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**STATEMENT OF THE INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) ON
RUSSIA'S PROGRESS REGARDING COMPLIANCE WITH THE U.S.-RUSSIA BILATERAL AGREEMENT**

Washington – On November 19, 2006, the U.S. and Russian Governments signed an important bilateral agreement on Russia's bid for WTO accession. One part of the overall agreement consisted of an Agreement on Intellectual Property Rights (IPR). At present, while certain progress has been made, Russia is not in substantial compliance with that Agreement -- either with respect to the necessary legal reforms or with its enforcement regime, in particular against optical disc and Internet piracy.

The IPR Agreement makes it clear that Russia must provide TRIPs-compliant protection and enforcement of IPR before it can accede to the WTO. The Agreement acknowledges that Russia's legal and enforcement regimes are not currently TRIPs-compliant and in signing the Agreement, the Government of Russia agreed to implement specific legal reforms and enforcement steps that it must undertake to be in full compliance with the TRIPs Agreement upon accession to the WTO. Many of these obligations require compliance by June 1, 2007. Unfortunately, Russia has not met these obligations.

Russia has great importance for IIPA members, and IIPA would like to be in a position where it can support Russia's bid to join the WTO. IIPA notes that since the signing of the Bilateral Agreement in November—an agreement that has been called Russia's roadmap to WTO accession with respect to intellectual property, Russia has undertaken some plant and warehouse raids, and has seized large quantities of illegal material. Unfortunately, Russia's incomplete implementation of the "roadmap" suggests that they are badly off course, and, missing critical deadlines does not bode well for the future.

We look forward to USTR's upcoming out of cycle review of Russia's performance, and highlight that Russia's continued failure to provide adequate and effective protection of intellectual property rights is inconsistent with the requirements of any country receiving unilateral trade benefits under the General System of Preferences (GSP) program.

IIPA and its members wish to thank Ambassador Schwab and her team of outstanding negotiators at USTR, Commerce, State, the PTO and the Copyright Office for their hard work not only in the completion of the Agreement last year, but for their recent and continuing efforts to seek Russia's full compliance with the Agreement. Russia's commitment to international trade rules and obligations is of critical importance if Russia is to be successfully integrated into the global trading system. We will continue to work with the US Government and the Government of Russia to fully implement the IPR Agreement, and hope that the Government of Russia will quickly move to address the present shortcomings.

The International Intellectual Property Alliance (IIPA) is a coalition of seven trade associations representing U.S. copyright-based industries in bilateral and multilateral efforts to open up foreign markets closed by piracy and other market access barriers. 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 discs and cartridges, personal computer CD-ROMs, and multimedia products); theatrical films, television programs, DVDs and home video and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, trade books, reference and professional publications and journals (in both electronic and print media). Visit www.iipa.com for more information.

FACT SHEET: U.S. – RUSSIA BILATERAL AGREEMENT (NOVEMBER 2006)

On November 19, 2006 the Governments of Russia and the United States entered into a IPR Bilateral Agreement (“Side Letter”) in the context of Russia’s efforts to accede to the WTO; it was signed by Russian Minister Gref and Ambassador Schwab.¹ According to the Side Letter, U.S. support for Russia’s entry into the World Trade Organization (WTO) is conditioned on meaningful copyright law enforcement with specific obligations that Russia must take to reduce piracy “on a priority basis” as well as requirements to adopt the laws necessary to accomplish this goal.

Enforcement Steps Required by the Side Letter for 2007: Russia agreed in the Side Letter to make copyright enforcement an IPR priority, especially against illegal optical media plants, and to improve overall enforcement. In particular, the Side Letter requires the Russian Government to:

1. Address the optical disc problem, with the objective of permanently closing down illegal plants, by:

A. Conducting “repeated, unannounced inspections” of all known OD plants. “Such inspections will take place regularly, without prior notice, and at any time, day or night. If evidence of unauthorized production of optical media bearing content protected by copyright or related rights on a commercial scale is found, criminal proceedings will be initiated.” Russia will then be required to “[c]ontinue to conduct actions to find and shut down unlicensed plants producing optical media bearing content protected by copyright or related rights.” **Russia has not met this obligation. To date in 2007, according to IIPA’s information, Russian authorities have inspected only five out of an estimated 50 manufacturing facilities. We further understand that one plant, operating without a license, was closed. Both the optical disc plant licensing authority (Rosokhrankultura) and the Economic Crime Department of the Ministry of Interior are, at present, short staffed and under reorganization.**

B. Conducting actions to “find and inspect warehouses” storing pirate product, including the seizure and retention for evidence of illegal copies, as well as initiating “investigations to determine the owner, distributor, and manufacturer of such goods and prosecutions of these persons and enterprises” including “criminal proceedings...in cases of piracy or counterfeiting on a commercial scale.” **Russia has undertaken some warehouse and optical disc plant raids. However, the Russian courts have not imposed deterrent sentences against the owners or operators of warehouses and optical disc plants. In fact, in most instances, such cases cannot be initiated because of the inability to identify the relevant “owner.”**

C. “Ensur[ing] that facilities on the territory of government-controlled military-industrial [i.e., RARE] sites are not leased or otherwise made available to companies producing optical media bearing content protected by copyright or related rights and immediately take action to terminate any existing leases.” **Russia has not met this obligation. IIPA understands that the Russian Government plans not to renew leases for these facilities when they expire, but this is a far cry from the Agreement’s commitment to “take immediate action” to stop these entities from being used in furtherance of piracy.**

D. Enacting legislation (by June 1, 2007) to “strengthen the licensing regime for optical media plants” including “grounds to deny applications for licenses and to suspend, and then immediately seek revocation by a court of, licenses of persons whose production premises are found to be manufacturing pirated product; enhanced recordkeeping requirements; and government monitoring of production.” This legislation must ensure that “each licensee will verify that the customers for whom it produces optical

¹ The text of this Side Letter, known formally as the U.S.-Russia Bilateral Market Access Agreement on Intellectual Property Rights, is available at http://www.ustr.gov/Trade_Sectors/Intellectual_Property/Russia/Section_Index.html.

media bearing content protected by copyright or related rights have authorization from all relevant right holders” and that “licensees mark optical media with data that identifies the licensee and the license number” and “that licensees use additional markings, such as source identification codes.” **Russia has not met this obligation. This obligation is key to addressing many of the current optical disc piracy problems – both the manufacturing and distribution of pirate material – and was supposed to be accomplished by June 1. There is no known timetable in the Russian Government to meet this obligation.**

E. Ensuring that grounds to deny, suspend or “immediately seek revocation by a court of a license” include violations of “any licensing condition,” and that by June 1, 2007 legislation will include a provision that “licenses will be denied to persons who have previously had a license revoked by a court for infringement of any license requirement, such as violation of copyright or related rights.” **Russia has not met this obligation. Rosokhrankultura has, to its credit, tried to apply such measures in a de facto manner, but the absence of clear statutory authority is limiting its success.**

2. Address the need for effective criminal enforcement, focusing in particular on piracy “committed for purposes of commercial advantage or private financial gain” by referring “to the Supreme Court of the Russian Federation a proposal for it to pass a resolution of the Plenum of the Supreme Court” to clarify for the courts their practices so that they impose stiff penalties for IPR violations, and requiring that judges “take into account the high degree of public harm from such infringement.” **Russia did adopt a resolution on April 29, 2007 (the US government and IIPA are awaiting an official translation).**

3. Address the need for effective border enforcement by “significantly increas[ing] the percentage of export shipments inspected” and to provide information to “appropriate authorities for investigation and prosecution.” Also, the government will seek to enact legislation (by June 1, 2007) “strengthening Customs officials’ authority to take actions *ex officio* with respect to suspected exports and imports of pirated or counterfeit goods” and “encourage Customs officials to use such authority.” **Russian Customs authorities are regularly conducting inspections, but the obligation for legislative reform has not been met. The continued availability of Russian manufactured illegal discs is evidence of the need for better enforcement.**

4. Address the need to combat the growing threat of Internet piracy “with the objective of shutting down websites that permit illegal distribution of content protected by copyright or related rights” (and especially for websites whose servers are situated in Russia (which in a footnote specifically says “[s]uch as allofmp3.com”) by:

A. Taking actions “against the operation of websites...that promote illegal distribution of content protected by copyright or related rights, such as phonograms (sound recordings).” **Russia has not met this obligation. The most notorious website (even noted in the Agreement), allofmp3.com, continues to operate, pirating U.S. and other foreign material with impunity. Despite the initiation of a number of criminal cases, allofmp3.com, and unauthorized collecting societies like ROMS and FAIR continue to grant “licenses” for content they neither own nor are permitted to license.**

B. “[I]nvestigat[ing] and prosecut[ing] companies that illegally distribute objects of copyright or related rights on the Internet.” **Russia has not met this obligation. Six months after this obligation, IIPA is unaware of a single case that has been initiated by Russian authorities against an Internet pirate.**

C. Enacting by June 1, 2007, legislative amendments to “provide that collecting societies may act only on behalf of right holders that explicitly authorize such action” and the “provisions needed to implement the World Intellectual Property Organization (WIPO) Copyright Treaty [WCT] and WIPO Performances and Phonograms Treaty (WPPT).” **Russia has not met this obligation. One change adopted by the Civil Code, Part IV, would clarify that collecting societies may only operate with a**

mandate from rightholders; but this legislation does not go into force until January 1, 2008. There are many other WIPO treaty obligations that Russia must meet – detailed in IIPA’s Special 301 filing in February – including properly protecting technological protection measures (TPMs), narrowing the scope of exceptions to protect rightholders, and providing effective enforcement provisions.

5. Adopt legislation to “fully implement the TRIPs Agreement and other IPR-related international agreements” to which the United States and Russia are already parties (as well as to “fully implementing the WCT and WPPT”). Ensure that any legislative, regulatory or other measures made prior to accession, i.e. Part IV of the Civil Code, will not “result in a lesser degree of consistency than exists on this date” (November 19, 2006) with the TRIPs Agreement or any other international IPR agreement to which the U.S. and Russia are parties. **Russia has not met this obligation. The details of the TRIPs deficiencies are provided in the IIPA’s Special 301 filing, but include especially the need to provide effective enforcement remedies.**

6. Ensure on-going dialog and work to implement the obligations above through a Bilateral Working Group, as well as to provide appropriate training to Russian enforcement officials. **The U.S.- Russia Working Group meets quarterly.**

The summary of these six Side Letter obligations illustrates the important enforcement actions that Russia must undertake in 2007 (most by June 1). Note that the Side Letter has the status of an international agreement under U.S. and Russian law.