the-ground police, prosecutorial, judicial or customs activity to stop retail distribution, much less the organized criminal enterprises who produce and distribute material in Uzbekistan and throughout the neighboring countries.

The criminal code currently does not provide deterrent penalties and must be amended. The administrative code does not provide any sanctions for violations of copyright or neighboring rights infringements and must be amended to provide for fines and the forfeiture of business licenses for retail establishments that are operating pirate operations. As a consequence, none of the copyright industries can report a single criminal or administrative penalty being levied in any copyright or neighboring rights case.

Border enforcement, as in other countries in the region, is very weak in Uzbekistan. This allows illegal copies, especially of musical material produced in neighboring countries such as Russia, to freely cross borders into neighboring countries causing significant harm to the copyright industries.

According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are no known optical media plants in Uzbekistan, although the opportunity is there for the startup of pirate CD and cassette operations due to the climate and infrastructure. The recording industry estimates trade losses for foreign rightholders in Uzbekistan (by calculating the size of the potential legal market) were \$32 million in 2002. In total, 25 million cassettes and 4.5 million CDs were sold in Uzbekistan in 2002.

Official piracy or loss figures for the motion picture, business software, entertainment software, or book industries are not available for Uzbekistan.

IV. Observations about Uzbekistan’s WTO Accession

IIPA takes this opportunity to note the importance of WTO accession negotiations. We believe that accession candidates must ensure that they have met in full their WTO obligations prior to accession, including that their copyright laws and enforcement systems comply with the substantive and enforcement provisions of the WTO TRIPS Agreement.

On January 1, 2000, all TRIPS copyright obligations, including providing effective and deterrent enforcement, entered into force for all the world’s developing countries (except those classified by the U.N. as the “least” developed countries). It is the promise of these new enforcement obligations that is essential to returning the commercial benefits that were envisioned at the conclusion of the Uruguay Round. For accession candidates, it is insufficient that their statutory legal regime is in place prior to accession; they must also demonstrate that their enforcement system is, in practice, effective in deterring piracy. TRIPS obligations, both with respect to substantive law and to enforcement standards, in statutory law and in practice, are the worldwide “floor” for copyright and other intellectual property protection. As a result of the numerous legal reform deficiencies in Uzbekistan, IIPA filed comments with the U.S. government in May 2002, requesting that it not be admitted into the WTO until these shortcomings were corrected.³

IIPA urges USTR and the U.S. government as a whole to continue use the WTO accession process as a leverage and consultation tool to move Uzbekistan toward effective implementation of its TRIPS obligations as a member of the international trading community. However, such attention in the WTO sphere must not be

³ See IIPA Comments to the Trade Policy Staff Committee on Accessions to the World Trade Organization and on U.S. Participation in Negotiations for the Terms of those Accessions, 67 Fed. Reg. 13205, submitted May 15, 2002, available at http://www.iipa.com/rbi/2002_May15_WTOAccession.pdf.

undertaken at the expense of failing to hold Uzbekistan to its current IPR bilateral obligations to the U.S. under the GSP trade program

V. Conclusion and Request for Action

Copyright law and enforcement in Uzbekistan clearly fails to conform to the “adequate and effective protection” standard demanded of our trading partners in our GSP trade law. Uzbekistan has been on-notice for years that it must take appropriate action to meet its “part of the bargain” in receiving these unilateral trade benefits. So far, its part of the bargain has not been met. The penalty at risk is the loss of GSP benefits and/or its loss of GSP beneficiary country status.

Respectfully submitted,

International Intellectual Property Alliance