

IIPA GSP Post-Hearing Brief on Uzbekistan's IPR Review

Accepted Case # 019-CP-05

Uzbekistan IPR

IIPA – ANSWERS TO QUES FROM
HEARING AS POST-HEARING BRIEF

Message From: Eric Schwartz [schwartz@smimetlaw.com]
Sent: Wednesday, December 14, 2005 4:28 PM
To: FN-USTR-FR0441
Cc: Teeter, Regina; Eric Schwartz IIPA; Eric Smith; Joe Papovich; Pam Burchette; Watkins, Ralph J.
Subject: Russia, Kazakhstan, Uzbekistan: IIPA Responses to USG Follow-up Questions at GSP Country Practice Hearing (Nov. 30, 2005)

Attached please find our responses to the questions posed by the U.S. Government at the GSP Country Practice Hearing (Nov. 30, 2005)...

The International Intellectual Property Alliance (IIPA) offers the following additional information in response to the three questions posed by the U.S. Government (USG) at the GSP Country Practice Hearing (Nov. 30, 2005):

[IIPA responses to questions on Kazakhstan and Russia have been deleted from this document]

3. USG QUESTION Regarding UZBEKISTAN (IPR):

Please provide a list of steps that the Government of Uzbekistan should take with respect to protecting IPR in order to retain GSP eligibility.

IIPA RESPONSE RE: UZBEKISTAN:

As noted in our filing and testimony, the Government of Uzbekistan has failed to provide even the minimal levels of IPR protection and enforcement that it pledged to adopt over 10 years ago in its Bilateral Agreement with the U.S. Government. The minimal levels of protection – that is, the list of steps the Government of Uzbekistan must undertake -- include:

- 1) Notifying the WIPO regarding the Berne Convention that the Government of Uzbekistan removes its reservation to Art. 18 so that Uzbekistan can properly provide protection – as required by Berne and the U.S. Bilateral – for preexisting works;
- 2) Joining the Geneva Phonograms Convention
- 3) Clarifying in the Uzbek Copyright Law that pre-existing works and sound recordings are protected in Uzbekistan for a minimum of 50 and preferably for 70 years (the U.S. provides over 70 years of such protection to foreign works and sound recordings).
- 4) Ratifying and fully implementing the WIPO Copyright Treaty (WCT), and the WIPO Performances and Phonograms Treaty (WPPT).

5) Fixing the deficiencies in the Copyright Law including: (1) the absence of an exclusive public performance (or making available) right for producers of sound recordings, at a minimum for digital transmissions; in lieu the current law provides only a right of remuneration (for the public communication of the recording, broadcasting, or communication to the public by cable); and (2) delete the onerous provisions that over-regulate the terms and conditions of authors' contracts. (The December 2000 amendments: (1) added "copying of a record" to the enumerated rights of producers to fix a glaring deficiency; and (2) 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.)

6) Adopting clear civil ex parte search procedures into the Uzbek law.

7) Amending the Customs Code to provide customs officials with the proper ex officio authority.

i. Including not adopting a (proposed) registration system for customs enforcement -- it will weaken, not strengthen enforcement at the border.

8) Amending the Criminal Code (and/or Criminal Procedure Code) as follows:

i. To provide for liability for infringement of neighboring rights violations (i.e., crimes involving the pirating of sound recordings);

ii. To toughen the existing penalties which are too weak because: (1) there are currently no criminal penalties applied "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—were much too low to be deterrent penalties as needed. The IIPA recommends that the first provision be deleted; and the second (50 to 100 times) be raised considerably to at least 500 times the minimum wage.

iii. To add the proper ex officio authority for police and prosecutors to commence criminal copyright cases.

Thank you.

Eric J. Schwartz
Vice President and Special Counsel
International Intellectual Property Alliance (IIPA)
Washington, D.C.

- - - ORIGINAL MESSAGE - - -

From: Watkins, Ralph J. [mailto:Ralph_Watkins@ustr.eop.gov]

Sent: Tuesday, December 06, 2005 2:16 PM

To: tdo@pakistan-embassy.org; Eric Schwartz IIPA; Eric Smith; Deborah Lamb

Cc: Sandler, Marideth; Yinug, Christopher F.; Teeter, Regina

Subject: Russia, Kazakhstan, Uzbekistan: Follow-up questions for GSP Country Practice Hearing (Nov. 30, 2005)

Debby Lamb
Christine LoCascio
Ashraf Hayat
Gregory Sadowski
Joseph Popovich
Eric Schwartz

Thank you for providing testimony at the Trade Policy Staff Committee, Subcommittee on GSP hearing November 30, 2005, regarding country practices. We have a few remaining questions for each of you. Please provide your responses by e-mail to FN-USTR-FR0441 by 5:00 p.m., December 14, 2005. Thank you for your important contributions to this process.

Ralph J. Watkins
Deputy Director, GSP
U.S. Trade Representative
1724 F Street, NW
Washington, DC 20508
Telephone (202) 395-9609
FAX (202) 395-9481
Cell (301) 785-9374
E-mail rwatkins@ustr.eop.gov