



May 20, 2004

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

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

To the GSP Subcommittee:

As the U.S. government nears its decisions regarding the 2003 GSP country eligibility review, IIPA takes this opportunity to reiterate our position regarding the Dominican Republic. In sum, we recommend that this investigation continue into the 2004 GSP cycle.

On February 18, 2004, IIPA provided this Subcommittee with a copy of IIPA's 2004 Special 301 report on the Dominican Republic in order to supplement the public GSP file on this case. Negotiations on the U.S.-Dominican Republic Free Trade Agreement concluded on March 15, 2004. IIPA already has acknowledged the hard work of the negotiators to obtain a good IPR chapter in that FTA, and importantly, a Side Letter on IPR Enforcement and separate Commitments on Broadcast Piracy.

IIPA remains concerned about the pace and progress in the Dominican Republic, especially regarding two key issues highlighted in the FTA context: broadcast piracy and the expeditious resolution of pending criminal copyright infringement cases. Below we outline some recent highlights since the filing of our February 2004 301 report:

- Since the March 15, 2004 conclusion of the DR-FTA negotiations, several incidences of blatant broadcast TV piracy have been reported by industry sources. For example, Telemicro (one of the stations subject to an ongoing criminal prosecution) has broadcast, without authorization, usually in the late night hours, America films such as "Charlie's Angels II: Full Throttle," "X2: X-men United," "Italian Job," "Bruce Almighty" and "Harry Potter and the Chamber of Secrets." Other stations have shown "The Lord of the Rings: The Two Towers" and "2Fast and 2Furious."
- Sadly, there has been little progress on the two criminal prosecutions involving broadcast piracy. Inspections of Telemicro (Channel 5) and Canal de Sol (Channel 40) were conducted by administrative agencies in April 2003, and criminal charges were filed in August 2003. Since then, numerous hearings have been held, predominately on defense procedural motions, but the merits of the copyright infringement charges have not yet been reached. In the Telemicro case, the first criminal hearing was scheduled for August 20, 2003 but was postponed, and since then, more hearings have been held on October 20, 2003, December 16, 2003, March 1, 2004, and April 2, 2004. In the Canal del Sol case, the first hearing was held on October 20, 2003, followed by hearings on December 16, 2003, March 1, 2004, and May 10, 2004, with the next hearing scheduled for June 11, 2004. Serious concerns remain that no substantive progress will be made

on the merits of these cases for the rest of this year, despite the best efforts and support of ONDA, INDOTEL and the prosecutor's office (*fiscalía*).

- The judicial process in the Dominican Republic remains slow. The RIAA has reported more criminal cases and results since IIPA's 2004 301 submission. As of May 2004, 90 criminal cases for copyright infringement of sound recordings brought are still pending trial. Recent raids in May 2004 conducted by ONDA and the *fiscalía* have not yet been entered into the system, so this number of pending cases will rise. Since 1999, the RIAA has been successful in obtaining 33 prosecutions, including prison sentences, court fines and restitution in the total amount of some US\$93,000. Of these 33 cases, 15 convictions (with \$10,000 in total fines) were obtained within the last month (April-May 2004).
- IIPA has learned that, contrary to RIAA's February 2004 report that all of its adjudicated cases (then numbering 18) were on appeal, in fact, "most" of those cases were on appeal, with no review dates scheduled by the Court of Appeals. There has been one notable piece of good news. In March 2004, a defendant in one of these sound recordings cases was actually sentenced by a court to serve 3 months in jail. The defendant is currently serving time, and should be released sometime in June 2004.
- Even though the amendments to the criminal code will enter into effect in early Fall 2004, the pending criminal cases (such as those mentioned above) will continue to be adjudicated under the current procedural laws which certainly have not served to expedite criminal cases and prosecutions.

IIPA will be closely monitoring the GODR's response to its FTA commitments. We do harbor some concern that the recent elections might result in a slowdown in anti-piracy activities taken by Dominican authorities during this summer. We understand that ONDA and the *fiscalía* this week have conducted some music piracy raids. IIPA and its members fervently hope that the enforcement agencies, including ONDA, INDOTEL and the *fiscalía*, will continue to enforce the laws even during the summer transition period before a new Administration enters office on August 16, 2004.

IIPA first filed our GSP petition in 1999, and after over five years of investigation, further delays in addressing basic piracy and copyright enforcement issues are hard to justify. Nevertheless, being cognizant of the recent FTA obligations and the recent elections, IIPA recommends that this GSP IPR investigation be continued into the 2004 GSP cycle. IIPA does reserve the right to amend our recommendation later this year if changing conditions in the Dominican Republic so warrant.

Sincerely,



Maria Strong
Vice President and General Counsel
International Intellectual Property Alliance