



November 7, 2005

*Via electronic submission: FR0441@ustr.gov*

Marideth J. Sandler

Executive Director of the GSP Program and Chairwoman of GSP Subcommittee

Office of the U.S. Trade Representative

1724 F Street, NW

Washington, DC 20508

Re: GSP Country Practices Review,  
022-CP-02, Uzbekistan, Pre-Hearing Brief  
and Request to Appear at the GSP Public  
Hearing

To the GSP Subcommittee:

The International Intellectual Property Alliance (IIPA) hereby submits this Request to Appear at the November 30, 2005 public hearing on the GSP country practices review of Uzbekistan. As you know, IIPA was the original petitioner of the GSP review of Uzbekistan's intellectual property rights practices in the 1999 GSP Annual Review. Attached to this letter is IIPA's Pre-Hearing Brief.

The IIPA witness will be: Eric J. Schwartz  
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Thank you.

Sincerely,

Eric J. Schwartz



**Pre-Hearing Brief**  
**International Intellectual Property Alliance**  
**GSP Review of the Intellectual Property Rights Practices of Uzbekistan**

Before the GSP Subcommittee  
 Case 022-CP-02, Uzbekistan  
 November 30, 2005

The International Intellectual Property Alliance (IIPA) appreciates the opportunity to provide the GSP Subcommittee with a summary of the serious copyright protection and enforcement deficiencies in Uzbekistan. In short, the government of Uzbekistan does not comply with the intellectual property rights (IPR) eligibility requirements for GSP benefits. In our view, the GSP Subcommittee should terminate the investigation with such a finding and should immediately remove Uzbekistan's eligibility to participate until such time as it has achieved adequate and effective copyright protection and enforcement as contemplated by the GSP statute.

The U.S. Trade Representative, in his May 2004 announcement placing Uzbekistan on the Watch List, noted that Uzbekistan is "out of compliance with its intellectual property commitments under the 1994 U.S.-Uzbekistan Trade Agreement, particularly with respect to copyright protection and enforcement." In fact, only in 2005 did Uzbekistan finally join the Berne Convention (with reservations), for the first time providing a point of attachment for works. However, Uzbekistan is not yet a member of the Geneva Phonograms Convention and thus does not provide any protection or rights to U.S. or other foreign sound recordings—over ten years after it agreed to make basic changes in its law and enforcement regime. The USTR noted that "IPR enforcement remains very weak" in Uzbekistan; the IIPA agrees.

### **Legal reform deficiencies**

In November 1993, Uzbekistan and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights; that agreement entered into force on January 13, 1994. The Copyright Law of Uzbekistan was overhauled in 1996 (in force, September 17, 1996), and two additional amendments were adopted in 2000. However, with the exception of the two relatively minor changes in 2000, there have not been the thorough revisions to the copyright act or to the relevant enforcement laws that Uzbekistan obligated itself to undertake in the bilateral agreement over ten years ago. The December 2000 amendments, while valuable, did not fix the major deficiencies. In January 2004 new amendments were prepared, and the IIPA and Uzbek government held numerous lengthy discussions about needed legal reforms and treaty accessions. Unfortunately, the January 2004 drafts were missing key provisions. For example, the draft did not provide protection for preexisting works and sound recordings. Nevertheless, the January 2004 amendments were never adopted.

Only in 2005 did Uzbekistan accede (finally) to the Berne Convention, effective April 19, 2005. Even that accession, however, was made with reservations (regarding Article 18) which international copyright officials agree is inconsistent with the obligations of Berne to provide protection for pre-existing works. Also, Uzbekistan is not a member of any of the relevant neighboring rights treaties even after it twice obligated itself to become a member. The first instance was in the 1993 bilateral; the second time was in its testimony to the U.S. government during the 2000 GSP hearings, when it said it would join both Berne and the Geneva Phonograms treaties by no later than the end of 2003. As a result of these ongoing delays (especially with treaty accessions), the IIPA recommends the immediate withdrawal of Uzbekistan's GSP benefits (Uzbekistan enjoyed about \$3 million in GSP benefits in the first 11 months of 2004). To enjoy GSP benefits Uzbekistan must join the Geneva Phonograms Convention and amend its copyright law (and Berne accession) to provide protection for preexisting works and sound recordings for a minimum of 50 years (and preferably, 70 years). Uzbekistan was not a signatory to either of the two new WIPO treaties. The Uzbek government should also ratify and fully implement both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

There are other deficiencies in the Copyright Law including: (1) no 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) onerous provisions that over-regulate the terms and conditions of authors' contracts. The December 2000 amendments did two things: (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.

There are no known civil *ex parte* search procedures in the Uzbek law; these must be adopted into the civil procedure code in order to commence actions against end-user pirates, especially software pirates. These are important enforcement tools that the Uzbek government must be encouraged to implement.

Uzbekistan did not amend its criminal code following passage of the 1996 Copyright Act to adopt deterrent penalties for intellectual property violations, in breach of the bilateral agreement's obligation to provide "adequate and effective" protection and enforcement. The Criminal Code (Article 149) does provide for liability for infringement of copyright and patent violations, but does not include neighboring rights violations (i.e., crimes involving the pirating of sound recordings). In any case, the existing penalties are too weak and must be amended to strengthen and broaden the provisions for all copyright and neighboring rights violations. Drafts to amend the criminal code were circulated in January 2004, but never adopted. The January 2004 draft would have weakened, not strengthened, criminal penalties because: (1) 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 if this draft is still viable, the first provision be deleted; and the second (50 to 100 times) be raised considerably to at least 500 times the minimum wage.

The IIPA recommends that the draft criminal reform also include revisions to the criminal code and criminal procedures code to provide police with the proper *ex officio* authority to commence criminal copyright cases. Further, the customs code must be amended to provide customs officials with *ex officio* authority to seize suspected infringing material at the border, as required by the WTO TRIPS Agreement and as is necessary to conduct effective border enforcement. In January 2004, an Uzbek government proposal was circulated to the IIPA for the establishment of a complicated registration system for IPR enforcement at the border; the IIPA strongly recommends that this plan be dropped because it will prove counterproductive to effective enforcement.

A 2001 resolution (No. 285 of the Cabinet of Ministers) established a licensing system for the production, reproduction and sale of records, cassettes and CDs, according to which only licensed entities could carry out such activities. However, experience shows that such licensing systems are not effective against the pirate production enterprises, which are common in this region.

The U.S. government and Uzbek government signed a Trade and Investment Framework Agreement (TIFA) on June 1, 2004 to enhance trade and investment between the two countries. In addition, the government of Uzbekistan enjoyed \$50.6 million in FY 2004 for other economic/social reform, law enforcement and democracy programs from the U.S. government.

Yet, even as the U.S. government is promising to enhance trade and investment with Uzbekistan and providing other aid, the Uzbek copyright regime is, at present, among the weakest of all of the countries in the Commonwealth of Independent States (C.I.S.). It is not in compliance with the bilateral obligations it made to the United States over ten years ago, and is woefully inadequate as a potential WTO member. After the Uzbek government adopts the necessary legal reforms, including accession to the relevant treaties to adequately and effectively protect foreign works and sound recordings, it must then, at a minimum, commence police raids and seizures, and must act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions.

According to the recording industry (the International Federation of the Phonographic Industry, IFPI), the level of music piracy is estimated at about 81% and trade losses for 2004 were estimated at \$31 million. It is estimated by the recording industry that in total 32 million cassettes and 8 million CDs were sold in Uzbekistan in 2004. Of these, 25 million cassettes and 7 million CDs were pirated copies. The recording industry reports that illegal musical cassettes are produced mainly in Uzbekistan, but that illegal CDs are produced in neighboring countries, particularly Russia, and are entering Uzbekistan as a result of poor border enforcement on both sides of the border. The IFPI reports there are no known optical media plants in Uzbekistan, although the opportunity is there for the startup of pirate CD operations due to the poor enforcement regime.

In sum, Uzbekistan is not meeting the GSP requirements and should be denied eligibility for these benefits until it complies with the GSP obligations in U.S. law and the commitments it made to the U.S. government to improve its copyright protection and enforcement regime.

Respectfully submitted,

International Intellectual Property Alliance