



February 18, 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: Kazakhstan GSP Petition for Review
Case: 015-CP-02

To the GSP Subcommittee:

We take this opportunity to update and supplement the public file with respect to the IIPA's petition and the U.S. government's review of Kazakhstan's intellectual property rights practices under the GSP trade program.

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

We request that the Subcommittee recommend the immediate suspension of Kazakhstan's GSP benefits for the reasons stated in the filing and at the U.S. government's hearing on this matter last year.

Sincerely,

Eric J. Schwartz
Vice President and Special Counsel
International Intellectual Property Alliance

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE
2004 SPECIAL 301 REPORT
COMMONWEALTH OF INDEPENDENT STATES
(C.I.S.)

EXECUTIVE SUMMARY: TEN COUNTRIES OF THE C.I.S.¹

This report includes a brief summary of the common issues in the following ten countries of the Commonwealth of Independent States (C.I.S.): **Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyz Republic, Republic of Moldova, Tajikistan, Turkmenistan and Uzbekistan**, followed by brief individual country reports in this section and in the Special Mention section.² For a more complete report on the common issues of all ten countries, see <http://www.iipa.com/rbc/2003/2003SPEC301CIS.pdf>.

Special 301 recommendation: IIPA recommends that:

- (1) **Azerbaijan, Belarus, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan** be retained on the **Special 301 Watch List** in 2004;
- (2) The U.S. government should continue to monitor the post-WTO accession progress of **Armenia, Georgia, the Kyrgyz Republic and the Republic of Moldova** as noted in the **Special Mention** section of this filing;
- (3) The U.S. government should suspend the duty-free trade benefits under the Generalized System of Preferences (GSP) of **Kazakhstan and Uzbekistan** for the reasons stated in the petitions filed by the IIPA concerning the shortcomings in the legal regimes of these countries and reiterated at the U.S. government hearings in 2003;³ and
- (4) The U.S. government should block accession to the World Trade Organization of **Azerbaijan, Belarus, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan (as well as Russia and Ukraine for the reasons noted in the separate reports)** because the legal and enforcement regimes in each of these countries is not in compliance with the WTO TRIPS obligations.

Overview of key problems: IIPA's broad summary of the priorities in these countries is that: (1) the legal regimes are in need of critical reforms to their copyright law, criminal code, customs code, civil procedure code, and administrative code in each country, and in some

¹ For more details on each country's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2004SPEC301HISTORICALSUMMARY.pdf>. Please see previous year's reports at <http://www.iipa.com/countryreports.html>.

² IIPA filed separate Special 301 reports on the other two countries in the C.I.S., Russia and Ukraine, as a result of serious piracy problems, in particular wide-scale illegal optical media production and distribution, confronting the copyright industries in those countries.

³ As noted in the separate IIPA Special 301 reports on Russia and Ukraine, IIPA recommends that Russia's GSP benefits be suspended (based on the IIPA 2000 petition and our testimony at the U.G. government GSP hearing in October 2003), and that the U.S. government continue its suspension of Ukraine's GSP benefits (first suspended in August 2001). Since 2000, Belarus has had its GSP benefits suspended, but for reasons unrelated to intellectual property matters. The U.S. government terminated Armenia's GSP review on September 3, 2003.

cases also need regulation of optical media production facilities; (2) accession to key treaties is still not complete, especially for neighboring rights and the WIPO digital treaties (WCT and WPPT); and (3) there is virtually no on-the-ground enforcement against commercial pirates, much less against smaller scale operations starting with the need for administrative remedies, effective border enforcement, and criminal prosecutions.

Actions to be taken by the governments of these countries: The actions that must be taken are:

- Amending the copyright law, criminal code, customs code, administrative code, and civil procedure code (adding *ex parte* search provisions) to provide a comprehensive and effective legal regime, as well as adding provisions to regulate optical media production facilities and equipment;
- Acceding to key treaties including full implementation of the Berne Convention, Geneva Phonograms Convention, WTO TRIPS, and the WIPO digital treaties (WCT and WPPT);
- Enacting and enforcing effective border measures to stop the export and import of illegal material;
- Commencing raids and following up with criminal prosecutions against pirates engaged in commercial distribution, as well as using administrative procedures for smaller scale operations directed at street vendors, kiosks, and retail stores.

AZERBAIJAN

As the U.S. Trade Representative noted when Azerbaijan was placed on the Watch List in 2003, there are many steps remaining for Azerbaijan “to fulfill its intellectual property rights commitments under the 1995 U.S.-Azerbaijan Trade Agreement.” In fact, Azerbaijan obligated itself to fix these deficiencies over nine years ago in the bilateral agreement with the United States (after an April 1993 exchange of letters); that agreement entered into force on April 21, 1995. The current Azerbaijani Copyright Law, in force since October 23, 1996, has many deficiencies. Azerbaijan adhered to the Berne Convention (1999) and the Geneva Phonograms Convention (2001). The long delay in the protection of sound recordings allowed unprotected back-catalog material to flow into the marketplace.

Legal reform deficiencies: Azerbaijan does not clearly provide protection for pre-existing works or sound recordings as required by the obligation in its bilateral trade agreement, and by Berne and the WTO TRIPS Agreement. Also unclear is whether Azerbaijani law provides civil *ex parte* search provisions as required by the WTO TRIPS requirement.

Article 158 of the Azerbaijani Criminal Code (2000) provides liability for copyright and neighboring rights infringements if they result in “significant damage” to the rightholder concerned. The “significant damage” standard creates an unwarranted threshold in the fight against copyright piracy because it sets a vague standard for police and prosecutors to commence action. The law should be amended to include a low and clear threshold to instigate a criminal action, for example, 50 times the minimum daily wage. There have been to date, no known convictions under this law (the criminal code does provide sanctions for copyright and neighboring rights violations).

Neither the Criminal Code nor the Criminal Procedures Code provides police with the proper *ex officio* authority to commence criminal copyright cases. These laws should be amended accordingly to provide the authority necessary for effective enforcement. It is not clear that the Azerbaijani Customs Code (last amended in 1997), which in Article 19 contains provisions relevant to the importation or export of intellectual property, provides *ex officio* authority for customs officials to seize material at the border as required by the WTO TRIPS Agreement. This authority must be clearly provided, and if needed, the Customs Code revised. Last, the Azerbaijani government should be encouraged to accede to and fully implement both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

There currently is no “adequate and effective” enforcement in Azerbaijan. There is no meaningful police, customs, or prosecutorial activity, as required by the bilateral trade agreement and the WTO TRIPS Agreement. There are administrative sanctions (Article 186-1) providing for fines of 20 times the minimum monthly wages for copyright infringements. However, these fines are only imposed if the infringement causes damages that equal more than ten times the minimum monthly wage. For another year, the copyright industries reported that there was not a single known case where either the administrative sanctions or any of the criminal penalties were levied.

Last, the U.S. Embassy in Baku has reported that licensed theater owners continue to complain that Azerbaijani television stations are threatening legitimate theatrical distribution because the stations are exhibiting pirated copies of American films without permission.

As in other countries in the region, the environment is ripe for illegal optical media production facilities, as well as other organized criminal production facilities. According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are currently no known optical media plants in Azerbaijan. Most music piracy is in the form of audiocassettes. The level of music piracy is estimated at about 83%; trade losses for 2003 were estimated at \$12.2 million. It is estimated by the recording industry that in total 10.3 million cassettes and 2.6 million CDs were sold in Azerbaijan in 2003 and of these, 8.4 million cassettes and 2.3 million CDs were pirated copies.

BELARUS

In May 2003, the U.S. Trade Representative called enforcement in Belarus “very weak” (in his annual announcement on Special 301 designations) and noted the “extremely high” piracy levels. There were no reports of any legal reform or enforcement successes in 2003. In recent years, Belarus has joined the relevant neighboring rights treaties—the WIPO Performances and Phonograms Treaty and the Geneva Phonograms Convention in 2003—to provide, at long last, for a point of attachment for foreign sound recordings. However, the long delay (of over ten years) in providing this legal protection allowed for a large back-catalog of unprotected material to enter the marketplace, making enforcement that much more difficult.

Even more troubling is the migration of optical media production facilities into Belarus from neighboring countries. One known plant (Armita) located in Brest, Belarus migrated from Ukraine a few years ago; in 2002 the plant was closed and a criminal investigation was commenced. However, the government of Belarus has not yet pushed this criminal case forward, to seek criminal convictions and, ultimately, deterrent sentences of the plant operators. The other important step that the government must take is to insist that border enforcement authorities act more effectively to prevent other plants from Russia (Ukraine or other neighboring countries) from relocating to Belarus, as well as to stop the importing and exporting of illegal optical media discs (CDs, DVDs, CD-ROMs, etc.).

In January and February 1993, Belarus and the United States exchanged letters to implement a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights; that agreement entered into force on February 16, 1993. Belarus enacted a new law on copyright and neighboring rights (in force on June 18, 1996), and amendments in 1998.

Belarus is a member of the Berne Convention (1997) and Geneva Phonograms Convention (2003) (also in 2003, the Rome Convention) as well as the two WIPO digital treaties, which it joined in 1998 as one of the first countries to do so. The 1998 amendments were intended to, among other things, partially implement the digital treaties.

Legal reform deficiencies: The 1998 amendments added provisions relating to anticircumvention devices and services, and the removal or alteration of rights management information (Article 39.5). The remedies for anticircumvention and rights management information protection include injunctive relief, monetary damages, and seizure of devices.

Criminal code provisions were adopted effective in 2000. Those provisions reportedly (IIPA was never provided a copy) include sanctions for up to five years’ imprisonment for copyright and neighboring rights violations.

The criminal procedures code still needs revision to provide the proper *ex officio* authority for police officials to initiate copyright criminal cases. There are administrative remedies against violations of copyright and neighboring rights, including acts of illegal retail sale and distribution.

Even though customs code amendments were adopted in 1998 to include intellectual property materials, the proper *ex officio* authority was never granted to customs officials.

Under the Copyright Law (Article 40), the civil penalties for copyright or neighboring rights violations included injunctive relief, damages (including lost profits), seizure and impoundment of infringing copies, and statutory penalties of between 10 and 50,000 times the minimum wage. Belarussian officials also point to the civil code revisions, adopted in 1999, as providing additional remedies for IPR violations.

The Copyright Law (as amended through 1998) does not provide protection for pre-existing works or sound recordings (for example, only recordings fixed or released on or after April 17, 2003 enjoy protection). Belarus is required by the clear obligation in its bilateral trade agreement, as well as by Berne and the WTO TRIPS Agreement to provide such protection, and should be urged to clarify its law immediately. Belarussian officials insist this protection does currently exist, at least for works. For works, the officials insist that since Article 42 of the 1996 law and Article 3 of the 1998 law make international treaties (such as the Berne Convention) self-executing in Belarus, absent any legislative action to the contrary, Article 18 of Berne should currently provide protection for pre-existing foreign works. While this may be a correct reading of the law, it should be clarified by amendment to the law to avoid any confusion on the part of police, prosecutors and judges tasked with enforcement of these rights. Further, the provisions cited (Article 18 of Berne) apply only to “works,” not sound recordings; a change in the law to explicitly extend protection for sound recordings (and works) is essential.

There are no known available civil *ex parte* search procedures in Belarussian law; these are needed for effective enforcement against end-user pirates, especially in the software industry.

Neither are its anticircumvention or copyright management information provisions fully compatible with the WIPO digital treaties. The provisions regarding technological protection measures need further change. In particular, it must cover a prohibition on the manufacture, importation, sale, distribution, or other trafficking in devices or services that are aimed at circumventing technological protection measures, as well as outlawing acts of circumvention. In addition, rightholders need to be able to protect so-called “copyright management information” that is attached to or accompanies a work or sound recording, including protection against the alteration, removal or falsification of this information. The Belarussian provisions provide some, but not all, of the required protection against Internet and other digital piracy.

The most important action Belarus can take for effective enforcement in 2004 is to bring the Armita optical disc plant investigation to a successful conclusion by commencing the criminal case and pushing the courts to impose deterrent criminal sentences on the plant operators. In general, levels of piracy remain extremely high, and enforcement remains virtually nonexistent in Belarus. There are numerous reports of material being produced in or shipped through Belarus ending up in other markets. In late 2002, Belarussian officials reported that a new interministerial committee to be headed by the First Deputy Prime Minister of Belarus would be formed to concentrate on IPR enforcement, but no additional information about this initiative has been forthcoming.

Belarus is in the midst of its accession process to join the World Trade Organization. To accede, Belarus must bring its law into full compliance with the WTO TRIPS obligations by improving its laws and providing effective enforcement (including criminal penalties), since the current laws and enforcement regime fall short of these obligations. According to the recording industry (International Federation of the Phonographic Industry, IFPI), Belarus has large-scale illegal musical cassette production facilities for domestic and foreign consumption—the government must take action against these facilities using the criminal law remedies.

According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are currently no known operating optical media plants in Belarus. The level of music piracy is estimated at about 74%; trade losses for 2003 were estimated at \$22 million. It is estimated by the recording industry that in total 11.4 million cassettes and 4.9 million CDs were sold in Belarus in 2003 and of these, 8.4 million cassettes and 3.6 million CDs were pirated copies. The industry also reported 845 raids and the seizure of US\$688,200 worth of pirate material (60,400 CDs, 1355 DVDs, 10,200 cassettes and 104 recording devices) in 2003 by local enforcement agencies.

KAZAKHSTAN

The U.S. Trade Representative, in his May 2003 Special 301 announcement, noted that Kazakhstan has still not met its commitments under the 1992 U.S.-Kazakhstan Trade Agreement. In particular, the U.S. government cited the lack of clear protection for pre-existing works and sound recordings and “weak enforcement” in part caused by ineffective criminal code provisions, which set a “high burden of proof.” After more than 10 years, Kazakhstan has still not fixed these critical deficiencies, which is why IIPA recommends not only the retention of Kazakhstan on the Watch List, but also that the U.S. government block Kazakhstan’s membership in the WTO, as well as the suspension of its GSP benefits, until these deficiencies are corrected.

In May 1992, Kazakhstan and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights; that agreement entered into force on February 18, 1993. The Copyright Law was last amended in 1996 (it entered into force on June 12, 1996).

Kazakhstan joined the Berne Convention (1999) and the Geneva Phonograms Convention (2001), providing a point of attachment for foreign sound recordings, albeit more than seven years after the bilateral trade agreement required such protection. The Kazakh government should be encouraged to ratify and fully implement both WIPO digital treaties.

Legal reform deficiencies: In 2001 and again in 2002, the government of Kazakhstan issued a resolution (from the Committee on IPR in the Ministry of Justice) with a package of measures intended to correct the legal deficiencies in the Kazakh IPR regime. In essence this committee has been tasked with preparing draft laws to fix the preexisting works and sound recordings problem, to accede to the digital treaties and to improve enforcement sanctions. No legislative proposals were introduced in 2003. The copyright industries understand that a Parliamentary Working Group is considering amendments to the copyright law for expected adoption in 2004; also on the agenda are laws pertaining to electronic commerce and Internet technology, E.U. compatible/accession laws and WIPO treaty implementation. IPR reform is imperative; for example, the recording industry considers Kazakhstan the most promising marketplace behind only Russia and Ukraine of the C.I.S. members.

The Kazakh Copyright Law (even after the 1996 “modernization”) contains several deficiencies. Most fundamentally, the copyright law does not contain a provision that clearly provides protection for pre-existing works and sound recordings as required by the obligation in the bilateral trade agreement as well as by Berne (Article 18), under national treatment obligations, and under the TRIPS Agreement. When Kazakhstan adhered to Berne in April 1999, it did not make clear in a directive or decree how or if it was complying with its obligations under Article 18 (for works) and how it would thereby provide full protection for older works, nor for sound recordings when it joined the Geneva Phonograms Convention. The Kazakh law must be amended to clearly provide protection for pre-existing works and sound recordings for a minimum of 50 years (and preferably 70 years—the U.S. provides it for at least 75 years for Kazakh works and recordings), to meet Kazakhstan’s bilateral and multilateral obligations. Copyright law amendments must be adopted this year to remedy these inadequacies and in order for Kazakhstan to enjoy GSP benefits and avoid their suspension.

There are no known civil *ex parte* search procedures under Kazakh law; these are needed to provide effective enforcement against end-user pirates, especially software pirates. It is understood that the current draft copyright law amendments contain provisions to remedy this matter.

In 1997, Kazakhstan adopted criminal code amendments; these amendments went into force on January 1, 1998. Article 184 of the Criminal Code includes substantial fines of between 100 and 800 times the statutory minimum monthly wage; detention (arrest) of up to six months; and imprisonment of up to five years for repeat offenders. But one major shortcoming still exists: The provisions are limited to actions committed for the purposes of “deriving profits” and which cause “considerable harm.” The imposition of this threshold, especially the considerable harm standard, has been a particular problem for effective enforcement in other countries, notably Russia. The threshold for criminal violations should be clear and it should be a relatively low standard (e.g., harm caused at a level equal to 50 times the minimum wage)—Kazakhstan needs to fix this provision. In addition, there is nothing in the criminal code or the criminal procedures code to provide police with the proper *ex officio* authority to commence criminal copyright cases. It is our understanding that administrative and criminal law amendments will be introduced and hopefully adopted in 2004 (some, but not all, of the copyright industries have been solicited by the government to provide comments).

One example of the ineffectiveness of the criminal enforcement system comes from an “enforcement report” issued by the government of Kazakhstan on October 21, 2003. It notes that there were 25 criminal cases in 2003, 20 still under investigation by the courts or prosecutors, four dismissed altogether, and one in which the defendant pleaded guilty and was fined (four times the monthly wage) for trademark infringement. There were no criminal convictions with jail sentences imposed, and the only fines came in a single case at levels that do not serve as a deterrent. Much more needs to be done for effective criminal enforcement. An October 2003 Memorandum of Understanding signed by the government pledging to the copyright industries to do more is a goodwill gesture and a positive first step, but nothing more without actual on-the-ground action.

The Customs Code was amended in April 2003, in force May 1, 2003, replacing 1999 amendments. Unfortunately, the 2003 amendments did not include the necessary *ex officio* authority to seize suspected infringing material at the border as required by the TRIPS Agreement and as is necessary to conduct effective border enforcement. Worse, the 2003 amendments adopted a complicated registration system for copyright rightholders seeking enforcement, which will further weaken, not strengthen, border measures. IIPA recommends that this registration system should be repealed and that border officials be given clear *ex officio* authority to seize infringing material and to commence their own criminal investigations.

While the U.S. copyright industries have been sustaining millions of dollars in losses in Kazakhstan, the country received GSP trade benefits of over \$145 million in the first 11 months of 2003. The copyright industries have waited ten years for effective change; perhaps the withdrawal of GSP benefits will help spur these necessary changes.

IIPA suggests that police and administrative activity is, if used correctly, a very positive first step and that stepped-up seizure and confiscation of illegal copyright materials should be undertaken, as well as the closure of shops and businesses conducting illegal business using the licensing law. The governments reported in 2003 that seizures of IPR materials comprised just over 200,000 copies—there were approximately 13 million pirate copies of sound recordings alone sold in 2003—so much more needs to be done by enforcement authorities. A

special IPR department was recently established within the Finance Police (with national authority). In 2003, the Finance Police initiated three criminal raids, resulting in two criminal cases against illegal software resellers. According to a recent initiative, the General Prosecutor's office instructed all regional prosecutors in Kazakhstan and all regional/city departments of the Financial Police to undertake raids against IPR infringers, and to report their results by February 12, 2004. This initiative resulted in five new raids and cases against software pirates that will hopefully result in criminal proceedings.

According to the recording industry (International Federation of the Phonographic Industry, IFPI), the level of music piracy is estimated at about 70%; trade losses for 2003 were estimated at \$22.7 million. It is estimated by the recording industry that in total 17.4 million cassettes and 5.8 million CDs were sold in Kazakhstan in 2003 and of these, 12.2 million cassettes and 4.1 million CDs were pirated copies. The industry also reported 427 raids and the seizure of US\$325,800 worth of pirate material (27,200 CDs, 46,300 cassettes and 61 recording devices) in 2003 by local enforcement agencies.

Last, there is one known optical disc production facility reported in Kazakhstan at present; it is reported that the line is capable of producing 8 million CDs a year—and the plant has neither applied for the international SID codes nor is it subject to any optical disc regulation. The lack of effective enforcement and the infrastructure in Kazakhstan makes it ripe for the movement of other plants into Kazakhstan from neighboring countries, such as Russia or Ukraine.

TAJIKISTAN

The U.S. Trade Representative, in his May 2003 announcement placing Tajikistan on the Watch List said, “Tajikistan has yet to fulfill all of its intellectual property rights commitments under the 1993 U.S.-Tajikistan Trade Agreement” and specifically noted that Tajikistan has neither joined the Geneva Phonograms Convention nor is it providing any protection for U.S. or other foreign sound recordings among its other deficiencies. This is ten years after it was obligated to do so.

Legal reform deficiencies: In July 1993, Tajikistan and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights; that agreement entered into force on November 24, 1993. The Tajik Copyright Law was last amended in 1998 (in force on December 17, 1998). Among its deficiencies, the law over-regulates the terms and conditions of authors’ contracts. And, it provides a right of remuneration only for producers of sound recordings for the public performance, broadcasting, or communication of a phonogram to the public by cable. The law should be further amended to provide producers with an exclusive public performance (or making available) right, at a minimum, for digital transmissions. Tajikistan should be encouraged to ratify and then fully implement both the WIPO digital treaties.

Tajikistan is a member of Berne (2000). As noted, it fails to provide any protection or rights to U.S. or any other sound recordings, and is not a member of the Geneva Phonograms Convention—two obligations of the trade agreement. Nor does the Tajik law clearly provide protection for pre-existing works or sound recordings in its copyright law. There are no known civil *ex parte* search procedures in existence in the Tajik law; these provisions must be adopted and implemented for effective enforcement against end-user pirates, especially software pirates.

Tajikistan did not amend its criminal code (as expected following passage of the November 1998 copyright law) to adopt criminal provisions for IPR violations. This failure is a breach of the bilateral agreement’s obligation to provide “adequate and effective” protection and enforcement. In addition, there is nothing in the criminal code or the criminal procedures code to provide police with the proper *ex officio* authority to commence criminal copyright cases. Also, 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 TRIPS Agreement and as is necessary to conduct effective border enforcement. The customs code (last revised in November 1995) does make one liable for the transfer of illegal goods, including intellectual property material, through the border. A 2002 resolution (No. 185 of the Cabinet of Ministers) established border control rules for goods, including IPR works, and it implemented a customs registry for IPR works requiring a rightholder to file a statement and set of documents for border enforcement, a cumbersome and ineffective tool.

In short, the Tajik copyright regime does not provide “adequate and effective” enforcement as required by the bilateral trade agreement—there is not a single criminal IPR case reported, and none under the administrative code (last revised in 1999 with a new Article 158-2 reportedly provides levies, fines, and seizure of illegal copyright and neighboring rights material).

On December 10, 2002, the U.S. and Tajik presidents signed a joint statement reaffirming the relationship between the two countries and “recognizing the importance of ... the

rule of law,” as well as pledging to work together on economic and political reforms. IIPA observes that the government of Tajikistan should, in this spirit of cooperation, and as required by its now ten-year-old obligations under the Bilateral Trade Agreement, amend the relevant IPR laws and engage in effective enforcement.

According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are currently no known optical media plants in Tajikistan. The level of music piracy is estimated at about 82%; trade losses for 2003 were estimated at \$5.2 million. It is estimated by the recording industry that in total 6.2 million cassettes and 1.1 million CDs were sold in Tajikistan in 2003 and of these, 5 million cassettes and 0.9 million CDs were pirated copies.

TURKMENISTAN

The U.S. Trade Representative, in his May 2003 announcement placing Turkmenistan on the Watch List, noted the many steps that Turkmenistan must take in order to “fulfill its intellectual property rights commitments under the 1993 U.S.-Turkmenistan Trade Agreement.” In fact, Turkmenistan is not providing any protection or rights to U.S. or other foreign works or sound recordings—over ten years after it agreed to make basic changes in its legal and enforcement regimes.

Legal reform deficiencies: In March 1993, Turkmenistan and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights; that agreement entered into force on October 25, 1993. For almost ten years since that time, however, Turkmenistan has done little to modernize its copyright regime or to join any of the relevant treaties as it obligated itself to do in the bilateral agreement. Turkmenistan never adopted a comprehensive Copyright and Neighboring Rights Law. In October 1993, Turkmenistan formally incorporated the Soviet-era Civil Code (Chapter IV) into its legal structure. On March 1, 1999, the Civil Code was revised, with extensive amendments pertaining to copyright; the operational copyright laws are those that were last amended by the Civil Code (1961) in 1999. The rights and provisions necessary to comply with basic international norms are lacking. A draft Law on Copyright and Neighboring Rights was under consideration several years ago, but was never adopted by the Parliament.

Turkmenistan is neither a member of the Berne Convention nor the Geneva Phonograms Convention which means that U.S. (and other foreign) works and sound recordings remain completely unprotected. When it does join these treaties, it must also obligate itself to provide protection for pre-existing works and sound recordings. Further, the civil procedure code must be amended to include provisions for civil *ex parte* search procedures; these are necessary to provide effective enforcement against end-user pirates, especially software pirates.

Turkmenistan must adopt remedies into its criminal code for works and sound recordings (another bilateral agreement obligation). In addition, provisions must be added into the criminal code to provide police with the proper *ex officio* authority to commence criminal copyright cases. Further, 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 to conduct effective border enforcement. Last, the Turkmen government should be encouraged to ratify and then fully implement both the WIPO digital treaties.

Turkmenistan, in the absence of these essential provisions and the lack of any police, prosecutorial, judicial or border activity, is clearly not providing “adequate and effective” enforcement as required by the bilateral trade agreement. After adopting the legal reforms, the Turkmen authorities must, at a minimum, commence police raids and seizures, and must act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions. The music industry reports that illegal musical cassettes produced in neighboring countries, in particular from Uzbekistan, enter Turkmenistan as the result of the very poor border enforcement regime (on both sides of the border). The IFPI reports that there are still no known optical media plants in Turkmenistan.

According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are currently no known optical media plants in Turkmenistan. The level of music piracy is estimated at about 89%; trade losses for 2003 were estimated at \$7 million. It is estimated by the recording industry that in total 6.5 million cassettes and 1.1 million CDs were sold in Turkmenistan in 2003 and of these, 5.7 million cassettes and 1.0 million CDs were pirated copies.

UZBEKISTAN

The U.S. Trade Representative, in his May 2003 announcement placing Uzbekistan on the Watch List, noted that Uzbekistan has “many remaining steps to fulfill its intellectual property rights commitments under the 1994 U.S.-Uzbekistan Trade Agreement.” In fact, Uzbekistan is neither a member of the Berne Convention nor the Geneva Phonograms Convention and thus does not provide any protection or rights to U.S. or other foreign works or sound recordings—ten years after it agreed to make basic changes in its law and enforcement regime.

Legal reform deficiencies: 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; that agreement entered into force on January 13, 1994. The Copyright Law of Uzbekistan was overhauled in 1996 (in force on September 17, 1996), and two additional amendments were adopted in 2000. However, with the exception of the two relatively minor changes in 2000, there have not been the thorough revisions to the copyright act or to the relevant enforcement laws that Uzbekistan obligated itself to undertake in the bilateral agreement over ten years ago. The December 2000 amendments, while valuable, did not fix the major deficiencies. In January 2004 new amendments were prepared, and the IIPA and Uzbek government held constructive discussions about needed legal reforms and treaty accessions. Unfortunately, the January 2004 drafts are missing key provisions; this is disappointing because the U.S. and Uzbek governments and IIPA lawyers worked extensively on these same issues/drafts in December 2000. As an example, the January 2004 drafts do not provide protection for preexisting works and sound recordings.

Uzbekistan has not acceded to any of the relevant copyright or neighboring rights treaties even after it twice obligated itself to do so. The first instance was in the 1993 bilateral; the second time was in its testimony to the U.S. government during the 2000 GSP hearings, when it said it would join both treaties by no later than the end of 2003. As a result of these ongoing delays (especially with treaty accessions), IIPA recommends the immediate withdrawal of Uzbekistan’s GSP benefits. Such benefits could be restored when Uzbekistan meets its bilateral obligations and joins the Berne Convention and the Geneva Phonograms Convention, and amends its copyright law to provide protection for preexisting works and sound recordings for a minimum of 50 years (and preferably, 70 years). Uzbekistan was not a signatory to either of the two new WIPO treaties. The Uzbek government should also ratify and fully implement both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

There are other deficiencies in the Copyright Law including: (1) providing only a right of remuneration producers of sound recordings for the public communication of the recording, the broadcasting, or the communication to the public by cable—the law should be further amended to provide producers with an exclusive public performance (or making available) right, at a minimum, for digital transmissions; and (2) onerous provisions that over-regulate the terms and conditions of authors’ contracts. The December 2000 amendments did two things: (1) They added “copying of a record” to the enumerated rights of producers to fix a glaring deficiency; (2) they 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.

There are no known civil *ex parte* search procedures in the Uzbek law; these must be adopted into the civil procedure code in order to commence actions against end-user pirates,

especially software pirates. These are important enforcement tools that the Uzbek government must be encouraged to implement.

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. Drafts were circulated in January 2004 to amend the criminal code. However, the draft provided to the U.S. government and IIPA would weaken, not strengthen, criminal penalties because: (1) no criminal penalties would apply "until one year after administrative penalties are assessed"—providing pirates with a chance to pirate without penalty the first time, and (2) the levels—set at 50 to 100 times the minimum wage—are much too low to be deterrent penalties as are needed. The first provision must be deleted; the second (50 to 100 times) must be raised considerably to at least 500 times the minimum wage.

IIPA recommends that the draft criminal reform also include revisions to the criminal code and criminal procedures code to provide police with the proper *ex officio* authority to commence criminal copyright cases. Further, 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. In January 2004, an Uzbek government proposal was circulated to IIPA for the establishment of a complicated registration system for IPR enforcement at the border; IIPA strongly recommends that this plan be dropped because it will prove counterproductive to effective enforcement.

A 2001 resolution (No. 285 of the Cabinet of Ministers) established a licensing system for the production, reproduction and sale of records, cassettes and CDs, according to which only licensed entities could carry out such activities. However, it has not proven to be effective against the pirate production enterprises that are so common in this region.

The Uzbek copyright regime is, at present, among the weakest of all of the countries in the C.I.S. It is not in compliance with the bilateral obligations it made to the United States ten years ago, and is woefully insufficient for any future WTO membership. After the Uzbek government adopts the necessary legal reforms, including accession to the relevant treaties to protect foreign works and sound recordings, it must then commence police raids and seizures at a minimum, and must act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions.

According to the recording industry (International Federation of the Phonographic Industry, IFPI), the level of music piracy is estimated at about 81%; trade losses for 2003 were estimated at \$30.5 million. It is estimated by the recording industry that in total 29.8 million cassettes and 5.3 million CDs were sold in Uzbekistan in 2003 and of these, 23.7 million cassettes and 4.6 million CDs were pirated copies. The recording industry reports that illegal musical cassettes produced in neighboring countries, particularly Russia, are entering Uzbekistan as a result of poor border enforcement (on both sides of the border). The IFPI reports 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.