

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2001 SPECIAL 301 REPORT

LITHUANIA

EXECUTIVE SUMMARY¹

The biggest problem confronting the copyright industries in Lithuania is the absence of any on-the-ground enforcement by police or prosecutors, and especially by customs officials at the Lithuanian border. Lithuania took a proper first step to fix its laws in 1999, and it has joined the appropriate treaties over the past several years. But the failure to engage in effective domestic criminal enforcement is destroying the possibility of establishing a legitimate Lithuanian market for music, films, or computer programs including business and entertainment software.

Even more serious is the poor border enforcement situation. Due to the geographic location of Lithuania near Eastern and Central European countries that are major producers of illegal material including optical media products, and those with established markets for these products in Central and Western Europe, Lithuania is a major transshipment point for this material. Lithuania must address these problems by implementing better customs procedures and by using the new criminal law to punish organized pirate operations.

In fact, to have an enforcement regime compatible with the World Trade Organization TRIPS Agreement, Lithuania needs to implement its criminal, civil, administrative, and border provisions and get these measures into actual effective operation. In 1999, Lithuania took a major step forward to improve its legal regime with the adoption of a comprehensive Copyright Act to replace what was essentially the revised Soviet Civil Code. A second major positive step was adherence to the Geneva Phonograms Convention, effective January 27, 2000. This fixed the long-standing legal deficiency of the absence of a point of attachment for foreign sound recordings.

Two other important legal reforms were made in the last year. In January 2001, the Customs Code was revised and reportedly includes the all-important *ex officio* authority to allow customs authorities to properly seize material at the border. In May 2000 Lithuania adopted improvements to its Criminal Code. These provisions must now be put to use by judges and prosecutors to stop the organized criminal piracy activities within Lithuania. Also, the Customs Code revisions reportedly granting *ex officio* authority are important to be able to take effective enforcement actions against commercial piracy operations at the border. In short, all of these new provisions must now be properly implemented and put into action.

On the ground enforcement has been almost non-existent, and weaknesses in the legal and enforcement regime to date have been exploited by the pirates. Lithuania is a major exporter of pirated copyrighted materials to Eastern, Central and Western Europe, and this has seriously harmed other markets, in Latvia, Estonia, and Poland, for example, as well as in some Western markets. It is estimated that the scope of this problem amounts to several million CDs

¹ For more details on Lithuania's Special 301 history, see IIPA's "History" Appendix to filing.

per year. The domestic Lithuanian market is flooded with pirated cassettes, videos, game cartridges, and optical media product, almost all of which are produced elsewhere. A starting point for Lithuanian enforcement, in addition to implementing the changes to the criminal code, would be for police to commence raids and seizures, as well as to implement administrative actions, for example, taking licenses away from infringing kiosks. Lithuania also needs to commence effective enforcement activity at the borders against infringing product. Last, the 1999 Copyright Law provisions (Article 69) must be properly implemented by courts to grant *ex parte* search orders against end-user pirates, especially important for the software industry.

As a result of these overall enforcement failures, and the harm caused to many countries in Eastern, Central, and Western Europe as a result, IIPA recommends that Lithuania be placed on the Special 301 Priority Watch List this year.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
AND LEVELS OF PIRACY : 1999 - 2000

INDUSTRY	2000		1999	
	Loss	Level	Loss	Level
Motion Pictures	1.5	80%	NA	100%
Sound Recordings / Musical Compositions	7.0	85%	5.0	85%
Business Software Applications	NA	76%	NA	80%
Entertainment Software ²	3.5	98%	NA	NA
Books	NA	NA	NA	NA
TOTALS	12.0		5.0	

COPYRIGHT PIRACY AND ENFORCEMENT

Lithuania as a Transshipment Point for Pirated Traditional And Optical Media Products

Only in 1999 did Lithuania begin to modernize its copyright legal regime with the adoption of a new copyright law; however, without the Customs Code or Criminal Code amendments (only adopted in 2000 and early 2001) to properly enforce copyright infringement, Lithuania to date has been ripe for piracy operations. Given its geographical location between East and West Europe, and its totally ineffective border enforcement, Lithuania has, over the last several years, become a pivotal regional exporter of pirated material – audio CDs, CD-ROMs containing entertainment and business software, videos and audiocassettes, and videogame cartridges. Most of the material is produced in other countries, especially Russia and Ukraine. It is then shipped through Lithuania to other countries in Eastern, Central, and Western Europe.

² IDSA estimates for 2000 are preliminary.

The Customs officials, until January 2001, did not have the proper (*ex officio*) authority to do their jobs, and still do not have the proper equipment and training to make much of an impact on the large quantities of material produced in the East and shipped to the West. To make matters worse, Customs officials reported to IIPA that there are many shipments of Russian materials that are entering Lithuania, with the Russian distributor claiming the same invalid licenses to distribute there (i.e., "within the territory of the USSR"). Lithuanian officials claim they have no means of verification, and no ability to stop this material.

Similarly, the police and prosecutors are hampered by basic legal deficiencies and evidentiary problems. The legal deficiency, until May 2000, was simple – the Criminal Code did not apply deterrent penalties to copyright violations. The only way to stop organized pirate activities is by the actions of the police and prosecutors imposing criminal fines and jail sentences. The new Criminal Code provides penalties including fines and up to two years imprisonment. These penalties must be applied to organized criminal syndicates working in Lithuania to stop the piracy. Also, in May 2000, the prosecutors were given the authority to commence intellectual property infringement cases on their own volition (that is, without a specified complaint from the copyright or neighboring right holder). This authority must now be utilized by the prosecutors to engage in effective enforcement against IPR crimes.

The evidentiary problem is also easily fixed. As with other countries in the region, the problem is that the police, prosecutors and courts will not apply a presumption of ownership or authorship. The police reported numerous times to IIPA officials that even if they conducted raids, the perpetrators would likely not be prosecuted because the police were required to get an expert opinion (that can include a "recognized" specialist) to determine proof of ownership for each copy seized. Further, expert witnesses are needed for many cases to proceed; the software industry has reported that it has not been confronted with this problem, but other industries have been. Private citizens, even though expert in this area of the law, are often barred; thus, only designated experts in some cases are allowed to serve this function, completely hampering those cases from moving forward.

The Motion Picture Association (MPA) for example, notes that expert reports have to be filed for every videocassette seized. Still, the MPA has brought cases and notes that they have been processed relatively quickly (six months), but cases have been postponed because of technicalities found in the papers submitted. As of October 2000, the MPA reported that their local distributors had filed 120 cases, about half of which included rulings against accused pirates.

The copyright industries report that police and prosecutors are similarly unable to deal effectively with false contracts that are common in this region. Last, in meetings judges have reported to IIPA that there were some difficulties with legal entities commencing copyright suits; however, some industries (software) report that this has not been a problem for them.

There is one known CD manufacturing plant in Lithuania. According to the recording industry, this plant has not implemented the Source Identification Code (SID) program. It has also been reported that there may be at least two additional plants, but their existence has not been confirmed.

Effective Enforcement Efforts to Combat Piracy Are Needed

It has been almost two years since the Copyright Act amendments were adopted. It is time for Lithuanian authorities – the police, prosecutors, courts as well as border authorities -- to take concrete actions to ensure that Lithuanian laws are actually being enforced in practice. While Lithuania has now implemented the legal reforms necessary to provide such enforcement-related measures (with the copyright law, customs code, and criminal code revisions), it has not taken the appropriate steps to deter piracy in Lithuania, either within the domestic market or at its border even under this meager legal regime.

The IIPA and its members have devoted significant time and resources to assist Lithuanian officials with enforcement, as well as to understand the substantive copyright law obligations of a modern and effective legal regime. In 1998 and 1999, a three-part training program was organized and undertaken by the IIPA and its members in the U.S. and in Lithuania (as well as Estonia and Latvia) to train police, customs officials, prosecutors, judges and government officials in the ministries and in the Parliament on copyright enforcement matters. Other programs have also been undertaken by U.S. and European copyright industry officials.

Over the past several years, Lithuanian officials have adopted several plans to improve the domestic interagency infrastructure to support anti-piracy efforts. For example, in 1997, the Ministry of Internal Affairs set up a Special IP Division for enforcement (including the Taxation Police). Also, copyright cases are heard in the Regional Courts, as opposed to the District Courts, and this has been viewed by the industry as a positive step. In addition, also in 1997, a judicial training center was established with the support of the Ministry of Culture, to help raise the level of judicial expertise on IPR issues.

However, these efforts have so far not resulted in effective enforcement, especially not at the border. The levels of piracy for sound recordings and music was 85% in Lithuania in 2000 (the same as in 1999). Estimated trade losses due to recording and music piracy was \$7 million in 2000, up from \$5 million in 1999. Cassettes and CDs are pirated in almost equal amounts. Apart from the very high levels of domestic piracy, one of the main problems for the recording industry is that Lithuania is the main transit country for pirate CDs from the Ukraine, Russia and Belarus, that are going to Estonia and Latvia, as well as to Poland and other neighboring countries. Before Ukraine took over as the region's number one pirate CD producer, Bulgarian pirate CDs were being shipped through Lithuania. For example, Polish Customs officials have instigated 49 criminal cases with regard to smuggling of pirate CDs through the Polish-Lithuanian border (47 of the cases being against Lithuanian citizens). However, investigating the transshipment of CDs through Lithuania has proven very difficult – shipments in transit cannot be seized by Lithuanian customs.

In general, the recording industry reports that prosecutorial enforcement remains almost non-existent; there has been some, but not enough, cooperation from the enforcement authorities. Successful enforcement actions by the relevant authorities, including the Economic and Tax Police, take place, but not as often as is needed. For example, there have been raids taking place; but, there is no deterrent effect to this activity. In fact, of approximately 51 raids undertaken in 2000 (up from 28 in 1999), most resulted in the seizure of only a few hundred CDs or cassettes.

For the most part, court cases against pirates are brought as administrative proceedings. These proceedings are slow and ineffective; the penalties that do exist are not deterrent. Until

last year, the number one problem was the lack of criminal penalties for copyright piracy; now that such penalties exist, they must be put to use. In fact, the recording industry tried to pursue 9 criminal prosecutions in the past year, but none have resulted in convictions to date. The Lithuanian government and authorities should work with the copyright industries and bring prosecutorial actions against the criminal organizations in Lithuania to deter piracy.

In January 2000, Lithuania finally joined the Geneva Phonograms Convention; this was one of the terms in the (un-ratified) 1994 Bilateral IPR Agreement with the U.S. Because it took so many years to join this treaty and to provide protection for foreign sound recordings, during the 1990s Lithuania became a haven for sound recording piracy. There are many examples of the size of the illegal CD piracy problem in Lithuania and the disruption it is causing in other countries. For example, in July 2000, the Lithuanian police, working with the IFPI, were able to breakup one organized criminal enterprise smuggling Ukrainian CDs into Lithuania. Over 110,000 pirated CDs were seized. The reach of the Lithuanian organized crime activities was indicated in December 2000, when London police arrested three Lithuanians with over 10,000 CDs originating from the illegal plants in Ukraine; the material seized included top best-seller repertoire such as the "Beatles 1" CD. In another case, in February 2000, a Lithuanian woman was arrested by the Polish police for attempting to smuggle 9,000 CDs, hidden in a secret car compartment, into Poland for sale there. In fact, in 2000, the recording industry did report a significant increase in the amount of material seized – over 140,000 CDs and 10,300 cassettes in 2000, compared with 5900 CDs and 2500 cassettes in 1999.

For the motion picture industry the lack of an effective anti-piracy regime in Lithuania is the major impediment to the development of business. Lithuania, though the largest of the three regional countries (Estonia, Latvia and Lithuania), has the least developed legitimate audiovisual market. Still, all of the MPA member companies are releasing legitimate films in local cinemas and on videocassette with subtitles and local publicity materials.

The distribution of pre-theatrical release titles on videocassette is the primary piracy problem now facing the nascent Lithuanian audiovisual market. Organized crime has come to dominate this trade, and titles are most often produced from clandestine camcordings from U.S. or Israeli theatres. These masters are first dubbed and then imported from Russia. Pirate cassettes are duplicated locally using the Russian-language masters. Many amateur Web sites posted by individuals can also be found marketing pirate videocassettes, VCDs and parallel imported DVDs. Cooperation with Internet Service Providers (ISPs) in Lithuania has reportedly been very good in removing such sites.

Relatively high-quality Lithuanian-dubbed pirate videos have also been reported in the past year, with packaging ranging from poor quality to sophisticated color video sleeves.

The legitimate video industry is trying to make inroads into this predominately pirate videocassette market, and local partners of several MPA members work closely with enforcement officials, particularly the Tax Police. These companies conduct extensive media campaigns, highlighting every enforcement action and every legislative initiative undertaken by the authorities.

Television piracy is also reported to occur in Lithuania, with small cable stations showing unlicensed blockbuster movies. There are currently four national television stations, 11 regional stations and 60-70 micro-cable television stations which appear largely unregulated.

The MPA estimates its losses in Lithuania were \$1.5 million in 2000; the video piracy rate is estimated to be 80%, and the broadcast piracy rate is estimated to be 50%.

The Business Software Alliance (BSA) reports that in 2000 there were 80 raids and seizures directed at flea markets, and at other resellers and end-users. Also, there were 49 administrative judgments at a lower court level and 10 at the higher (Appeals Court) level. Currently, there are six civil cases pending, and the BSA is assisting in 6 criminal investigations. There is one criminal case pending in court and 25 pending administrative actions. In addition, 16 cases were closed as a result of settlements reached between the respective parties.

The BSA reports that in Lithuania, the piracy rate was 76% in 2000; in 1999 it was reported at 80%. There are no figures available on trade losses in Lithuania from the business software industry.

Last, in relation to the Lithuanian government's use of software, BSA has for some time been negotiating the terms of a proposed Software Asset Management Agreement with the Lithuanian government. These negotiations remain ongoing.

The entertainment software industry, represented by the Interactive Digital Software Association (IDSA), reports that they have had a few successes with small-scale raids and the use of administrative sanctions in the past few years. However there is little or no police assistance with criminal cases unless they can prove a very high likelihood of success. In one instance in 2000, a computer CD production facility was successfully raided and closed by the police and over 6000 CDs, containing mostly entertainment software, were confiscated. There were no reports on whether anyone was ultimately prosecuted for this illegal activity.

The entertainment software industry reports that most of the illegal material (especially pre-recorded discs) comes from Russia and Belarus, but that there is evidence that material from Southeast Asia is also coming into Lithuania because of the poor border enforcement. The material is then stored in Lithuania for distribution throughout Eastern and Central Europe, as well as for distribution in Lithuania itself.

Additional Protection and Enforcement Obligations

Lithuania currently participates in the U.S. Generalized System of Preferences (GSP) program, which offers duty-free imports of certain products into the U.S. from developing countries. In order to qualify for such unilaterally granted trade preferences, the U.S. Trade Representative must be satisfied that the country meets certain discretionary criteria including whether it provides "adequate and effective protection of intellectual property rights . . .". At the same time that Lithuania caused millions of dollars of losses to the U.S. due to piracy, it exported \$3.3 million worth of products without duty into the U.S. in 1999 (the last full year of available GSP statistics), and over \$2.6 million in the first 10 months of 2000. Lithuania should not continue to expect such favorable treatment at this level if it is not providing adequate and effective protection and enforcement of copyright material.

LEGAL REFORMS – COPYRIGHT LAW, CRIMINAL CODE, CUSTOMS CODE, AND RELATED ISSUES

Lithuania made important revisions to its Copyright Law in 1999, finally replacing the outmoded Soviet Civil Code. Plus, in May 2000 with the Criminal Code revisions and the January 2001 Customs Code reforms, the important copyright enforcement laws have now been updated.

However, even with this impressive list of legal reforms, the Lithuanian IPR legal regime is currently incompatible with the World Trade Organization (WTO) TRIPS Agreement's enforcement obligations found in Articles 41 through 61 because it has taken a long time to get these reforms adopted and copyright and neighboring rights violations are not currently enforced. Since, on December 8, 2000, the WTO's General Council approved the accession of Lithuania to the WTO, it must bring its enforcement regime into compliance quickly. Before acceding to and in order to comply with the WTO TRIPS obligations, Lithuania must put all of its enforcement tools into working order; this includes its Criminal Code, Customs Code, Civil Procedure Code, and any appropriate administrative sanctions. All of these provisions are part of an enforcement arsenal necessary to fight commercial piracy. For example, the Criminal Code must not only contain the appropriate provisions, but must be put into action, so that fines and jail sentences for IPR violations act as deterrent penalties. Businesses and kiosks should lose their licenses under administrative sanctions if they are caught selling infringing materials.

It has taken eight years for Lithuania to transform its Copyright Law and its Criminal Code and Customs Code from the old Soviet-style one to a system that at least in black letter law complies with most of the modern bilateral and multilateral standards. Hopefully, the implementation of these new laws will be acted upon quickly.

The history of Lithuania's legal (and political) reform has of course been compacted into an approximate ten-year span. In July 1992, Lithuania signed a bilateral Trade and Investment Framework Agreement with the U.S. in which it committed to provide intellectual property rights protection. On April 26, 1994, Lithuania and the U.S. entered into a Trade Relations Agreement and a Bilateral Intellectual Property Rights Agreement. The Bilateral IPR obligations, meant to bring the Lithuanian law up to Berne and Geneva Phonograms Convention standards, were supposed to be in place by the end of 1995. Unfortunately, this Bilateral never entered into effect because Lithuania did not ratify it.

Still, Lithuania did join the Berne Convention on December 14, 1994, and after years of delay, it joined the Geneva Phonograms Convention effective January 27, 2000; it also joined the Rome Convention on July 22, 1999. These treaties were obligations of the Bilateral; but other obligations, notably the required enforcement obligations, have not been met. Because Lithuania is not yet a WTO member, joining the Geneva Phonograms Convention was an important milestone to assure protections for U.S. and other foreign sound recordings, by providing a point of attachment. Foremost, Lithuania must make it clear that it does provide protection for pre-existing sound recordings and works consistent with the requirements of the WTO TRIPS Agreement. For example, Lithuania must provide a minimum of 50 years of protection for foreign sound recordings created prior to January 27, 2000.

The history of copyright reform in Lithuania began in 1991. After regaining its independence from the Soviet Union, Lithuania amended its copyright and administrative law,

albeit only slightly, in May 1994. These 1994 amendments updated its old Soviet-style Civil Code with two new chapters that adopted a general framework for a Berne-compatible law, but which fell short of even the minimum standards of substantive protection. Also, these amendments fell far short of meeting TRIPS standards, especially with regard to civil and criminal remedies. In January 1996, a separate Law on Computer Programs and Databases was adopted, in part to provide laws compliant with the European Union directive on software.

Criminal Code Revisions

It took many years for the Lithuanian government to adopt amendments to the Criminal Code and Criminal Procedure Code. Now, these new fines and terms of imprisonment must be put into force. Until May 2000, the only extant criminal provision for IPR crimes was Article 142 from the Soviet Civil Code.

The IIPA has not been able to obtain a copy of the new Criminal Code (and is unaware of the scope of amendments to the Criminal Procedure Code). It is our understanding that the provisions include fines and a two-year term of imprisonment. Also, the revisions include penalties for infringements against the new digital rights, that is, rights management and technological protection measures, punishable by one and two year imprisonment terms, respectively, as well as fines.

IIPA members continue to urge the implementation of criminal penalties that are fully compatible with the provisions in the WTO TRIPS Agreement (Article 61). Criminal penalties should be imposed in such a way so that they vary depending on the nature of the infringing activities and the number of copies imported, reproduced or distributed, and there should be a provision for indexing fines in order to insure that the fines adjust with inflation.

Furthermore, where an infringement of copyright is established to be willful and on a commercial scale, fines and penalties should be significantly higher to deter such infringing activity. The Criminal Code should also explicitly provide that the terms of imprisonment and fines apply to each violation, in order to comply with Article 61 of the TRIPS Agreement. This will provide a real deterrent to infringing conduct. Last, there should be criminal penalties for (1) the unauthorized importation of parallel imports and (2) re-transmitting protected programs without authorization.

Finally, the Lithuanian law must include *ex parte* search orders at least as required by the WTO TRIPS Agreement in Article 50. This type of search order should be available for both criminal and civil cases, allowing a right holder with evidence of piracy to obtain, without advance notice to the alleged infringer, a court order for an inspection of equipment and the premises of the business suspected of piracy. Article 69 of the Copyright Act reportedly provides for such civil procedures.

Customs Issues

In January 2001, the Lithuanian Parliament reportedly adopted new provisions in the Customs Code granting the authority to customs officials to make *ex officio* seizures. Because IIPA does not have a copy of this newly adopted code, we are hopeful that it provides the authority to customs officials to: (1) search, on their own initiative (with or without a judicial

order), all persons, objects and vehicles that enter or leave Lithuania; (2) seize infringing copies of audiovisual works, including parallel imports; and (3) detain all persons in possession of such goods.

In meetings with IIPA and its members, Customs officials have in the past, complained that in addition to the lack of this proper *ex officio* legal authority, they also lack the proper training and resources to effectively conduct border enforcement. This must be corrected if Lithuania is going to deter piracy, since much of the pirated operations are imported from neighboring countries.

Copyright Law of 1999

In 1995, Lithuania began the legislative consideration of an entirely new Copyright Bill that was finally adopted in 1999. IIPA submitted detailed comments to the Parliament on the penultimate draft of the bill in October 1998, at the request of the drafters of the law and the government of Lithuania. Our comments expressed concerns that the Copyright Bill, although a major improvement over the existing Copyright Law of 1994 (Civil Code), still contained serious deficiencies that needed to be addressed if Lithuania was going to adopt a modern copyright law and an effective enforcement regime.

According to the Copyright Law of June 1999, the Ministry of Culture was appointed by the government (effective November 17, 1999) as the agency responsible for the implementation of the copyright law. Also, a special "Copyright Board" was formed effective January 2000 under the Law (Article 63); it includes representatives of the copyright industries to consider enforcement activities.

The Copyright Law (Act No. VIII-1185) was finally enacted on May 18, 1999; the date of entry into force was June 9, 1999. The Act was a major step forward for the legal regime in Lithuania; unfortunately, it still contains significant deficiencies.

Below is a summary of the key deficiencies in the law, in the opinion of the IIPA. Many of these were also included in our October 1998 comments to the Lithuanian Parliament, and were not resolved. With respect to substantive copyright law issues:

- The transitional provisions of the Copyright Law should explicitly provide for protection for preexisting works and sound recordings in Article 71 (i.e., full retroactivity consistent with Article 18 of Berne and Article 14.6 of TRIPS).
- Producers of sound recordings should be vested clearly with exclusive rights in respect of broadcasting and communication to the public. The law should make it clear that the remuneration claim does not substitute for the exclusive right.
- The law should provide for a term of 95 years from first publication in the case of audiovisual works, or where the author is a legal entity.
- Amendments should be made to initially vest all economic rights in an audiovisual work in the producer of the work, subject to agreements to the contrary.
- The definition of an "author" of an audiovisual work is very broad and should be clarified.

- The law should provide for clear presumptions of authorship and ownership that would include not only “natural persons” but also a “legal person” (“legal entity”). This should include, for example, a provision that the producer (including a legal entity) of an audiovisual work or a sound recording is the initial owner of all economic rights. This would avoid the problem of proving ownership for illegal copies of works seized, and would permit one entity (producer) to commence legal actions on behalf of the authors and performers.
- The scope of the Lithuanian Copyright Law should apply to works or phonograms first or simultaneously published in Lithuania; the Act’s language requires clarification.
- The limitations on exclusive rights of copyright owners and producers of sound recordings should be narrowly tailored to fit the scope of the exceptions provided for in TRIPS. This includes: clarifying the TRIPS Article 13 tri-partite test and clarifying the vague scope of the “fair practice” definition; narrowing the “personal use” exception; limiting the blank tape/recording equipment levies to analog (not digital) material; and, preserving a meaningful practice of the copyright owner to add copyright protection technology to copies.
- The provisions with regard to collective management should delete the provisions that over-regulate author and producer contracts, make the collecting society more democratic, and lower the mandated administration fees.

IIPA also continues to press for clarifications to various definitions in the 1999 Act.

One positive legal reform note in 2000 were the steps taken towards accession to the two 1996 WIPO digital treaties. On September 26, 2000, the Parliament approved Lithuania for accession to the WIPO Performances and Phonogram Treaty (WPPT); in December 2000 the Parliament was expected to, but then delayed, approval of the WIPO Copyright Treaty (WCT). In January 2001, Lithuania deposited its instrument ratifying the WPPT. Lithuania should be encouraged to quickly accede to both treaties and then to adopt provisions to implement them fully in order to protect against Internet and other forms of digital piracy.

In fact, in the 1999 amendments, Lithuania adopted some, but not all, of the provisions required by these treaties into its law. In particular, Lithuanian law must: (1) ensure that the right of reproduction covers temporary copies; (2) amend the Act’s right of communication to the public to make clear it applies to all disseminations, not just “transmissions,” and that there is no exhaustion of the distribution right by transmission and (3) allow right holders to fully enforce their rights against the circumvention of technological protection measures. Technological protection measures are the tools that right holders use to manage and control access to and copying of their works in the digital environment.

Although the Lithuanian amendments (Art. 64) cover some of these activities, full implementation would include a prohibition on the manufacture, importation, sale, distribution, or other trafficking not only in devices but also in services that are aimed at circumventing technological protection measures, as well as outlawing acts of circumvention (and not just the removal of a technological measure). The Lithuanian Copyright Act did add protections for so-called “copyright management information” that is attached to or accompanies a work, performance, or sound recording. However the Act does not provide the full panoply of rights

for the protection against the alteration, removal or falsification of this information but it excludes the reproduction and offering for distribution or dissemination activities.

The Copyright Law was amended to provide for the recovery of profits and statutory damages, in order to be consistent with the WTO TRIPS Agreement. The law sets punitive damages at three or four times actual damages, in the discretion of the court; this is to be determined by multiplying two or three times the retail price for each illegal copy sold. Lithuanian courts need to put these provisions into actual use.

In 2000, for example the BSA reports that there are six pending cases involving the revised damages law. The BSA reports that it was able to benefit from this law with several settlements with illegal end-users; the settlements involved damages agreed to at the statutory level. It is worth noting that the level of damages present in the Lithuanian law has attracted a good deal of adverse press, and has resulted in several parliamentary debates on the subject. There is a perception held by some that the penalties are too harsh, and there have been some unsuccessful attempts to roll back these penalties.

In sum, to fully comply with the WTO TRIPS enforcement obligations, IIPA and its members suggest that Lithuanian government officials must now implement the new laws in accordance with the obligations set out in the provisions in Articles 41 through 61 pertaining to civil, administrative (including customs regulations and authority) and criminal penalties. Last, the Copyright Law should be extended to cover other organizations representing the collective interests of right holders, including anti-piracy organizations besides the one included in the law now.