



Written Statement

of

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before the

**Subcommittee on Courts, the Internet, and Intellectual Property
United States House of Representatives**

on

**“International IPR Report Card – Assessing U.S. Government and Industry
Efforts to Enhance Chinese and Russian Enforcement of Intellectual Property
Rights”**

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Mr. Chairman, Ranking Member Berman and other distinguished Committee members, IIPA and its seven trade association members thank you again for the opportunity to appear today to review the record of China and Russia on enforcement of their copyright laws against wholesale, massive piracy, both within their domestic markets and for export. Last May, IIPA testified before this Subcommittee and provided a report on the dire situation that our industries face in these two countries.

We applaud you, Mr. Chairman, for holding this hearing to permit the U.S. government and affected U.S. industries to update that May report. It is vitally important that both these countries are fully aware of Congress’ views on this topic which so vitally affects the U.S. economy and U.S. jobs.

IIPA represents the U.S. copyright industries. Its seven member trade associations consist of over 1,900 U.S. companies, accounting for millions of U.S. jobs. The copyright industries, in 2002, contributed over \$625 billion to the GDP, or 6% of the U.S. economy and almost 5.5 million jobs or 4% of U.S. employment. These companies and the individual creators that work with them are critically dependent on having strong copyright laws in place around the world and having those laws effectively enforced. On average, the copyright industries generate over 50% of their revenue from outside the U.S., contributing over \$89 billion in exports and foreign sales to the U.S. economy, with a surplus balance of trade of \$33 billion. Given the

overwhelming global demand for the products of America's creative industries, all these numbers would be significantly higher if our trading partners, including both China and Russia, were to significantly reduce piracy rates by enforcing their copyright and related laws vigorously.

Is it realistic to expect countries like China and Russia to “significantly reduce piracy levels”¹ in the near term?

Mr. Chairman, before embarking on our update of the piracy situation in these two countries, I wanted to address, as a preliminary matter, a commonly-heard charge that because China and Russia are “developing” countries (or in the case of Russia, an “economy in transition”), because they are vast in size and because available law enforcement resources are sparse and untrained, that we are simply asking too much of these countries to improve significantly and quickly their performance in the fight against piracy.

The answer to this charge is indeed an easy one—if China and Russia are not in a position to meet their international legal obligations in the area of IPR protection, they should not be a party to international trade agreements that provide such obligations and corresponding benefits. Our members are acutely aware of the realities of the situation in both countries. We are not politicians, we are businessmen, and our mission is to achieve the possible, not to demonstrate failure. Even given these resource constraints (which exist in virtually all countries, by the way) it is realistic to expect these countries to be able to reduce piracy levels significantly in the short term – indeed in both cases it should have happened by now.

Most of our members have vast experience fighting piracy in developing countries around the world. Their businesses critically depend on creating legitimate markets in these countries. While the nature of piracy keeps changing, as technology advances and as organized criminals become more adept at avoiding law enforcement, we can cite you at least two examples where piracy rates were significantly reduced and these examples provide the lessons and the template for how China and Russia can do so as well – but only if those governments have the political will to make it happen. These examples come from my own experience of working with the U.S. government, our members and these countries over the last 20 years.

In South Korea in the mid to late 80's, piracy levels were estimated – and we will use the recording and film/video industries as the example – at over 80% of the market. By the mid-90s, the rates for those sectors had been reduced to 10% to 15%. Similarly, in Taiwan, known for years as the counterfeit and piracy capital of the world, piracy rates were similar to, if not worse than, those in South Korea. By 1997-1998, the rates had been similarly reduced to 10-15% of the market in these sectors.

We acknowledge that these countries/territories are smaller than China and Russia, but we submit that the key is reducing piracy in the major cities and here the size of the market is not particularly relevant. What is critically relevant in our judgment, and what turned the tide in South Korea and Taiwan, were:

¹ A commitment made by China's Vice Premier Wu Yi at the 2004 JCCT meeting.

1. The regular application of criminal remedies and high penalties on pirates. We submit that it is not necessary to prosecute thousands of people and to use massive enforcement resources. What is key is that the government sends the message to its people through exemplary prosecutions that create a domestic environment that significantly raises the risk to pirates that they are in serious jeopardy. This is the nature of “deterrence.” After all, piracy is an economic, not an emotional crime, and responds rather directly to criminals’ assessment of the risk of remaining in the piracy business. The key is that these criminal remedies work to take the potential of vast profits out of the equation, that penalties are stiffer than the money that can be made. We recognize in some ways that this is an oversimplification but we also submit that it “works.”
2. Undertaking enforcement actions in close cooperation with right holders and using scarce enforcement resources to move up the pirate value chain. Of course, raiding activities at all levels – retail, distribution, and manufacturing – is critical and the activity must be constant. These are not ingredients wholly missing in China and Russia. What is missing is the consistent, close cooperation with right holders and a fully transparent enforcement system. Moreover, corruption at many levels of that system is a tremendous obstacle. It is also a myth that dealing with piracy requires massive resources not available in these countries. This is simply not the case. What is key is the “smart” application of the resources available to target, prosecute and punish with a view to creating deterrence.
3. A zero-tolerance policy toward corruption in the system is also critical. We have seen that the Chinese are able, where they have had the political will in a particular area, to work through this problem and bring corrupt officials to justice. We have not seen this in Russia – the political will does not seem to be there. What we have not seen in either country, which we did see during the periods cited in South Korea and Taiwan, is that high level law enforcement officials were willing to ensure that this economic crime – IPR theft -- was given priority and that corruption was not tolerated. The leadership had decided that dealing with this issue was in its interest and a high priority and this filtered down to law enforcement. To date, this has not happened in either China or Russia. Indeed, dealing with piracy as an economic crime, with appropriate prosecutions and deterrent penalties, is a decision that does not appear to have yet been taken in either country.
4. A country must have open market access to legitimate product. Governments cannot permit pirates unfettered access to their markets while restricting the ability of legitimate companies to compete. Both Taiwan and Korea had substantially reduced all significant barriers to the entry of legitimate product allowing right holders to satisfy the demand with legitimate product. While this is not as critical a problem in Russia (though bureaucratic barriers remain a significant problem), the issue is so acute in China that, even if China were to do everything noted above, U.S. industry might still not see any significant benefit.

Again, in seeking not to oversimplify a complex issue, we must note that piracy rates in both South Korea and Taiwan for audio and video product did not stay at this low level. New

problems must constantly be addressed. In the case of Taiwan it was an unfettered growth in optical disc production capacity and the territory's failure to prevent its takeover by organized crime after 1997-98. While Taiwan appears to have gotten a handle on this new issue, it is now faced with the new challenge of Internet piracy and faces some ongoing problems with book piracy and illegal commercial photocopying. South Korea did not go through the pirate optical disc production phase but did withdraw for a while from aggressive criminal enforcement and is now facing massive Internet piracy, as the country with the highest broadband penetration in the world.

Both China and Russia continually try to excuse their lack of effective enforcement against piracy by citing at every turn that they need still more time and that they are "developing" countries. Frankly, we in industry know that these are mere excuses – neither country has made the political decisions that would allow them to significantly reduce piracy – decisions that other countries have made and the results are evident.

Now let's turn to an update on copyright piracy in China and Russia, keeping these points in mind.

China

Conclusion: There has been some minor incremental progress but no significant reduction in piracy levels, either domestically or for export

In our May testimony we laid out for the Subcommittee the issues faced by each of the copyright industries. We noted that losses in 2004 amounted to a staggering \$2.5 billion and that piracy rates continued to hover around 90% of the market. I refer the Subcommittee back to that testimony because none of those basic issues have changed in the last six months. In what follows we detail what new has happened in China that affects the copyright industries.

Since the May hearing before this Subcommittee, there have been

- (a) a number of bilateral engagements between the U.S. and China, including a July 11 meeting of, and "outcomes" from, the JCCT;
- (b) the announcement of another special enforcement period, on Internet piracy, to last through February, 2006;
- (c) the finalization of regulations governing the liability of ISPs with respect to Internet infringements;
- (d) the issuance of draft guidelines (not yet final) for the transfer of cases from the administrative enforcement system to the criminal system, following on the December 2004 "Judicial Interpretations" by the Supreme People's Court revising the thresholds that must be met before an IPR violation becomes a criminal offense;
- (e) the completion of the 4th Transitional Review Mechanism (TRM) in the TRIPS Council;
- (f) the submission of the U.S. government's request for enforcement information under TRIPS Article 63.3, as announced in USTR's Special 301 decision;

- (g) two Roundtables conducted in Beijing and Shanghai by U.S. Ambassador Randt in early November, and
- (h) a November meeting of the IPR Working Group (set up within the JCCT framework) involving representatives from law enforcement on the Chinese side.

These new meetings and initiatives were viewed by the U.S. government and by most elements of the private sector as positive signs of an increasing awareness of the importance of IPR enforcement to China.

In the second (July 2005) meeting of the reconstituted JCCT, the “outcomes” document reflected some positive developments. However, in general all were further “commitments” (not unimportant but of which we have seen many over the last ten years which have not borne fruit), rather than reflections of enforcement actions taken on the ground. Some of these key developments included:

- (a) an agreement to increase criminal prosecutions, including the above mentioned promulgation of guidelines to refer criminal cases;
- (b) promises of increased cooperation by law enforcement agencies at every level;
- (c) the announcement of an MOU with the Motion Picture Association which committed China to crack down on any DVDs or VCDs that were in the market before their release in the legitimate home video market in China;
- (d) clarification that sound recordings were covered by the new Supreme People’s Court “Judicial Interpretations”;
- (e) in what is regarded as a most promising development, a statement that end-user software piracy (a massive problem in China) constitutes “harm to the public interest” making it subject to nationwide administrative enforcement, that such piracy is even a criminal offense “in appropriate circumstances,” and that the government will complete legalization of government software use at the central, provincial and local levels by year-end and will begin legalizing software use in “state-owned enterprises” in 2006; and
- (g) in a critical move for the software industry, the Chinese government agreed to “delay” issuing draft regulations that would have required government ministries to purchase only Chinese software.

The report card to date on these JCCT “outcomes” is positive in some areas. A document was later released clarifying that sound recording are covered by the JIs, cooperation has appeared to improve among enforcement bodies, the software procurement regulations have not been promulgated (though little progress has been made to date on Chinese adherence to the WTO Agreement on Government Procurement), and there has been some incremental progress in enforcement under the new MOU. However, on the most critical issues that we have with China, namely significantly increased enforcement, the jury remains out on enforcement against end-user piracy and on increased criminal enforcement generally.

The Supreme People’s Procuratorate and the Ministry of Public Security have accepted comments (including from IIPA) on their draft referral guidelines and the National Copyright Administration and the State Council have accepted two sets of comments (also from IIPA and some of its members) on the new Internet Regulations, but neither have been finalized and issued.

However, we applaud the Chinese government for opening up both these processes to the foreign private sector. Such transparency is essential to any enforcement system working effectively.

As promised in the Special 301 announcement, USTR submitted its TRIPS Article 63.3 request to the Chinese government at the TRIPS Council. IIPA was greatly pleased that this request was joined by Japan and Switzerland. The Chinese government's initial reaction to this request was reportedly very negative but we hope that that China will eventually comply and provide the information necessary for the U.S. government and industry to understand better and evaluate the effectiveness of the Chinese enforcement system.

With respect to the 4th annual Transitional Review Mechanism (TRM) on whether China is meeting its WTO obligations in the IPR area, the Chinese response was, again, to avoid the tough questions and generally to remain unresponsive to legitimate requests for information from the U.S. and other WTO members.

Some of this litany represents the incremental progress mentioned above but, as noted, on the most critical issue: is China significantly increasing copyright piracy prosecutions under its Criminal Law and the new JIs, the answer is still that they have not.

In the November IPR Working Group, set up under the JCCT, Ministry of Public Security officials provided statistics on their most recent enforcement crack-down, called Mountain Eagle, and on enforcement generally.

The Ministry reported that from November 2004 to September 2005, it had brought 2,963 criminal cases, and concluded 2,589. There was no breakdown of whether these were trademark counterfeiting cases only or included all IPR categories (we suspect they involve only trademark cases). 4,900 criminals were penalized (no further statistics on penalties were given). Out of all these reported cases initiated, only 55 involved foreign firms and 36 were U.S. companies – all that were mentioned were companies that owned trademarks subject to counterfeiting. We do not believe any of these were copyright cases.

Indeed, to this date, we know of only two criminal cases prosecuted and concluded IN THE LAST FOUR YEARS (since China joined the WTO) under the criminal piracy provision, Article 217, involving a U.S. copyrighted work.²

² The Chinese government has reported to the IPR Working Group and to others increased referrals of administrative cases to the criminal system, but have provided no information on whether these involved U.S. copyrights. We know of one case involving U.S. videogames which was transferred to the criminal authorities, but as often happens, the accused disappeared and the case is in abeyance. It is unclear at this point whether any significant increase in referrals will occur before the referral guidelines mentioned above have been finalized, published and distributed.

In the copyright area, the Ministry reported that in 2004 it seized 21 “illegal” OD lines (presumably from “underground” plants that did not have proper operating licenses).³ No information was given whether anyone involved with these seized lines was ever prosecuted. In 2005 through September, the number of seized lines was put at 15. It seems, therefore, that there has been minimal improvement on this front. No other information was provided.

Industry is severely hampered by the lack of meaningful statistics available on enforcement in China. By not publicizing to us or to its own citizens that piracy per se is a serious crime and that it imposes very heavy penalties on these illegal acts, it gives comfort to the pirates, who know that the government is in effect turning a blind eye to their infringements. China is fully experienced with stamping out illegal conduct – when it wants to and when it threatens a political value that it considers fundamental. China is using this lack of transparency to wage a propaganda war that is cheating its own creators and hiding its non-deterrent enforcement system from public view. We must continue to insist that China’s system become far more transparent at every level – and that it be effective.

Without a massive increase in criminal enforcement, piracy rates will likely remain at current levels

It has been one and a half years since the Chinese government promised the U.S. government significantly increased criminal enforcement. To date the copyright industry cannot yet report any significant movement in this area. The promise inherent in the lowered thresholds in the December 2004 “Judicial Interpretations” – after the passage of one year – appears not to have made any difference in the number of cases brought nor the penalties imposed.

IIPA said in its May testimony, and we repeat here: Until the Chinese government musters the political will to prosecute piracy as a criminal act, we will not see a significant long term shift downward in the piracy rate. The administrative enforcement system does not provide the deterrence that is necessary to force pirates out of this illegal business.

The copyright industries continue to be hampered by onerous market access restrictions and the Chinese government has made no moves to remedy the problem.

As we reported in May, there is a direct relationship between piracy and China’s severe market access restrictions on the copyright industries. The plain fact is that U.S. copyright products have almost total access to the Chinese market, in **pirate** copies with **billions of dollars being earned by pirates**, not by the rightful owners of that product.

³ In May, we reported that there were 83 “licensed” OD factories. Many of these also produce massive quantities of pirate product, both for the domestic market and for export. In the October 24, 2005 submission by China to the TRIPS Council in the TRM proceeding (IP/C/W/460, 11 November 2005), it was noted that China claimed to have “inspected and confiscated” 167 million illegal audio and video products and pirate copies, apparently in calendar year 2004. Again, there was no breakdown between pornographic product and infringing copies, and no information on the quantity that represented the works of U.S. right holders.

Efforts in the July 2005 JCCT meetings to seek redress from the Chinese government on this front met with total resistance – the Chinese government made crystal clear that they had no intention of opening up their market further to copyrighted products beyond their minimal commitments in the WTO.⁴

China is the most closed market in the world for the U.S. copyright industries. Given the massive trade deficit which this country has with China, it is inexcusable that one of our country's most productive sectors is effectively denied entry to one of the largest markets in the world – a market where the demand for our products is deep and growing. China is allowing the pirates to steal money straight out of the pockets of the millions of creators and workers in our industries.

Actions to be taken by the Chinese government

In our May testimony we also set out the actions that the Chinese government must take if it is to bring its enforcement regime into compliance with its TRIPS obligations. Those action items have changed little. China must:

- Significantly liberalize and implement its market access and investment rules, including and in addition to those already made in the WTO, and improve the overall business climate in China to permit effective operations by all copyright industries. This should continue to be a major objective in the JCCT.
- Immediately commence criminal prosecutions (the passage of an entire year with no action is inexcusable) using both the monetary and new copy thresholds and carry these forward promptly to impose deterrent penalties. The Economic Crime Division of the Public Security Bureau should be made responsible for all criminal copyright enforcement and be provided sufficient resources and training to very substantially increase criminal enforcement under the new Judicial Interpretations. Amendments should be made to those Interpretations to further lower thresholds, to provide that the method of valuation should include the value of finished and semi-finished products and infringing components, and otherwise pave the way for greater criminal enforcement.
- Ensure that foreign copyright holders and their trade associations are given the full details of actions by enforcement agencies and the transparency necessary to effectively engage China's anti-piracy claims.
- Under the leadership of Vice Premier Wu Yi, constitute a single interagency authority at the national and provincial/local levels to undertake administrative enforcement against piracy of all works. This authority would have the full authority to administer fines and to refer cases to the Ministry of Public Security and the Supreme People's Procuratorate for criminal prosecution, under referral guidelines that are equal to or better than the Judicial Interpretations. Such authority must have the full backing of the Party Central Committee and the State Council. Far greater resources must be

⁴ Or, in the case of the book publishing sector, possibly even living up to the WTO commitments it has made. There are serious questions as to whether China has fulfilled its WTO accession commitments to open distribution and trading rights to foreign book publishers.

provided to this enforcement authority. All administrative enforcement, and enforcement by Customs at the border, must be significantly strengthened.⁵

- Adopt a final set of regulations governing protection and enforcement on the Internet, including the liability of Internet Service Providers, which follow the recommendations made in IIPA's Special 301 submission and recommendations made by IIPA directly to NCA and the State Council, including effective "notice and takedown" mechanisms and without unreasonable administrative evidentiary burdens. Establish within this single interagency authority described above special units (at the national, provincial and local levels), whose purpose is to enforce the law and these new regulations against piracy on the Internet.
- Amend the Criminal Law to comply with the TRIPS Article 61 requirement to make criminal all acts of "copyright piracy on a commercial scale." These must include infringing acts not currently covered, such as end-user software piracy and Internet offenses conducted without a profit motive. Also amend the Criminal Code provisions requiring proof of a sale, to require instead proof of commercial intent, such as possession with the intent to distribute.
- Significantly increase administrative penalties/remedies, including shop closures, and monetary fines, impose them at deterrent levels, and publicize the outcome of cases.
- Take immediate action against illegal use of copyrighted materials on university campuses, including at on-campus textbook centers.
- Permit foreign companies and trade associations to undertake anti-piracy investigations on the same basis as local companies and trade associations.
- Through amended copyright legislation or regulations, correct the deficiencies in China's implementation of the WCT and WPPT, and ratify the two treaties by mid-2006, as promised.
- Significantly ease evidentiary burdens in civil cases, including establishing a presumption with respect to subsistence and ownership of copyright and, ideally, permitting use of a U.S. copyright certificate, and ensure that evidentiary requirements are consistently applied by judges and are available in a transparent manner to litigants.
- Require government agencies to certify software legalization, allocate sufficient resources at every government level specifically earmarked for procurement of legal copies of software, and establish transparent mechanisms to audit and verify government legalization, including increases in legitimate software sales.

The copyright industries are continuing to work closely with USTR to prepare the necessary elements of a WTO case if China does not significantly improve its enforcement system in the next months. That work has progressed since your last hearing in May, but no decision to bring such a case has been made.

⁵ In the area of trademark enforcement undertaken by one ESA member company and involving handheld and cartridge based games, the new Judicial Interpretations are unclear on whether the authorities are able to seize components and parts that make up the counterfeit products. This is essential and must be clarified.

Russia

In May, when my colleague Eric Schwartz, testified for the IIPA on the problems our members confront in Russia, he noted that the piracy problem in Russia was the worst it has been in our experience since the fall of the Soviet Union. Piracy of all copyright materials – motion pictures, records and music, business and entertainment software, and books – is at levels ranging from a low of about 66% to a high of 87% – totally unacceptable for a country and economy the size and sophistication of Russia.

Unfortunately, in the six months since that testimony, the problem has gotten even worse.

Six months ago we testified that there were 34 known optical disc plants. Last month the Russian government acknowledged that there are now 42 such plants and our members' report that in the past two weeks that number has grown to between 46 and 48 plants. These plants are, in essence, unregulated with only a handful subject to inspections or the seizure of material, and none have been the subject of the imposition of effective criminal enforcement for commercial piracy.

Let me re-iterate and summarize some of the statistics from our testimony in May of this year. A more complete overview of our issues was included in our filing last week with the Office of the U.S. Trade Representative as part of an Out-of-Cycle review of Russia's IPR regime. We attach a copy of that filing.

Scope and nature of the piracy problem in Russia

Russia has one of the worst piracy problems of any country in the world, second only to China. IIPA estimates that the copyright industry lost over \$1.7 billion due to piracy last year, and over \$6 billion in the last five years in Russia. As noted, the piracy rates hover around 70% of the market or higher for every copyright sector. In short, Russia's criminal enforcement system has failed to stem persistent commercial piracy.

The number of optical disc (i.e., CD and/or DVD) plants in Russia has more than doubled in just the last three years. There are a total of 80 known operational production lines, and reports that that number may be closer to 120 lines. Production capacity has nearly tripled as criminal operations have encountered little hindrance in expanding their activities.

Even more troubling, IIPA is aware of nine production plants located on the facilities of the Russian government, so-called restricted access regime enterprises (although the Russian government has publicly acknowledged that there may be as many as 18 such plants).

Russia's annual manufacturing capacity now stands conservatively at over 370 million CDs and additionally over 150 million DVDs, despite the fact that the demand for legitimate discs is unlikely to exceed 80 million in all formats (including an estimated current demand for legitimate DVDs at around 10 million discs per year). Thus, Russian pirates are clearly producing material for export markets which hurt the copyright industries' competitiveness in

third country markets. Russian-produced optical discs (CDs) have been positively identified in at least 27 countries. So, the harm illegal Russian plants are doing far exceeds the Russian marketplace.

Forensic evidence indicates that at least 24 of the plants are known to be producing pirate product. Of course, without proper surprise inspection procedures in place, there is no way of knowing for certain the size and scope of what all the plants are producing.

In 2004, there were eight actions taken by the Russian government against the optical disc (“OD”) CD/DVD plants, including raids and seizures of illegal materials according to our industry, and Russian government, reports.

In recent weeks as many as nine additional raids have been run. The raids are obviously a positive step.....but, the outcome of the raids this year, as in 2004, are telling:

First, much of the seized material ends up back in the marketplace either through lax enforcement (or corruption), laws permitting charitable sales of such property, or the conclusion without prosecution of criminal investigations. As an example, over half of the one million illegal CD and DVD copies seized in a raid last year “disappeared” before the case went to trial.

Second, the optical disc plants that were raided in 2004 and 2005, including the most recent raids, remain intact, and in almost all cases, in operation after those raids. In some cases, truckloads of illegal material were seized from the same plants by Russian government enforcement officials – and still these same plants remain in operation. And in no case, was the equipment used to make illegal material ever confiscated or destroyed. It is a telling signal of Russia’s indifference to the problem that the equipment used in the commission of these offenses remains in the possession of the wrongdoers.

Third, the plant owners remain untouched by the criminal justice system. A few people employed by the plants were convicted – after extensive delays in criminal investigations – but virtually all received suspended sentences. So, there is no deterrence to continuing to conduct commercial piracy in Russia at present.

The Russian government’s legacy of failed commitments

In May, we characterized the performance of the Russian government over the past decade as representing a legacy of failed commitments on obligations to the United States and the broader international community. We outlined in that testimony the list of these failed commitments. Just this week, one senior Russian official (in President Putin’s office) at an IPR enforcement seminar acknowledged his own purchases of illegal material in Russia because pirated materials were “sold at a better price” than legitimate material. Of course, since most of the pirate product produced in Russia is exported, this so-called “price argument” – not even true in the domestic market – is irrelevant.

In sum, six months after testifying before this subcommittee, there is little that IIPA can report that is positive.

Yes, there have been stepped up plant raids, but so far, the outcome is the same – the plants are not being shuttered (with the exception of a few plant owners moving locations), no equipment used in production is being seized, and there are no criminal convictions taken against plant operators. And, if the attitude of the Russian government can be best summarized by a presidential official about his desire to purchase illegal material, the time has come for the U.S. government to act decisively.

IIPA’s recommendations to the U.S. government

IIPA believes that after nine years on the Priority Watch List, it is time for the U.S. government to take a different approach to Russia’s inability or unwillingness to act.

We have several times over the past few years offered the Russian government suggested “steps” necessary to improve enforcement (see our Out-of-Cycle filing attached for our most recent recommendations).

In sum, there are three things the U.S. government can do to mandate Russia compliance with international norms and obligations to provide “adequate and effective protection and enforcement” for U.S. copyright material:

1. Condition Russia’s entry into the World Trade Organization (WTO) on meaningful copyright law enforcement;
2. Designate Russia as a Priority Foreign Country (PFC) after the on-going out of cycle review by USTR.; and
3. Deny Russia’s eligibility for Generalized System of Preferences (GSP) duty-free trade benefits.

We also note that the House of Representatives sent its own strong message to the Government of Russia that Russia is not presently in compliance with its WTO/TRIPS obligations and is not eligible for GSP benefits. On November 16, 2005 by a vote of 421-2, the House of Representatives passed H. Con. Res. 230, which IIPA strongly applauds and appreciates.

Condition Russia’s entry into the World Trade Organization (WTO) on meaningful progress in enforcing its copyright laws

The Russian IPR regime is not in compliance with WTO/TRIPS obligations, especially pertaining to enforcement. As a consequence, the U.S. government should not assent to Russia’s accession into the World Trade Organization until its copyright regime, both legislative and enforcement, is brought into compliance with these WTO/TRIPS obligations.

Russia is not providing adequate and effective enforcement as required for entry into the WTO, certainly not the enforcement standards required as “effective” (Articles 41 through 61 of TRIPS).

The U.S. can and should condition Russia's entry into the WTO on Russia making positive and meaningful enforcement progress – for example, by licensing and inspecting all the known 42 (or 48) optical disc plants, closing those engaged in illegal activities including the seizure and/or destruction of the equipment used to make illegal material, and criminally prosecuting those involved in this commercial illegal activity as well as ensuring imposition of deterrent (not suspended) sentences.

Designate Russia as a Priority Foreign Country (PFC) when the current “Out-of-Cycle” review is complete

The U.S. Trade Representative's announcement on April 29, 2005 that Russia would be left on the Priority Watch List (for the ninth straight year) noted “[w]e will continue to monitor Russia's progress in bringing its IPR regime in line with international standards through out-of-cycle review, the ongoing GSP review that was initiated by USTR in 2001, and WTO accession discussions.”

The situation has gotten significantly worse, not better, in the past few years. IIPA recommended in February 2005, and continues to recommend as part of the out-of-cycle review, that it is time to designate Russia a Priority Foreign Country to force Russia to properly enforce its laws or face the consequence of trade sanctions.

Remove Russia's eligibility for Generalized System of Preferences (GSP) benefits

In August of 2000, IIPA filed a petition asking the U.S. government to open an investigation into Russia's practices and outlining a variety of ways in which Russia failed (and continues to fail) to meet the GSP criterion of providing adequate and effective protection for intellectual property. That petition was accepted by the U.S. government on January 10, 2001. IIPA has since testified three times before the U.S. government GSP interagency committee – this November 2005 (and in March 2001 and September 2003) -- and submitted extensive materials and briefs.

IIPA believes it is time to revoke Russia's eligibility from the GSP program. Russia is not providing the U.S. GSP mandated “adequate and effective protection” as required by Sections 502(b) and 502(c) of the 1974 Trade Act (the intellectual property provisions in the GSP statute are at 19 U.S.C. §§ 2462(b) and (c)).

It has been over five years since the IIPA petition was filed, and well over four years since the U.S. government accepted the petition, which at least as a threshold matter, acknowledged the potential of Russia's shortcomings under the GSP program. The Russian government has had years to move to fix these problems and they have not done so.

* * *

Mr. Chairman, we are grateful for your support and for the support of the members of this Subcommittee, in May and now, to work with industry and the Administration to ensure that the

progress (or in the case of these two countries, lack of progress) is fully monitored and Congress, along with the Administration, can consider what appropriate action to take.