



September 21, 2007

**Via E-mail: [FR0711@ustr.eop.gov](mailto:FR0711@ustr.eop.gov)**

Marideth Sandler  
Executive Director of the GSP Program  
Office of the United States Trade Representative  
600 17th Street, NW  
Washington, D.C. 20508

**Re: GSP Country Practices Review  
005-CP-07, Russian Federation  
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 October 4, 2007 public hearing on the GSP country practices review of the Russian Federation. As you know, IIPA was the original petitioner of the GSP review of Russia’s intellectual property rights practices in the 2000 GSP Annual Review. Attached to this letter is IIPA’s Pre-Hearing Brief.

The IIPA witness will be: Eric J. Schwartz  
International Intellectual Property Alliance  
1818 N Street, NW, 8th Floor  
Washington, D.C. 20036  
Tel: (202) 355-7903; Fax: (202) 355-7893  
Email: [ejs@msk.com](mailto:ejs@msk.com)

Thank you.

Sincerely,  
/s/  
Eric J. Schwartz  
On behalf of IIPA

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

**Before the GSP Subcommittee  
Case 005-CP-07, Russian Federation  
October 4, 2007**

The International Intellectual Property Alliance (“IIPA”) appreciates this opportunity to provide the GSP Subcommittee with a summary of the copyright enforcement issues confronting our members in Russia in accordance with the Federal Register notice regarding the Generalized System of Preferences Country Practice Petition of the Russian Federation (“Russia”). See Generalized System of Preferences (“GSP”): Notice Regarding the Acceptance of Product and Country Practice Petitions for the 2007 Annual Review, 72 Fed. Reg. 51,264 (Sept. 6, 2007).

In short, the government of Russia is not complying with the eligibility requirements for GSP benefits. In our view, the GSP Subcommittee should terminate this investigation with such a finding and should remove Russia’s eligibility to participate until such time as it has achieved “adequate and effective protection” of intellectual property rights (“IPR”) as contemplated by sections 502(b) and 502(c) of the 1974 Trade Act (the intellectual property provisions in the GSP statute found at 19 U.S.C. §§ 2462(b) and (c)).

It has been almost seven years since the IIPA GSP petition was first filed, and over six years since the U.S. government accepted the petition, which as a threshold matter, acknowledged Russia’s shortcomings under the GSP program. As noted in this filing, Russia has undertaken some legal reform steps and enforcement activity during this period, but not the comprehensive action required by the GSP trade program. In 2006, Russia benefited from over \$512 million in duty free GSP imports into the United States. In contrast, U.S. companies suffered losses of over \$2 billion due to copyright piracy in Russia (as detailed in our February 12, 2007 Special 301 filing).

The IIPA believes that Russia is at a critical juncture in the development of its IPR regime. The November 19, 2006 Bilateral IPR Agreement (“IPR Agreement”) reflects Russia’s acknowledgment of the many legal reforms and enforcement steps it needs to implement to develop a modern and effective copyright system for the benefit of Russian and foreign authors and producers. Russia’s full compliance with the IPR Agreement’s obligations is essential, and should be considered as part of the GSP Annual Review.

When the IPR Agreement was signed, the Government of Russia pledged to implement very specific legal reforms, to undertake “meaningful enforcement,” and to do so “on a priority basis.” Several of these obligations had an agreed June 1, 2007 deadline. The U.S. Government has been clear that Russia must provide protection and enforcement of IPR consistent with the requirements of the IPR Agreement before the U.S. can support Russia’s entry into the World Trade Organization (“WTO”).

While there are areas where improvements have been accomplished, much remains to be done to achieve adequate protection in Russia and to secure compliance with the IPR Agreement. As detailed in this submission, however, Russia is presently not in compliance with its IPR Agreement obligations.<sup>1</sup> This is particularly so with regard to optical disc (“OD”) piracy and Internet piracy. We look forward to working with the U.S. and Russian Governments on the work that needs to be undertaken by Russia to meet its commitments in the IPR Agreement and, more importantly, to make significant reductions in piracy that harms all copyright industries, U.S. and Russian alike.

### The IIPA and Copyright Industries – Interest of IIPA in this GSP IPR Review

The 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. IIPA is comprised of seven trade associations, each representing a significant segment of the U.S. copyright community. These member associations represent 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).

For over 15 years, IIPA members have closely monitored IPR developments in Russia – both legal reforms and enforcement activities – because Russia’s IPR regime is essential to the development of a flourishing market and creative community in Russia, as well as to stem the losses caused by the production and distribution of materials made in or shipped through Russia and sold into other territories.

### Enforcement Activity in Russia

Clearly, the priority for IIPA members in Russia is to step up enforcement activity – well beyond current levels – to provide adequate and effective enforcement of IPR violations, including the imposition of criminal deterrent penalties. In short, Russia is undertaking some enforcement activity – and by some measure, more than in prior years, but still much more needs to be done to meet the requirements of the IPR Agreement.

For example, Russian police stepped up enforcement against copyright infringers, particularly with respect to vendors of illegal optical disc materials, and companies involved in

---

<sup>1</sup> IIPA has provided extensive comments and suggestions in earlier filings related to Russia’s IPR regime and its obligations under U.S. trade law. *See, e.g.*, Letter from Eric J. Schwartz, Counsel to IIPA, to Ms. Marideth J. Sandler, Executive Director, Generalized System of Preferences Program, Office of the U.S. Trade Representative (June 21, 2007), *available at* <http://www.iipa.com/pdf/IIPARussiaGSPSubmission062107.pdf>; IIPA 2007 Special 301 Report on the Russian Federation, *available at* <http://www.iipa.com/rbc/2007/2007SPEC301RUSSIA.pdf>.

the installation and use of pirated software. Statistics of the Ministry of the Interior illustrate an increase in police activity: in 2005, the Ministry recorded a total of 2,924 crimes under Article 146 of the Criminal Code of Russia (for copyright infringement); in 2006, this figure doubled to 7,423 recorded crimes. In the first half of 2007, 5,215 such crimes were recorded. Industry statistics (including BSA figures) corroborate this official data.

As another example of improvements, some deterrent sentences (and prison terms) have been applied by Russian courts, including some (albeit a few), aimed at serious repeated offenders. One case of note involved a sentence imposed against two individuals in Rostov-on-Don for duplicating DVD-Rs and selling the discs in their kiosks. Some IIPA members further report an increase in the number of administrative and criminal penalties imposed against vendors. Also, the business software industry reports an increase in the number of civil actions commenced by rightholders that have had a deterrent effect on illegal activities to the benefit of legitimate software distributors. But, deterrent criminal penalties are not being imposed against optical disc plant owners, and with few exceptions, plant operators, nor against owners of commercial Internet operations.

With piracy rates continuing to range between lows of 65% and highs of over 80% for IIPA members, improved enforcement is an important step to establishing legitimate markets for the benefit of Russian and foreign rightholders. For example, the current lack of clear authority for optical disc licensing and inspections significantly prejudices enforcement of optical disc production and distribution in Russia.

As noted, there have been some positive steps in 2007, for example, raids against pirate warehouses are on the increase. Raids have also been undertaken at some of the optical disc plants including: two at the end of 2006 and three to date in 2007 – at the Gamma, Victoria, and Poliplast plants. However, the Victoria and Poliplast plant licenses were not suspended and both are reportedly open and in operation again, while Gamma continues to operate without a license. These cases highlight the weaknesses that must be addressed if Russia is to meet the obligations of the 2006 IPR Agreement. In addition, far fewer criminal cases have been initiated against OD plants in 2007 than in 2006, and many cases have languished for a long time. With an estimated 50 plants in operation, raids at a handful of plants, and surprise inspections at almost none of the plants, IIPA believes there is ample evidence that additional effective enforcement is needed to deter illegal activities, and that such enforcement needs to be called for from the highest levels within the Russian Federation.

The Russian Government has also taken steps to address the problem of the Russian State owned Restricted Access Regime Enterprises (“RARE”) that house or run optical disc plants. The Russian Government has reported that there are ten of these RARE plants, that is, OD plants on government controlled military-industrial sites, and that it is taking steps against nine of the ten such plants to cancel their leases. This is a positive step. IIPA continues to recommend that, in addition to lease cancellations, any plant engaged in the production of illegal optical disc material should also be the subject of a criminal investigation, closure, and the prosecution of those involved.

Other positive steps since the IPR Agreement are the raids and large seizures of copyrighted materials at warehouses (including a huge stamper warehouse), including several significant raids in April, May, and August. The Russian Government has reported that it has taken action, so far in 2007, against seven illegal production facilities (OD plants, but also CD-R burners), and against 17 warehouses (seizing a total of 3 million illegal optical discs). The copyright industries are reporting good cooperation with the police on such raids, but much more needs to be done to sustain these activities and to drive down piracy rates. While IIPA members are pleased that well-meaning Russian officials are attempting to address this problem, the failure to impose serious criminal penalties against the principals behind criminal enterprises undermines their efforts. In fact, since the adoption of the criminal penalties (Article 146), we are not aware of a single plant owner who has been convicted, and only a handful of plant operators (i.e., plant managers) have served jail time or been given suspended sentences.

Importantly, the copyright industries report that more criminal cases have been commenced than in prior years. However, the industries also report that most of these cases do not result in deterrent penalties as a final disposition. There have been some notable and important exceptions: in April, in a raid in Krasnodarsky Kray a jail sentence was imposed; and in May, in St. Petersburg, the first-ever jail sentence was imposed against a DVD/software shop owner (an 8-month sentence). Unfortunately, these examples remain the exception to the general practice of non-deterrent sentencing. There are many examples of plant operators who received suspended sentences (at the UVK Stimul, ROFF, Simplex, DataMedia and Disc Press MSK plants); the exception is the operator of the Mediasystem plant, who is currently in prison awaiting the end of a criminal investigation. The longest prison sentence imposed to date for copyright infringement was four and a half years against the two DVD-R replicators in Rostov-on-Don (the case cited above). One other significant recent action took place in August 2007, in Moscow, when a warehouse was raided and over two million DVDs (including many very recent titles) were seized; a criminal case has been initiated.

The Business Software Alliance (“BSA”) reports that the quantity of raids against businesses that make and sell recordable CDs (“CD-Rs”) increased significantly this year. However, only ten percent of these criminal raids resulted in court verdicts. This is mostly attributable to the following problems: (a) the absence of criminal liability for legal entities; (b) the failure of the police to comply with the Criminal Procedure Code; and (c) the general reluctance of prosecutors to initiate criminal cases.

The quantity of end-user raids against businesses using pirate products remains inadequate, with the enforcement of IPR very inconsistent throughout Russia. In some regions (such as, Udmurtya, Bashkiria, Saratov and Mordovia) the police run many raids, while in other regions (such as, Novosibirsk and St. Petersburg) end-user raids are not run at all (or, if raids are run, the prosecutors refuse to initiate criminal cases after the raids take place). This inconsistency stems from the lack of a uniform methodology promulgated by the Ministry of Interior (“MOI”) and the General Prosecutor’s Office in relation to implementation of Article 146 of the Criminal Code. The police continue to be reluctant to conduct raids against medium and large-scale targets; when raids are conducted, the police tend to seize fewer than 10 personal computers (“PCs”) on average. This problem is related to the experts’ inability to examine large quantities of PCs, a problem connected to the fact that the MOI has not issued an internal order

instructing the MOI Expert-Criminal Centers on how to properly conduct software examinations (although some of these centers do prepare expert examinations, this is not their official function). These problems highlight the lack of effective enforcement coordination between prosecutors, police and rightholders.

IIPA recommends that the Government of Russia improve its IPR enforcement by including rightholder cooperation in its enforcement and OD (surprise) plant inspection operations, and by the central coordination of law enforcement (including a high-level announcement by the government that IPR enforcement is a priority). Prosecutors need to: (a) coordinate their efforts with the police; (b) bring more IPR cases; and (c) conduct expeditious investigations. The development of instructions by the MOI and the General Prosecutor's Office with an updated and detailed methodology for investigations of copyright infringements would help to increase the quality and effectiveness of IPR enforcement activities. Another recommended measure is the appointment of IPR special prosecution investigators and police officers at both the federal and regional levels throughout Russia. On September 7, 2007, the reform and reorganization of General Prosecutor's Office and all prosecutorial bodies will be completed: prosecutorial bodies will be divided into prosecution offices and investigative committees. The appointment of specialized IPR prosecutorial investigators could, if utilized correctly, significantly increase the efficiency of IPR criminal investigations.

An intensification of criminal investigations and obtaining criminal convictions against principals is sorely needed, especially against Internet, as well as hard copy (optical disc) operations. There needs to be a focus on criminal enforcement targeted against organized crime syndicates. Regarding Internet piracy, although the notorious [allofpm3.com](http://allofpm3.com) is not currently in operation, other similar (in fact, nearly identical) sites are operating, and must be closed, along with the commencement of criminal investigations against the site operators. The ability of wrongdoers to simply modify their Internet sites and continue to operate in violation of the law manifests a clear need for reform. More and improved criminal proceedings in general, along with speedier investigations and trials are needed. Last, we recommend that the General Prosecutor's Office needs to appoint a government liaison with IP rightholders to more effectively bring criminal investigations and trials to successful conclusions.

#### Legal Reforms: Progress and Deficiencies

Although enforcement is the priority of IIPA members in Russia, effective enforcement is itself predicated upon the existence of a comprehensive and modern IPR legal regime, elements of which continue to be absent in Russia. Russia has made progress on legal reforms. Here are some of the recent highlights:

- 1) The Criminal Procedure Code was amended in 2006 to allow Russian police, in addition to prosecutors, to initiate criminal investigations.
- 2) The Criminal Code was amended in January 2007 (in force April 9, 2007) to increase IPR penalties from 5 to 6 years imprisonment and to reclassify "grave crimes." This latter change allows prosecutors and enforcement authorities to use investigative measures far exceeding those under the prior "medium gravity" threshold.

- 3) The Supreme Court, on April 26, 2007, adopted a resolution detailing IPR (Articles 146 and 180) enforcement practices. This directive was aimed at the lower courts to provide guidance to them for IPR enforcement (along with a similar June 2006 resolution).
- 4) Amendments to the Administrative Code were adopted on April 9, 2007, with a new Article 14.33 on unfair competition. This change means that the introduction of illegal goods into markets can result in fines on either individuals or legal entities (as an administrative liability). However, the provisions do not permit either the seizure or forfeiture of the goods.
- 5) Amendments to the Civil Code (in force, January 1, 2008) will provide as a remedy for infringement, the “liquidation of a legal enterprise” – if used effectively against illegal companies (including optical disc producers) this should improve enforcement.

These legal reforms are a step in the right direction toward meeting the IPR Agreement obligations, and other essential steps are pending government review or Duma adoption. But, there are many other essential legal reforms, some required by the IPR Agreement, that have yet to be adopted.

Most important are the long-promised optical disc regulations, which would properly regulate the licensing of plants (and their equipment and raw material used in production), the (surprise) inspection of plants, the closure of illegal plants and the sanctions to be imposed – including criminal penalties – for violations. Russia plans to address this problem with one legislative amendment: to deny licenses to plants (and individuals) whose business license was previously revoked, as well as with regulatory amendments (to the Prime Minister’s Decree of April 2006). In fact, since March 2007, no Russian organization or agency has had the authority to inspect OD plants since the Federal Service with such authority was abolished as part of government reorganization. The issue of authority is expected to be rectified by the establishment of a new Federal Service (Rossviazokhrankultura). However, that will only re-constitute the existing, inadequate, plant licensing and inspection authorization without the needed and promised comprehensive and more effective regime.

There are many other important legal reforms that need to be adopted; in fact, many are IPR Agreement obligations. These include: (1) the Criminal Code which needs to be amended to make legal entities liable for IPR crimes; (2) the Customs Code which must be amended to add *ex officio* authority (IIPA understands this amendment is now pending in the Duma); (3) the complete implementation (in the Civil Code) and ratification of both digital treaties – the WCT and the WPPT.

One particular concern, pertaining to collecting societies, was corrected (in Part IV of the Civil Code); however, it does not go into force until January 1, 2008. Since its adoption, IIPA and its members have commented on two major overarching concerns with the new Civil Code: first, that there are many unclear legal terms and definitions that may cause challenges to enforcement efforts; and second, that there are administrative law principles throughout the Civil Code that likely cannot be enforced by civil or criminal procedures.

Earlier this year, IIPA made several recommendations to address some of these problems and to improve enforcement generally. These included a recommendation for the introduction into the Civil Code of a clear definition of “Internet Service Provider” (“ISP”) and confirmation of clear (third party) liability in civil and criminal law for facilitating Internet piracy, as well as a duty to provide all necessary information to law enforcement agencies in Internet piracy cases. In addition, to stem the rise in Internet piracy that is harming many of the copyright industries – including the book, business and entertainment software, movie and music industries – Russia should undertake steps to address and implement notice and takedown procedures for websites hosting illegal material.

As part of our comments earlier in the year, IIPA recommended that, in order to comply with TRIPs and the WIPO digital treaties, Russia should amend the Civil Code, Part IV by addressing the following:

- 1) The Civil Code’s “three-part” (fair use) test in Article 1229 is far too broad and must be narrowed. It does not currently comply with Article 9(2) of the Berne Convention, Article 13 of WTO/TRIPs and Articles 10 and 16 of the WCT and the WPPT, respectively. The “three-part” test must be re-stated in its entirety in Article 1229.
- 2) The Civil Code contains an overly broad exception for copying for “personal needs” (or alternatively, translated as “personal purposes”) in Article 1273 and Article 1306. IIPA recommends that the best way to “fix” this exception would be to clearly apply the “three-part” test to narrow the scope of the exception as well as to apply it only to specific instances (and to clearly, as it does now, exclude some activities as not personal uses, such as camcording and telecine copying).
- 3) Article 1280(4) of the Civil Code violates the “three-part” test for permissible exceptions, and needs to be significantly narrowed.
- 4) The Civil Code provisions fail to provide WCT (Article 11) and WPPT (Article 18) compliant levels of protection --because they are too narrow, and do not provide adequate remedies, for technological protection measures (“TPMs”) that protect copyright works and objects of neighboring rights, in Articles 1299 and 1309, respectively.
- 5) The Article 1270(2)(1), 1317(2)(4) and (6), 1324(2)(5) and (6), and 1330(2)(2) definitions of reproduction fail to adequately cover the creation of temporary copies because they explicitly state that temporary copies that constitute “integral and essential” parts of processes conducted with the sole purpose of lawfully using or bringing works or objects of neighboring rights to the public do not qualify as reproductions.
- 6) Articles 1232-38, 1240, 1286, and 1307-08 over-regulate contractual relations in connection with copyright and neighboring rights (including the application of general rules on assignments and licensing of exclusive rights).
- 7) Articles 1281, 1282, 1318, and 1324 fail to clarify that the Civil Code provisions apply equally to pre-existing works. (By one reading – a cross-reference to Articles 5 and 6 with Articles 1281 and 1282 – the Civil Code does apply to pre-existing works – but this should be clarified).



- 8) Article 1231 fails to clarify whether non-Russian works and objects of neighboring rights receive national treatment (i.e., that foreign works are protected the same as Russian works).
- 9) Article 1231 mixes copyright, patents, trademarks and other IP together, where it should be differentiated; separately, the right of remuneration needs clarification.
- 10) Steps need to be taken to make certain that essential – treaty required – remedies for IPR infringements found in the Criminal Code, the Criminal Procedure Code, the Administrative Code and the Customs Code will continue to apply in light of the adoption of the new Civil Code and the repeal of the copyright law.
- 11) The Civil Code fails to clearly provide for third party liability for civil and criminal facilitation of Internet piracy, as well as a duty to provide all necessary information to law enforcement agencies in Internet piracy cases.
- 12) The Civil Code must limit the current abusive practices of collecting societies in Russia; provisions need to be corrected in Article 1244 to accomplish this goal.
- 13) It should be clarified that the making available right applicable for objects of neighboring rights is not limited by the statutory license in Article 1326(1).
- 14) One miscellaneous provision needs to be corrected – in Article 1239. Currently, Article 1239 of the Civil Code provides procedures for granting compulsory licenses without specifying conditions. This type of licensing is applicable only to patents and should be so stated.

There are several positive features of the Civil Code that deserve mention, as well. These features include:

- 1) A clarification that collective administration organizations can only operate within the mandates they receive from rightholders (Article 1242).
- 2) Adding (civil, but not criminal) liability for legal entities at Article 1253.
- 3) Adding remedies for the seizure and destruction of materials and equipment used in infringements (Article 1252 and 1302). However, this could be further improved by deleting the exception for the sale of materials by the state for “income.”
- 4) Adding clear protection for computer programs as “literary works” (Article 1261).
- 5) Providing proper rights of ownership and exploitation of audiovisual works (Articles 1240 and 1263).
- 6) Providing a clear making available right (Article 1270(11)) consistent with the digital treaties; providing a private (personal purpose) levy (Article 1245).
- 7) Providing statutory damages (ranging from 10,000 to 5 million rubles) (Article 1301).

## The IPR Agreement Obligations

As noted, since the signing of the IPR Agreement in November — an agreement that has been called Russia’s roadmap to WTO accession with respect to intellectual property — some steps have been undertaken but much remains to be done. One notable “positive” step that simultaneously illustrated the weakness of the Russian legal/enforcement system was the closure of the notorious website [allofmp3.com](http://allofmp3.com) and the acquittal of the former CEO Denis Kvasov. Although we were obviously pleased that [allofmp3.com](http://allofmp3.com) was itself taken down, we note that a nearly identical site is now in operation that is apparently owned and operated by the same parties — illustrating the need for corporate criminal liability and the criminal sentencing of principals of pirate operations. In addition, Russian enforcement authorities have undertaken plant and warehouse raids, and seized large quantities of illegal material. Russia has been meeting quarterly with the U.S. through the U.S.-Russia Working Group, which is also a positive step toward ensuring that dialog and work to implement the IPR Agreement continue.

IIPA is disappointed that the deadlines of June 1 were not met, with Russia still needing to: (1) address the problem of illegal optical disc manufacturing; (2) effectively enforce criminal laws with deterrent penalties for IPR violations; (3) combat Internet piracy; (4) implement international IPR agreements, up to the WTO-TRIPs levels; and (5) implement and ratify the WIPO “digital” treaties (the WCT and the WPPT).

Here are the details of some of the obligations where further action by the Russian Government is needed:

### 1. The Optical Disc Problem

Russian optical disc piracy is a massive problem. Russia agreed to address the optical disc problem, with the objective of permanently closing down illegal plants. Russia was supposed to conduct “repeated, unannounced inspections” of all known OD plants. These inspections were to “take place regularly, without prior notice, and at any time, day or night.” Criminal proceedings were to be initiated “[i]f evidence of unauthorized production of optical media bearing content protected by copyright or related rights on a commercial scale is found...” However, Russia has not met this obligation. Instead, according to IIPA’s information, this year, Russian authorities have inspected only three out of an estimated 50 manufacturing facilities. As noted, one of the plants 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 under reorganization (and when they were in operation, they were short-staffed). After the reorganization, more training and more resources need to be available to conduct the promised effective enforcement.

Although Russia has undertaken some warehouse and optical disc plant raids, it has fallen short of its promise to conduct actions to “find and inspect warehouses” storing pirate product, and to initiate “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.” In addition, the Russian courts have not imposed deterrent sentences against the owners or operators of warehouses and OD plants.

In fact, in most instances, such cases cannot be initiated because of the inability to identify the relevant “owner.”

Russia did not enact legislation by June 1, 2007, to “strengthen the licensing regime for optical media plants” by 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 was supposed to ensure that “each licensee will verify that the customers for whom it produces optical 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.” This obligation is key to addressing many of the current OD piracy problems – both the manufacturing and distribution of pirate material. IIPA is concerned that there is no known timetable in the Russian Government to meet this obligation. Russia should include the monitoring of high-grade polycarbonate material used to manufacture optical discs in its OD enforcement regime, especially its border enforcement.

Finally, Russia did not enact legislation by June 1, 2007, to ensure that grounds to deny, suspend or “immediately seek revocation by a court of a license” include violations of “any licensing condition,” and 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.” 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. Criminal Enforcement

The IPR Agreement requires the Russian government to 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.

## 3. Border Enforcement

Russia is obligated to 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 to “encourage Customs officials to use such authority.” Russia did not meet the June deadline, but an amendment to the Customs Code is currently pending before the Duma.

## 4. Internet Piracy

The IPR Agreement obligates Russia to 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). Russia has taken some action in this regard (according to the Russian Government identifying 166 offending sites and closing 72 of them). In June, the most notorious website (even noted in the IPR Agreement), allofmp3.com, was taken down, and to this point has not resurfaced at that Internet address. However, another site, nearly identical and apparently owned and operated by the same company has sprouted up in its place, and the illegal distribution of copyrighted material continues there, as well as on many other sites. Investigation of the Internet distribution of other types of works, such as business and entertainment software, books, as well as music and film material, by a variety of technical means, must be stepped up by criminal investigators. Few, if any, criminal cases have been pursued against illegal website operators.

#### 5. International Agreements

Russia had not yet adopted 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 implement[] the WCT and WPPT.”

#### Conclusion

This summary is meant to identify Russia’s positive steps and failures regarding its IPR Agreement obligations, and, in particular, to illustrate the important enforcement actions that Russia still needs to undertake in order to provide the “adequate and effective protection” required by the GSP program. In conclusion, 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 IPR Agreement last year, but for their continuing efforts to seek Russia’s full compliance with the IPR 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 U.S. 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.

Respectfully submitted,

/s/

Eric J. Schwartz

On behalf of IIPA