



March 3, 2006

Via electronic mail (FR0607@ustr.eop.gov)

Ms. Gloria Blue
Executive Secretary
Trade Policy Staff Committee (TPSC)
Office of the United States Trade Representative
1724 F Street, NW
Washington, DC 20508

Re: Notice of Intent to Testify at, and Testimony for, a Public Hearing Concerning the Proposed Free Trade Agreement with the Republic of Korea (71 Fed. Reg. 6820, Feb. 9, 2006)

To the Trade Policy Staff Committee:

This written notification responds to the TPSC's Request for Comments and Notice of Public Hearing Concerning Proposed Free Trade Agreement with the Republic of Korea. The request requires persons wishing to testify orally at a hearing that will be held in Washington, DC on Tuesday, March 14, 2006, to provide written notification of their intention, as well as a copy of their testimony.

Notice of Request to Testify

We hereby notify you that the following person wishes to testify orally at this hearing on behalf of the International Intellectual Property Alliance (IIPA):

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Summary of Testimony

The following represents a short summary of the IIPA testimony, as required by the Federal Register notice. IIPA's full testimony follows this summary.

IIPA applauds the initiation of negotiations for an FTA with Korea. The copyright sector, like other sectors of our economy, could reap significant benefits from a sound and comprehensive US-Korea FTA. However, these benefits can only be realized if the FTA includes high standards for copyright law reform; concrete deliverables for strengthening enforcement of copyright in Korea; and firm commitments to reduce or eliminate market access barriers in the copyright sector.

The FTAs that have been previously negotiated with other trading partners in the Asia-Pacific region, notably Singapore and Australia, provide good starting points for the text that the US should seek to achieve in negotiations with the ROK. The provisions of these agreements should be refined and expanded to address specific issues where strong FTA provisions are needed to further open the Korean market, and to deal with particular features of copyright piracy in Korea. The Korea FTA should require full implementation of the copyright law reforms that have become part of emerging global consensus minimum standards, including but not limited to those already embodied in the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The agreements with Korea must also require it to upgrade its copyright enforcement practices, with the goal to ensure that copyright owners and law enforcement officials have available to them the tools necessary to impose effective, consistent, predictable and deterrent penalties on copyright pirates. The negotiations should also aim to dismantle or significantly reduce the market access barriers and discriminatory practices that keep U.S. copyright holders from full participation in the Korean market.

Finally, although there has been much progress, we must keep in mind that virtually all sectors of the copyright industry continue to suffer high levels of piracy in Korea. Particular problems include massive illegal photocopying and printing of published materials; rising Internet piracy of all kinds of copyrighted materials; and persistent problems with unauthorized CD-R “burning” operations, end-user piracy of business software, and importation of pirate cartridge-based entertainment software products. Provisions should be considered for inclusion in the FTA itself or in side letters that are specifically targeted at reducing the prevalence of piracy in these areas.

We thank the TPSC for permitting us to testify on this important initiative.

Respectfully submitted,



Steven J. Metalitz
Senior Vice President
International Intellectual Property Alliance

Attachments: 1 – IIPA Testimony
2 – IIPA 2006 Special 301 Country Report on South Korea

**TESTIMONY OF
STEVEN J. METALITZ
SENIOR VICE PRESIDENT
INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE**

**PUBLIC HEARING CONCERNING
PROPOSED FREE TRADE AGREEMENT
WITH THE REPUBLIC OF KOREA
TUESDAY, MARCH 14, 2006
BEFORE THE TRADE POLICY STAFF COMMITTEE
IN WASHINGTON, DC**

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to provide the perspectives of the U.S. copyright industries on negotiations for a Free Trade Agreement (FTA) with the Republic of Korea (ROK).

1. About IIPA and the Copyright Industries

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.¹ 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). Taken as a whole, the “core” copyright industries – those whose primary purpose is to create and/or distribute copyright materials – accounted for an estimated 6 percent of U.S. gross domestic product (\$626.6 billion) and employed 4% of all U.S. workers (5.48 million) in 2002.²

Virtually since its inception, IIPA has been actively engaged on behalf of its member associations in the monitoring and development of copyright law and enforcement policy in the ROK. It has prepared comprehensive reports on these issues in each annual Special 301 proceeding since that mechanism was created in the Omnibus Trade and Competitiveness Act of 1988.³

2. Introduction and Summary

IIPA applauds the initiation of negotiations for an FTA with Korea. As you will hear from other witnesses in this proceeding, Korea is one of our country’s most important trading partners, and many sectors of our economy could reap significant benefits from a sound and comprehensive US-Korea FTA. This is certainly true of the copyright sector as well. However, these benefits can only be realized if the FTA includes high standards for copyright law reform; concrete deliverables for strengthening enforcement of copyright in Korea; and firm commitments to reduce or eliminate market access barriers in the copyright sector. If Korea agrees to and fully implements such FTA provisions, the prospects for increased U.S. – Korea trade in copyrighted materials would be great, with accompanying positive effects on U.S. employment in the copyright sector, and in U.S. global competitiveness.

The FTAs that have been previously negotiated with other trading partners in the Asia-Pacific region, notably Singapore and Australia, provide good starting points for the text that the US should seek to achieve in negotiations with the ROK. The provisions of these agreements should be refined and expanded to address specific issues where strong FTA provisions are needed to further open the Korean market, in the following general areas:

¹ IIPA members include the following associations: Association of American Publishers (AAP), Business Software Alliance (BSA), the Entertainment Software Association (ESA), the Independent Film & Television Alliance (IFTA), the Motion Picture Association of America (MPAA), the National Music Publishers’ Association (NMPA), and the Recording Industry Association of America (RIAA).

² See Copyright Industries in the U.S. Economy: the 2004 Report, by Stephen E. Siwek, Economists Incorporated, available at http://www.iipa.com/copyright_us_economy.html.

³ The eleven most recent annual IIPA Special 301 reports on ROK are available at <http://www.iipa.com/countryreports.html>, listed under South Korea.

- Like the previous agreements, the Korea FTA should require full implementation of the copyright law reforms that have become part of emerging global consensus minimum standards. Many of these standards are already embodied in international treaty instruments (most recently in the WIPO Copyright Treaty [WCT] and the WIPO Performances and Phonograms Treaty [WPPT])⁴; others are drawn from the clear trends in recent copyright enactments around the world (such as the extension of terms of copyright protection). An FTA with Korea should spell out specifically what Korea needs to do to bring its laws up to these global minimum standards.
- Strong substantive copyright laws are necessary, but are not by themselves a sufficient basis for conclusion of an FTA. The agreements with Korea must also require it to upgrade its copyright enforcement practices, with the goal to ensure that copyright owners and law enforcement officials have available to them the tools necessary to impose effective, consistent, predictable and deterrent penalties on copyright pirates. Here, too, the previously negotiated FTAs provide a good starting point.
- Finally, U.S. copyright holders face other obstacles to full and non-discriminatory access to the Korean market. The negotiations should aim to dismantle or significantly reduce these market access barriers and discriminatory practices.

Before turning to some of the specific issues that should be addressed in a sound and comprehensive FTA with Korea, a word about copyright piracy in Korea is required. As in many other countries around the world, for more than two decades, one of the principal barriers to full access of U.S. copyright holders to the Korean market has been pervasive and persistent copyright piracy. This remains true today.

The current piracy situation in Korea is comprehensively surveyed in the report IIPA filed last month in the Special 301 process. That report is attached to this submission. A comparison of this report to some of the more than a dozen Special 301 reports that IIPA has previously filed on Korea demonstrates the considerable progress that the ROK has made over the years in battling copyright piracy. However, it is also clear from the 2006 Special 301 report that much more remains to be done.

Virtually all sectors of the copyright industry suffer high levels of piracy in Korea, and the losses inflicted on U.S. copyright holders remain very serious. The report highlights the piracy problems in particular sectors, notably massive illegal photocopying and printing of published materials; rising Internet piracy of all kinds of copyrighted materials; and persistent problems with unauthorized CD-R “burning” operations, end-user piracy of business software, and importation of pirate cartridge-based entertainment software products. These specific piracy hotspots should be kept clearly in view as USG embarks on its FTA negotiations with Korea, and provisions should be considered for inclusion in the FTA itself or in side letters that are specifically targeted at reducing the prevalence of piracy in these areas.

⁴ Korea acceded to the WCT in 2004. It has not yet joined the WPPT but has announced its intention to do so.

3. Copyright Law Reforms

The following, while not an exhaustive list, highlights some of the key issues that should be addressed in the portion of the US-Korea FTA dealing with substantive copyright law. The first several issues take on particular importance in light of the extent to which Korea, unsurpassed by almost any other country, has embraced the networked digital environment as a medium for the exploitation of copyrighted works.

(A) Right of reproduction and protection for temporary copies. Almost alone in the world, the ROK government takes the position that the exclusive right of reproduction under its law does not extend to temporary copies, such as those made in the Random Access Memory of a personal computer. This interpretation not only calls into question Korea's compliance with its obligations under the Berne Convention and the WTO TRIPS Agreement; it is also an especially glaring omission in view of the ever-increasing economic importance of temporary copies. Indeed, in the networked digital environment which already prevails in Korea, the making and use of temporary copies is rapidly becoming the primary means by which copyright works of many kinds are exploited and consumed by the public. Consumers with a broadband connection that is "always on" have less and less need to possess permanent copies of sound recordings, computer programs, entertainment software, or many other kinds of works; the full value of the work can be obtained through access to a temporary copy. Korea's refusal to accord to the right holder control over the making of such copies is a flaw in its copyright law regime that is becoming more fundamental every day. The flaw must be corrected before the US enters into an FTA with Korea.

(B) Exclusive rights for sound recordings. Korea must ensure that all means of digital dissemination of sound recordings to the public — such as webcasting, streaming and digital broadcasting — are brought within the scope of the exclusive rights of producers of sound recordings. These methods are already in widespread use by pirates who exploit Korea's advanced broadband network. While Korean authorities have put forward expansive interpretations of current law on this subject, the law remains ambiguous, and pending legislation threatens to nullify the official interpretations and to unduly restrict the scope of exclusive rights in this area. This uncertainty represents an unjustifiable impediment to enforcement against online pirates, and retards the development of a robust market in licensed use of these media to disseminate sound recordings.

(C) Technological protection measures. The WIPO Internet Treaties proceed from the premise that use of technological measures is a critical element in the successful exploitation of copyright works in the digital environment, and that thus these measures must receive adequate and effective legal protections. Current Korean law does not fully meet the standards of the Treaties, since, for example, its coverage of access control technologies is uncertain, and it fails to outlaw the act of circumvention of such controls.

(D) Online Service Provider Liability. The basis on which an online service provider may be held liable in Korea for copyright infringements committed by its subscribers or customers needs to be clarified, and the authority of courts to issue appropriate injunctions in all cases should be spelled out. Although liability limitations have been legislated, both in the Copyright Act of Korea and in the Computer Programs Protection Act (which governs copyright in computer programs), the circumstances under which such liability limitations are inapplicable need to be clarified (e.g., when a service provider's employee or agent is directly involved in the infringement, or when the service provider refuses to cooperate by terminating the accounts of customers who repeatedly use the system to commit infringements). Improvements are also needed in the statutory notice-and-takedown system, notably by clarifying the validity of e-mail notifications, and by providing a speedy and simple procedure through

which rightholders can obtain identifying information about service provider subscribers who commit online infringements.

(E) Extension of term of copyright protection. Recent enactments in territories ranging from the European Union to Japan, and including Australia, Singapore, and, of course, the United States, mark an unmistakable trend toward extension of the term of copyright protection, which now exceeds the Berne/TRIPS minima for some or all categories of protected subject matter in more than 80 countries. As cross-border transmissions become the norm, the refusal of outliers such as Korea even to consider harmonization in this area is an issue with increasing potential to become a major irritant in the trading relationship. The threat of trade stresses and distortions should be forestalled through Korea's agreement in the FTA to protect works for the life of the author plus 70 years, or 95 years from publication in the case of sound recordings, cinematographic works, works whose author is a legal entity, and other works whose term is measured from publication.⁵

(F) National treatment. The FTA should establish the norm of full national treatment, without exception or derogation. In particular, discrimination against U.S. sound recording producers in the current system of equitable remuneration for broadcasting must be abolished; and the policy of denying foreign music publishers the right to qualify for "trust licenses" must be ended as well, so that these publishers will have a solid legal basis for directly managing and enforcing all the rights applicable to musical compositions in their catalogs.

(G) Contractual rights. Any entity acquiring or holding economic rights in a copyright work should be able to exercise those rights in its own name and enjoy fully the resulting benefits. Korea should phase out or repeal provisions for mandatory collective administration of exclusive rights or rights of remuneration.

(H) Exceptions to protection. Korea must ensure that any exceptions to copyright protection are restricted to certain special cases that do not conflict with normal exploitation of a work and do not unreasonably prejudice the legitimate interests of the right holder – in other words, that they meet the standard set out in Berne, TRIPS and the WIPO Treaties. Among other candidates for searching review under this standard are the private copying exception (as it applies to easily transmittable perfect digital copies); the recently expanded exceptions that allow libraries to digitize certain works in their collection and transmit them over a network to other libraries and their patrons; and proposed new exceptions for educational institutions.

(I) Protection for encrypted program-carrying satellite signals. Criminal and civil liability should be imposed on those who decode such signals without authorization of the lawful distributor.

(J) Government legalization and protection against use of public agency computer resources for infringement. The ROK government must implement and enforce appropriate measures to mandate that all government agencies use and procure only properly licensed computer software and only legitimate copies of other copyright works, including textbooks used in publicly funded educational institutions. Furthermore, these measures should extend to ensuring that computer resources of public agencies are not

⁵ For almost a decade, Korea has failed to fulfill its obligations under Berne and TRIPS to provide a full term of protection to existing works and other subject matter whose copyright protection has expired in Korea but that are not in the public domain in their country of origin due to expiry of term. USG should seek to negotiate provisions in the FTA or a side letter that ensure that the full extended term is enjoyed by all works that would have been protected but for Korea's earlier failure to comply with the relevant Berne and TRIPS provisions.

used to infringe, or to facilitate the infringement of, copyright materials, such as by participating in illicit peer-to-peer networks that promote such infringement.

4. Copyright Enforcement

Among the key issues that should be addressed in the enforcement portion of the FTA's intellectual property chapter are the following (once again, this is not an exhaustive list):

(A) Pre-set statutory damages. In order to achieve deterrence and predictability in its civil remedies for infringement, Korean law should offer right holders the option of seeking pre-established statutory damages for infringement, set at levels sufficiently high to achieve the deterrence objective.

(B) Ex parte relief. Current law and practice do not make ex parte civil relief available to right holders on a basis expeditious enough to satisfy TRIPS Articles 41 and 50. This should be remedied in the context of the FTA.

(C) Remedies. Korea should ensure that right holders who prevail in civil infringement litigation can generally receive remedies such as the award of court costs and reasonable attorney's fees, and destruction of infringing copies and of materials and implements used in their creation. Right holders should also be able to obtain seizure of goods and implements at the outset of the litigation, as well as enforceable orders for defendants to identify third parties involved in the production or distribution of pirated goods, or in other infringing activity.

(D) Transparency in enforcement. Korea should be encouraged to commit to taking steps that will improve the ability of right holders to learn of enforcement actions taken by government entities that result in the identification of infringing materials, and to monitor the status and outcome of individual criminal cases (including knowing the sentences imposed) that result from right holder complaints.

(E) Outlawing "camcording". Since unauthorized use of a video camera to illicitly record a motion picture in a theater is the leading source of "master copies" for pirate audio-visual material, Korea should take the necessary steps to ensure that this activity is made a criminal offense.

(F) Ancillary offenses. Deterrent criminal penalties should be imposed, and the other remedies mentioned above made available, not only for copyright infringement, but also for related offenses such as trafficking in counterfeit or illicit labels, documentation or packaging intended to be used in connection in connection with pirate or unauthorized product.

5. Market Access

Although several of the issues identified above have direct market access implications, the USG should also seek in the FTA to eliminate other, non-copyright market access barriers faced by U.S. copyright industries in the Korean market. These include, but are not limited to:

(A) Broadcast sub-quota: The Broadcast Act of 2000 effectively limits U.S. programming to 45% of all airtime allocated to movie broadcast on terrestrial stations in Korea. This discriminatory treatment should be challenged in the FTA negotiations.

(B) Import review procedure. While all films distributed in Korea must pass through a “content review” for classification and censorship purposes, foreign films are singled out for a second “import review” procedure by the Korea Media Review Board. This discrimination should be ended.

(C) Source Code Review: The Korean National Intelligence Service is in the process of implementing a requirement that all vendors of security software (defined broadly) to any entity of the ROKG and certain segments of the private sector must disclose their products’ source code. This requirement is not justified by the legitimate security concerns of the Korean government, and erects an insurmountable barrier to an important segment of the Korean market for the business software industry. The requirement for disclosure of source code should be abandoned.

(D) Restrictions on imported TV programming: Under Korean Broadcasting Commission policies, re-transmissions of TV channels that are foreign-owned cannot include local advertising and are prohibited from being dubbed in the Korean language. These policies, along with restrictions on foreign investment in cable television, satellite delivery, and program providers, are substantial market access barriers that should be targeted in the FTA negotiations.

IIPA thanks the TPSC for this opportunity to present its views. We look forward to working with the U.S. government negotiators toward the goal of a sound, comprehensive Free Trade Agreement with Korea that will produce significant benefits for our nation’s creators, other workers in the copyright industries, and our economy as a whole.

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301 REPORT

SOUTH KOREA

EXECUTIVE SUMMARY

Special 301 Recommendation: IIPA recommends that South Korea be placed on the Watch List, with an out-of-cycle review to determine whether book publishing and music industry issues have been adequately addressed, or whether a higher designation is warranted. On February 2, 2006, U.S. Trade Representative Rob Portman announced the U.S. Government's intention to negotiate a free trade agreement (FTA) with the Republic of Korea. The negotiations are expected to commence in the coming months (after the expiration of a 90-day consultation period). Just prior to the FTA announcement, the long-standing motion picture screen quota issue was resolved, and it is hoped that an FTA with Korea will bring resolution to many other issues, including many discussed herein.

Actions to be Taken in 2006

- **Take Effective Action Against Illegal Photocopying and Printing of Published Materials:** Despite positive steps in 2005 by the Korean Government, book piracy appears to be worsening in Korea, and going underground where it is much more difficult to detect. Publishers need cooperation from the Government's Copyright Protection Center (CPC) to help ferret out massive photocopy and print operations operating in near-secrecy. In addition, since pirate textbooks and English Language Teaching (ELT) materials are used all over Korea with impunity, publishers need follow-up by the Ministry of Education on work to ensure legalized use of published materials in all learning institutions, and to ensure that universities deliver and implement action plans to achieve greater legalized use of published materials.
- **Effectively Tackle Internet Piracy:** As has been reported for several years, Internet piracy in Korea continues to cause major damage to the legitimate marketplace for copyright material, evidenced by the closure of many licensed shops and decreased sales across the motion picture and music industries. While there were some positive case results in 2005 involving online piracy, leading some online services to take the necessary steps to go "legal," enforcement generally has been lacking. IIPA thus calls upon the Copyright Protection Center (CPC), which was tasked with tackling Internet piracy in September 2005, to take effective action against illegal Internet sites and to address such piracy as a priority in 2006. To the extent CPC cannot act, the cybercrime units within the Korean police and prosecutors must do so.
- **Ensure Passage of Laws That Strengthen Protection and Comport with International Standards:** Few of the many copyright-related amendments being considered in 2005 successfully address key needs for copyright owners, including: (1) extending copyright term for works and sound recordings to reflect global trends; (2) providing sound recording producers with control over digital dissemination of their sound recordings; (3) fully complying with WIPO Treaties standards on technological protection measures; (4) clarifying liability of Internet service providers and providing effective notice and takedown; (5) recognizing protection for temporary copies and narrowing the private copying exception in the digital realm; (6) substantially tightening library exceptions; and (7) clarifying and strengthening criminal prohibitions on "camcording" (use of a video camera to illicitly record

a movie at a movie theater). These needs should be addressed, and any attempts to scale back protection in these and other areas should be abandoned.

- **Address WTO-Inconsistent Broadcast Sub-Quota:** A WTO-incompatible broadcast sub-quota limiting the availability of foreign content in Korea must be resolved.
- **Address Increasing CD-R “Burning” Problem:** Several industries report major CD-R “burning” operations in Korea, e.g., the motion picture industry suffers losses due to sales of DVD-Rs “burned” with major motion pictures titles. The Korean Government must focus on this problem by running market sweeps on shops engaging in illegal burning or sales of illegally burned discs and investigating and acting against pirate duplication labs.
- **Maintain Enforcement Efforts Against “End-User” Piracy of Business Software:** The Korean Government has done a very good job remaining focused on end-user piracy of business software, and hopefully will continue this work throughout 2006. The Government should publicize raids to ensure that the business community does not become complacent.
- **Unauthorized Public Performances:** Unauthorized public performances of motion pictures in motels, computer game rooms, and public baths and saunas remain a problem in Korea. A Presidential Decree to amend the Enforcement Regulations of the Copyright Act of Korea was approved in early 2006 by the State Council and will go into force in March 2006. This Decree partially addresses this problem, and IIPA calls for its swift implementation.
- **Piracy of Cartridge-Based Videogames:** Piracy of cartridge-based entertainment software has increased, primarily due to imports of counterfeit and pirate Game Boy products from China, with piracy rates in this format at about 99% in South Korea. The Korean Government should not let this unacceptably high level of piracy stand in 2006.

For more details on Korea’s Special 301 history, see IIPA’s “History” appendix to this filing at <http://www.iipa.com/pdf/2006SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years’ reports at <http://www.iipa.com/countryreports.html>.

| SOUTH KOREA Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2001-2005¹ | | | | | | | | | | |
|---|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| INDUSTRY | 2005 | | 2004 | | 2003 | | 2002 | | 2001 | |
| | Loss | Level | Loss | Level | Loss | Level | Loss | Level | Loss | Level |
| Business Software² | 255.8 | 46% | 276.0 | 46% | 275.0 | 48% | 285.9 | 50% | 100.4 | 48% |
| Entertainment Software³ | 415.1 | 55% | 349.0 | 43% | 248.4 | 36% | 381.0 | 36% | 487.7 | 63% |
| Books | 43.0 | NA | 42.0 | NA | 38.0 | NA | 36.0 | NA | 35.0 | NA |
| Records & Music | 1.3 | 13% | 2.3 | 16% | 3.5 | 20% | 6.9 | 20% | 4.0 | 14% |
| Motion Pictures⁴ | NA | NA | 40.0 | 20% | 40.0 | 20% | 27.0 | 25% | 25.0 | 25% |
| TOTALS | 715.2 | | 709.3 | | 604.9 | | 736.8 | | 652.1 | |

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2006 Special 301 submission at <http://www.iipa.com/pdf/2006spec301methodology.pdf>.

² BSA’s 2005 statistics are preliminary. They represent the U.S. publishers’ share of software piracy losses in South Korea, and follow the methodology compiled in the Second Annual BSA/IDC Global Software Piracy Study (May 2005), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA’s 2004 piracy statistics were preliminary at the time of IIPA’s February 11, 2005 Special 301 filing; the 2004 data has been revised and is reflected above.

³ ESA’s reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry “losses.” The methodology used by the ESA is further described in Appendix B of this report.

⁴ MPAA’s trade losses and piracy levels for 2005 are available for a limited number of countries and are based on a methodology that analyzes physical or “hard” goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As loss numbers and piracy levels become available for additional countries at a later time, they will be posted on the IIPA website, <http://www.iipa.com>.

PIRACY AND ENFORCEMENT UPDATES IN KOREA

Book Piracy: Despite some very positive efforts by the Korean Government in 2005, piracy involving published materials has worsened, resulting in decreased sales by legitimate right holders operating in Korea. The chief problems facing book publishers in Korea include massive illegal photocopying in and around university campuses, and more sophisticated pirate offset print operations. The problem of pirate offset printing has become particularly severe, with pirates exhibiting high levels of organization, and publishers regularly noting seizure numbers in the thousands, much higher than in other Asian markets. The problems have been exacerbated in recent years by the increasingly evasive practices of pirate offset printers and even copyshops, which have moved their operations underground. The quality of the pirate offset prints is becoming so high as to make detection increasingly difficult, hence, cooperation with right holders is key to discerning pirate (unlicensed) production from legitimate.

The problem of photocopying of educational materials in Korea is unfortunately not limited to the university market; thriving English language institutes, as well as primary and secondary schools, now use massive numbers of pirate copies of U.S. publishers' English Language Teaching (ELT) materials, as well as tertiary ELT books. While it is still generally accepted in Korea that students would prefer to go to a copyshop to get a hard copy of a book than deal with online versions, there are also some reported instances of digital piracy, such as cell phones with high-resolution cameras being used by university students inside bookstores to copy up to 100-200 pages of textbooks rather than purchase them,⁵ and copyshops using scanned versions of texts to speed up the generation of new pirate "copies on demand."

As noted, the Korean Government took some important steps in 2005 to recognize and begin to address the serious book piracy issues. These include the creation of the Copyright Protection Center (CPC) (which we understand has subsumed the enforcement functions of the Korea Reprographic Transmission and Rights Center (KRTRC)), increasing Government cooperation with foreign right holders on copyshop raids, and increasing Government cooperation on raids on pirate print warehouses. IIPA is hopeful that CPC will receive the manpower and resources necessary to reduce book piracy levels. We also hope CPC will avoid the "conflict of interest" that plagued KRTRC enforcement efforts by separating the functions of licensing and enforcement. Regarding pirate offset printing, the publishing industry, with some government cooperation, had especially notable success in 2005 in tracking down massive underground offset printing operations, leading to some of the largest seizures in the history of enforcement efforts against book piracy in Korea. However, while Korean Government cooperation is vastly improved over 2004, the burden of initiating, investigating and carrying through enforcement actions remains on right holders. In 2006, IIPA would like to see even greater activity to combat piracy, including *ex officio* actions.

One important area in need of more efforts and results in 2006 involves promoting the legal use of published materials at educational institutions. IIPA commends the Minister of Education for issuing a letter in March 2005 requesting every university to devise an action plan for reducing book piracy on campus. IIPA understands that the Ministry has received responses from nearly half the universities, regarding implementing policies, monitoring on-campus photocopy shops, and crafting educational campaigns. We look forward to the Minister's further efforts to ensure that the universities that have not yet responded do so, and to press for some highly notable universities to step up as "models" in this regard. Implementation of these plans

⁵ Kim and Lim, *Cell phone users using their cameras to copy textbooks*, Joong-Ang Ilbo, August 12, 2004.

in 2006 is crucial to measuring the ultimate effectiveness of the MOE letter. IIPA also hopes the CPC will work with industry to devise an appropriate response to raise public awareness about illegal use of published materials at primary and secondary schools, as well as ELT materials by language institutes, and to put into place educational initiatives aimed at these schools/institutes, students and parents.

Internet Piracy: With the near-saturation of the broadband market,⁶ the challenge now is to legitimize the usage of copyright materials by Korea's online population. Unfortunately, P2P sites are on the rise in Korea, with 100 to 120 sites now providing P2P file-sharing; this number is expected to rise to 150-180 sites in 2006. From only 20-30 file sharing services monitored in 2005, the Motion Picture Association identified over 9,500 Korean uploaders engaged in audio-visual piracy, a 20% increase over 2004. While cease & desist letters were sent to all the file sharing services concerned and there was a 100% compliance rate, the files in question invariably resurfaced on the same, or different, file sharing services within weeks or sometimes days. The business and entertainment software industries are also feeling the effects of unlawful downloads of their products over the Internet. The effects of Internet piracy are felt countrywide on the legitimate market.⁷

Peculiar to the entertainment software industry are so-called "offline servers." The "offline server" essentially makes a publisher's online game readily available without authority from the legitimate publisher and without adherence to terms or conditions set forth in a licensing agreement. In this form of piracy, an "offline server" operator creates a "mirror" server to the legitimate servers operated by entertainment software companies to run their online games, thereby diverting traffic and subscription revenue from the legitimate site. Pirate servers also allow the play of pirated games as there is no authentication or verification process carried out at the server level (i.e., to verify that the game software being used is not a pirated copy) as there is on a legitimate game server.

There is also unauthorized use of copyright materials, including entertainment software, by some of the more than 20,000 Internet cafés (called *PC baangs*.) In 2004 some ESA member companies succeeded in entering into licensing agreements with many of the cafes, about 40% of which have now been legitimately licensed by game publishers. Entertainment software publishers also face a new form of piracy – piracy of games for play on mobile phones. Pirated entertainment software is now capable of being downloaded directly from the Internet onto mobile devices or memory cards used in such devices. The near ubiquity of mobile devices in Korea – far exceeding even fixed broadband penetration – makes this a serious concern.

The recent Soribada decisions (criminal and civil) and the case involving Bugsmusic have raised the awareness of copyright law and rights enforcement amongst Koreans (Bugsmusic is now licensed, while Soribada, which had three significant court rulings against it, closed in November 2005, although recent press reports indicate Soribada is considering the launch of a product that permits "free" file sharing without any intermediary; industry will continue to monitor this development closely). The Copyright Protection Center (CPC) (formed

⁶ Korea boasts a household broadband penetration rate of 79.9%, and Korea remains the only country in the world to have surpassed the threshold of 25 broadband lines per 100 people. Point Topic Ltd., *World Broadband Statistics Q3 2005*, December 2005, Press Rel. at <http://www.point-topic.com/content/dslanalysis/ukbb051229.htm>.

⁷ For example, the motion picture industry reports that the number of video shops operating in Korea has decreased to about 7,000, resulting in lost employment to legitimate distributors and salesmen. The entertainment software sector reports that there is a strong market for legitimate product for the PC format, including through legitimate online delivery and online game play, but that there is also a significant level of illegal downloading and P2P trading of PC games and of entertainment software in other formats.

under the Copyright Deliberation and Conciliation Committee) was just designated as the responsible agency to address online piracy in September 2005. CPC had not previously seemed willing or able to take effective action against illegal Internet sites, leaving the cybercrime units within the Korean police and prosecutors' offices as the relevant enforcement agencies. The CPC should be given enforcement powers and must treat Internet piracy as a priority issue in 2006, and to the extent they will not act, the police and prosecutors' offices must do so.

IIPA understands that the Seoul Central District Prosecutors' Office in early January, 2006 issued internal guidelines relating to the criminal liability of individuals who upload or download infringing song files. Industry is monitoring the application of these guidelines.

Tackling Street Piracy/CD-R and DVD-R "Burning": Both the motion picture industry and the entertainment software industry suffer losses due to sales of "burned" optical media (DVD-Rs or CD-Rs) with their copyright product on them. The Korean Government must pay more attention to this problem by running market sweeps on shops engaging in illegal burning or sales of illegally burned discs and investigating to identify and enforce against any offsite duplication labs. A particularly encouraging investigation with the Police in January 2004 resulted in the step-by-step arrest and isolation of a street vendor selling pirated motion pictures on DVD-Rs, a truck driver delivering pirated motion pictures on DVD-Rs to the street vendor, and the DVD-R laboratory supplying the infringing motion pictures. It is also encouraging that as a result of ongoing raids by the Police in the Yongsan Electronics market in 2005, the number of pirate vendors has dropped from 28 to 18.

End-User Piracy of Business Software: Unauthorized use of software by businesses causes the greatest losses to the business software industry in Korea. The piracy level has plateaued, but the damage in absolute terms remains great. The problem would have been worse without the government's effective enforcement program and more widespread public awareness about the benefits of respecting copyrights. IIPA and the business software industry greatly appreciate the considerable efforts the Ministry of Information and Communication (MIC), the police and prosecutors' offices have made in recent years. At this rate, Korea is on track to have one of the lowest software piracy rates in the region. It is important, however, that the Government maintain the level of enforcement activity as in previous years (the Government is taking more than 50 criminal end-user actions a month on average in response to complaints from industry) and publicize raids to ensure that the business community does not become complacent in managing software assets.

Unauthorized Public Performances of Motion Pictures: The U.S. motion picture industry continues to encounter some problems in enforcement of "Home Use Only" video product licenses. There are frequent free showings of "Home Use Only" videos of U.S. titles in government-run community centers and universities, motels, computer game rooms, and public baths and saunas. These uses severely undercut the ability to distribute these videos through commercial channels. In March 2004, the Korean government determined that such showings in government-run centers violate the Unfair Elections Practices Act, and enforced this ruling for the first time in Taegu City in January, 2005. Korean authorities should continue these enforcement efforts and take further actions to ensure that these uncompensated public performances of copyrighted audiovisual materials do not unreasonably conflict with normal commercial exploitation. As noted below, proposed regulations will hopefully help reduce this form of piracy in Korea.

Cartridge-Based Videogames: Piracy of cartridge-based entertainment software has increased, primarily due to imports of counterfeit and pirate Game Boy products from China.

TRAINING AND PUBLIC AWARENESS

The copyright industries undertook or supported many training and public awareness and educational activities in 2005. For example, book publishers participated in U.S. Embassy trainings, giving presentations at Embassy-sponsored events, and allowing interactions with local government officials and personnel. One publisher headed up a highly successful direct-appeal campaign in 2005, combining educational efforts with direct appeals to convince many copyshops to refrain from engaging in illegal practices. The motion picture industry conducted periodic training for both the Korean police and prosecutors' offices. The business software industry provided software asset management seminars to businesses. The recording industry conducted training sessions for the CPC on how to tackle online piracy (since CPC, as noted, was designated as the online enforcement agency at the end of September 2005).

UPDATE ON LAW REFORM

Various copyright-related pieces of legislation were under consideration in 2005.

Copyright Act of Korea Amendments: There are two known sets of proposed amendments to the CAK. The first set, introduced in June 2005 on behalf of the Government, raises several concerns, including:

- **Weakening of Rights for Sound Recording Producers:** The bill would result in denial of exclusive rights for producers of sound recordings for non-interactive transmissions, and a denial of remuneration for U.S. producers for broadcasting, resulting overall in a weakening of protection. MOCT posted on its website in January 2005 a set of "Q&A Regarding Data Transmission over the Internet," which included some encouraging interpretations of the 2005 law, including the statement that "regardless of the format or methods, any unauthorized use of music files on the Internet constitutes an illegal act," and specifying that "real-time transmission of music files through webcasting is illegal" unless authorized by the right holder; this interpretation would unfortunately appear to be superseded by the new bill.
- **Educational Exception:** The bill proposes expansion of the education exception (ostensibly for distance learning purposes). The exception would extend to "transmission" (i.e., online dissemination), and could be invoked by a student as well as a teacher. On the other hand, the existing exception would apparently be narrowed in that it could be invoked only "for the purpose of classes" (while the current law says "for education"), and an entire work could be used only if such use is "inevitable" in light of the "character" or "exploitation purpose" of the work. The revised amendment would also authorize the implementing Presidential Decree to specify technical safeguards ("reproduction preventative measures") that schools would have to meet in order to qualify for the exception.
- **Proposed Mandatory Collective Management:** The bill would set out procedures for mandatory collective administration of rights of remuneration created under several other provisions, including broadcasting and "transmission of digital sounds" with respect to sound recordings; reproduction or transmission by libraries; or use of copyrighted material in school textbooks. It appears that only one collective administration organization can be recognized by the Minister of Culture and Tourism for each remuneration right. The statute should allow recognition of more than one organization for this purpose, and right holders should be free to choose which organization to use, or whether to by-pass collective administration

altogether and contract directly with users for payment of this remuneration. MOCT should also reverse its current policy – which is not, apparently, mandated by law – that gives a *de facto* monopoly over administration of the rights of music publishers, including foreign publishers, to KOMCA, the Korea Music Copyright Association. Foreign music publishers should be accorded a non-discriminatory opportunity to qualify for "trust licenses" that would give them an unchallenged legal basis for directly managing and enforcing within Korea all the rights applicable to musical compositions within their catalogs.

- The bill proposes an expansion of the mandate of the Copyright Commission to include promotion of "business designed for fair use of works."
- The bill proposes replacing the MOCT "Standing Enforcement Team" with a new organization charged with, *inter alia*, developing a "sound environment for exploitation of works," including establishing and enforcing standards for rights management information, as well as "promoting fair use."
- The bill provides that MOCT will be directed to designate an organization to receive and administer "donations of property rights" from authors. IIPA is concerned that without safeguards against third parties "donating" works they do not own, this provision could lead to undesired results.
- The bill summary contains an explanatory statement that MOCT is considering expanding the library networking exception in Article 28(3) to apply to schools as well. It is unclear what is contemplated or the timetable for such an expansion, but in any event, as noted below, Article 28 must be narrowed, not expanded, to comport with international standards.

The latest set of amendments to the CAK, issued in mid-November 2005, raises additional concerns,⁸ including the following:

- The bill would, among other things, give either the MOCT or allow by Presidential Decree the authority to issue "certifications" that "prove" someone is the legitimate right holder to license all forms of exploitation (proposed Articles 52-3 and 2(23)), which could impose a formality to protection in violation of Article 5(2) of the Berne Convention.
- Proposed Article 47 would be amended to allow second-comers to a work, for which a statutory license had already been granted, to use the work without trying to locate the right holder; this would be a troubling provision but is less of a concern if, as proposed in the pending government amendments, Article 47 was made inapplicable to foreign works.

Computer Programs Protection Act Amendments: In September 2005, the Ministry of Information and Communication (MIC) released draft amendments to the Computer Programs Protection Act (CPPA), which contain a number of positive changes,⁹ although there

⁸ There are some positive features of the latest set of amendments, including providing for: civil and criminal liability for online service providers whose service are "for the main purpose of reproduction or transmission of a work mutually between other persons" (proposed Arts. 77-3(2) and 98(4-3)); criminal liability for ISPs who, having knowledge of infringement, fail to act against it (proposed Art. 98(4-2)); and Ministry of Culture and Tourism administrative enforcement authority against online infringement, backed by fines (proposed Arts. 97-5 and 104).

⁹ Positive changes include the following:

- Registration of a computer program can now be made more than one year after its creation, and registration now creates a presumption as to authorship of the program (amended Art. 24.2);
- The Computer Program Protection Committee (see below) can ask an ISP to take down an infringing program or TPM circumvention material, and/or suspend or terminate the account of the user in question; if the service provider fails to take the needed corrective action, the Ministry can "deny, suspend or restrict the handling of such programs or information by on-line service providers" (this administrative process supplements the existing statutory notice and takedown procedure) (see new Arts. 34-2 and 34-3);
- Potential jail terms for infringers, and fines to be imposed on ISPs that disobey orders in the administrative process described above are increased (amended Arts. 46, 47, 51);

remain some questions about how the amendments would affect existing provisions on technological protection measures (TPMs).

Draft Presidential Decree to Amend Enforcement Regulations of the Copyright Act of Korea: Amendments to the Enforcement Regulations and Decree would include the following improvements:

- Free cinema screenings in public baths would become infringing, as would screenings in government buildings, community centers, libraries, museums, etc. of commercial titles within the first six months after their release.
- Regarding the ISP liability provisions of the CAK, it would be specified that e-mail can be used to deliver takedown notices to ISPs.¹⁰

Music Industry Promotion Act: This legislation could potentially be quite useful, in that it will remove the requirement on the recording industry to apply for the KMRB's approval before the release of music videos.¹¹ Another positive feature of this legislation appears to be the regulation of "[o]nline service providers for phonograms," who:

- are required to obtain copyright licenses and to "take technical measures to prevent illegal reproduction (Art. 25.1);
- can have their license to operate such a business revoked or suspended by local or regional officials (Art. 32), and can have their servers confiscated if operations continue after revocation (Art.35);
- can have pirate recordings confiscated and destroyed by MOCT or local officials if technological protection measures (TPMs) have been removed (Art. 35.3).
- can have criminal penalties imposed (probably fines only) for operating such services in defiance of a revocation order (Art. 39.1).

Nonetheless, since the Sound Recordings, Video Software, and Game Products Act (which previously dealt with such issues as to sound recording producers) was the basis for most enforcement against music piracy in Korea, it is essential that the Music Industry Promotion Act not result in weakening of enforcement against piracy of recorded music. One example of a potential concern involves the notification and registration requirements for various music industry businesses. Notably, under draft Article 20.2, those who wish to make phonograms available online have to notify the city, county, or district governments, and much of the enforcement stemming from this notification is devolved to these sub-national levels. It is not clear how practical this is or what the role of MOCT would be. Article 37 also provides that enforcement activities can be contracted out to an association or similar organization. At the same time, MOCT has the authority under Article 31 to create a "standing inspection team" to "handle illegal phonogram cases," though the details are left to a Ministerial Decree (Article 31). It must be ensured that these notification and registration requirements, and the new enforcement mechanism, do not result in undue burdens being placed on right holders to

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- The Program Deliberation and Mediation Committee is re-named the Computer Program Protection Committee (CPPC) and given a number of new functions, including operating a "Report Center for Unjust Reproduction of Programs" to take complaints that would initiate the administrative process mentioned above.

¹⁰ Unfortunately, notification requirements are lightened for "copyright trust management" services but not for copyright owners in general.

¹¹ The KMRB censorship/rating function will be taken over by a new "phonogram deliberation" entity, which will act on its own initiative or at the request of a phonogram producer/distributor to identify recordings deemed unsuitable for minors, draft Arts. 18-19, and would prohibit the importation of recordings deemed "offensive" in a number of categories, draft Art. 28.

exercise or enforce their rights, or these new provisions could run afoul of Korea's international obligations.

Movie Promotion Law Amendments: This law would eliminate the "import review" procedure presently imposed against foreign films by the KMRB (a secondary review over and above the "content review" required for all films distributed in Korea). IIPA supports passage of this amendment to eliminate this onerous review, which MPA views as a violation of Korea's WTO obligations under the General Agreement on Trade and Services.

IIPA Observations on All Copyright-Related Legislation: It is disappointing that, despite numerous interventions by the IIPA and affected right holders, the Korean Government has not addressed many of the key needs for copyright owners. Failure to do so in some instances (e.g., broad exceptions) leaves the Government open to criticism for failure to meet international obligations, and in other instances, leave Korea's laws lagging behind those of nearby trading partners, to the detriment of IIPA members' copyrights as well as those of local Korean creators' copyrights. These important issues include:

- **Extending Copyright Term:** In line with the international trend in over 80 countries to extend term past the Berne minimum terms, Korea should extend the term of copyright protection for works and sound recordings to the life of the author plus 70 years, and 95 years from date of first publication where the author is a legal entity or in the case of related rights of a sound recording producer. Korean law is becoming more isolated on this issue, and Korea now provides less protection than do most other OECD member countries.
- **Providing Exclusive Rights for Sound Recordings:** Korean authorities should ensure that means of dissemination, such as webcasting, streaming, and digital broadcasting, are clearly brought within the scope of the producer's exclusive rights. Delivery of music to the consumer through a variety of means, capable of being listened to or captured by a wide variety of devices, is the emerging pattern for the marketing of recorded music, and it is essential that the producer have exclusive rights over all forms of communications that will reach the listening public. In addition, even to the extent that ownership of a copy remains important in the marketplace, it becomes increasingly difficult to predict the specific form of communication and programming most likely to lead to unauthorized copying. All digital transmissions will compete on relatively equal footing for place on the personal copier's recordable media, so all forms of the digital transmission of recorded music should require the authorization of the copyright owner, regardless of the nature of the communicating entity. This includes not only webcasting and all forms of online streaming, as the MOCT Q&A document in early 2005 seems to recognize, but also digital broadcasting. Only with broader exclusive rights can investment in the creation of original recordings be sustained in the Korean market. Finally, but not least of all, the rights accorded to producers must be made available in a non-discriminatory way, regardless of nationality. Discrimination against foreign producers in the current system of equitable remuneration for conventional analog broadcast of sound recordings [under Art. 68(1) of the CAK] must also be ended.
- **Protecting Technological Protection Measures:** Korea should fully implement the WIPO Treaties standards on technological protection measures, by, e.g., ensuring coverage of access controls, prohibiting the act of circumvention, etc. IIPA understands that an anti-hacking statute may provide broad coverage for technologies used to prevent access on a "networked" environment, but offline access controls must also be covered to provide adequate and effective protection as required by the WIPO Treaties.
- **Clarifying Liability of Internet Service Providers (ISPs):** The basis for indirect liability of ISPs for copyright infringement needs to be spelled out in Korean law, perhaps in the form

of an amendment to Article 92 of the CAK. In addition, to provide the appropriate incentives for cooperation in the detection and elimination of online piracy, it should also be made clear that in all cases, including cases in which liability is “exempted” under Article 77, the courts retain the authority to issue appropriate injunctions. In addition, we note that while several improvements are proposed in the amendments to the CAK and the CPPA, it should in addition be expressly provided that: no liability limitations should apply to a case in which the ISP has the right and ability to control infringing activities on its network and in which it derives a direct financial benefit from such activities; and any liability limitations are inapplicable when the infringement is carried out by an employee or agent of the ISP, or by any other affiliated party, or when the ISP has any other direct involvement in the infringement.

- **Providing Effective Notice and Takedown:** Notice and takedown in Korea still does not seem to effectively deter online infringement, although compliance rates with takedown notices are good for some industries. Article 77-2 of the CAK provides for a notice and takedown system, which is spelled out in more detail in the Enforcement Decree. It is positive that a proposed amendment to the Decree would accommodate the routine delivery of notifications by e-mail. Comparable provisions in the CPPA provide for a similar approach, and amendments to the CPPA would apparently further strengthen the regime. In order to facilitate enforcement further, ISPs should make available to right holders complete contact information regarding ISP subscribers or other customers who commit infringements online. A speedy and simple procedure for obtaining such information would also reduce the number of legal claims brought against ISPs for their participation, since it would enable right holders to pursue the primary infringer directly. Such a procedure should be added to the laws in Korea.
- **Protecting Temporary Reproductions:** In the networked digital environment, the right to make and use temporary copies of all kinds of works is attaining ever-increasing economic significance, and indeed in some cases will become the primary means of legitimate exploitation of copyrighted materials. Korean law stands nearly alone in the world in its rejection of protection for temporary copies. In order to meet its international obligations embodied in Article 9.1 of the TRIPS Agreement [incorporating Article 9(1) of the Berne Convention] and referenced in footnote 1 of the WCT and footnote 9 of the WPPT, the reproduction right accorded to works and sound recordings should be made clearer and more comprehensive, by including within the scope of the reproduction right (1) direct or indirect reproduction; (2) temporary or permanent reproduction; (3) reproduction by any means or in any form; and (4) reproduction in whole or in part.
- **Narrowing Certain Exceptions in Light of Digital Copying:** The market harm threatened by the unauthorized creation of easily transmittable perfect digital copies far exceeds the harm threatened by analog personal copying. As such, the private copy exceptions in Articles 27 and 71 of the CAK should be re-examined in light of the growth of digital technologies. We are encouraged by recent Korean court decisions in the Soribada litigation that appear to deny the shelter of the exceptions to copying in the context of illicit peer-to-peer file-swapping services. The personal copy exception should be made inapplicable to digital copying to the extent that it exceeds the three-step test for permissible exceptions as enshrined in the TRIPS Agreement and Berne Convention. In this regard, IIPA supports the bipartisan legislation that was introduced in early 2005 in the National Assembly to narrow the scope of the Article 27 exception.
- **Eliminating or Narrowing Library Exceptions:** Article 28(2)-(5) of the CAK as amended allows libraries to digitize and to transmit to other libraries throughout the country any material in their collection that was published more than five years ago and that is not otherwise available in a digital format. This exception as codified is incompatible with the

three-step test in Article 13 of TRIPS. Many of the works most clearly targeted by these exceptions – including textbooks, English language instructional material, and scientific, technical and medical journals – are actively sold in the market far longer than five years after first publication. The only sure way to achieve compatibility with international standards is to repeal the exception altogether. At a minimum, the Article 28 exception must be substantially narrowed, e.g.: for on-site access (Article 28(2)) or networking with other libraries (Article 28(3)) only; subject to the pre-condition that there be implementation of technological safeguards; increase the period from five to ten years, and start the ten-year clock running when the material is first published in Korea; provide a notice to publishers of the library's intent to avail itself of the exception if the publishers chooses not to make the work available on commercially reasonable terms; and provide a more robust compensation mechanism.

- **Outlawing “Camcording”:** A vast number of movies are stolen right off the screen by professional camcorder pirates, who use video cameras to illicitly copy a movie during exhibition in a movie theatre – usually very early in its theatrical release or even prior to the film's release (e.g., at a promotional screening). These copies are then distributed to bootleg “dealers” throughout the world and over the Internet. Korea should take whatever legislative steps are necessary to criminalize camcording (use of a video camera to illicitly record a movie at a movie theater) of motion pictures.

MARKET ACCESS ISSUES

A WTO-incompatible broadcast sub-quota in Korea should be resolved. The Broadcasting Act of 2000 provides that total foreign programming may not exceed 20% of total airtime allowed on terrestrial stations, with additional restrictions set by genre. Foreign movies may fill up to 75% of the time devoted to broadcasting movies, but a sub-quota instituted in 2002 limits total foreign content by any one country to 60%. This sub-quota effectively limits U.S. programming to 45% of all airtime allocated to movie broadcast on terrestrial stations. IIPA believes that this sub-quota violates Korea's WTO obligations. Both the intent and effect of this new sub-quota are to discriminate against U.S. programming, and this issue should be addressed now.