



May 20, 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: Russia GSP Petition for Review  
Case: 019-CP-02 Russia

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 Russia and to supplement the filing that we made on February 18, 2004, in conjunction with the IIPA's 2004 Special 301 report on Russia (which is available online at the IIPA website, [www.iipa.com](http://www.iipa.com)).

In August of 2000, we filed a petition asking that you open an investigation into Russia's practices and outlining a variety of ways in which Russia fails to meet the GSP criterion of providing adequate and effective protection for intellectual property. That petition was accepted on January 10, 2001, and IIPA has twice testified and submitted a number of materials and briefs in this matter since then.

Unfortunately, while Russia has taken certain steps in the nearly four years since the filing of our petition, the piracy problem has gotten worse, and our members' losses have increased. Perhaps most importantly, these four years have witnessed an explosion of optical disc manufacturing capacity without the concomitant controls to ensure that this capacity was used only for legitimate purposes. As a consequence, Russia has emerged as one of the world's leading exporter of pirate optical disc materials, and Russian manufactured pirate discs (of musical materials) have been forensically identified in over 26 countries. This activity must be addressed immediately by the Russian authorities, and this Committee should ensure that GSP benefits are not continued unless Russia takes clear and effective steps to bring this illegal activity under control.

While we do not expect Russia to be able to completely control piracy in advance of the date on which the President needs to make a decision concerning GSP, we believe that the following steps could be accomplished in the near term:

- 1) Inspect, on a regular, unannounced and continuous basis, each of the 34 known optical disc plants, and immediately close down any plant and seize any machinery found to be used to produce pirate product or operating without a license;
- 2) Adopt a decree setting forth sentencing guidelines for judges to advise the Courts to impose penal sanctions as provided under the penal code as amended (Article 146);
- 3) Pledge to investigate all complaints from copyright owners in respect of the commercial replication, distribution or export of pirate optical discs;
- 4) Introduce, either via executive order or legislation, the necessary modifications of the optical disc licensing regime so that it provides for more effective control over the operations of the plants, including stricter controls on the importation of polycarbonate and machinery, mandatory seizure and destruction of machinery used to produce pirate materials, and the introduction of criminal penalties for the owners of such plants;
- 5) Announce, from the office of the President, that fighting copyright piracy is a top priority for the country, and instruct the Inter-Ministerial Commission, headed by the Prime Minister, to deliver reports every three months to the President on what steps have been taken to address the problem of copyright piracy; and
- 6) Sign into law the copyright law amendments that have already had their third reading in the Duma.

These steps, if taken, should provide a sufficient basis for maintaining Russian participation in the GSP program. They will not, however, resolve the situation, and progress towards more completely addressing the range of continuing problems--both legal and enforcement related--must be closely monitored. Assuming that these actions are satisfactorily accomplished, we believe that it would be reasonable to delay, for a period of approximately 6 months, any decision on Russia's status under the GSP program.

We also want to address one issue that has been raised by certain senior members of the Russian Government and which raise serious questions about its commitment to fighting piracy. We have seen a number of reports in which Russian officials have suggested that the prices for legitimate goods and the lack of local manufacturing of legitimate products are to blame for the piracy problem. This comment reflects both an ignorance of what is happening in the marketplace, and a misunderstanding of the nature of the problem that we confront in Russia. The organized criminal enterprises manufacturing and distributing pirate product are largely servicing foreign markets (local manufacturing capacity is at least a multiple of six or seven times that of local demand), making the Russian price for legitimate materials wholly irrelevant to their motivation or profitability. As noted earlier, Russian manufactured product has been found in over 26 countries over the past two years.

In addition, existing efforts by certain industries to offer low cost Russian editions have not had the effect of reducing local piracy rates. The record industry, for example, is already manufacturing locally, and sells legitimate copies for an average price of \$6.00 to \$8.00 U.S. dollars—a price that is extremely low not just in relation to prices for music elsewhere, but also with respect to other consumer goods sold in Russia. It is not the price of legitimate product that

is creating opportunities for piracy—it is the opportunity for easy profits that has brought criminal enterprises into this business, and Russia should stop offering such excuses for its continuing inaction.

Simply put, Russia's copyright piracy problem is enormous. The performance of the Russian government over the past decade can be summed up as representing a legacy of failed commitments on obligations to the United States and the broader international community. Illegal production has devastated the domestic Russian market, and exports of pirated Russian CDs are causing serious damage to legitimate market worldwide, as witnessed by the huge amount of pirated material originating in Russia that is found abroad. Russia's criminal enforcement system has failed to stem persistent commercial piracy. Overall copyright industry losses have well exceeded \$6 billion for the past seven years.

The number of CD plants in Russia has more than doubled in the last three years to now number at least 34. Production capacity has nearly tripled as criminal operations have encountered little hindrance in expanding their activities. Even more troubling, eight production plants are located on the facilities of Russian military-industrial enterprises. Russia's annual manufacturing capacity now stands at over 370 million CDs and additionally over 30 million DVDs, despite the fact that the demand for legitimate discs is unlikely to exceed 80 million in all formats.

Russia's anti-piracy efforts remain severely hampered by flawed legislation, ineffective enforcement by the Russian authorities and insufficient deterrent penalties in the courts. We are hopeful that Russia will meet the benchmarks set forth above. In the longer term, the Russian government will need to address legal reforms in the copyright law (even after the adoption of the current amendments), the criminal code, the criminal procedure code, and the administrative code, as well as to press for stronger and more effective enforcement compatible with WTO TRIPS and the WIPO digital treaties. The Russian Government has taken certain recent steps towards addressing copyright piracy, including by taking certain legal actions against pirate optical disc plants, adopting a ban on the sale of certain products at kiosks and other street locations, and moving, but not yet adopting, certain limited but positive copyright law amendments. This is a good start, but it is only that. This Committee should adopt positions, and a timetable, to ensure that Russia is significantly moving towards achieving meaningful and lasting progress to meet its obligations under the GSP program to provide adequate and effective protection for intellectual property.

Sincerely,



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

cc: Cathy Novelli  
Meredith Broadbent  
James Mendenhall