



February 17, 2004

Mr. Steven Falken
Executive Director for GSP
Chairman, GSP Subcommittee
Office of the U.S. Trade Representative
1724 F Street NW, Room F-220
Washington, DC 20508

Re: Dominican Republic GSP Investigation
Case: 012-CP-02

Mr. Falken and the GSP Subcommittee:

We take this opportunity to update and supplement the public file with respect to the ongoing investigation into the Dominican Republic's intellectual property rights practices under the GSP and CBI trade programs.

Attached please find IIPA's 2004 Special 301 report on Dominican Republic, which we filed with USTR on February 13, 2004. This report is also available online at the IIPA website, www.iipa.com.

Sincerely,

Maria Strong
Vice President and General Counsel
International Intellectual Property Alliance

cc: Meredith Broadbent (USTR)
Andrea Gash-Durkin (USTR)
Mark Wu (USTR)

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2004 SPECIAL 301 REPORT

DOMINICAN REPUBLIC

EXECUTIVE SUMMARY

Special 301 recommendations: IIPA recommends that the Dominican Republic be elevated to the Priority Watch List. IIPA also recommends that if concrete commitments and tangible progress in combating broadcast piracy and significantly improving prosecutorial and judicial results in pending criminal copyright infringement cases are not achieved by April 30, 2004, then the U.S. government should make a determination that the Dominican Republic fails to provide “adequate and effective” protection to U.S. copyright owners and action should be taken immediately to withdraw or suspend preferential trade benefits or remove eligibility status under the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) trade programs.

Overview of key problems/challenges: One of the most looming problems remains the government’s questionable commitment to effective and transparent copyright enforcement. While investigations and raids against broadcasting stations involved with the unauthorized transmission of copyrighted programming were initiated in early 2003 by administrative and criminal enforcement agencies, the ensuing criminal actions taken against certain politically connected stations remains stymied. Criminal trials in key copyright infringement cases have been postponed numerous times under an antiquated court system which permits such delays. During the summer of 2003, the Ministry of Culture issued very damaging regulations, which were partially rescinded only after serious outcry by copyright owners and other official interventions with government officials. This kind of wrangling affecting both criminal prosecutions and non-transparent regulations is an example of a very shaky commitment to strong copyright protection and enforcement, dictated from very high levels of the government. Possible political jockeying between now and the May 2004 elections may have an adverse impact on some anti-piracy actions, given political connections that suspected targets and enforcement officials (respectively) have with, and against, the current administration. In fact, the Ministry of Culture already has told MPA it will allow enforcement against video retail piracy only after the 2004 elections.

Interestingly, the government of the Dominican Republic has taken some commendable steps to address some of the issues and challenges it faces regarding copyright protection and enforcement. While industry cooperation with administrative (such as ONDA-the Copyright Office and INDOTEL-the telecommunications authority) and criminal agencies is generally good, such actions do not result in practical deterrence against copyright piracy. A specialized IPR prosecutor with nationwide jurisdiction was appointed in mid-2003. The administrative enforcement agencies could benefit from more political and economic support within the government in order to pursue more complicated cases. Clearly the Dominican Republic courts remain a significant hurdle in providing effective, deterrent enforcement, due in part to antiquated criminal procedural rules (which will be improved when new amendments enter into effect in August 2004).

Actions for the government of the Dominican Republic to take in 2004

- Stop preferential actions based on political connections which halt or undermine effective anti-piracy enforcement actions (from raids to prosecutions), and instead taken actions based on full transparency;
- Have the enforcement agencies (including ONDA, INDOTEL and the police-Fiscalia) conduct more regular and sustained actions, followed by prompt criminal prosecutions (where warranted);
- Focus particular attention on inspecting/monitoring those broadcast television stations which continue to broadcast U.S. programming without authorization, and follow-up with criminal and administrative actions;
- Assign a squad of investigative law enforcement officers to follow-up on the cases after ONDA or the Fiscalia has conducted a raid;
- Dedicate more resources and training to ONDA inspectors—for example, fund and expand ONDA to include satellite offices;
- Support ONDA's use of penalties under their regulations to fine and close down retail outlets where infringing actions have been identified or infringing products seized;
- Continue to support the cooperative efforts between the copyright-based organizations and companies with ONDA, the Fiscalia and INDOTEL;
- Assure proper implementation of the new Criminal Procedure Code, which enters into effect in August 2004 (i.e., training of judges, prosecutors and police officers);
- Expedite prosecutions and judicial decisions in criminal cases;
- Complete the deposit process to join the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.

DOMINICAN REPUBLIC
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1999 – 2003 ¹

INDUSTRY	2003		2002		2001		2000		1999	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	2.0	20%	2.0	60%	2.0	60%	2.0	60%	2.0	80%
Records & Music ²	9.9	65%	6.9	65%	7.7	65%	2.0	80%	2.0	80%
Business Software Applications ³	NA	NA	3.6	61%	4.0	64%	6.7	68%	7.4	69%
Entertainment Software	NA	NA	NA	NA	NA	NA	6.0	NA	NA	NA
Books	1.0	NA	1.0	NA	1.0	NA	1.0	NA	1.0	NA
TOTALS ⁴	NA		13.5		14.7		17.7		17.5	

The IIPA and its members have long supported high-level, bilateral engagement between the U.S. and the Dominican Republic in several fora.⁵ The Dominican Republic has a series of bilateral and multilateral obligations on IPR. First, the industries have used the Special 301 process since its invention to elevate the importance of copyright issues onto the trade agenda. Second, the IIPA filed a petition with the U.S. government in June 1999 to initiate a review under both the GSP and the CBI trade laws of the eligibility of the Dominican Republic to participate in these programs due to its failures to provide adequate effective copyright protection for U.S. copyright owners and to provide equitable and reasonable market access. GSP hearings were held in April 2000 and again in October 2003.⁶ Third, since our 1999 GSP/CBI filing, the U.S. Congress has amended the intellectual property rights (IPR) criteria in the CBI, to heighten the level of protection expected from beneficiary countries of the Caribbean Basin Trade Partnership Act (CBTPA) benefits, including the Dominican Republic.⁷ Fourth, the

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2004 Special 301 submission at www.iipa.com/pdf/2004spec301methodology.pdf.

² RIAA reports that \$9.9 million (2003) represents the estimated sales displacement to the legitimate industry. Actual revenue to music pirates is estimated at \$7.4 million. The recording industry's loss estimates for previous years were based on less complete information, and represented a projection of pirate revenue rather than industry losses.

³ BSA's 2003 piracy statistics were not available as of February 13, 2004, and will be made available in the near future and posted on the IIPA website at www.iipa.com. BSA's statistics for 2003 will then be finalized in mid-2004 and also posted on the IIPA website. In IIPA's February 2003 Special 301 filing, BSA's 2002 estimated losses of \$2.9 million and levels of 61% were identified as preliminary. BSA's revised 2002 figures are reflected above. BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA's trade loss numbers released separately in its annual global piracy study which reflects losses to (a) all software publishers in the Dominican Republic (including U.S. publishers) and (b) losses to local distributors and retailers in the Dominican Republic.

⁴ In IIPA's 2003 Special 301 submission, IIPA estimated that total 2002 losses to the U.S. copyright-based industries in the Dominican Republic were \$12.8 million. IIPA's revised 2002 loss figures are reflected above.

⁵ For more details on IIPA's summary of the history of the Dominican Republic on IPR issues under Special 301 and other trade programs, see Appendix D (<http://www.iipa.com/pdf/2004SPEC301USTRHISTORY.pdf>) and Appendix E (<http://www.iipa.com/pdf/2004SPEC301HISTORICALSUMMARY.pdf>) of this submission.

⁶ See IIPA's Pre-GSP Hearing Brief of October 1, 2003, available at http://www.iipa.com/rbi/2003_Oct1_DomRep_FTA.pdf, and IIPA's Post-GSP Hearing Brief of October 30, 2003, available at http://www.iipa.com/gsp/2003_Oct30_GSP_DomRep.pdf. During the first 11 months of 2003, over \$2.4 billion in preferential trade benefits were attached to Dominican Republic exports to the U.S., specifically: \$66 million worth of Dominican goods entered the U.S. under the duty-free GSP code (representing a 366.1% decrease from the same period in the prior year); \$777.3 million worth under the CBI (representing a 6% decrease over the same period in the prior year); and \$1.6 billion worth under the CBTPA (representing a 1.9% decrease over the same period in the prior year).

⁷ For a more detailed discussion of the CBI's enhanced IPR standards, see IIPA's submission to the U.S. International Trade Commission on its Annual Report on the Impact of the Caribbean Basin Economic Recovery Act

Dominican Republic is obligated to meet its substantive copyright obligations as well as the enforcement text of the WTO TRIPS Agreement.

Fifth, and most recently, the Dominican Republic and the U.S. are now engaged in Free Trade Agreement (FTA) negotiations. Three rounds of negotiations are expected to conclude before April 2004. IIPA and its members understand that the government of the Dominican Republic has a renewed sense of urgency to resolve the problems of widespread copyright piracy and ineffective enforcement. However, until the government of the Dominican Republic acts swiftly and effectively to significantly reduce the piracy levels, including halting broadcast piracy and improving its prosecutorial and judicial results in criminal copyright cases, IIPA has gone on-the-record that the reward of extending the Dominican Republic with additional trade concessions (such as an FTA) should be withheld.

COPYRIGHT PIRACY IN THE DOMINICAN REPUBLIC

The audiovisual industry reports that broadcast piracy remains its key piracy problem in the Dominican Republic. MPA confirms that broadcast piracy has caused far-reaching market distortions, and is the most egregious in the entire region. The broadcast of movies prior to release in theaters or featuring motion pictures still in their theatrical release in the Dominican Republic greatly reduces legitimate business opportunities in other media by disrupting the normal release sequence to theatrical exhibitors, retail video outlets and legal cable operators. For many years, MPA and its member companies have taken action against television and video piracy in the Dominican Republic. Within the last year, the Dominican Republic has taken notable and successful action to reduce piracy in both of these areas. For example, this has resulted in a significant lowering of the video piracy level, now placed at approximately 20%. Annual losses to the U.S. motion picture industry due to audiovisual piracy in the Dominican Republic are estimated to be over \$2 million in 2003. Although piracy has been significantly reduced in video stores, these same stores continue to violate copyright law by using U.S.-only home-use DVDs for commercial use in the Dominican Republic. As a result, the U.S. film studios have lost the entire video market for development. The government of the Dominican Republic has recognized this practice as illegal, but has refused to apply the law until, at least, after elections in 2004.

However, the government has openly permitted high-profile exceptions in enforcement action because of their "political" nature; that is, the political connections of the suspects. These exceptions exist because of cabinet-level decisions not to enforce copyright laws in specific cases. These subjective and political exceptions to enforcement vitiate the good results obtained by lower level enforcement officials and clearly demonstrate the lack of commitment to adequate and effective copyright enforcement by the highest levels of both the current and prior administrations. In the case of television piracy, the main alleged violators are station owners closely involved in the leadership of the political parties of both the current and prior administrations; in the case of video, the video stores' representative has a family relationship with a very senior Ministry of Culture representative. These highly visible exceptions provide to those who now comply with copyright law strong incentives to return to piracy.

on U.S. Industries, Consumers and Beneficiary Countries, Investigation No: 334-227 (filed June 30, 2003), available at http://www.iipa.com/rbi/2003_Jun30_CBERA_ITC_REPORT.pdf.

Piracy of sound recordings and music in the Dominican Republic continues to plague the country, with piracy estimated at 65%. The estimated trade loss due to music recording piracy was \$9.9 million in 2003. The piracy rate estimate for audiocassettes is 97%, compact disc (CDs) is 25% in retail stores, with a noticeable increase in the tourist areas and major shopping areas around the country. Audiocassettes, although still distributed by independent labels, has decreased dramatically as a format, giving way to music CDs that have had an explosive growth in the country and brought on a larger presence of pirate music recorded on the CD-R format. In 2003, the RIAA had its first full year of operations utilizing ADOPROFONO (a group or task-force made up of record labels, the IPR prosecutor's office, ONDA, and the National Police). While addressing perhaps 25% of the pirate market in the Dominican Republic, ADOPROFONO and ONDA seized over 648,000 pirate units from Santo Domingo and Santiago. This would indicate that the illicit market exists at around 2.6 million units. Prices for illicit product has also decreased to around US\$2.50 for a CD-R and about US\$1.25 for a cassette. This has made the pirate market flourish under the economic strain the Dominican Republic is experiencing.

The Business Software Alliance (BSA) reports that computer software piracy in the Dominican Republic comprises primarily end-user piracy and hard-disk loading. With hard-disk loading, Dominican resellers load unlicensed software onto computer hardware and sell the package to an end user. In some cases, the software is represented as legitimate and the purchasers may be unaware that they are buying illegal software; in other cases, the purchasers are complicit in the piracy. End-user piracy rates remain high among Dominican businesses of all sizes, from small family businesses to large, prosperous financial institutions and industrial concerns.

The book publishing industry reports that problems in the Dominican Republic primarily involve illegal photocopying of English as a Second Language (ESL) textbooks. Commercial piracy is diminishing as legitimate distributors increase. Estimated trade losses to the publishing industry stayed at approximately \$1 million in 2003.

COPYRIGHT ENFORCEMENT IN THE DOMINICAN REPUBLIC

Progress on actual enforcement measures to deter piracy in practice has been slow in the Dominican Republic, and high levels of piracy remain. Several key issues include: political connections in certain broadcast and video piracy cases have severely hindered effective enforcement; criminal copyright infringement cases at the judicial level remain unresolved as the procedures permit lengthy appeals; deterrent-level penalties have not been imposed by courts of first instance. Below is a summary of the various enforcement entities' performance in 2003, with industry-specific views following:

- **ONDA:** In 2003, ONDA was proactive on copyright inspections and investigations, not only in Santo Domingo but also in other cities. ONDA presently has a contingency of nine inspectors in the Santo Domingo main office. ONDA needs to maintain an office in the North, preferably Santiago. In addition, funding should be made for an additional satellite office in the South. One concrete step toward improvement of enforcement actions in the Dominican Republic would be to continue to actively foster closer coordination between ONDA and the police. ONDA has requested additional support from the police in its investigations of piracy, and also in providing security for ONDA personnel when they perform inspections and raids on suspected pirates.

- **Police (Fiscalia):** Industry reports good cooperation with the fiscalia on anti-piracy actions. The police could better assist ONDA with their inspections of the leads and tips ONDA receives about suspected pirates operating in the Dominican Republic. In fact, ONDA was assigned an investigator from the Fraud Division of the National Police, but his is used as security and not in an investigative capacity for which he was detailed.
- **INDOTEL:** In 2003, INDOTEL conducted two concerted inspection sweeps of broadcast and cable stations (in addition to ongoing activities). Based on its investigations, INDOTEL can and does refer actions for criminal prosecution. Since fall 2003, INDOTEL has been examining possibilities under its own legislation and regulations in order to strengthen its actions against those broadcast stations and cable companies which are infringing copyrights. INDOTEL suggested at the October 2003 GSP hearing that it might adopt additional regulatory measures to strengthen its authority in broadcast piracy and cablecast piracy cases in the November 2003 timeframe. At this time, IIPA does not have additional information regarding this process, and looks forward to seeing what INDOTEL may propose.
- **Prosecutions:** The Dominican authorities appointed a new specialized IPR prosecutor, with nationwide authority in the summer of 2003. This prosecutor will be in charge of IPR, e-commerce and telecommunications prosecutions. Three ministries have ceded authority to this new centralized position. Creation of a nationwide IPR prosecutor has been high on the copyright industries' wish-list for years. In practice, the MPA reports some concerns about the commitment of prosecutors to effectively pursue cases against politically well connected suspects. MPA is also disappointed that key IP cases, such as two key television broadcast piracy cases, are not handled by the IP Prosecutor. The Attorney General explains this by noting that the cases originated prior to his naming the IP Prosecutor; however, the net result is that the IP Prosecutor has no say in the prosecution of two important and current copyright prosecutions.
- **Judges:** Judicial delays are a serious, systemic problem in the Dominican Republic. Delays affect all cases, not just IPR cases. Continuances are sometimes two and three months long. The criminal judicial system in the Dominican Republic allows for virtually unlimited continuances based on any excuse imaginable, with little to no review of the merits. (The current criminal broadcast piracy case against Canal del Sol confirms the continuance saga in a vivid manner.) RIAA adds that these delays cover both the actual start date of the trial as well as the length of the trial. Once a sentence is handed down, request for appeal from the defendant is granted automatically. In addition, the appeals court judges have not sat to hear and/or affirmed any of the 19 cases presently pending appeal for the RIAA.

The new Criminal Code in the Dominican Republic will enter into effect in August 2004. It contains rules which are expected to expedite all new cases (but does not effect cases already in progress, such as the dozens of recording industry cases under appeal). Under the new code, criminal cases will be heard much more quickly. Instead of having cases rescheduled in mid-trial for months at a time, the trial would be heard continuously during the course of several days. The new code also will permit negotiation of restitution amounts, something that is not presently available. The current failure of the courts to afford adequate and effective protection is a present-day problem which requires present-day solutions.

Specifically, the recording industry continues to experience severe enforcement roadblocks, primarily at the judicial level. So far, 86 criminal cases for copyright infringement of sound recordings brought are still pending trial as of December 2003. Since 1999, the RIAA has been successful in obtaining only 19 prosecutions, including prison sentences, with court fines and restitution in the amount of US\$86,000. All these adjudicated cases are on appeal, with no appellate review dates set.

- **Interagency coordination:** In March 2001, an interagency commission was formed to coordinate all the agencies dealing with intellectual property issues, including ONDA, foreign affairs, customs, public health and others. It is headed by the President of INDOTEL and has members from the Ministry of Industry and Commerce, Customs, the Health Ministry and the Culture Ministry.

The Industries' Criminal Copyright Enforcement Experiences in 2003 Vary

Because of the copyright industry sectors' unique experiences in the Dominican Republic, the description below summarizes each industry's recent experiences.

Motion picture industry: The motion picture industry reports that broadcast piracy in the Dominican Republic remains the worst in the entire hemisphere. MPAA brings both criminal and administrative actions in country. The administrative authorities (ONDA and INDOTEL) have met with difficulty in taking actions against the larger television broadcast stations because of their political importance to the government. In April 2003, at the initiative of INDOTEL, a new anti-piracy campaign was initiated in which these two authorities began inspecting broadcast stations to verify they had contracts to authorize broadcasting of all, including U.S., programming. After some delay, these authorities presented criminal complaints to the prosecutors. In August 2003, INDOTEL conducted another series of inspections of broadcast stations. So far, sixteen (16) criminal complaints have been filed. However, the Attorney General has demonstrated little effort in prosecution.

The first criminal hearing against one of the larger broadcast stations, Channel 40-Canal del Sol, was first scheduled for August 20, 2003, but was continued by the prosecution and postponed until October 20, 2003. The trial was postponed again to December 16, 2003, and postponed a third time until March 1, 2004. And this criminal process has had no deterrent effect against this station's action because infringing U.S. programming continues to be broadcast. The hearing in the criminal trial against another broadcast station, Telemicro, is scheduled for February 20, 2004.

The motion picture industry is also concerned about the fair and transparent handling of some its video piracy cases, which have been progressing — at least up until the summer of 2003 — rather smoothly. This problem was illustrated by the Ministry of Culture's non-transparent issuance of objectionable copyright regulations in July 2003, portions of which have since been reversed due to a loud outcry by the copyright community and the U.S. government.

The MPA is very concerned that preferences are being given to political and family connections over even-handed law enforcement, something which has happened for years in broadcast piracy cases and, more recently, in video cases. The Dominican Republic government, through two administrations, has told MPA that it would obtain a resolution to the problem "politically," in lieu of taking enforcement action. During that time, infringing activity has continued, MPA member companies' copyrights have been infringed and their revenues have been damaged, and MPA has continued to request a legal remedy. Government officials from

the Industry and Commerce and Culture Ministries as well as the Attorney General have told MPA that the resolution to these problems is political and cannot be resolved through the legal system.

MPA also notes that non-transparent preferences appear to be happening, instead of even-handed law enforcement, demonstrating the government's predisposition towards political and personal considerations over its legal commitments. These criteria are entirely inconsistent with the effective legal remedies that the government claims to have established. For example, The Minister of Culture has recognized in writing that the current practice of commercial use of US-only home-use DVDs in video stores is illegal, but has prohibited ONDA from applying the law until, at least, after the 2004 elections.

Recording industry: The recording industry continues to experience severe enforcement roadblocks, primarily at the judicial level. RIAA's three-tier effort in the Dominican Republic includes education, training and enforcement (bringing criminal and administrative actions). The judiciary continues to be the weakest link and requires the most urgent attention at both the criminal courts level and the appeals court level. So far, 86 criminal cases for copyright infringement of sound recordings brought were still pending trial in December 2003. Since 1999, the RIAA has been successful in obtaining only 18 prosecutions, including prison sentences, court fines and restitution in the amount of US\$83,750.⁸ All these adjudicated cases are on appeal, and no review dates have been scheduled by the Court of Appeals. As a result, there continues to be no practical deterrence against music piracy in the Dominican Republic.

ONDA reduced operations in music related activities by 227% in 2002. In 2003, ONDA increased their music related operations seizing 141,216 units. To date, ONDA has not used the law enforcement specialist/detective assigned to follow-up on investigations in this capacity. This is the RIAA's first full year of utilizing ADOPROFONO, a local group of music labels brought together as a coalition, to address the increasing piracy problems in the Dominican Republic. ADOPROFONO, with the assistance of the Fiscalia and the National Police, conducted over 40 operations, seizing 414,379-pirate/counterfeit music CDs and 91,184 audiocassettes through December 2003. There were 44 people arrested as a result of their operations. RIAA is encouraged by the results of the task force operations. The Judicial System continues to be the weakest link in the RIAA's anti-piracy strategy in the DR.

Business software: Although the business software industry has reported some enforcement successes in the Dominican Republic, piracy levels of its copyrighted works remain high (61%) as well. BSA runs a campaign involving mainly administrative actions. With respect to administrative actions this year, BSA reports it continues to be able to work very effectively with ONDA and the Fiscalia in this new enforcement regime. During 2003, ONDA and the Fiscalia were proactive on software industry cases, with ONDA conducting inspections and seizures and referring evidence to the Fiscalia for criminal prosecution. Working with Dominican prosecutors in the Fiscalia offices, BSA achieved 13 convictions of software piracy in recent years. Other prosecutions for piracy and counterfeiting are working their way through the Dominican courts. During 2003, ONDA was helpful and supportive in performing inspections not only in Santo Domingo but also in other cities such as Santiago, La Vega, San Pedro de Macorí, La Romana, and San Francisco de Macorís

⁸ The award is in Pesos at RD\$3.35 million at a current exchange rate of RD\$40.00 to US\$1.00.

2003 CRIMINAL ENFORCEMENT STATISTICS IN THE DOMINICAN REPUBLIC

COPYRIGHT ENFORCEMENT STATISTICS 2003			
ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE	SOUND RECORDINGS
Number of raids conducted by police (Fiscalia)	12 (with ONDA)	12	60
Number of criminal cases commenced	16		86
Number of defendants convicted (including guilty pleas)	0		19
Numbers of acquittals and dismissals	0		0
Number of criminal cases pending	16	8	86
Total number of cases resulting in jail time	0	1	0
Suspended Prison Terms			0
Maximum 6 months		1	0
Over 6 months			0
Over 1 year			0
Total Suspended Prison Terms	0		n/a
Prison Terms Served (not suspended)			
Maximum 6 months			0
Over 6 months			0
Over 1 year			0
Total Prison Terms Served (not suspended)			
Number of cases resulting in criminal fines	0		
Up to \$1,000			5
\$1,000 to \$5,000			5
Over \$5,000			9
Total amount of criminal fines levied (US\$)			83,750
Number of administrative inspections conducted by ONDA	36 (with INDOTEL)	48	Unknown
Number of cases resulting in administrative sanctions	8	6	0
Average fine per case (US\$)	US\$1,500	US\$1,500	n/a
Total amount of administrative fines collected (US\$)		n/a	n/a

The Rules for Civil Enforcement Remain Good

The 2000 Copyright Law corrected several civil litigation omissions which had been in Dominican law and practice. First, it provides for *ex parte* civil searches, an especially important tool used by the business software publishers. Second, the law also expressly prohibits judges from imposing onerous bonds in cases brought by foreign plaintiffs, resulting in a major improvement in the practical ability of copyright holders to defend their ownership rights in Dominican courts. However, to the best of our knowledge, copyright holders like BSA did not pursue civil infringement actions in 2003.

COPYRIGHT LAW AND RELATED ISSUES

Copyright Law of 2000: The Dominican Republic adopted a new copyright law in October 2000 (Law 65-00), fulfilling many years of effort to replace its inadequate 1986 copyright law. That legislative achievement represented success in advancing higher levels of

substantive copyright protection as well as expanding the battery of tools available for criminal, civil and administrative copyright enforcement in the Dominican Republic. The law raised the level of copyright protection up to WTO TRIPS levels, and also integrated several critical obligations of the two WIPO Internet treaties. Copyright regulations were published in January 2002, and included the administrative fines which ONDA could impose against copyright infringers.

Regulations undermining the Copyright Law were adopted (then reversed, in part) in 2003: To the surprise and consternation of the copyright industries, the Ministry of Culture issued a series of resolutions to the copyright law on/about July 11, 2003 (Resolutions 4-03, 5-03, 6-03, 7-03). In particular, two of the more egregious provisions disallowed motion picture studios from determining their own method of distribution and eliminated the Copyright Office's (ONDA) ability to independently investigate copyright violations of audio-visual works (thus administratively weakening the 2000 Copyright Law itself). Sadly, the rapid and non-transparent issuance of these July regulations showed the government's predisposition toward political and personal considerations over its legal commitments. All the copyright industries were very concerned about the July 2003 regulations and the adverse precedent they might have to undermine enforcement actions. After much bilateral engagement, the Ministry of Culture revised its July 2003 regulations in August 2003 (Resolution No. 9-03) to correct the two most glaring problems: that the motion picture studios were not considered copyright holders (thus greatly interfering with their ability to take anti-piracy actions) and that ONDA lost its *ex officio* inspection authority.

However, despite this recuperation of enforcement ability, the Minister of Culture has prohibited ONDA from enforcing copyright law in the case of video stores, while at the same time recognizing that the commercial practices of the video stores are illegal and violate the copyright law. The Ministry of Culture has told MPA it will only allow enforcement after the 2004 elections.

Constitutional challenge to the copyright law: BSA is currently defending against a constitutional challenge to the 2000 Copyright Law. A reseller defendant in a BSA case, Hard Soft, filed a constitutional challenge in the Supreme Court of Justice in Santo Domingo, alleging that portions of the 2000 Copyright Law are unconstitutional. Hard Soft argues that the copyright law protects software more stringently than other media, and is thus unconstitutional because of unequal protection, in addition to other arguments. BSA has filed a brief refuting these arguments, and ONDA also filed a brief against this constitutional challenge. The hearing in order to discuss whether Hard Soft committed a copyright infringement was scheduled for November 4, 2003, but was postponed until April 2004. Regarding the constitutional challenge, BSA is still waiting for the Supreme Court's final decision.

WIPO Internet treaties: The Congress of the Dominican Republic has passed legislation to ratify the two 1996 WIPO treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. President Mejia has signed the documents for both treaties, but deposit with WIPO is still forthcoming.

Criminal Code amendments: The Dominican Congress on July 2, 2002 passed a new Criminal Procedure Code which continues to allow ONDA and the Fiscalia to conduct *ex officio* actions; this law will enter into effect in August 2004 (refer to discussion above).