



September 15, 2006

Via Email: FR0627@ustr.eop.gov

Ms. Sybia Harrison

Special Assistant to the Section 301 Committee

Office of the U.S. Trade Representative

600 17th Street NW

Washington, DC 20508

Re: **Chile: Special 301 Out-of-Cycle Review**
(71 Fed. Reg. 49491, August 23, 2006)

To the Section 301 Committee:

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials.¹ We take this opportunity to provide the Committee with our views on the Special 301 out-of-cycle-review of Chile's intellectual property rights practices.

The IIPA provided our views on Chile's copyright law, piracy and enforcement efforts in our 2006 Special 301 submission to USTR. In our submission, IIPA recommended that Chile be elevated to the Special 301 Priority Watch List.² On April 28, 2006, USTR chose to maintain Chile on the Watch List and conduct this out-of-cycle-review. In sum, the copyright industries in the IIPA report no positive progress on any of the copyright-related issues we highlighted in February 2006. **Therefore, IIPA recommends that this Committee elevate Chile to the Special 301 Priority Watch List.**

¹ IIPA is comprised of seven trade associations, each representing a significant segment of the U.S. copyright community. These member associations represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media).

² See IIPA's Special 301 2006 report on Chile, February 13, 2006, available online at <http://www.iipa.com/rbc/2006/2006SPEC301CHILE.pdf>.

COPYRIGHT PIRACY AND WEAK ENFORCEMENT IN CHILE

IIPA's 2006 Special 301 outlines the various forms of piracy (both hard-goods and digital) facing almost all the copyright industries in Chile. Our report also outlined the difficulties the industries have encountered in attempting to work with the criminal authorities as well as the civil courts to bring anti-piracy actions. Weak border enforcement results in large amounts of infringing products to enter the Chilean market. In our 2006 Special 301 report, IIPA also outlined a series of actions – relating to both enforcement and legislation – which we believe the Chilean government should take, and we continue to support those recommendations. Below is an update on recent piracy and copyright enforcement developments in Chile.

- Inadequate border enforcement: Chile (mainly Iquique) continues to play a major role as an entrance port for blank optical disc media that is coming from Southeast Asia with a final destination of Paraguay and/or Bolivia. Local Chilean authorities are aware of this fact but much improvement is needed in order to track and intercept these imports. The Chilean government has not organized any type of border program to curtail importation of over 100 million blank optical discs known to end up as pirate product.

Film piracy: MPAA reports that there is a growing problem of “delivery piracy” in the offices of the main areas of Santiago. For example, a well dressed person, armed with a film catalog, goes into office buildings offering to sell copies of the latest movie releases. To fight this situation, MPA has started an “educational” campaign to the managers of these buildings, alerting about the illegal activity of these delivery service. More than 400 companies have been contacted by letters and phone calls.

Also of interest, recently a member of the Ministerio Publico was found selling pirate movies to employees. The Ministerio Publico itself took all the necessary steps to stop this illegal activity within its offices, and the suspect was caught and prosecuted. This event was well publicized in the media and it is hoped that this message will improve public awareness about the scope of the problem and the need to halt such infringing activities.

- Raids without results: The recording industry reports that raids continue to be focused in Santiago and Valparaiso but there is no change or improvement. Most raids are requested by the industry; the local authorities rarely initiate any type of actions. Flea markets such as Bio-Bio in the outskirts of Santiago are still plagued with pirate product. The general sense is the amount of piracy has increased over the last few months. A sharp decrease in the legitimate recording market (January-July 2006) of 20% strongly suggests that music piracy in Chile is growing.
- Internet piracy: Another important concern for all industries is the growing internet broadband penetration (Chile has one of the highest broadband penetrations in the region). The recording industry reports that music piracy situation is worsening with the rapid growth of illegal downloads of music files over the Internet. An increase in broadband lines and access to peer-to-peer (p2p) sites have fueled this problem. The local recording industry association commissioned a third-party survey which revealed over 100 million songs of local and international repertoire are being downloaded annually in Chile. The industry association is addressing this problem by working with local cyber-crime units to raid

internet cafés contributing to illegal downloads. It is also considering alternative actions against individual uploaders.

- Finalized Copyright Piracy Statistics for 2005: BSA has finalized its 2005 business software data. Estimated losses reported by three industry sectors in Chile rose slightly over that reported in the IIPA 2006 301 report, and now amounts to over \$78 million last year.

| INDUSTRY | CHILE (2005) | |
|--------------------------------|-------------------------------------------------------|------------------------|
| | Estimated loss due to copyright piracy (US\$ million) | Estimated piracy level |
| Records & Music | 22.7 | 51% |
| Business Software ³ | 55.0 | 66% |
| Books | 1.0 | NA |
| Motion Pictures | NA | NA |
| Entertainment Software | NA | NA |
| TOTALS ⁴ | 78.7+ | |

COPYRIGHT LEGISLATION IN CHILE

1. Anti-Piracy Bill: Off-the Agenda

In IIPA's 2006 Special 301 report on Chile, we outlined our concern about the adequacy of the “anti-piracy” legislation Chile proposed in 2004 (while there were some positive elements there, the proposal would undercut the current level of criminal penalties and failed to include other key FTA obligations) which the industries have not supported. After much delay and legislation inaction in the House of Deputies’ Economy Commission, we understand that this bill (Boletin No 3461-03) died in committee.

2. Proposed Copyright Law Reform

Under the Bachelet Administration, authority for copyright has shifted from the Ministry of Education to the Ministry of Culture. The Minister of Culture has announced two initiatives affecting copyright, neither of which have yet resulted in the public distribution of proposed text. The copyright industries, both Chilean- and U.S.-based, look forward to reviewing the proposed legislation.

³ BSA’s 2005 statistics are now final (preliminary data of \$47.4 million and 64% were reported in IIPA’s 2006 301 filing). . These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. In May 2006, BSA released its Third Annual BSA/IDC Global Software Piracy Study (May 2006), available at <http://www.bsa.org/globalstudy/>.

⁴ The methodology for all industry statistics provided by each industry association appears in Appendix B of IIPA’s 2006 Special 301 filing.

The first legislative endeavor involves a bill that reportedly will address some FTA compliance issues, including enforcement measures (perhaps including deterrent-level penalties and fines, statutory damages and *ex officio* authority), exceptions and limitations to rights and protection for technological protection measures. Reportedly this process has been moving forward, with internal draft legislation being circulated to other ministries, including the Ministry of the Secretary General of the Presidency, the Ministry of Foreign Relations and the Ministry of Economy. This bill will likely be presented before the end of 2006.

The second legislative project reportedly involves comprehensive reform of the copyright law in 2007. Local industry was informed that Ministry of Culture intends to create consultative commissions, whereby private industries may participate in discussions over the legislative proposal, sometime in the second quarter of 2007.

3. Alternative Proposal on Anti-Piracy Reform

A local intellectual property coalition known as CONAPI (to which MPA and the recording industry, IFPI, are members) recently presented to the Ministry of Culture a new, shorter and revised version of the Anti-Piracy bill which had been pending in Congress. This new bill is known as the "Ley Corta," and the industries are seeking its fast-track congressional approval. CONAPI is willing to support the Minister's long-term objective for copyright reform, and at the same time, will continue to lobby the adoption of the "Ley Corta" by the Ministry of Culture. (It is unknown if or how the government will support any project other than what it is preparing for introduction.)

4. Law Affecting Judicial Processes

The Chilean Congress passed a number of IPR-related bills in early December 2005. While much was directed at industrial property issues, there was some legislation which aimed at streamlining judicial processes by changing the criminal procedure code. The key changes which would improve IPR enforcement included: (1) giving judges greater freedom to order preventive incarceration, and (2) giving the police the authority to search locations without a warrant in case of a flagrant crime.

Conclusion

IIPA and its members recommend that Chile be elevated to the Special 301 Priority Watch List in this out-of-cycle-review.

Respectfully submitted,



Maria Strong
on behalf of the
International Intellectual Property Alliance (IIPA)