

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE 2001 SPECIAL 301 REPORT COMMONWEALTH OF INDEPENDENT STATES (C.I.S.)

SUMMARY OF ISSUES IN THE COUNTRIES OF THE C.I.S.

This report encompasses separate but similar reports on the following countries of the Commonwealth of Independent States (C.I.S.):

Armenia
Azerbaijan
Belarus
Georgia
Kazakhstan
Kyrgyz Republic
Republic of Moldova
Tajikistan
Turkmenistan
Uzbekistan

IIPA recommends that each of these ten countries of the C.I.S. should be individually placed on the Watch List in 2001.

IIPA has grouped these ten (of twelve) countries of the C.I.S. under a single heading only for the convenience of reporting on their problems. This is due to the numerous similarities of the problems confronting the copyright industries in each of these countries.

In the remaining two countries of the C.I.S., namely **Russia** and **Ukraine**, much more serious piracy problems confront the copyright industries and thus warrant separate attention. So IIPA has filed separate reports on Russia and Ukraine, recommending the placement of Russia on the Priority Watch List, and that Ukraine be designated a Priority Foreign Country in 2001.

After a few issues are treated collectively in the introduction to this report, each of the ten countries of the C.I.S. listed above are then treated separately in alphabetical order.

To summarize, the major deficiencies for all of these countries include: (1) the failure to fully adopt the legal reforms required in bilateral trade agreements signed and ratified by each country; (2) the failure to comply with the World Trade Organization (WTO) TRIPS Agreement, especially the enforcement obligations; (3) the failure to adopt optical media production and distribution controls; and (4) with the rise of internet piracy, the need to accede to and implement the 1996 digital treaties of WIPO (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty).

An even more fundamental legal shortcoming in many of these countries in the C.I.S. is the absence of protection for sound recordings because many of these countries are still not members of the Geneva Phonograms Convention (or the World Trade Organization TRIPS Agreement) and thus have no point of attachment for American or other foreign sound recordings. This is so even though they were obligated by the bilateral trade agreements to do this over seven, and in some cases, eight, years ago. It is of utmost importance that the U.S. government press each of these countries to cure their current major violations of the agreements reached with the United States. Introducing the necessary legal infrastructure to prevent the growth of piracy is much simpler than attempting to dismantle piratical operations once they are established. In the current environment in the region, replication facilities are easily moved from one territory to another — today it is Ukraine; it could well be Belarus or Georgia tomorrow. Providing the necessary legal framework will go a long way toward dissuading this type of movement.

In almost all cases, even where legal reforms have been adopted in these countries, there is virtually no on-the-ground enforcement — neither effective civil, administrative, criminal, or border enforcement measures are in place. This has resulted in the countries in this region becoming a haven for the production and distribution of pirated material, including optical media material consisting of music CDs, CD-ROMs containing business and entertainment software, and DVDs containing audiovisual material. Much of this material is produced by regional organized criminal enterprises, and is not only hampering the development of legal markets in the countries of the C.I.S., but is spreading and thus doing significant harm to other legitimate markets in neighboring countries in Eastern and Central Europe. The combination of the failures in the legal regime, plus a total enforcement breakdown, especially poor border enforcement, acts as a bar to the entry of any legitimate copyright industries into the local markets; in addition, these are WTO TRIPS deficiencies.

Four steps are needed to curb this problem: (1) all works (including sound recordings) must enjoy protection consistent with the WTO TRIPS requirements — i.e., including materials released with the past 50 years; (2) optical media production regulations must be implemented to shut down illegal plants and control the production and distribution of this material; (3) police and prosecutors must commence raids, seizures, deterrent criminal actions; and (4) effective border enforcement must be implemented to prevent the widespread flow of material throughout the region or into territories beyond the region.

COMPLIANCE WITH BILATERAL TRADE AGREEMENTS

In 1990, the United States and the Soviet Union signed a far reaching bilateral trade agreement including extensive intellectual property rights obligations. These obligations included the enactment and enforcement of a (pre-TRIPS Agreement) modern copyright regime. As a result of the tumultuous events of August 1991, the 1990 U.S.-U.S.S.R. Trade Agreement, which required the U.S.S.R. to adopt a Berne-compatible copyright law by December 31, 1992, never entered into force because the U.S.S.R. did not implement it before it dissolved. The U.S. government determined that each country of the C.I.S. could (re)sign the 1990 U.S.-U.S.S.R. Trade Agreement with only minor technical amendments, including new deadlines to meet the Agreement's obligations, and a statement from each country of the C.I.S. acknowledging its succession to the Soviet Union's Universal Copyright Convention obligation, dating from May 27, 1973.

All twelve of the former republics of the Soviet Union did sign these agreements (see dates below). Once each agreement was signed, it was agreed it would enter into force upon an exchange of diplomatic notes between the U.S. and each new country. At such time that country would be eligible for "Most Favored Nation" (MFN; now known as "Normal Trade Relations") status. All of the countries have now put the agreements into force. Once in force, each country agreed to make its "best efforts" to enact all of the IPR components of the trade agreement, in the case of every country but the Russian Federation, by December 31, 1993. The Russian Federation agreed to complete its obligations by December 31, 1992.

The bilateral trade agreements were signed and entered into force in each country on the following dates:

Armenia (Signed April 2, 1992; entry into force on April 7, 1992);
Azerbaijan (Signed April 12, 1993; entry into force on April 21, 1995);
Belarus (Exchange of letters January 6 and February 16, 1993; entry into force on February 16, 1993);
Georgia (Signed March 1, 1993; entry into force on August 13, 1993);
Kazakhstan (Signed May 19, 1992; entry into force on February 18, 1993);
Kyrgyz Republic (Signed May 8, 1992; entry into force on August 21, 1992);
Republic of Moldova (Signed June 19, 1992; entry into force on July 2, 1992);
Russian Federation (Signed June 1, 1990; entry into force on June 17, 1992);
Tajikistan (Signed July 1, 1993; entry into force on November 24, 1993);
Turkmenistan (Signed March 23, 1993; entry into force on October 25, 1993);
Ukraine (Signed May 6, 1992; entry into force on June 23, 1992);
Uzbekistan (Signed November 5, 1993; entry into force on January 13, 1994).

The obligations of the bilateral trade agreements (Article VIII of each agreement and in the accompanying side Letter on IPR) include:

(1) Joining the Berne Convention (Paris Act); (2) Providing protection for sound recordings, including a right of reproduction, distribution (and importation), and a commercial rental right; (3) Providing a point of attachment for foreign (American) sound recordings and making best efforts to join the Geneva Phonograms Convention; (4) Providing full retroactivity (per Article 18 of Berne); (5) Protecting computer programs and databases (as "literary works" consistent with Berne, and now TRIPS); (6) Providing adequate and effective protection and enforcement (which is understood to include deterrent civil and criminal penalties, as well as border measures); and (7) Establishing a working group with each country to monitor the continuing progress of copyright and other IP protection and enforcement.

Berne Convention: Ten of twelve of the countries in the C.I.S. are members of the Berne Convention. They are: the Russian Federation (1995), Ukraine (1995), Georgia (1995), the Republic of Moldova (1995), Belarus (1997), Kazakhstan (1999), Azerbaijan (1999), the Kyrgyz Republic (1999), Tajikistan (2000), and Armenia (2000). This means that two countries, Turkmenistan and Uzbekistan, are in breach of this trade agreement obligation.

Sound Recording Protection (Geneva Phonograms Convention and WTO TRIPS Agreement): Only six of twelve countries in the C.I.S. provide any protection for American or other foreign sound recordings by virtue of their membership in the Geneva Phonograms Convention, or by their membership in the World Trade Organization (WTO TRIPS Agreement).

The six countries that do protect foreign sound recordings are: the Russian Federation (1995), the Kyrgyz Republic (1998), Georgia (1999), Ukraine (2000), Moldova (2000), and Kazakhstan (2001).

Only four of twelve countries are members of the Geneva Phonograms Convention: the Russian Federation (1995), Ukraine (2000), Moldova (2000), and Kazakhstan (effective January 2001). The Kyrgyz Republic and Georgia use their WTO membership as a point of attachment for foreign sound recordings since they are not Geneva Phonograms members. So, six of twelve countries provide no protection for foreign sound recordings over six, or in some cases, seven years after they obligated themselves to do so. They are: Armenia, Azerbaijan, Belarus, Tajikistan, Turkmenistan, and Uzbekistan.

Eight of twelve countries in the C.I.S. are in breach of the bilateral trade agreement obligation to join Geneva Phonograms. They are: Armenia, Azerbaijan, Belarus, Georgia, Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan.

Note that as a point of attachment for a non-Geneva Phonograms non-WTO member, such as Belarus, the WIPO Performances and Phonograms Treaty (WPPT) is not yet in force. It will not be in force until thirty countries ratify it, probably some time in 2001. So, it cannot yet provide a point of attachment for American or other foreign sound recordings and thus Belarus does not yet provide such protection.

Pre-existing Works and Sound Recordings: The Russian Federation and Ukraine explicitly *do not* provide protection for pre-existing works or sound recordings in breach of the clear obligation in the bilateral agreement.¹ This lack of protection for pre-existing works and sound recordings is also a violation of Berne (Article 18 and the national treatment obligations) and the WTO TRIPS Agreement (Article 14.6 for sound recordings and Article 9 for works).

Belarussian experts claim that their law probably does provide protection for pre-existing works, though they acknowledge it is less clear with respect to sound recordings. For the other nine countries of the C.I.S. it is unclear what, if any, protection they do or do not provide for pre-existing works and sound recordings. The countries of the C.I.S. that are not providing protection for pre-existing works and sound recordings must do so or they are in breach of the bilateral agreement; those countries where such protection is unclear should clarify that protection. This problem of protection for pre-existing material, especially for sound recordings, is a regional problem because such protection has only very recently been provided in

¹The issue of protection for pre-existing works, at least back to 1973, was additionally required in every country in a special bilateral provision (not found in the Soviet agreement). That provision obligated each country to act as a successor state to the Soviet Union's obligations under the Universal Copyright Convention (U.C.C.). Thus a "gap" in protection for American works in each of the (non-Berne) countries of the C.I.S. was avoided, from May 27, 1973 to the present. This is because the Soviet Union became a party to the 1952 text of the Universal Copyright Convention on May 27, 1973. UNESCO (secretariat of the U.C.C.) reportedly treats all of the former republics of the U.S.S.R. as successors to the Soviet Union and confirms every republic's adherence to the U.C.C. from that date. Only five countries — the Russian Federation, Belarus, Kazakhstan, Tajikistan and Ukraine — formally confirmed their membership in that convention, however. At the time of the signing of the bilateral agreements, the USG requested that each country send such a confirmation letter to UNESCO to avoid any confusion about this status.

neighboring countries such as Poland and the Czech Republic, thereby creating a region haven for the production and widespread distribution of back-catalog material.

Computer Programs and Databases: Some form of explicit copyright protection for computer programs and databases is provided in every country except Turkmenistan. However, almost no country in the C.I.S. provides criminal *ex parte* search provisions necessary for effective enforcement against end-user piracy (and as required by the WTO TRIPS Agreement); the availability of civil *ex parte* search provisions is unclear in virtually all of these countries.

Criminal Code: Only a few of the countries have amended their criminal code to adopt any criminal provisions applicable for IPR violations; almost none of the countries have adopted deterrent penalties to stop commercial piracy, especially necessary against the organized criminal enterprises operating in this region.

Customs Code: Neither have most of these countries adopted the necessary Customs Code revisions to provide *ex officio* authority to properly seize material at the border.

Enforcement: None of these countries are providing "adequate and effective" enforcement on the ground as required by the bilateral agreements or the WTO TRIPS Agreement, that is, police, prosecutors, judges and customs officials must be engaged in effective enforcement activity to stop commercial piracy in the region.

Working Groups: Last, working groups consisting of representatives of the governments of United States and each of these countries should meet periodically to exchange information on the progress of IPR reforms. This is especially important because many of the countries of the C.I.S. do not have politically strong agencies for the adoption and implementation of IPR laws; perhaps such working group meetings could help spur the governments of the C.I.S. into better IPR protection and enforcement activity.

SUMMARY OF LEGAL REFORMS AND ENFORCEMENT ACTIVITY

Of course, the most important multilateral legal reforms that came into force after the bilateral trade agreements were adopted in the early 1990s, were the World Trade Organization TRIPS Agreement in 1995, and the 1996 digital WPO treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

World Trade Organization (WTO TRIPS Agreement): Only two of twelve countries in the C.I.S. are members of the World Trade Organization, and are thus bound by the TRIPS Agreement's substantive and enforcement obligations. They are the Kyrgyz Republic (December 20, 1998) and Georgia (June 14, 2000).

Eight other countries in the C.I.S. are in the process of acceding to the WTO. Working parties have been established for Armenia, Azerbaijan, Belarus, Kazakhstan, the Republic of Moldova, the Russian Federation, Ukraine, and Uzbekistan.

The U.S. Congress has made it clear, in the legislation implementing the Uruguay Round, that the Administration should work to encourage "acceleration" of WTO TRIPS compliance by existing and acceding WTO members. Consistent U.S. policy requires any nation newly acceding

to WTO to be in full compliance with TRIPS at the time of accession. In IIPA's view, the TRIPS obligations merely spell out in greater detail the C.I.S. countries' *existing* bilateral obligations under the bilateral trade agreements with the U.S. to provide "adequate and effective protection and enforcement" of intellectual property rights.

WCT and WPPT: Three countries are members of the new WIPO Copyright Treaty (WCT). They are Moldova (March 1998), Belarus (July 1998), and the Kyrgyz Republic (September 1998). Two countries are members of the WIPO Performances and Phonograms Treaty (WPPT). They are Moldova (March 1998) and Belarus (July 1998). Unfortunately, the Kyrgyz Republic bifurcated its membership in these important digital treaties and only joined the WIPO Copyright Treaty in 1998; it is expected that they will soon accede to the neighboring rights (WPPT) treaty as well. The United States deposited its instrument of accession to the WCT and WPPT in September 1999.

In December 2000, the Interparliamentary Assembly of the members states of the C.I.S. agreed in a resolution adopted in St. Petersburg that for those countries that have not yet done so "to recommend to the parliaments and governments" . . . to accede to the WCT and WPPT, and to modernize copyright and neighboring rights laws taking into account the two digital treaties. The Assembly even adopted recommendations on the specific definitions and scope of new rights that need to be adopted by the states of the C.I.S. to properly implement the digital treaties. The resolution and recommendations were agreed to by all 12 members states of the C.I.S., working with officials from the W.I.P.O.

Other Multilateral Agreements: Armenia and the Russian Federation have joined the Brussels Satellite Convention. The Republic of Moldova is a member of the Rome Convention (December 1995).

In September 1993, the C.I.S. Treaty on Cooperation in Copyright and Neighboring Rights was signed. This obligated member states to confirm their membership in the Universal Copyright Convention (U.C.C., 1952 text); to mutually protect their works on this basis; and to develop national legislation at the level of the Berne, Geneva Phonograms, and Rome Conventions. This treaty does not provide for the creation of any intergovernmental executive body.

Civil Code Reform in the C.I.S.: A dangerous development in breach of the bilateral agreement continues to unfold in several countries of the C.I.S., including the Russian Federation: the comprehensive reform of the civil codes of these nations that is underway.² In most cases, the efforts to revise the civil code will or has resulted in the addition in that code of new

²Prior to the breakup of the Soviet Union, the text of the U.S.S.R.'s 1961 "Fundamentals of Civil Legislation" was the governing copyright law throughout the Union. Based on the "Fundamentals," each of the republics adopted in its civil code a separate chapter for copyright protection. The main features of these civil codes were: a 25-year term of protection, no protection for producers of sound recordings or performers, and broad free use provisions. The Supreme Soviet of the U.S.S.R. adopted amendments to the Fundamentals in May 1991, but they did not become effective because of the dissolution of the U.S.S.R. The 1991 amendments entered into force in the Russian Federation on August 3, 1992 by special decree. Several of the republics still treat the old civil codes as in force; it is not known whether any of these republics explicitly treat the 1991 amendments drafted by the former U.S.S.R. as effective within their territories

copyright provisions inconsistent with Berne, TRIPS, and the bilateral agreements, and inconsistent with the more fully developed national copyright laws. These efforts to revise the Civil Codes should be opposed. For example, in the case of Russia, drafts of the Civil Code reform (in 1999, and again in 2000) included IPR provisions completely incompatible with the bilateral trade agreement, the Berne Convention, and TRIPS. In 1996 a so-called Model Civil Code for the countries of the C.I.S. was reportedly adopted by the C.I.S. Interparliamentary Assembly in St. Petersburg. Detailed provisions on copyright and neighboring rights were included that were contradictory to existing international standards of protection for copyrights.

Each country of the C.I.S. should enact separate copyright, customs, and criminal provisions and procedures, rather than build on the foundation of the Soviet-era civil codes.

Copyright Law Reform: To the best of our knowledge, 11 countries have passed major revisions to their copyright laws:

- Armenia** (May 13, 1996; effective June 6, 1996; amended December 8, 1999; effective February 12, 2000)
- Azerbaijan** (June 5, 1996; effective October 23, 1996)
- Belarus** (May 16, 1996; effective June 18, 1996; amended August 11, 1998; effective August 19, 1998)
- Georgia** (Civil Code in force on November 25, 1997; copyright law adopted June 22, 1999; effective August 16, 1999)
- Kazakhstan** (June 10, 1996; effective June 12, 1996)
- Kyrgyz Republic** (January 14, 1998; effective January 22, 1998)
- Republic of Moldova** (November 23, 1994; effective May 2, 1995; amended May 28, 1998)
- Russian Federation** (July 9, 1993, effective August 3, 1993; amended July 19, 1995)
- Tajikistan** (November 13, 1998; effective December 17, 1998)
- Ukraine** (December 23, 1993, effective February 23, 1994)
- Uzbekistan** (August 30, 1996; effective September 17, 1996)

Turkmenistan has for a number of years reportedly been in the process of drafting new copyright legislation; until it is adopted, the Civil Code (Chapter IV, 1961) from the former Soviet era is still the operational law there.

Generalized System of Preferences (GSP): As a result of their MFN/NTR status, all of the countries are eligible to be beneficiaries under the Generalized System of Preferences (GSP) program, a U.S. trade program which offers preferential trade benefits to eligible countries (duty-free tariffs on certain imports). Part of the discretionary criteria of the GSP program is that the country provide "adequate and effective protection of intellectual property rights..." which includes copyright protection and enforcement. In 1999 (the latest full year of statistics), the countries of the C.I.S. received the following preferential trade benefits under GSP:

	<u>Amt. GSP duty-free (\$)</u>	<u>Percent of U.S. imports that benefit from GSP</u>
Armenia	\$2,743,000	18.1
Azerbaijan	\$0	0
Belarus	\$10,587,000	11.5
Georgia	\$0	0
Kazakhstan	\$188,124,000	83.3

Kyrgyz	\$30,000	5.7
Moldova	\$364,000	<1.0
Russia	\$417,070,000	7.3
Tajikistan	\$0	0
Turkmenistan	\$0	0
Ukraine	\$27,279,000	5.2
Uzbekistan	\$3,689,000	13.7

On June 16, 1999, IIPA submitted a request to the United States government in accordance with U.S. law that the eligibility of Armenia, Belarus, Kazakhstan, the Kyrgyz Republic, the Republic of Moldova, Ukraine, and Uzbekistan as a GSP beneficiary developing country be reviewed, and that its GSP benefits be suspended or withdrawn, in whole or in part, if requisite improvements are not made by each of these countries to remedy the deficiencies which adversely affect U.S. copyright owners.

On February 14, 2000 the United States government accepted the IIPA petitions for: Armenia, Kazakhstan, the Republic of Moldova, Ukraine, and Uzbekistan. On May 12, 2000, the United States government held public hearings on the GSP petitions regarding these five countries; the IIPA testified, as did representatives of most of the governments of the five countries.

As a result of cooperation with the Government of Moldova on legal reforms following the filing of the IIPA petition, on October 23, 2000, the IIPA requested that its petition be withdrawn; and, on January 10, 2001, the United States government accepted that action and the GSP review of the Republic of Moldova was formally ended.

The United States government has still not decided whether to withdraw or suspend GSP benefits in any of the four remaining countries: Armenia, Kazakhstan, Ukraine, and Uzbekistan.

Also in 2000, the United States government withdrew GSP benefits from Belarus, but for reasons unrelated to intellectual property matters.

ARMENIA

LEGAL REFORM AND TREATY ADHERENCE

In April 1992, Armenia and the United States signed a bilateral trade agreement detailed in the C.I.S. summary (above). This agreement entered into force on April 7, 1992. Armenia did adopt a copyright law on May 13, 1996; it went into force on June 6, 1996. However, the law had many substantive deficiencies. A new Law on Copyright and Neighboring Rights was adopted by the National Assembly of Armenia on December 8, 1999 to replace the 1996 law. The new copyright law was signed by the President on January 12, 2000; it went into force on February 12, 2000.

Also in 2000, Armenia finally joined the Berne Convention, effective October 19, 2000. However, Armenia is not a member of any of the other relevant conventions, nor has it met its enforcement obligations as required by the bilateral agreement. These failures are long past the deadlines set in the agreement to take such action. For example, Armenia is not a member of the Geneva Phonograms Convention, leaving American sound recordings completely unprotected more than seven years after the bilateral trade agreement required such protection. The Government of Armenia indicated at the end of 2000 in discussions with United States government officials, that Armenia might soon join the Geneva Phonograms Convention.

Armenia does not clearly provide protection for pre-existing works or sound recordings as required by the clear obligation in its bilateral trade agreement, as well as by Berne (Article 18), national treatment obligations, and the TRIPS Agreement (Article 14.6 for sound recordings and Article 9 for works). Unfortunately, the Copyright Law of 2000 is silent on this matter in the relevant provisions for both works and sound recordings. Armenia must clearly provide protection for pre-existing works and sound recordings to meet these obligations.

The Armenian Copyright Law of 2000 does provide enumerated protection for computer programs and databases as required under the bilateral trade agreement. There are no criminal *ex parte* search procedures to enforce end-user piracy. The Civil Procedure Code was revised in 1998, effective January 1, 1999, but the provisions pertaining to the availability of civil *ex parte* search procedures are unclear.

Chapter 5 of the Copyright Law of 2000 (articles 42-44) provides civil remedies for copyright infringements including monetary damages, as well as for the seizure and confiscation of infringing goods and machinery used to make illegal copies.

Article 160 of the Armenian Criminal Code provides for fines of 200 times the minimum monthly wage for copyright and neighboring rights violations, and ("obligatory social") corrective labor of up to two years. However, there have not been any convictions under this law. Amendments to the Criminal Code, first drafted in 1997, were apparently ready for parliamentary consideration in late 2000, but they were never enacted.

It is also unclear whether the existing Criminal Code or the Criminal Procedures Code provides police with the proper *ex officio* authority to commence criminal copyright cases. Armenian copyright officials told U.S. government officials that they believed such authority does exist, but there has been no indication of any meaningful enforcement action to date. If the Criminal Code does not do so, these laws should be amended accordingly when the revisions to the code are considered.

Effective January 1, 2001, Armenia amended its Customs Code and included authority to protect "intellectual property rights" and "intellectual property objects." It contains a somewhat complex registration and notification system, though it also apparently does provide *ex officio* authority for customs officials to seize material at the border. Such authority should be clearly provided to and utilized by Customs officials to stop the flow of material across the border; this is a requirement of the WTO TRIPS Agreement.

Armenia was not a signatory to either of the two new WIPO treaties. The Armenian government should be encouraged to accede to both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

COPYRIGHT ENFORCEMENT

Armenia is not currently providing "adequate and effective" enforcement with any meaningful police or prosecutorial activity, as required by the bilateral trade agreement, even if some (albeit weak) criminal, civil, and administrative remedies do exist. Also, border enforcement is very weak in Armenia, allowing illegal copies that are produced in any country in the region (like Russia and Ukraine) to freely cross borders for sale in Armenia and other countries. Hopefully, the new Customs Code effective in 2001 will energize the customs authorities to take appropriate actions. The failure to provide an adequate legal and enforcement regime in Armenia is causing significant harm to the copyright industries.

In addition, the environment is ripe for illegal optical media production facilities as well as other organized criminal production facilities. According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are no known optical media plants yet, but there are at least two cassette manufacturing plants; most of the music piracy is in the form of audio cassettes. The level of music piracy is estimated at about 90%; trade losses for 2000 are estimated at \$5.0 million. It is estimated that in 2000, almost 400,000 CDs and 2.5 million cassettes were sold in Armenia.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$32.7 million in 2000 (these are preliminary figures for 2000; they will be finalized later in 2001). The level of piracy was estimated to be 90%.

There are no official piracy or loss figures for the motion picture, entertainment software, or book industries.

AZERBAIJAN

LEGAL REFORM AND TREATY ADHERENCE

In April 1993, Azerbaijan and the United States exchanged letters to implement a bilateral trade agreement detailed in the C.I.S. summary (above). This agreement entered into force on April 21, 1995. Azerbaijan adopted the Copyright and Neighboring Rights Law on June 5, 1996; it went into force on October 23, 1996. IIPA has not been able to obtain a copy of this law.

Azerbaijan did adhere to the Berne Convention, effective June 4, 1999. Azerbaijan is not providing any protection for foreign sound recordings, nor is Azerbaijan a member of the Geneva Phonograms Convention — two obligations of the trade agreement. So U.S. sound recordings are completely unprotected, six years after the bilateral trade agreement required such protection.

Azerbaijan *does not* clearly provide protection for pre-existing works or sound recordings as required by the clear obligation in its bilateral trade agreement, Berne and the WTO/TRIPS Agreement. Azerbaijan must clearly provide protection for pre-existing works and sound recordings.

Azerbaijani law reportedly does provide copyright protection for computer programs and databases. It is unclear whether Azerbaijani law provides civil or criminal *ex parte* search provisions for effective enforcement against end-user pirates.

Article 158 of the new Azerbaijani Criminal Code (in force on September 1, 2000) does provide liability for copyright and patent infringements, but no details of the scope of the penalties are available. There have not been any convictions under this law. The Azerbaijani Customs Code was amended on June 10, 1997 and does contain provisions (Article 19) relevant to the importation or export of intellectual property. However, it is not clear if the provisions adopted in the Customs Code provide *ex officio* authority for customs officials to seize material at the border as required by the WTO TRIPS Agreement. At present, the Criminal Code provides sanctions only for criminal liability for copyright and patent rights violations; neighboring rights violations are not covered at all. The criminal provisions that do exist are minimal and do not include jail terms. Neither the Criminal Code nor the Criminal Procedures Code provides police with the proper *ex officio* authority to commence criminal copyright cases. These laws should be amended accordingly.

Azerbaijan was not a signatory to either of the two new WIPO treaties. The Azerbaijani government should be encouraged to accede to both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

COPYRIGHT ENFORCEMENT

There is currently no “adequate and effective” enforcement in Azerbaijan; there is no meaningful police, customs or prosecutorial activity, as required by the bilateral trade agreement and the WTO TRIPS Agreement. There are administrative sanctions (Articles 186-1)

providing for fines of 20 times the minimum monthly wages for copyright infringements. However, these fines are only imposed if the infringement causes damages that equal more than ten times the minimum monthly wages. None of the copyright industries report that these administrative sanctions, nor any of the criminal penalties, have ever been levied in a copyright case. Also, border enforcement is very weak in Azerbaijan. This is allowing illegal copies, especially of musical material produced in another country in the region, to cross borders freely for sale in Azerbaijan and other countries. The failure to provide an adequate legal and enforcement regime in Azerbaijan is causing significant harm to the copyright industries.

In addition, as in other countries in the region, the environment is ripe for illegal optical media production facilities as well as other organized criminal production facilities. According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are no optical media plants in Azerbaijan. Most music piracy is in the form of audio cassettes. The level of music piracy is estimated at about 90%; trade losses for 2000 are estimated at \$12 million, an increase from 1999 when it was \$10 million. It is estimated by the industry that 6 million cassettes and 700,000 CDs were sold in Azerbaijan in 2000.

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There are no official piracy or loss figures for the motion picture, entertainment software, or book industries.

BELARUS

LEGAL REFORM AND TREATY ADHERENCE

In January and February 1993, Belarus and the United States exchanged letters to implement a bilateral trade agreement detailed in the C.I.S. summary (above). This agreement entered into force on February 16, 1993. In May 1996, Belarus enacted a new law on copyright and neighboring rights. That law entered into force on June 18, 1996.

Belarus adhered to the Berne Convention (Paris Act) on December 12, 1997, in accordance with its bilateral obligation. In December 2000, Belarus signed a cooperation agreement with the World Intellectual Property Organization (WIPO) to improve its IPR regime.

On August 11, 1998, amendments to the Law on Copyright and Neighboring Rights were adopted; those amendments went into force on August 19, 1998. The new amendments added: (1) a rental right consistent with TRIPS for computer programs and audiovisual works (Art. 16.1) and for sound recordings (Art. 32.2); (2) a right of communication to the public with definitions of "communication to the public" and "broadcasting" (Arts. 16.1 and Art. 4, respectively) – but absent a clear right of making available; (3) provisions pertaining to "rights management information" (Art. 4); (4) a limited right of archival backup copying for computer programs plus a narrow exception for decompilation (Art. 21); (5) a point of attachment for sound recordings – by creation, and first or simultaneous publication in Belarus (Art. 30); and (6) making available rights for sound recordings (Art. 32.2) (but maintaining a compulsory license for the public performance, broadcasting, communication to the public [including interactive use] of sound recordings [Art. 33]).

These amendments were adopted not only for eventual WTO TRIPS compliance, but also to comply with the new WIPO "digital" treaties. Belarus then deposited its instrument of ratification on July 15, 1998 for both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), becoming one of the first countries to do so.

However, even with all of these important legal reforms in place, Belarus is still not providing any protection or rights to American or any other foreign sound recordings; nor is Belarus a member of the Geneva Phonograms Convention — two obligations of the trade agreement. So U.S. sound recordings are completely unprotected, more than seven years after the bilateral trade agreement required such protection. Note, that Belarus is a non-Geneva Phonograms, non-WTO member. Since the WIPO Performances and Phonograms Treaty (WPPT) is not yet in force, Belarus cannot rely on this treaty to provide a point of attachment for American or other foreign sound recordings. The WPPT will not be in force until thirty countries ratify it, probably some time in 2001.

The August 1998 Copyright Law added in the remedies section provisions relating to anticircumvention devices or services and the removal or alteration of rights management information (Art. 39.5). The remedies for anticircumvention and rights management information protection include injunctive relief, monetary damages, and seizure of devices.

New Criminal Code provisions were adopted in 1999 and went into force on January 1, 2000. The new provisions reportedly (IIPA was never provided with a copy) provide for up to five years imprisonment for copyright and neighboring rights violations. The Criminal Procedures Code still needs revision to provide the proper *ex officio* authority for police officials to initiate copyright criminal cases. There are administrative remedies against violations of copyright and neighboring rights, including acts of illegal retail sale and distribution. Although Customs Code amendments were made in 1998 to include intellectual property materials, the proper *ex officio* authority was not granted to customs officials.

Under the Copyright Law (Article 40), the civil penalties for copyright or neighboring rights violations included injunctive relief, damages (including lost profits), seizure and impoundment of infringing copies, and statutory penalties of between 10 and 50,000 times the minimum wage. Belarussian officials also point to the Civil Code revisions, adopted effective July 1, 1999, as providing additional remedies for IPR violations.

Belarus does not clearly provide protection for pre-existing works, nor at present does it provide such protection for pre-existing sound recordings, as required by the clear obligation in its bilateral trade agreement, as well as by Berne (Article 18) national treatment obligations, and the TRIPS Agreement (Article 14.6 for sound recordings and Article 9 for works). Belarussian officials insist this protection does currently exist, at least for works. This is because Article 42 of the 1996 Law, and Article 3 of the 1998 law make international treaties (such as the Berne Convention) self-executing in Belarus, meaning that absent any legislative action to the contrary, Article 18 of Berne should currently provide protection for pre-existing foreign works. Belarussian officials also believe that such protection for pre-existing sound recordings also exists but absent membership in the relevant treaties, there is no point of attachment. Belarus should clarify that this protection is provided for works and sound recordings to meet its international obligations.

Belarussian copyright law does provide explicit protection for computer programs and databases as required under the bilateral trade agreement. However, there is no known criminal *ex parte* search procedure necessary to provide effective enforcement against end-user pirates. The availability of civil *ex parte* search procedures is unclear.

Neither are its anticircumvention or copyright management information provisions fully compatible with the new digital treaties. In particular, implementation of the anticircumvention requirement should include a prohibition on the manufacture, importation, sale, distribution, or other trafficking in devices or services that are aimed at circumventing technological protection measures, as well as outlawing acts of circumvention. In addition, rightholders need to be able to protect so-called "copyright management information" that is attached to or accompanies a work or sound recording, including protection against the alteration, removal or falsification of this information. The Belarussian provisions provide some, but not all, of these rights.

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Levels of piracy are extremely high and enforcement remains virtually nonexistent in Belarus. This piracy and the lack of effective enforcement in Belarus is preventing entry by the U.S. creative industries into the country. In addition, Belarus is in the midst of its accession process to

join the World Trade Organization. To accede, Belarus must bring its law into full compliance with its TRIPS obligations by improving its laws and providing effective enforcement (including criminal penalties), since the current laws and enforcement regime fall short of these obligations.

Belarus must also act to stem the unacceptable rates of piracy by (1) enforcing its new criminal penalties provisions; (2) building an enforcement regime with effective police, prosecutorial and judicial enforcement; (3) taking action aimed at the growth of musical cassette production, and the growing threat of optical media production and distribution in Belarus – this includes implementation of optical media regulations to close illegal plants down; (4) licensing its television broadcasting stations; and (5) adopting procedures for government agencies to effectively deter commercial piracy.

According to the recording industry (International Federation of the Phonographic Industry, IFPI), Belarus has large-scale illegal musical cassette production facilities for domestic and foreign consumption. There is confirmation of the involvement of organized criminal enterprises in the music piracy business in Belarus. These criminal organizations are not only producing musical cassettes in Belarus, but are producing optical disk media in neighboring countries, and distributing CDs and CD-ROMs containing musical recordings as well as business and entertainment software in Belarus and in these other countries. Because of the ineffective border enforcement measures, materials are flowing freely through Belarus to Ukraine, Poland, Russia, the Czech Republic, and a number of other countries.

The environment and infrastructure are ripe for illegal optical media production facilities, although there are no confirmed reports of these plants at this time. In July 2000, CD plant representatives from Ukraine visited Belarus to consider moving some of their production facilities there. These optical disk plants are capable of producing thousands of CDs, DVDs, CD-ROMs, and even VCDs. The Belarussian authorities should act now to prevent illegal production facilities from taking root in Belarus by adopting legislation controlling optical media production and distribution (including plant licensing regulations, raw material monitoring and Source Identification (SID) coding). Illegal optical media production is now a major regional problem. Adopting measures now will prevent the rapid growth of this problem in Belarus, in anticipation that, unfortunately, optical media production in Belarus is likely to be a reality in the very near future.

The growth of illegal musical cassette plants for the production and distribution of musical works in Belarus and the rise of optical media production elsewhere in the region are very serious developments. Belarussian authorities need to implement systems to regulate and monitor the activities of the illegal cassette tape plants, to prevent their illegal reproduction and distribution with regular copyright compliance controls. Also, they need to adopt optical media controls before Belarus becomes a production site; if optical media plants do begin operations they should also be strongly encouraged to implement IFPI SID codes.

Customs officials must be better trained and equipped to prevent any illegal product made in Belarus from being exported, and to prevent the importation of material (tapes and CDs) made elsewhere in the region from entering into Belarus. In 2000, only five cases were reported where the shipment of CDs (about 1000 total) was stopped by customs; obviously, much more needs to be done to stop the heavy trafficking of illegal material into and out of Belarus.

In 2000, the IFPI continued to coordinate its anti-piracy actions against retailers and illegal manufacturers, seizing over 29,000 tapes, over 20,000 CDs, and over 40 recording devices. The recording industry considers this, a very modest figure, taking into account the huge Belarussian markets, and notes that much more enforcement activity is needed successfully to deter the pirates.

The music industry has endemic piracy problems: The recording industry estimates total trade losses for all international repertoire in Belarus were \$28.0 million in 2000 (up from \$25 million in 1999); the piracy rate was estimated at 90%. In 2000, more than 3.6 million CDs and 10.8 million cassettes were sold in Belarus.

In Belarus, pirated CDs sell for one-third the legitimate price, preventing the music industry from creating a market; and as mentioned, pirate tapes are a major problem. This is coupled with the lack of protection for pre-existing works (domestic or foreign), and the lack of any protection for foreign sound recordings (because Belarus does not provide a clear point of attachment). Belarus must adhere to the Geneva Phonograms Convention, and adopt strong enforcement mechanisms to allow a legitimate music market to develop.

The Interactive Digital Software Association (IDSA) reports wide-scale piracy in Belarus of entertainment software (including videogame CDs and cartridges, personal computer CDs, and multimedia products). Most of the material is produced elsewhere in the region; it is controlled by organized Russian piratical operations who use Belarus as a major distribution point for this material which is shipped to other parts of Eastern Europe and throughout the C.I.S. The IDSA reports that there may now be one plant in Belarus producing both entertainment software and music material, that is, an optical media plant, though this has not been confirmed. In any case, it is clear Belarus is the source of a large amount of material whether produced in or simply shipped through Belarus to neighboring countries.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$32.7 million in 2000 (these are preliminary figures for 2000 and will be finalized later in 2001). The level of piracy was estimated to be 90%.

The Motion Picture Association (MPA) reports that video and other forms of piracy remain rampant in 2000. Almost all videocassettes in Belarus' open markets are pirate Russian-language copies imported from Russia (costing approximately U.S.\$1.10 at Moscow wholesale stores) by small traders and sold locally for U.S.\$1.30. The lack of border checkpoints between Belarus and the Russian Federation facilitates such cross-border piracy. Counterfeit packaging and tapes can also be bought separately in Russia and assembled locally. So without any enforcement activity by police, and with virtually no border enforcement, pirate video dealers sell their wares at rock-bottom prices in the huge open markets and pirate cassettes are sold at retail stores at slightly higher prices.

There are no official piracy or loss figures for the motion picture, entertainment software, or book industries. The book industry reports that the primary production and distribution source of most of the pirated material in Belarus and throughout the C.I.S. is Ukraine.

Copyright piracy not only threatens foreign investment, but the development of local copyright industries in Belarus, as it does in the other countries in the C.I.S. This threat must be

met by a coordinated legal and enforcement response. All enforcement agencies (police, prosecutors, customs, plus ministries such as Justice, Interior, and Internal Revenue) should treat commercial copyright infringement as a serious crime and, as noted above, have the proper *ex officio* authority to act against it. Clear government strategies and lines of authority should be developed. Training of judges, prosecutors, magistrates, and police should be part of regular ongoing enforcement efforts.

GEORGIA

LEGAL REFORM AND TREATY ADHERENCE

In March 1993, Georgia and the United States signed a bilateral trade agreement detailed in the C.I.S. summary (above). This agreement entered into force on August 13, 1993. Until adoption of a separate (specialized) copyright law in 1999, the operating law was the Civil Code of Georgia (Chapter IV), which entered into force on November 25, 1997. On June 22, 1999, Georgia adopted the Law on Copyright and Neighboring Rights; it came into force on August 16, 1999.

Georgia adhered to the Berne Convention, effective May 16, 1995. However, Georgia is not a member of the Geneva Phonograms Convention, an obligation of the trade agreement. On June 14, 2000, Georgia became a member of the World Trade Organization (WTO) and obligated itself on that date fully to comply with the TRIPS Agreement, including substantive provisions as well as the important enforcement obligations. This meant that as of June 14, 2000, there was finally a point of attachment for American and other foreign sound recordings.

The Georgian Copyright Law does not provide protection for pre-existing works or sound recordings as required by the clear obligation in its bilateral trade agreement. However, as required by the WTO TRIPS Agreement (Article 14.6 for sound recordings, and Article 9 for works), Georgia is obligated to provide protection for pre-existing works and sound recordings that are less than 50 years old.

Georgia does provide explicit copyright protection for computer programs and databases as required under the bilateral trade agreement. However, there is no known criminal *ex parte* search procedure, something that is necessary to provide effective enforcement against end-user pirates. The availability of civil *ex parte* search procedures is unclear.

Also in June 1999, Georgia adopted a new Criminal Code, which came into force on July 1, 2000. Article 189 applies to copyright and neighboring rights violations. The penalties range from fines of between 300 to 500 times the minimum wage, or obligatory social labor for up to two years, for illegal reproduction, importation or export. They increase up to 1,000 times the minimum wage and the same temporary limitation on freedom, for the unauthorized "use" or "release" (including first publication, i.e., moral rights violations) of copyright and neighboring rights material. For repeat offenders, the temporary limitation of freedom increases up to three years; there is a jail sentence of up to one year. There is nothing in the Criminal Code or the Criminal Procedures Code to provide police with the proper *ex officio* authority to commence criminal copyright cases.

A new Customs Code was adopted on June 23, 1999. IIPA was never provided with a copy of those amendments, but they reportedly did not provide Customs officials with *ex officio* authority to seize suspected infringing material at the border as required by the TRIPS Agreement, and as is necessary to conduct effective border enforcement. The June 1999 amendments explicitly provide for border measures relevant to intellectual property violations. Customs

officials are authorized to seize suspected IP materials and hold them until a court renders a decision; however, there must be an application submitted by the rightholder for such action.

A few years ago, Georgia was considering a major revision of its Civil Code. The proposal was to incorporate new and extensive copyright provisions into that Code, inconsistent with its international treaty obligations including Berne and the WTO TRIPS Agreement. That effort, opposed by the European Union, the U.S. government, the WIPO, and the IIPA, seems now to have been abandoned.

Georgia was not a signatory to either of the two new WIPO treaties. The Georgian government should be encouraged to accede to both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). In 1999 and again in 2000, efforts were underway in the Georgian government to begin to prepare treaty implementation legislation (for both the WCT and WPPT) for eventual accession as well. The IIPA supports these efforts.

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Georgian law and its enforcement regime is currently not providing “adequate and effective” enforcement as required by the WTO TRIPS Agreement obligations found in Articles 41 through 61, and as required by the bilateral trade agreement. There is no meaningful police, prosecutorial, judicial or customs activity to stop retail distribution, much less organized criminal enterprises producing and distributing material in Georgia and trafficking that material in neighboring countries.

The administrative sanction provisions provide penalties only for the sale of illegal products; there are no special provisions for the violation of copyright and neighboring rights. In addition, they are not being used to close retail (including kiosk) establishments, by removing business licenses from pirate shops. And, even more telling, they don’t even apply to infringements of copyright and neighboring rights, such as the reproduction and distribution of sound recordings, which is the most prevalent form of piracy in Georgia. In fact, none of the copyright industries report that these administrative sanctions, or any of the criminal penalties, have ever been levied in a copyright case.

As in other countries in the region, border enforcement is very weak in Georgia. This is allowing illegal copies, especially of musical material produced in neighboring countries freely to cross borders for sale in Georgia and other countries. This is causing significant harm to the copyright industries.

In addition, as in other countries in the region, the environment is ripe for illegal optical media production facilities as well as other organized criminal production facilities. According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are no known optical media plants or cassette plants in Georgia. The reports that in the near future some of the illegal Ukraine CD plants may move their operations to Georgia are very troubling. Most of the music piracy in Georgia is currently in the form of audio cassettes. The recording industry estimates trade losses in Georgia in 2000 were \$5 million; the piracy rate was estimated at 90%. In 2000, about 480,000 CDs and 3.6 million cassettes were sold in Georgia.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$32.7 million in 2000

(these are preliminary figures for 2000 that will be finalized later in 2001). The level of piracy was estimated to be 90%.

There are no official piracy or loss figures for the motion picture, entertainment software, or book industries.

KAZAKHSTAN

LEGAL REFORM AND TREATY ADHERENCE

In May 1992, Kazakhstan and the United States signed a bilateral trade agreement detailed in the C.I.S. summary (above). This agreement entered into force on February 18, 1993. On June 10, 1996, Kazakhstan passed the Law on Copyright and Neighboring Rights. That law entered into force on June 12, 1996. Among its many features, the law for the first time protected computer programs and sound recordings; it provided copyright owners with exclusive rights of reproduction; distribution including importation, rental and public lending; public display and public performance; communication to the public; broadcasting; and a right of translation as well as adaptation. The law enacted a Berne-compatible term of life-plus-50 years.

Kazakhstan joined the Berne Convention, effective April 12, 1999. Effective on January 13, 2001, Kazakhstan finally became a member of the Geneva Phonograms Convention, providing a point of attachment for foreign sound recordings, albeit more than seven years after the bilateral trade agreement required such protection.

The Kazakh Copyright Law does not clearly provide protection for pre-existing works or sound recordings as required by the clear obligation in its bilateral trade agreement, as well as by Berne (Article 18), national treatment obligations, and the TRIPS Agreement (Article 14.6 for sound recordings and Article 9 for works). Kazakhstan's Copyright Law (Article 4) states where there is a conflict between the Kazakh Law and an international treaty obligation (i.e., Berne Article 18) the latter shall govern and be self-executing in Kazakhstan. However, when Kazakhstan adhered to Berne in April 1999, it did not make clear in a directive or decree that it was complying with its obligations under Article 18 and is providing full so-called "retroactive" protection for works. Kazakhstan must clearly provide protection for pre-existing works and sound recordings to meet its international obligations.

The Kazakh Copyright Law does provide explicit copyright protection for computer programs and databases as required under the bilateral trade agreement. However, there is no known criminal *ex parte* search procedure, something necessary to provide effective enforcement against end-user pirates. The availability of civil *ex parte* search procedures is unclear.

On July 16, 1997, Kazakhstan did adopt a new Criminal Code; it went into force on January 1, 1998. Pursuant to the bilateral agreement obligations, the new Criminal Code includes important sanctions for copyright and neighboring rights violations. Article 184 of the Criminal Code includes substantial fines of between 100 and 500 times the statutory minimum monthly wage; detention (arrest) of up to six months; and imprisonment up to five years for repeat offenders. However, the provisions are limited to actions committed for the purposes of "deriving profits" and which cause "considerable harm." The imposition of thresholds, especially the "considerable harm" standard, has been a particular problem for effective enforcement in other countries, notably Russia. The "considerable harm" standard is a vague one that shifts the burden of proof away from the pirates onto copyright owners. In other countries, this threshold has resulted in otherwise clear piracy cases being dismissed because the burden could not be

met to move forward -- either the prosecutors refuse to press charges, or judges dismiss cases. The threshold is not only a burden for identifying infringing acts under the criminal law, it also provides critical guidance for the police when they are conducting the initial raids, and must determine whether the cases should be brought under the criminal code or the administrative code. The threshold for criminal violations should be clear and it should be a relatively low standard applied against those in commercial activities.

In addition, there is nothing in the Criminal Code or the Criminal Procedures Code to provide police with the proper *ex officio* authority to commence criminal copyright cases.

The Law on Customs was amended on June 16, 1999. It contains five articles on IP border control (Articles 218-1 to 5). However, the Customs Law must be further revised to give Customs officials the proper *ex officio* authority to seize suspected infringing material at the border as required by the TRIPS Agreement and as is necessary to conduct effective border enforcement. Reportedly, new Customs Code regulations were under consideration in Fall 2000, but they have not yet been adopted; it is not clear if they would grant Customs officials this authority.

Copyright authors and owners (individuals or legal entities) have the right to commence civil actions under Article 125 of the Civil Code as amended effective December 27, 1997. The Copyright Law provides only civil remedies that include compensation for losses, including lost profits, and statutory damages ranging between 20 and 50,000 times the minimum salary, as determined by the court (Article 49).

Last, Kazakhstan was a signatory to both of new WIPO treaties. The Kazakh government should be encouraged to ratify both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), and to adopt the appropriate legislation to implement these treaties.

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As in past years, there are reports that piracy of all copyrighted products -- music, sound recordings, business applications software, interactive entertainment software (on all platforms, CDs and cartridges), motion pictures, videos, television programming, books and journals -- is widespread throughout Kazakhstan. Levels of piracy are extremely high and enforcement is virtually nonexistent. The only change in 2000 was a structural one, whereby the Copyright Agency was moved into and under the direction of the Ministry of Justice. It is hoped that this will result in better enforcement operations, especially against criminal piracy operations.

Although new criminal penalties have been adopted, none of the copyright industries report any cases that have been commenced under the new laws. IIPA urges the United States government to monitor how these new penalties scaled to multiples of the monthly salary or income of individuals convicted, and especially the threshold ("considerable harm"), are applied and whether penalties are imposed in a way that they actually deter piracy. The availability and application of criminal penalties at levels sufficient to deter piracy are necessary to effective copyright protection as required under the bilateral agreement, as well as the WTO TRIPS Agreement. In addition, there is no effective customs law and therefore no border protection for the importing or exporting of illegal material -- (a problem region-wide in Russia, Ukraine, Belarus, the Czech Republic and Poland).

According to the music industry, because of the lack of any effective border enforcement, illegal sound recordings (especially CDs) are being imported, particularly from Russia and China. The music industry (IFPI) does report good cooperation with the Kazakh copyright officials with ongoing legal reforms to improve the levels of protection and enforcement for sound recordings and copyrighted works. However, the lack of a clear point of attachment for foreign sound recordings is of course a major obstacle to effective protection.

The recording industry reports total trade losses in Kazakhstan were \$25 million in 2000 (up from \$20 million in 1999). The piracy rate was estimated at 90%. It is estimated that in 2000, more than 3 million CDs and 12 million cassettes were sold in Kazakhstan. The recording industry reports that more than 190 raids were run in 2000, but only about 5,000 CDs, 28,000 cassettes and 8 recording devices were seized; so obviously, most of the "raids" were taken against very small operations, and only minimal administrative sanctions were levied against infringers.

At present, there are no illegal optical disc production facilities reported in Kazakhstan. However, the lack of effective enforcement and the infrastructure there makes this country ripe for movement of plants into Kazakhstan from the neighboring countries, such as Ukraine. For example, there are fears that several former military facilities in Kazakhstan could easily be converted to optical disc plants; there are no confirmed reports that this has already occurred. In any case, illegal optical media production is now a major regional problem including facilities in Ukraine, Poland, Russia, and the Czech Republic, that manufacture and distribute throughout the region. Optical disc plants, like the ones operating in Ukraine and other neighboring countries, are capable of producing thousands of musical recordings, entertainment and business software, and audiovisual works on CDs, DVDs, CD-ROMs, and even VCDs.

The Kazakh authorities should act now to prevent illegal production facilities from taking root in Kazakhstan by adopting legislation controlling optical media production and distribution (including plant licensing regulations, raw material monitoring, and the use of IFPI Source Identification [SID] codes). Adopting measures now will prevent the spread of this problem to Kazakhstan.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$32.7 million in 2000. (These preliminary figures for 2000 and will be finalized later in 2001.) The level of piracy was estimated to be 90%.

There are no official piracy or loss figures for the motion picture, entertainment software, or book industries.

Copyright piracy threatens not only foreign investment but the development of local copyright industries in Kazakhstan. This threat must be met by a coordinated legal and enforcement response. All enforcement agencies -- the police, prosecutors, customs, in addition to ministries such as Justice, Interior, and Internal Revenue -- should treat commercial copyright infringement as a serious crime, and should have the proper authority (*ex officio*) to act against commercial piracy. Clear government strategies and lines of authority should be developed. Training of judges, prosecutors, magistrates, Customs officials, as well as police, should be part of regular ongoing enforcement efforts.

KYRGYZ REPUBLIC

LEGAL REFORM AND TREATY ADHERENCE

In May 1992, the Kyrgyz Republic and the United States signed a bilateral trade agreement detailed in the C.I.S. summary (above). This agreement entered into force on August 21, 1992. In January 1998, the Kyrgyz Republic adopted the Law on Copyright and Related Rights; the law went into force on January 22, 1998. The Civil Code was amended in 1998 by introducing a new Part IV (of the former Soviet Code) with very detailed provisions on intellectual property, including 40 articles on copyright and neighboring rights. These provisions now contradict the Copyright Law; this problem should be clarified so that the Copyright Law supercedes the Civil Code amendments and is consistent with international norms and obligations.

The January 1998 Copyright Law included, for the first time, protection for computer programs and sound recordings. It provided authors with a full set of rights, including reproduction (that includes the "storage of a work in a computer memory"); distribution; importation; public presentation and public performance; communication of the work to the public by broadcasting or rebroadcasting (or by cable); translation; and adaptation. The law adopted a life-plus-50-year term of protection. The rights afforded to producers of sound recordings include reproduction, adaptation, distribution (including rental) and importation. However, the law provides a right of remuneration only for producers of sound recordings for the public performance, broadcasting or transmitting by cable of their phonograms.

The Kyrgyz Republic joined the Berne Convention, effective July 8, 1999. Also, the Kyrgyz Republic deposited its instrument of ratification of the new WIPO Copyright Treaty (WCT) on September 10, 1998, although the latter is not yet in force. It did not deposit an instrument of ratification for the WIPO Performances and Phonograms Treaty (WPPT). Neither is the Kyrgyz Republic a member of the Geneva Phonograms Convention as required by the bilateral agreement. According to the copyright officials in the Kyrgyz Republic, draft laws are under consideration for accession to the WPPT, the Rome Convention and the Geneva Phonograms Convention sometime in 2001.

On December 20, 1998, the Kyrgyz Republic became the 133rd member of the World Trade Agreement (WTO) and the first country in the C.I.S. to become a WTO member.

The Kyrgyz Copyright Law in Art. 51 does clearly provide protection for pre-existing works or sound recordings that are less than 50 years old (from first publication, or creation for unpublished works). However, the applicability of this provision to foreign works should be clarified to avoid judicial misinterpretation. As a member of the WTO, effective on December 20, 1998, the Kyrgyz Republic is obligated to provide not only a point of attachment for the sound recordings of other member nations, including the United States, but to afford a minimum of fifty years of protection for pre-existing works and sound recordings under Article 14.6 (sound recordings) and Article 9 (works) of the TRIPS Agreement. This is also an obligation of the bilateral agreement and the Berne Convention (for works).

The Kyrgyz Copyright Law does provide explicit copyright protection for computer programs and databases as required under the bilateral trade agreement. However, there is no known civil or criminal *ex parte* search procedure, something necessary to provide effective enforcement against end-user pirates. The availability of civil *ex parte* search procedures is unclear.

According to Kyrgyz officials, in 1999 a package of intellectual property law amendments was adopted along with implementing regulations in order to comply with the WTO TRIPS Agreement. Currently, criminal sanctions in the Kyrgyz Republic provide for imprisonment of up to five years for intellectual property violations (Art. 150 of the Criminal Code). Administrative sanctions provide for liability (fines) for minor violations of copyright and neighboring rights, with the possibility of confiscating infringing copies (Art. 340). The Customs Code contains a special Chapter IV on customs measures applicable to IP goods; this has been in force since 1998. However, these provisions do not provide Customs officials with *ex officio* authority to seize suspected infringing material at the border as required by the TRIPS Agreement and as is necessary to conduct effective border enforcement.

There is nothing in the Criminal Code or the Criminal Procedures Code to provide police with the proper *ex officio* authority to commence criminal copyright cases.

The Copyright Law does contain civil law remedies (arts. 48 through 50). These include damages of between 20 and 50,000 times the minimum salary; these are to be determined by the discretion of the court in lieu of actual damages.

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The Kyrgyz enforcement regime is currently not providing "adequate and effective" enforcement as required by the WTO TRIPS Agreement obligations found in articles 41 through 61, and as required by the bilateral trade agreement. Material is easily being imported across the border from China, as well as musical material from Ukraine. There is no meaningful police, prosecutorial, judicial or customs activity to stop the ongoing distribution of this material, much less organized criminal enterprises producing and distributing material in the Kyrgyz Republic who are also trafficking this material in neighboring countries. In December 2000, the government announced it would authorize the State Customs Agency to begin seizing illegal copyright material, especially singling out audio and video pirate product. It is hoped that this announcement will soon be followed by actual and effective border enforcement.

The Kyrgyz Republic must put the civil, administrative and especially the criminal and customs provisions into action. The administrative sanctions, perhaps the easiest to implement, should be directed at the retail level including kiosks and small stores by taking away business licenses and closing such pirate shops. There are no reports from any of the copyright industries that the administrative, much less any of the criminal, penalties have ever been levied in a copyright case.

As noted above, border enforcement, as in other countries in the region, is very weak in the Kyrgyz Republic, and the known importation of musical CD material from China and Ukraine must be stopped. It is causing significant harm to the copyright industries, especially the recorded music industry.

In addition, as in other countries in the region, the environment is ripe for illegal optical media production facilities as well as other organized criminal production facilities. According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are no known optical media plants nor cassette plants in the Kyrgyz Republic. Like Kazakhstan, the danger is that the former military bases are an enticing target to open illegal manufacturing operations. Currently, most of the music piracy is in the form of audio cassettes. The recording industry estimates trade losses in the Kyrgyz Republic were \$10 million in 2000, with the level of piracy estimated to be about 90% out of approximately 500,000 CDs and 4.2 million cassettes sold in the country in 2000.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$32.7 million in 2000 (these are preliminary figures for 2000 and will be finalized later in 2001). The level of piracy was estimated to be 90%.

There are no official piracy or loss figures for the motion picture, entertainment software, or book industries.

Included in the package of 1999 amendments and regulations was a provision to open a single office with responsibility for intellectual property law enforcement. It is reported that this office would act as a focal point for interagency activity, bringing together the efforts of the police, Customs officials and the judiciary. IIPA still has no additional reports of the progress or activity of this office.

REPUBLIC OF MOLDOVA

LEGAL REFORM AND TREATY ADHERENCE

In June 1992, the Republic of Moldova and the United States signed a bilateral trade agreement detailed in the C.I.S. summary (above). This agreement entered into force on July 2, 1992. The Republic of Moldova adopted a comprehensive copyright law on November 23, 1994; it went into force on May 2, 1995. Some minor amendments were added on May 28, 1998.

The Republic of Moldova is a member of the Berne Convention, effective November 2, 1995. Also, on March 6, 1998, Moldova deposited its instrument of accession to both new WIPO treaties the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Neither is yet in force.

On July 17, 2000, Moldova finally provided a point of attachment for foreign sound recordings when it became a member of the Geneva Phonograms Convention. The Republic of Moldova is also a member of the Rome Convention (December 5, 1995). It is also likely that early in 2001, the Republic of Moldova will become a member of the World Trade Organization and thus be obligated to all of the substantive and enforcement provisions of the TRIPS Agreement upon the date of such accession.

The Republic of Moldova has not yet adopted additional copyright or neighboring rights provisions to implement the WCT or WPPT. The Copyright Act of the Republic of Moldova adopted in late 1994 was intended to comply with the Berne Convention obligations. It provides a Berne-compatible term of life-plus-50 years. It provides authors with exclusive rights of reproduction; distribution, including rental for computer programs and sound recordings; importation; public presentation and public performance; communication of the work to the public (but without an explicit right of making available); translation; and adaptation. The producers of phonograms are afforded the exclusive rights of reproduction, distribution (including rental), adaptation, and importation. However, the law provides a right of remuneration only for producers of sound recordings for the public performance, communication of a phonogram over the air, or by cable.

Until last year, it was unclear whether the Moldovan Copyright Law provided protection for pre-existing works or sound recordings as required by the clear obligation in its bilateral trade agreement, as well as by Berne (Article 18) and the TRIPS Agreement (Article 14.6 for sound recordings and Article 9 for works). However, in an exchange of letters between the United States government and the government of the Republic of Moldova in 2000, the Moldovans (Letter of October 16, 2000) acknowledged that their Copyright Law does provide protection for works and sound recordings that are less than 50 years old. They cited Article 3 of the Moldovan Parliamentary Decision no. 294/XII of November 23, 1994. The IIPA is pleased that this issue has been resolved and hopes that future actions by the enforcement authorities (and the courts) will provide for actual enforcement of these older works and sound recordings.

The Moldova Copyright Law does provide copyright protection for computer programs and databases. It does not, however, provide for criminal *ex parte* search provisions, something necessary for effective enforcement against end-user pirates. The Civil Procedure Code (articles 31, 135, 136, 140-142) were all cited by the government of Moldova (Letter of October 16, 2000) as clearly providing for the availability of civil *ex parte* searches. It is hoped that such searches will now commence in reality.

The Republic of Moldova introduced criminal sanctions into its Copyright Law (Art. 38, para. 12). It contains a provision for criminal liability for copyright and neighboring rights infringements, providing up to three years of imprisonment and/or fines of between 100 and 1,000 times the minimum monthly wage. However, Moldova should also amend its Criminal Code, following passage of the 1994 copyright law, in order to include special criminal provisions for IPR violations. We are concerned that some of the provisions in the current Criminal Code only apply to works and not to sound recordings, and that overall the provisions need to be strengthened to provide deterrent penalties. The Criminal Procedures Code does provide police with the proper *ex officio* authority to commence criminal copyright cases.

The Government of Moldova (Letter of October 16, 2000) noted that in 2001 improvements to the Criminal Code and Criminal Procedure Code are expected in compliance with the WTO TRIPS Agreement.

The Republic of Moldova has not amended its Customs Code to provide *ex officio* authority for customs officials to seize material at the border as required by the WTO TRIPS Agreement. This is necessary to conduct effective enforcement at the border. Moldovan authorities acknowledged these problems (Letter of October 16, 2000) and agreed to fix them with amendments currently under consideration in the Parliament.

There are civil law provisions in the Law on Copyright and Neighboring Rights that in theory could provide strong remedies if implemented. The provisions permit the payment, in the discretion of the court, of between 10 and 20,000 times the minimum wage. There are also administrative remedies against legal entities to enjoin illegal activity for up to 30 days, or to assess fines of between 30 and 100 times the minimum wage.

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The copyright enforcement regime in the Republic of Moldova is not “adequate and effective” as required by the bilateral agreement. There are no adequate civil, criminal, administrative or customs provisions either in place or being utilized against commercial piracy. Although civil and administrative sanctions exist, they are not being used. There have not been any known raids or seizures against retail (including kiosk) businesses. None of the copyright industries report that the administrative sanctions, much less any of the criminal penalties, have ever been levied in a copyright case. Border enforcement is very weak in the Republic of Moldova, allowing illegal copies, especially of musical material produced in Ukraine, freely to cross borders for sale in the Republic of Moldova and other countries. This is causing significant harm to the copyright industries.

In addition, as in other countries in the region, the environment is ripe for illegal optical media production facilities as well as other organized criminal production facilities. According to the recording industry (International Federation of the Phonographic Industry, IFPI), there is

reportedly at least one illegal optical media plant in the Republic of Moldova, but this has not been confirmed. The threat of CD piracy is, however, very great; Moldova is an attractive location for the production of illegal material that could then be distributed to other countries in the region. The IFPI reports that CDs and musical cassettes are being imported into Moldova from Russia and Ukraine. The recording industry estimates trade losses in the Republic of Moldova was \$6 million in 2000, with the level of piracy estimated to be about 90% out of 750,000 CDs and 4.2 million cassettes sold in Moldova in 2000.

Both the recording industry and the software industry report that the Republic of Moldova has become a haven for CD piracy. As noted, some of this material may be produced in Moldova, but even if produced elsewhere, the poor border enforcement, combined with little on-the-ground police activity, has created an environment where material can be warehoused and shipped to countries throughout the region using Moldova as a base of operations.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$32.7 million in 2000 (these are preliminary figures for 2000 and will be finalized later in 2001). The level of piracy was estimated to be 90%.

There are no official piracy or loss figures for the motion picture, entertainment software, or book industries.

TAJIKISTAN

LEGAL REFORM AND TREATY ADHERENCE

In July 1993, Tajikistan and the United States signed a bilateral trade agreement detailed in the C.I.S. summary (above). This agreement entered into force on November 24, 1993. On November 13, 1998, the Republic of Tajikistan adopted the Law on Copyright and Neighboring Rights providing a comprehensive revision of the copyright law in Tajikistan; the law went into force on December 17, 1998.

According to the Minister of Culture B.A. Makhmadov in an official statement that accompanied the passage of the Tajik Copyright Law of 1998, the law was intended to modernize the legal regime in Tajikistan by: (1) protecting sound recordings (and other neighboring rights) for the first time; (2) removing the Soviet-era "maximum rates of author's remuneration"; (3) permitting authors and users freely to contract (eliminating the "standard authors' contract"); (4) adding a term of life-plus-50 years (from life-plus-25); (5) expanding author's economic rights and moral rights, including the possibility of assignment of economic rights to third parties; (6) limiting the scope of "free use" and adding more exact terms of such use; (7) adding numerous definitions to clarify the scope of the Act. That said, there are still numerous provisions regulating the terms and conditions of authors' contracts.

The exclusive economic rights provided to authors include reproduction; distribution, including rental for computer programs and sound recordings; importation; public presentation and public performance; communication of the work to the public (but without an explicit right of making available) including broadcasting, cablecasting or by other wire or comparable means; translation; and adaptation. The producers of phonograms are afforded the exclusive rights of reproduction, adaptation, distribution (including rental), and importation. However, the law provides a right of remuneration only for producers of sound recordings for the public performance, broadcasting, or communication of a phonogram to the public by cable.

Tajikistan finally deposited its instrument of accession to the Berne Convention on December 9, 1999 and became a member of Berne effective March 9, 2000. However, Tajikistan is not providing any protection or rights to U.S. or any other sound recordings, nor is Tajikistan a member of the Geneva Phonograms Convention — two obligations of the trade agreement. So U.S. sound recordings are completely unprotected, more than seven years after the bilateral trade agreement required such protection.

Tajikistan *does not* clearly provide protection for pre-existing works or sound recordings as required by the clear obligation in its bilateral trade agreement and the Berne Convention. Tajikistan must clearly state its protection for pre-existing works and sound recordings that are less than 50 years old in order to comply with its bilateral trade agreement obligations and international norms.

The Tajik Copyright Law does provide explicit copyright protection for computer programs and databases as required under the bilateral trade agreement. However, there are no known civil or criminal *ex parte* search procedures necessary to provide effective enforcement against end-user pirates.

Tajikistan has not amended its Criminal Code, following passage of its November 1998 copyright law, to adopt criminal provisions for IPR violations, in breach of the bilateral agreement's obligation to provide "adequate and effective" protection and enforcement. The Criminal Code must provide deterrent penalties. In addition, there is nothing in the Criminal Code or the Criminal Procedures Code to provide police with the proper *ex officio* authority to commence criminal copyright cases. Further, the Customs Code must be amended to provide Customs officials with *ex officio* authority to seize suspected infringing material at the border as required by the TRIPS Agreement and as is necessary to conduct effective border enforcement. The Customs Code, last revised in November 1995, does make one liable for the transfer of illegal goods, including intellectual property material, through the border.

Tajikistan was not a signatory to either of the two new WIPO treaties. The Tajik government should be encouraged to ratify both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

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The Tajik copyright is currently not providing "adequate and effective" enforcement as required by the bilateral trade agreement. In addition to the many deficiencies in the enforcement legal regime (civil, administrative, criminal and customs provisions), there is no meaningful on-the-ground police, prosecutorial, judicial or customs activity to stop retail distribution much less the organized criminal enterprises who produce and distribute material in Tajikistan and throughout the neighboring countries.

The Criminal Code (Art. 156) does sanction copyright and neighboring rights infringements with penalties of between two and five years. However, none of the copyright industries report that these criminal penalties, much less any of the administrative sanctions, have ever been levied in a copyright case. The Administrative Code was amended on December 10, 1999 (Art. 158-2; IIPA does not have a copy of this new law). Reportedly, this provision levies fines and seizure of illegal copyright and neighboring rights material.

Border enforcement, as in other countries in the region, is very weak in Tajikistan. This is allowing illegal copies, especially of musical material produced in neighboring countries such as Russia, to freely cross borders for sale in Tajikistan and other countries. This is causing significant harm to the copyright industries.

According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are no known optical media plants in Tajikistan. Most of the music piracy is in the form of audio cassettes, some produced in Tajikistan. The recording industry estimates trade losses in Tajikistan were \$3 million in 2000 (up from \$500,000 in 1999); music piracy levels were estimated to be at about 90%.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$32.7 million in 2000. (These preliminary figures for 2000 will be finalized later in 2001.) The level of piracy was estimated to be 90%.

There are no official piracy or loss figures for the motion picture, entertainment software, or book industries.

TURKMENISTAN

LEGAL REFORM AND TREATY ADHERENCE

In March 1993, Turkmenistan and the United States signed a bilateral trade agreement detailed in the C.I.S. summary (above). This agreement entered into force on October 25, 1993. Since that time however, Turkmenistan has done little to modernize its copyright regime or to join any of the relevant treaties as it obligated itself to do in the bilateral agreement.

In the first instance, Turkmenistan never adopted a comprehensive Copyright and Neighboring Rights Law. In October 1993, Turkmenistan formally incorporated the Soviet-era Civil Code (Chapter IV) into its legal structure. On March 1, 1999, the Civil Code was revised, with extensive amendments pertaining to copyright. So, the operational copyright laws are those that were last amended by the Civil Code (1961) as amended in 1999. The Civil Code does contain provisions for the protection of computer programs, databases, and sound recordings, but the rights and provisions necessary to comply with international norms are still lacking. A draft Law on Copyright and Neighboring Rights was under consideration in 2000, but it has not yet been adopted by the Parliament.

Turkmenistan is not a member of the Berne Convention. Turkmenistan is not providing any protection for American or any other sound recordings, nor is it a member of the Geneva Phonograms Convention, leaving U.S. sound recordings completely unprotected. These are all obligations of the bilateral agreement that Turkmenistan obligated itself to fulfill more than seven years ago.

When Turkmenistan does adopt a modern copyright law, it must clearly provide protection for pre-existing works and sound recordings that are at least 50 years old, in order to avoid another breach of its bilateral trade agreement and international norms. It also must adopt explicit copyright protection for computer programs and databases as required under the bilateral trade agreement. Further, it must include provisions for civil and criminal *ex parte* search procedures necessary to provide effective enforcement against end-user pirates.

Turkmenistan must also adopt intellectual property remedies into its Criminal Code, as required by the bilateral agreement's obligation to provide "adequate and effective" protection and enforcement. The Criminal Code must provide deterrent penalties. In addition, provisions must be added into the Criminal Code or the Criminal Procedures Code to provide police with the proper *ex officio* authority to commence criminal copyright cases. Further, the Customs Code must be amended to provide Customs officials with *ex officio* authority to seize suspected infringing material at the border as required by the TRIPS Agreement and as is necessary to conduct effective border enforcement.

Turkmenistan was not a signatory to either of the two new WIPO treaties. The Turkmen government should be encouraged to ratify both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

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The addition into the Turkmen copyright law of basic civil, administrative, criminal and customs remedies is essential to bring the copyright enforcement legal regime up to the international norms. Currently, Turkmenistan, in the absence of these essential provisions and the lack of any police, prosecutorial, judicial or border activity, is clearly not providing “adequate and effective” enforcement as required by the bilateral trade agreement. The Turkmen government must adopt the necessary legal reforms. Then, at a minimum, the authorities must commence police raids and seizures, and must act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions.

The Criminal Code currently does not provide any sanction for copyright or neighboring rights infringements. The Administrative Code does not provide any sanctions for violations of copyright or neighboring rights infringements.

Border enforcement, as in other countries in the region, is very weak in Turkmenistan. This is allowing illegal copies freely to cross borders for sale in Turkmenistan and other countries.

The recording industry (International Federation of the Phonographic Industry, IFPI) reports that most of the music piracy is in the form of audio cassettes; further they report that illegal musical cassettes produced in neighboring countries, including Uzbekistan in particular, are entering Turkmenistan as a result of poor border enforcement. The IFPI reports there are no known optical media plants in Turkmenistan. The recording industry estimates trade losses in Turkmenistan were \$5 million in 2000 (up from \$3 million in 1999); music piracy levels were estimated to be at about 90% out of a total of 3 million cassettes and 360,000 CDs sold in Turkmenistan in 2000.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$32.7 million in 2000. (These preliminary figures for 2000 will be finalized later in 2001.) The level of piracy was estimated to be 90%.

There are no official piracy or loss figures for the motion picture, entertainment software, or book industries.

UZBEKISTAN

LEGAL REFORM AND TREATY ADHERENCE

In November 1993, Uzbekistan and the United States signed a bilateral trade agreement detailed in the C.I.S. summary (above). This agreement entered into force on January 13, 1994. On August 30, 1996, the Uzbek Parliament adopted the Law on Copyright and Neighboring Rights providing a comprehensive revision of the copyright law in Uzbekistan; the law went into force on September 17, 1996. Since that time, there have not been any important revisions to the Copyright Act, or to the relevant enforcement laws. After meetings with United States government officials in October 2000, Uzbek officials suggested that revisions would be undertaken before the end of the year to fix some of the legal deficiencies. Some minor amendments to the Copyright Law were reportedly adopted in December 2000, but none of the important deficiencies noted herein were corrected.

Neither has Uzbekistan acceded to any of the relevant copyright or neighboring rights treaties as it obligated itself to do in the bilateral agreement over seven years ago. In fact, in discussions with the IIPA and the United States Government in 2000, the Uzbek government officials stated that they did not expect to join the Berne Convention or the Geneva Phonograms Convention before the end of 2003!

The Uzbek Law on Copyright and Neighboring Rights of 1996 established protection for the first time of computer programs, databases and sound recordings. The exclusive economic rights provided to authors (Art. 22) include "the right to exploit the work in all forms and by all means" such as by reproduction and dissemination; public presentation; rental; public performance; broadcasting including cable distribution or satellite transmission; recording of a work by technical means and communication of a technical recording (including by radio or television); and translation or transformation. There are numerous provisions that remain that regulate the terms and conditions of authors' contracts. The producers of phonograms are afforded the exclusive rights of public presentation, adaptation or other transformation, distribution (including commercial rental); and importation. The law does not even clearly specify a right of reproduction for producers of sound recordings. In addition, the law provides a right of remuneration only for producers of sound recordings for the public communication of the recording, the broadcasting, or the communication to the public by cable.

Uzbekistan is not a member of the Berne Convention. Neither is Uzbekistan providing any rights to U.S. or other foreign sound recordings, nor is Uzbekistan a member of the Geneva Phonograms Convention; U.S. sound recordings are completely unprotected. Joining Berne and Geneva Phonograms and providing protection for U.S. sound recordings are all obligations of the bilateral trade agreement that Uzbekistan promised to fulfill over seven years ago. Uzbek officials suggested in meetings that a point of attachment may be available for works and sound recordings under the Foreign Investment Law, but instead, they need to clearly provide copyright and neighboring rights protection under the relevant treaties and laws.

In addition, Uzbekistan does not clearly provide protection for pre-existing works. When Uzbekistan extends protection for foreign sound recordings, it must clearly protect pre-existing works and sound recordings that are at least 50 years old to comply with the bilateral treaty obligations and international norms.

The Uzbek Copyright Law does provide explicit copyright protection for computer programs and databases as required under the bilateral trade agreement. However, there are no known civil or criminal *ex parte* search procedures that are necessary to effective enforcement against end-user pirates.

Uzbekistan did not amend its Criminal Code following passage of the 1996 Copyright Act to adopt deterrent penalties for intellectual property violations, in breach of the bilateral agreement's obligation to provide "adequate and effective" protection and enforcement. The Criminal Code (Art. 149) does provide for liability for infringement of copyright and patent violations, but does not include neighboring rights violations. In any case, the existing penalties are too weak and must be amended to strengthen and broaden the provisions for all copyright and neighboring rights violations. Reportedly, Article 149 is under review for revision. IIPA has not seen any drafts currently under consideration.

IIPA recommends that the draft criminal reform also include revisions to the Criminal Code and Criminal Procedures Code to provide police with the proper *ex officio* authority to commence criminal copyright cases. Further, the Customs Code must be amended to provide Customs officials with *ex officio* authority to seize suspected infringing material at the border as required by the TRIPS Agreement and as is necessary to conduct effective border enforcement.

IIPA is aware of Resolution 215 of the Cabinet of Ministers, April 19, 1994, that established a licensing system for the production, reproduction and sale of records, cassettes and CDs. However, IIPA has no reports of how these provisions were implemented, if at all, and their effectiveness against pirate production enterprises that are so common in this region.

Uzbekistan was not a signatory to either of the two new WIPO treaties. The Uzbek government should be encouraged to ratify both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

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The Uzbek copyright regime must be amended to include basic civil, administrative, criminal and customs remedies to bring the enforcement regime up to international norms. Currently, Uzbekistan is not providing "adequate and effective" protection and enforcement as it is obligated to do under the bilateral agreement. There are significant legal reform deficiencies and there is no effective police, prosecutorial, judicial or border activity underway. The Uzbek government must adopt the necessary legal reforms, including accession to the relevant treaties to protect foreign works and sound recordings. Then the authorities must commence police raids and seizures at a minimum, and must act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions.

The Criminal Code currently does not provide deterrent penalties and must be amended. The Administrative Code does not provide any sanctions for violations of copyright or neighboring rights infringements and must be amended to provide for fines and the forfeiture of business licenses for retail establishments that are operating pirate operations.

Border enforcement, as in other countries in the region, is very weak in Uzbekistan. This is allowing illegal copies freely to cross borders for sale in Uzbekistan and other countries. This in turn is causing significant harm to the copyright industries, in particular the music industry.

The recording industry (International Federation of the Phonographic Industry, IFPI) reports that most of the music piracy is in the form of audiocassettes; further they report that illegal musical cassettes produced in neighboring countries (particularly Russia), are entering Uzbekistan as a result of poor border enforcement. The IFPI reports there are no known optical media plants in Uzbekistan, although the opportunity is there for the startup of pirate CD and cassette operations due to the climate and infrastructure. The recording industry estimates trade losses in Uzbekistan were over \$30 million in 2000 (up from \$20 million in 1999); this is considerably more than for almost any other country in the C.I.S. Music piracy levels were estimated to be at about 90% of the estimated 6 million CDs and 36 million cassettes sold in Uzbekistan in 2000.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$32.7 million in 2000. (These preliminary figures for 2000 will be finalized later in 2001.) The level of piracy was estimated to be 90%.

There are no official piracy or loss figures for the motion picture, entertainment software, or book industries.