

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2001 SPECIAL 301 REPORT

# GREECE

### EXECUTIVE SUMMARY<sup>1</sup>

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In IIPA's 2000 Special 301 submission, it and its Motion Picture Association (MPA) declared victory in the long battle against TV piracy in Greece which for years had the highest rates in all Europe. The filing of a TRIPS case against Greece was clearly the motivating factor for that country's finally adopting a broadcast law (which made copyright protection a condition of a broadcast license) and beginning the task of enforcing it. With the threat of use of the law, and indeed its use in a few cases, the level of TV piracy went down dramatically and continues to hover at its lowest point in years – 5%. Nevertheless, there is concern that this victory may not be a permanent one; over the last year, Greece has not aggressively used the Broadcast Law's Article 17 to enter binding closure orders against those TV stations that continue to pirate. Moreover, Greece and the European Union have failed to sign an agreement terminating the TRIPS case, disputing the right of the U.S. to obligate Greece to continue enforcing its law against the very piracy that gave rise to the TRIPS case in the first place.

While the Greek government should be commended for finally reducing piracy TV piracy levels, the motion picture industry remains concerned over the lack of enforcement of the Broadcast Law. On a positive note, Greece's most notorious TV pirate, Junior's TV, finally ran its course of appeals of at least three convictions and a rare deterrent sentence went into effect. Nevertheless, Greece's overall enforcement system remains weak, allowing high rates of piracy to flourish in all other product areas and placing Greece out of compliance with its TRIPS enforcement obligations. The problem is that the court system remains unable to function to provide quick justice and deterrent sentences.

Over the last year, piracy rates have increased for the motion picture and entertainment software industries, stayed level for the recording industry and decreased for the business software industry. Total piracy losses increased from an estimated \$96.6 million in 1999 to 105.2 million in 2000. The reason is that court processes remain slow, and penalties, while quite substantial in the statute, are not imposed at nearly this level, and deterrence remains insufficient. The Greek judiciary, in particular, has not shown the will to change this continuing situation.

Because of the failure to terminate the TRIPS case, to enforce its broadcast law aggressively to further reduce TV piracy, and to take action to bring more deterrence into the enforcement system generally, IIPA recommends that Greece be placed on the Priority Watch List in 2001.

**ESTIMATED TRADE LOSSES DUE TO PIRACY**  
*(in millions of U.S. dollars)*  
**and LEVELS OF PIRACY: 1995 - 2000**

INDUSTRY	2000		1999		1998		1997		1996		1995	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	10.0	18%	12.0	15%	20.0	20%	50.0	25%	60.0	25%	59.8	25%
Sound Recordings / Musical Compositions	10.0	50%	10.0	50%	8.0	25%	8.0	25%	7.5	25%	6.0	25%
Business Software Applications <sup>1</sup>	40.1	65%	47.5	71%	40.5	74%	30.6	73%	32.7	82%	28.6	86%
Entertainment Software <sup>2</sup>	38.1	78%	20.1	68%	22.3	70%	21.3	74%	22.0	75%	20.8	79%
Books	7.0	NA	7.0	NA	7.0	NA	6.5	NA	5.0	NA	6.0	NA
<b>TOTALS</b>	<b>105.2</b>		<b>96.6</b>		<b>97.8</b>		<b>116.4</b>		<b>127.2</b>		<b>121.2</b>	

## COPYRIGHT PIRACY IN GREECE

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### TV Piracy and the TRIPS Case

As late as 1997, the TV piracy rate exceeded 50% – the highest rate in all Europe. After long and frustrating efforts to remedy the problem, the U.S. government commenced a TRIPS case on this issue in May 1998. Criminal enforcement under a modern copyright law proved ineffective and it was the passage of the amendment to the Broadcast Law (Article 17 of Law 2644, adopted in May 1998) which finally set the TV piracy problem on a course of improvement until 1999, when the piracy rate dropped to 5% resulting from the closure of some stations under the law. That law gave the National Radio and Television Council (NRTC) the authority to close down stations that were engaged in piracy. While the TRIPS case proved successful, the motion picture industry is still concerned that the broadcast law is not being adequately enforced. Fraudulent distributors of programming have taken advantage of the new state licensing process by pushing illegal product on many smaller, less sophisticated television stations. Despite these new enforcement provisions and the successful closing of two stations since the broadcast law went into effect, the Greek broadcast authorities have so far been unable or unwilling to shut down two other regional stations with a long-standing history of piracy. While the existence of the Law and the few closures have had their desired effect, this record is too thin a reed to give confidence that the problem is solved and that TV piracy rates will continue to decline. Indeed, they have not declined since 1999.

Earlier efforts to use the Copyright Law had resulted in isolated victories but that strategy did not make any significant dent in TV piracy levels. However, a part of that saga has now come to an end with a landmark decision from the Greek Supreme Court dismissing all appeals of the country's most notorious pirate, Junior's TV. The penalties assessed will reportedly now be imposed and Mr. Halaris, the station's owner, is not entitled to have the penalties assessed suspended. Moreover in a major breakthrough for EPOE, the motion picture industry's local anti-piracy organization, the Court recognized its right as an association to file criminal and civil actions in its own name to

<sup>1</sup>BSA loss numbers for 2000 are preliminary.

<sup>2</sup> IDSA estimates for 2000 are preliminary.

protect its members' interests. The Court also ruled that EPOE's U.S. members should be regarded as authors of their works, applying U.S. law under Article 67 of the Greek Copyright Law. The ruling also finally clarified the right of MPA member companies to prohibit the unauthorized broadcast of their works. EPOE has been seeking legislative amendments to address this issue for over six years. Junior's TV was shut down by ministerial order in November 1999, and the Supreme Court's decision finally brings to an end a long – running story that has been at the center of the industry's efforts to curb television piracy in Greece.

Because of the improvement that occurred in 1999, the U.S. sought to terminate the TRIPS case by opening settlement discussions at the end of 1999. To date, however, the case has not been settled, though there have been a number of false starts and tantalizing rumors. In essence the dispute is over Greece's future conduct in fighting TV piracy, which the EU does not wish to allow its member state to commit.

## **Retail and Wholesale Piracy of Works and Sound Recordings**

Piracy levels in Greece are the highest of any country in Western Europe. Video piracy levels have not come down further and remain at 10% in Athens and 20% elsewhere in Greece. Most of this is back-to-back copying of videos for copy depth in storefronts. The industry is concerned that there may be a resurgence of video piracy if TV piracy rates resume their downward course. On the audio side, piracy has gone up to 35% with approximately 80% of the CD piracy resulting from the local copying of CDs on CD burners, with the product being sold throughout Greece. The remaining piracy is divided 15% through imports from Ukraine, Montenegro and Russia and about 9% audiocassette piracy. Much of the CD-R piracy is under the control of organized crime with transient street vendors used for local distribution throughout Greece. The area where most of this production occurs is called Aghia Varvara (Santa Barbara), known for drug trafficking and difficult to close down due to the powerful criminal elements that control it. However, in the last year the police have been raiding increasingly in this area, with some success. Piracy around the university in Thessaloniki has declined, due to efforts of the local police, who have seized significant numbers of pirate CDs and made arrests.

The piracy rate for entertainment software is 78% in Greece in 2000. Pirate copies of console games are imported from Eastern and Central Europe and copied on CD burners and sold locally. Pirate PC-based games are also imported and represent 90% of the pirate market with the rest locally produced on CD burners.

BSA faces hard – disk loading and sales of counterfeit products throughout Greece. Like the other copyright industries, the business software industry experiences long delays and nondeterrent fines, and the piracy rate is 65% in 2000, still the highest in Western Europe.

The book industry's problems in Greece are unauthorized commercial photocopying around universities, particularly of ELT texts. Losses due to this piracy are estimated at \$7 million in 2000.

# COPYRIGHT ENFORCEMENT

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## Criminal Enforcement

In past years IIPA has reported on criminal convictions and sentences in Greece. However, the instance of pirates actually paying any but minimal fines and actually serving jail sentences is very rare. In the TV broadcast area, the upholding on appeal of the Junior's TV convictions for TV piracy and that the station owner may serve jail time, discussed above, will, it is hoped, send a positive signal to pirates. Other convictions were also finally obtained against a relatively few pirate station owners, though those fines (and, on occasion, accompanying damages) were low by any standard. Nevertheless, these convictions and the possible threat of action under the Greek government's administrative machinery in the Broadcast Law did provide some deterrence.

The criminal enforcement record against TV pirates is likely the worst, but other types of piracy — of videos, sound recordings, videogames and business software, also do not fare well, particularly at the sentencing stage. While the police and customs authorities can be, and often are, cooperative in running raids when requested by rightholders, once these cases reach the judicial system, rightholders are faced with delays and procedural hurdles which make it extremely difficult to get convictions and penalties that deter further piracy. The recording industry, while it has achieved a number of convictions in 2000 (195, including guilty pleas), nevertheless reports small fines and a general reluctance on the part of Greek judges to penalize many of the African immigrants who act as runners for the criminal enterprises that supply the market.

Greece has excellent laws and a statutory penalty structure, among the highest in Western Europe. Jail terms range from a minimum term of 1 year up to 5 years and a minimum fine of 1 million drachmas up to 5 million (\$2,746- \$13,730). If the profits are particularly high, the penalties go up to 2-10 million drachmas (\$5,492—\$27,460) and if the infringer is deemed a professional, the penalties increase to 5-10 years in jail and fines of 5-20 million drachmas (\$13,730- \$54,920). Despite this, however, Greek courts have never levied penalties anywhere close to these levels and regularly ignore the statutory minimums. Moreover, while the copyright law provides that any jail term of less than two years can be "bought out" for 15,000 drachmas per day (\$41), which with interest, stamp duties and costs can be substantial, the recording industry reports that in their cases, the judges look to the existing Penal Code which the judges say supercedes the copyright law and permits buyouts at a mere 1,500 drachmas (\$4.10) per day. Furthermore, Greek law also provides for suspended sentences for jail terms of three years or less. In view of these exceptions, it is very rare that a pirate ever serves a day in jail.

The result is a general lack of deterrence borne of a broken judicial system that tolerates interminable delays. The motion picture industry reports that prosecutors, especially at the local level, are often reluctant to pursue intellectual property cases and have largely ignored the Supreme Court circulars directing them to give intellectual property cases high priority. These deficiencies in copyright enforcement have led EPOE to use the "All-Day Court" system established for urgent criminal matters. EPOE has had some success in these courts in video and television piracy cases, but penalties have continued to be too low to deter piracy. Moreover, this system can be invoked only where the defendant is taken into custody within 24 hours of the issuance of the complaint; otherwise the case is assigned to the normal criminal courts.

The recording industry also experiences a lack of deterrence, due principally to judges not taking copyright violations seriously enough. While the raiding and conviction record is commendable, fines remain low (averaging less than \$1,000 and very often suspended). The industry reported seizing 256,731 CDs and cassettes in 2000.

BSA reports improved cooperation in 2000 from law enforcement. In April 2000, the national police issued a directive committing to fight software piracy. The Copyright Office has promised to send letters to software distributors emphasizing the importance of using legal software. On October 10, 2000, the Greek financial police (SDOE) also issued a circular committing to take action against software piracy. Specifically, it stated that it would include examination of software licenses and all the accompanying purchase and tax documents in the framework of its daily fiscal controls.

The entertainment software industry has been getting good cooperation from the police and Customs, but again has had few convictions. However, EPOE, which operates the enforcement program in Greece for some members of the entertainment software industry, carried out 1,284 investigations, seized 11,172 CDs containing pirate games and initiated 43 legal actions. In one case, arising out of a June raid near Athens, the court imposed a one-year jail term and a small fine of \$3,000. It is not known if the jail term was bought out, which is usually the case.

**CRIMINAL COPYRIGHT  
ENFORCEMENT STATISTICS  
2000**

<b>ACTIONS</b>	<b>MPA</b>	<b>IFPI</b>	<b>TOTAL</b>
Number of Raids conducted	43	1027	1,070
Number of indictments filed	43	372	415
Number of defendants convicted (including guilty pleas)	NA	195	195
Ratio of convictions to the number of raids conducted	NA	18,98% <sup>3</sup>	
Ratio of convictions to the number of indictments	NA	52,41% <sup>4</sup>	
Total number of cases resulting in jail time	NA	186	186
1 to 12 months		161	161
13 to 24 months		25	24
25 to 36 months		-	
37 to 60 months		-	
Over 61 months		-	
Number of cases resulting in criminal fines	NA	92	92
Total amount of fines levied	NA	US\$ 86.000	US\$86,000
US\$0-\$1,000		12	12
\$1,001-\$5,000		80	80
\$5,001-\$10,000		-	
\$10,000 and above		-	
Total amount of restitution ordered) in how many cases (e.g. \$XXX in Y cases)	NA	NA	NA

<sup>3</sup> Low due to the escapes during the raids.

<sup>4</sup> Low due to adjournments of the trials and not due to acquittals.

## Civil Enforcement

### End-user civil cases

Last year, IIPA reported on four civil end-user cases. At present eight cases are pending. BSA received two judgements in 2000, awarding damages equal to two times the retail price of the infringed works. Courts have been getting more efficient at ordering civil *ex parte* searches (although subsequent litigation remains slow).

### CIVIL COPYRIGHT ENFORCEMENT STATISTICS 2000

ACTIONS	BSA
Number of civil raids/searches conducted	2
Post Search Action	
Cases Dropped	
Cases Settled	4
Cases Adjudicated	
Value of loss as determined by Court (\$USD)	
Judgment Amount (\$USD) in how many cases (e.g. \$XXX in Y cases)	
US\$0-\$1,000	
\$1,001-\$5,000	
\$5,001-\$10,000	
\$10,001-\$20,000	1
\$20,001-\$50,000	
\$50,001-\$100,000	
\$100,000 and above	
Settlement Amount (\$USD) in how many cases (e.g. \$XXX in Y cases)	US\$50,687 in 4 cases

## DEFICIENCIES IN STATUTORY LAW AND REGULATIONS

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### Copyright Law

As noted in previous IIPA submissions, Greece's Copyright Law is modern and, at the theoretical level at least, contains a deterrent penalty structure. However, there remain defects in the law in addition to the enforcement defects noted above. IIPA recommends the following amendments, or regulations as appropriate, to correct some of the key problems in the law:

- eliminating the levy on computer hardware, or at least ensuring that its provisions do not immunize the unauthorized downloading of online databases and other protected works (Article 18);
- eliminating the public performance and broadcasting compulsory license of the neighboring right in a videogram (Article 49);

- clarifying that U.S. performers and record and film producers will receive their share of rental and private copying levies and proceeds under the Article 49 compulsory license. Denial of this right would violate Greece's national treatment obligations under both the Berne Convention and the TRIPS Agreement. It is hoped that the recent Supreme Court opinion in the Junior's TV case (which applied U.S. law to determine authorship and ownership) will help in resolving the national treatment issue.
- clarifying retroactive protection for performers and record producers; and
- restoring or clarifying the mandatory minimum 15,000 drachma amount to buyout a less-than-two-year jail term.