

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2001 SPECIAL 301 REPORT

# RUSSIA

### EXECUTIVE SUMMARY

---

On January 10, 2001, then U.S. Trade Representative Barshefsky announced that the U.S. government had accepted IIPA's petition to examine whether Russia continues to be eligible to receive duty-free trade benefits under the Generalized System of Preferences program. For the first 11 months of 2000, Russia exported goods valued at \$486.3 million to the U.S. which received preferential duty-free treatment under the GSP program, a 26.8% increase over the same period in 1999. At the same time, losses to U.S. industries from copyright piracy in Russia amounted to \$672.4 million, not including losses suffered by the entertainment software industry, which are not yet available.

These massive losses are accompanied by estimated piracy levels in all copyright sectors, except for the recording industry at 70% which exceed 89% of the market, and are as high as 94% in one industry.<sup>1</sup> Since 1999 the powerful and organized criminal syndicates which control much of the pirate market in Russia have continued to increase in strength and wealth.

Russia optical media piracy problem also continues to grow. It has both domestic production (though not yet on the scale of its neighbor Ukraine) and is a major destination and transshipment point for pirate optical media product from Asia and from Ukraine and other markets.

Raiding by the police and the municipal authorities is continuing but without follow-up and while there have been some deterrent sentences, all were voided by the general amnesty in May 2000. Without a major change in the imposition of deterrent penalties, it will be almost impossible for Russia to keep up with the piracy problem.

The major problem in Russia continues to be the lack of deterrence in the system, with low penalties meted out and currently only a small number of jail sentences for piracy, with at least two of those voided by the amnesty. IIPA again outlines its enforcement benchmarks – steps it believes necessary to start piracy levels on a downward trend.

Russia's legal regime is still deficient, despite a good copyright law. Retroactive protection is still not provided for U.S. sound recordings (or for pre-1973 "works"). IIPA notes with optimism, however, that ROSPATENT, the agency put in charge of copyright matters in 2000, has drafted amendments which solve the retroactivity problem and has proposed many new

---

<sup>1</sup>In an article in the IPR strategic Business information Database, dated July 23, 2000, Lieutenant-General Magomed Abdurazakov, deputy chief of the Main Department for Public Order in Russia, is stated to have estimated that in the case of videocassettes, audio products and computer software, the piracy rate is 90%. He called it one of the most profitable criminal businesses in Russia.

changes that seek to implement the new WIPO "Internet" treaties. Unfortunately, these amendments appear embroiled in the usual interministerial controversies that have often defeated reform attempts.

A number of amendments to the criminal, civil and administrative codes are necessary, and apparently pending, to improve enforcement. With one exception, these efforts have apparently languished in the Duma; the government has given them no support. The threat of deleterious amendments to the Civil Code remains, though the IPR provisions have now been broken off into Part IV of the Civil Code, which may improve the opportunity to defeat, or at least significantly improve and shorten, the current deficient and dangerous draft. All in all, Russia's copyright regime remains TRIPS-incompatible both substantively and with respect to enforcement.

Moscow City needs to repeal its stamp tax and Russia as a whole must adopt effective optical media regulations if it wants any chance to control growing pirate productions and imports.

For these reasons, IIPA recommends that the Russian Federation remain on the Priority Watch List and that the U.S. engage, through both the Special 301 and GSP process, much more aggressively to obtain enforcement as well as legislative reforms.<sup>2</sup>

**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                             | 250.0        | 90%   | 250.0        | 90%   | 312.0        | 85%   | 312.0        | 85%   | 312.0         | 95%   | 312.0        | 99%   |
| Sound Recordings / Musical Compositions     | 250.0        | 70%   | 200.0        | 70%   | 170.0        | 75%   | 165.0        | 65%   | 170.0         | 70%   | 180.0        | 73%   |
| Business Software Applications <sup>3</sup> | 124.4        | 89%   | 134.5        | 89%   | 196.1        | 92%   | 174.5        | 89%   | 298.2         | 91%   | 216.9        | 94%   |
| Entertainment Software <sup>4</sup>         | NA           | %     | 241.1        | 95%   | 240.8        | 97%   | 225.8        | 95%   | 223.0         | 93%   | 189.9        | 91%   |
| Books                                       | 48.0         | NA    | 48.0         | NA    | 45.0         | NA    | 45.0         | NA    | 45.0          | NA    | 45.0         | NA    |
| <b>TOTALS</b>                               | <b>672.4</b> |       | <b>873.6</b> |       | <b>963.9</b> |       | <b>922.3</b> |       | <b>1048.2</b> |       | <b>943.8</b> |       |

<sup>2</sup>For a history of Russia's involvement in the Special 301 process, see Appendix E.

<sup>3</sup>BSA loss numbers for 2000 are preliminary. In IIPA's February 2000 Special 301 submission, BSA's 1999 loss and level figures were not available. New figures were made available in May 2000. That figure appears above; the total losses for 1999 have been increased accordingly.

<sup>4</sup> IDSA estimates for 2000 are preliminary.

# COPYRIGHT PIRACY IN RUSSIA

---

## Optical Media Production Grows

Since IIPA's 1999 submission, the capacity to produce pirate optical media product (music CDs, videogames, VCDs and, increasingly-DVDs) has grown significantly. It is now estimated that the 13 Russian plants have at least a 150-million-unit capacity. Russia is also one of the largest destination points for pirate optical media product – most smuggled in from neighboring states like Ukraine and from pirate operations throughout Southeast Asia (Malaysia, Thailand, Hong Kong, Macau, etc.).

Large seizures of pirate optical media product continued in 2000. In January 2000, the Ministry of the Interior's Economic Crime Unit raided a plant in Moscow operated by the "Storm" company and seized music CDs and other pirate optical media product and 2 million inlay cards destined for the domestic market and for export. As described below in the enforcement section, it is unlikely that this case will result in a criminal conviction.

In early September 2000, the film industry's anti-piracy organization, RAPO, seized 62,000 CD-ROMS containing titles in MPEG4 format (ripped from DVDs) at various Moscow metro stations. Since then, the program has been seizing between 5,000 and 10,000 such discs per week. The last raid was in December 2000, when RAPO seized 110,000 CD-ROM with MPEG4 titles. RAPO has recently identified two major CD plants suspected of producing these discs, one in Zelenograd near Moscow and the other in the Urals, Siberia. These CD-ROM are also now finding their way to the Baltics. The quality of this product is excellent and the discs sell for between 50 and 75 rubles (\$1.75-\$2.65). The titles have a voice-over in Russian, and appeal to PC users in Moscow, in particular. The investigation of these plants is in process; it is not yet clear that a criminal case will be commenced.

In its 2000 submission IIPA reported that in September 1999 the recording industry, assisted by the Ministry of the Interior and other agencies, seized over 12,000 mostly music CDs on the Belorussian border which were destined for shipment to Poland. This then led to the first-ever raid on a CD plant, Disk Press MSK, located in the Moscow region, that had begun operations in 1998 without the required license. This plant's production capacity was then about 5 million units annually. The investigation had started with a raid on a large distributor, CD Haus, where 5,000 music CDs and 2000 CD-ROMs with pirated software and games were seized. This led to the discovery that the product was manufactured by DPMSK. The search conducted at the plant netted over 100,000 pirate music and other CDs, 9 large containers with polycarbonate and ink and 500 stampers of popular U.S. and other musical artists. Two members of the reported "criminal gang" responsible were arrested. While IIPA reported this development in a positive light last year, the investigation is still continuing after over a year and five months, without the present prospect of an actual prosecution. The DPMSK owners have also been discovered to have connections to distributors of pirate product in both Poland and the Czech Republic.

Piracy of videogames in console and PC optical media formats continues to be rampant and the vigorous enforcement attempts and large seizures noted in IIPA's 2000 submission concerning activities in 1999 diminished due to the dangerous condition brought about by organized criminal elements controlling videogame piracy. However, RASPA, the Russian anti-piracy organization for the entertainment software industry, undertook many raids per month in the Gorbushka, Mitino and other markets as well as throughout Moscow's metro stations. RASPA

succeeded in seizing hundreds of thousands of Sony Playstation® and PC-based pirate games over the course of the year. IIPA has no further information on court actions but some were brought as a result of these raids. Nevertheless, follow-up and court action with deterrent penalties also continues as a core problem, the same as with piracy of other copyrighted products. The piracy rates in the area of videogames remains at an estimated 95%. Russian pirates take advantage of company localization of games into Russian and sell pirate copies throughout Russia. They also export a large quantity of the videogames localized in the Russian language to Israel.

While the majority of pirate optical media product continues to be smuggled, domestic Russian pirate production, which increased by 60 million units between 1999 and 2000, is reaching dangerous proportions. Illegal VCD, DVD and CD-R product is showing up in markets with increasing regularity. The VCDs are of the prerelease variety, which is typical in Asia. More troublesome are the pirate DVDs which have been “ripped” and Russian language tracks inserted and the appearance last year of large quantities of CD-ROM containing U.S. films in MPEG4 format. This process points to sophisticated clandestine mastering facilities operating in, or targeting, the Russian market. While these seizures from major distributors of optical media product and the CD plant are a positive sign, they must be followed by a vigorous campaign accompanied by convictions with deterrent penalties as well as an effective regulatory regime to control further pirate production.

## **Other Piracy Problems and Piracy Levels**

Video piracy around Moscow is down to an estimated 50%. But piracy outside Moscow ranges from 70% to 90%. Organized criminal gangs control the duplication and initial distribution of pirate videos. Distribution occurs through selected wholesalers that operate in large outdoor markets and through private “stores” that act as warehouses to replenish retail stock in a defined territory.

More progress has been made at the Gorbushka market; the piracy rate there is now estimated at 20%. However, both markets continue to remain major sale centers for nonvideo pirate product. Furthermore, as we reported in the 2000 submission, the increased availability of legitimate videos has resulted in demand for higher quality video product and counterfeits of good quality have begun circulation in Moscow. Prices of this product come close to legitimate prices. Continued raiding has moved retail pirate video distribution underground, but both this market and the Mitino market remain centers for distribution to other retailers in Moscow.

In 1999, IIPA reported that MPA’s anti-piracy organization, RAPO, discovered pirate DVDs in the markets, with Mitino market the primary point of distribution. RAPO investigated and initiated a criminal case against the pirate distributors. Several people were arrested in different cities and about 3,500 pirate DVDs of 15 MPA member company titles were confiscated. The results are discussed below under the section on enforcement.

In Briansk, in August 2000, RAPO seized 100 VCRs and 8,000 cassettes in raids on three apartments. In September, 42 VCRs were seized from a flat in Moscow along with 3,400 cassettes from a truck. In Ekaterinburg, 60 VCRs and 12,800 cassettes were seized from a lab, storage premises and two shops. In eight months, this pirate produced over 200,000 cassettes evidenced by documents seized at the premises. He is being prosecuted by the tax and economic crime police but the results are not known. In early November, in Zelenograd, RAPO seized 42 VCRs and over 5,000 pirate cassettes from a pirate known to the program for about three years. The

raid was done with Dept R of the Ministry of the Interior, since the pirate had alleged close connections with the local economic crime police. In December 2000, RAPO found 294 VCRs and 30,000 pirate cassettes at a lab in St. Petersburg. Finally, in February 2001, RAPO and the Moscow Economic Police seized 180 VCRs, and about 7,000 cassettes from a lab and storage facility in the city. From the above, it is clear that raiding activity remains substantial. However, significant piracy rate reductions will only come with criminal prosecutions and deterrent penalties.

Significant progress has been made in controlling broadcast piracy and the Ministry of Press, Television and Mass Media (formerly the Federal Service for Television and Radio [FSTR]) has been receptive to requests for assistance from RAPO. Problems of liaison have been corrected for the most part and RAPO now institutes two to three regulatory actions per month, and has initiated several criminal actions.

Cable piracy has all but disappeared in the Moscow region due to good cooperation between the Moscow TV Commission and RAPO, which is a member.

Although the recording industry conducted around 500 raids against music pirates in 1999 and seized about 1 million CDs and 2 million inlay cards and equipment with a total value of around \$11.3 million, music CD and audiocassette piracy levels hover at around 70%, despite this major raiding activity and the expenditure of major resources by IFPI. As reported also for 1999, Moscow and its region are accountable for over 60% of the nation's pirate market and constitute a key transshipment point. Audiocassettes are still the dominant format, but the CD market is rapidly growing. The prices of pirate audiocassettes are now practically the same as prices for legitimate product. In the market for local music the price of pirate CDs is close to the legitimate price; however, for international repertoire, there is still a price differential between pirate and legitimate product.

As noted above, the piracy level for entertainment software is 94% of the market. We have no information this year regarding software piracy in Russia

Because of the growing penetration of computers and the Internet in Russia, online piracy of music and sound recording in the MP-3 format is growing, as is online piracy of games. There is also a large number of hacker rings in Russia that have caused problems, particularly for the videogame industry.

Book piracy continues to flourish in the difficult Russian economy. While bestsellers were the target of the pirates in the early 90's, they have now turned to reference works and textbooks, a large market in Russia. U.S. textbooks are the victims of unauthorized translation and reproduction. Targets include books on computer science, medicine and law. As reported by Itar-Tass in September 2000, pirate reference works and textbooks were even being sold around the Moscow Book Fair. It reported that 100,000 pirate copies of one reference book, *Countries of the World*, were sold in Moscow.

Increasingly, the pirate book business is controlled by the Russia Mafia. The "hidden print run" or "overrun" problem, where printers of legitimate editions deliver additional unauthorized copies to Mafia distributors before delivering books to legitimate publishers remains. Pirate books and translations continue to be imported into Russia from Ukraine.

# COPYRIGHT ENFORCEMENT

---

## Criminal and Administrative Enforcement

Inadequate criminal enforcement cutting across all copyright industries remains the most glaring deficiency in the Russian copyright system. It is this lack of effective criminal enforcement that has kept piracy levels at unprecedented high levels (see the trade loss and piracy rate chart above). The federal police and the new IP unit plus Unit "R" in the Ministry of the Interior have generally been cooperative in running raids against major pirates. At the retail level, however, it is now clear that antipiracy actions must be conducted by municipal authorities and in these cases pirates are subject to administrative, not criminal, remedies.

To assist in combating piracy, an Alliance for IP Protection was formed in early 2000 with IFPI Moscow, RAPO, BSA and RASPA (representing the videogame industry) joining together. The activities of this organization have been limited to training activities.

Growing out of the 1999 raids that resulted in the seizure of 3500 DVDs of 15 MPA member titles, two of the accused were sentenced, in November 2000, to three years' imprisonment by the Meschansky District Court in Moscow, but were able to avail themselves of the amnesty proclaimed by the state Duma in May of 2000 and were released. It is hoped that these lengthy sentences are indicative of a change in attitude toward piracy by the Russian courts and judges.

The local antipiracy organization for the film industry, RAPO, conducted a total of 1,949 raids in 2000, seizing over 655,000 pirate videocassettes and over 171,000 pirate CD-ROMs containing films in MPEG4 format.

In 2000, RAPO initiated police raids on 98 clandestine video and optical disc duplication labs and distribution centers. These raids resulted in the seizure of hundreds of VCRs and tens of thousands of illegal cassettes, optical discs, sleeves and false holograms. 85% of the titles concerned were MPA titles. In addition, hundreds of VCRs and thousands of pirate cassettes have been seized by the police (mostly outside Moscow) without the direct assistance of RAPO.

In 2000, RAPO has more than doubled the number of decisions obtained in criminal cases to a total of 80. It has organized an average of two to four raids every week and, since the beginning of the 2000, has initiated 197 criminal cases under Article 146 (copyright infringement) and - article 171 (illegal business) of the Criminal Code. To date, there have been approximately 57 decisions resulting primarily in the confiscation of the illegal product and criminal fines. Despite a higher level of raids and criminal actions commenced, however, prosecutors continue to regard copyright offenses as minor crimes. On far too many occasions, they dismiss cases citing a lack of public interest, particularly when RAPO is not directly involved. This is likely to continue until the copyright law can be amended and copyright offenses can be listed as serious crimes.

RAPO has sought to develop closer relationships with police and prosecutors in 2000. This strategy has been successful to date and includes victories in 14 cases, mostly in Moscow and the Moscow region, where pirates were charged under Article 146 of the Criminal Code and the sentences were from one to three years in prison. However, some of these cases were subject to the May 2000 amnesty but at least the judges imposed the longer sentences

Large-scale raids by the recording industry also were conducted in and outside of Moscow. Activities in Moscow and other cities in Russia resulted in closing 11 recording studios, 11 wholesale outlets and warehouses, and around 44 retail outlets. Some actions were initiated regionally. In March 2000, the tax authorities and other enforcement agencies conducted a number of raids in the Rostov region. Altogether more than 50,000 audiocassettes, 12,000 videos and 90,000 inlay cards were seized. The director of the RonEeS audiocassette manufacturing plant was arrested and a criminal case begun. The recording industry also assisted authorities in 180 investigations resulting in 20 criminal cases. The industry reports, however, that most of these cases were later dismissed or were turned into administrative cases with *de minimis* fines.

Through RASPA, many IDSA member companies also undertook raids of larger targets looking to criminal prosecutions. However, most raids involved seizing product in the local markets in cooperation with Department R of the Ministry of the Interior and the Economic Crimes Unit. IIPA has no statistics on the total number of seizures or on cases commenced and convictions obtained.

**CRIMINAL COPYRIGHT  
ENFORCEMENT STATISTICS**

**2000**

| ACTIONS  | MPA   | IFPI          | TOTAL         |
|--|-------|---------------|---------------|
| Number of Raids conducted  | 1949  | 514           | 2463          |
| Number of indictments filed  | 197   | 773           | 970           |
| Number of defendants convicted (including guilty pleas)                        | 57    | 54            | 111           |
| Ratio of convictions to the number of raids conducted                          | 2.9%  | 10.5%         | 4.5%          |
| Ratio of convictions to the number of indictments                              | 28.9% | 7%            | 11.4%         |
| Total number of cases resulting in jail time                                   | NA    | NA            | NA            |
| 1 to 12 months   |       |               |               |
| 13 to 24 months  |       |               |               |
| 25 to 36 months  |       |               |               |
| 37 to 60 months  |       |               |               |
| Over 61 months   |       |               |               |
| Number of cases resulting in criminal fines                                    | NA    | NA            | NA            |
| Total amount of fines levied   |       |               |               |
| US\$0-\$1,000  |       |               |               |
| \$1,001-\$5,000  |       |               |               |
| \$5,001-\$10,000   |       |               |               |
| \$10,000 and above   |       |               |               |
| Total amount of restitution ordered) in how many cases (e.g. \$XXX in Y cases) | NA    | \$7.7 million | \$7.7 million |

Clearly, these results will not succeed in significantly reducing piracy levels in Russia for some time. Any reduction that does occur will be achieved only through the massive use of resources to take product off the streets through raiding activity without the concomitant deterrence of prosecutions and deterrent penalties.

## Administrative Enforcement

Retail cases are increasingly handled under administrative machinery, resulting in very small fines, or none at all. While pirate product is generally confiscated, shop operators are normally not the owners and the latter seldom get caught and fined. The recording industry and the motion picture industry continue to report that, as in 1999, administrative raids have been positive and in 2000, RAPO is able to average three to four Administrative Court decisions against pirate retailers that order illegal product to be confiscated and that impose small fines. This has resulted in a reduction in the video piracy level in the Gorbushka market to 20%. However, this has involved the employment of huge resources, since administrative penalties remain totally inadequate to deter over the long term. Statistics below show the significant number of cases but the *de minimis* penalties.

In a hopefully positive development, Moscow Mayor Lushkov announced prior to the 2000 end-of-year holidays that he was going to close the Gorbushka market altogether. However, following protests, he withdrew this threat, at least temporarily, allowing for a boom in sales of pirate product at year's end. Recent reports are that he is seeking input on how to rid the market of pirate product by restructuring it. Needless to say, the industry is only cautiously optimistic.

### ADMINISTRATIVE COPYRIGHT ENFORCEMENT STATISTICS 2000

| ACTIONS   | MPA  | IFPI    | TOTAL |
|---|------|---------|-------|
| Number of raids/searches conducted  | NA   | 514     |       |
| Number of administrative cases brought by agency                              | 1367 | 259     | 1626  |
| Number of defendants found liable (including admissions/pleas of guilt)       | 1462 | 259     | 1721  |
| Ratio of convictions to the number of raids conducted                         | NA   | 38.1%   |       |
| Ratio of convictions to the number of cases brought                           | NA   | 75.7%   |       |
| Number of cases resulting in administrative fines                             | NA   | 159     |       |
| Total amount of fines levied  |      | \$2,500 |       |
| US\$0-\$1,000   |      | 159     |       |
| \$1,001-\$5,000   |      |         |       |
| \$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    |

## Civil Enforcement

RAPO has brought and won a few civil cases in 2000 (civil add-ons to criminal prosecution), including one case in Nizny Novgorod where 160 VCRs were given to RAPO for distribution among its members. A second victory in St. Petersburg against a major duplicator and distributor resulted in a damage award of U.S.\$80,000. This latter case was particularly important because it involved an interpretation of a poorly written provision in the copyright law. RAPO filed a second criminal case against this individual who was subsequently arrested, had all of his equipment confiscated (including 1,500 VCRs), and is now in prison awaiting trial.

### CIVIL COPYRIGHT ENFORCEMENT STATISTICS 2000

| ACTIONS   | MPA |
|---|-----|
| Number of civil raids/searches conducted                            | 17  |
| Post Search Action  | NA  |
| Cases Dropped   | NA  |
| Cases Settled   | NA  |
| Cases Adjudicated   | 5   |
| Value of loss as determined by Court (\$USD)                        | NA  |
| Judgment Amount (\$USD) in how many cases (e.g. \$XXX in Y cases)   | NA  |
| US\$0-\$1,000   |     |
| \$1,001-\$5,000   |     |
| \$5,001-\$10,000  |     |
| \$10,001-\$20,000   |     |
| \$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) | NA  |

## IIPA and IIPA Member Enforcement Objectives and Benchmarks

In the submissions of the last four years, IIPA outlined a series of benchmarks which the USG has periodically provided to the Russian government on improvements needed in Russia's enforcement system. To date, these have not been implemented but would go far to moving the enforcement regime forward.

In addition to taking more forceful and consistent enforcement actions in 2001, the Russian government needs to take a number of structural and political steps to make progress against the massive levels of piracy threatening the very existence of their own copyright industries. The following recommendations were made in 1997-2000. While the Russian government has not seen fit to implement any of these obvious measures which remain fully valid today, it is hoped, given the incentive of a strong bilateral engagement under Special 301 as well as the GSP process, Russia can be persuaded to move this agenda forward:

**The President and the Prime Minister should issue a decree or internal directive making copyright enforcement a high priority.**

A newly formed Interministerial Task Force (the previous one is now moribund) and all enforcement agencies must be directed to treat commercial copyright infringement as a serious crime that should be dealt with *ex officio* by all enforcement authorities. Customs should be taking actions to enforce copyright laws at the border. The Public Prosecutor's Office must be tasked to vigorously prosecute copyright offenses; this is critical, since police officials often refuse raiding requests on the grounds that prosecutors will not followup with prosecutions. Such directives should be issued by the President and/or Prime Minister in order to obtain the attention of the various ministries.

**The Supreme Court and Supreme Arbitration Court should issue an explanatory instruction to the lower courts concerning copyright enforcement.**

The Supreme Court and Supreme Arbitration Court should base such instruction on their review and analysis of existing court practice in the area of IPR enforcement. The instruction should contain clarifications of certain points of law that are currently subject to debate among judges, prosecutors and law enforcement officials. Judges should be instructed to consider infringements of copyright and neighboring rights as serious crimes.

**A permanent interministerial task force on enforcement should adopt a binding plan to coordinate nationwide enforcement by all relevant agencies.**

There are currently no clear governmental strategies and no clear lines of authority for copyright enforcement in Russia. The Ministry of the Interior already has the lead responsibility as the major criminal enforcement agency in Russia, working with other agencies, like the Anti-Monopoly Ministry, Customs, and the Ministry of Justice, playing their appropriate roles. The Task Force should meet at least once per month and deal separately with copyright matters focusing on those issues causing the largest losses for Russian and foreign right holders. It should be headed by one of the deputy prime ministers.

**Enforcement (police and customs) and prosecutorial pools should be established in each major city and region.**

Piracy enforcement requires specialized knowledge and focused resources. Piracy rings are sophisticated and often have international connections. Only organized enforcement authorities can successfully curb the illicit activities of organized crime syndicates. Antipiracy actions targeted at the Russian Mafia could boost government and public confidence that economic crime can be dealt with. For example, the Economic Crime Units (at both the militia and federal levels, i.e., Interior Ministry) specializing in IPR cases should be properly manned and counterparts should be set up in other major cities outside Moscow. Customs should also be involved. In addition, IIPA recommends that prosecutors be brought fully into this system; it is imperative that prosecutors develop more specialized knowledge about IPR cases.<sup>5</sup> Without

---

<sup>5</sup>We are told that because prosecutors and judges are not part of the executive branch of government, they do not normally participate in any groups or pools with police, Customs, etc.

deterrent financial penalties and imprisonment, experience shows that piracy, indeed economic crime in general, cannot be brought under control.

**A plan should be formulated and commenced for the training of judges, prosecutors, magistrates, and police as a regular part of ongoing enforcement efforts.**

The U.S. and EU governments and the private sector, including IIPA members, stand ready to assist in this objective. A comprehensive training program has been proposed by the U.S. government to the Russian government and one or two sessions have been held in past years. This program, which also relies on IIPA members, must be continued and more training undertaken if the full benefits of these initial training programs are to be realized.

## **GENERALIZED SYSTEM OF PREFERENCES (GSP) PROGRAM**

---

Even with piracy rates among the highest in the world, Russia continues to receive significant trade benefits through the GSP program. The U.S. creative industries and the U.S. economy have also lost almost \$5 billion in the last five years (averaging near \$1 billion annually). Meanwhile, progress has been frustratingly slow. To bring other tools to bear on the problem, IIPA has twice petitioned the U.S. to deny, limit or suspend some or all of Russia's GSP benefits, which petitions were not accepted. Fortunately, on January 10, 2001, the U.S. government finally accepted IIPA's August 2000 petition to determine whether Russia continued to be eligible to receive these unilateral duty-free benefits amounting to close to 8% of Russia's total imports to the U.S.. In 1999, \$417.1 million of Russia's imports to the United States benefited from the GSP program, accounting for 7.3% of its total imports to the U.S. For the first 11 months of 2000, \$486.3 million of Russian goods entered the U.S. under the duty-free GSP code, representing a 26.8% increase over the same period last year. At the same time, losses to U.S. industries from copyright piracy in Russia amounted to at least 672.4 million in 2000, even without the entertainment software industry losses which are not yet available.

## **DEFICIENCIES IN THE STATUTORY AND REGULATORY REGIME**

---

### **Copyright Law and Enforcement Provisions**

While adoption of the criminal code amendments in 1996 (and discussed in previous submissions) was a critical step forward, these amendments were not altogether satisfactory and further amendments are necessary. Furthermore, it is critical that Russia extend full retroactive protection to all sound recordings and works and adopt civil *ex parte* search procedures. These are clear TRIPS requirements.

In its 1997-2000 submissions, IIPA reported on amendments to Russia's copyright law, and to the criminal code, criminal procedure code and its administrative codes that increased penalties for copyright infringement and added some improved enforcement procedures. However, some of these provisions are not TRIPS compatible. After many years, it appears that there may be some progress in achieving amendments to correct these deficiencies.

The most positive development has been the placing of responsibility for copyright matters under ROSPATENT, which also has the portfolio for patent and trademark matters. The agency then sought the help of WIPO and others and has now released a draft amendment to the copyright law which would correct the retroactivity deficiencies, make a few other changes and add provisions directed at implementing the WIPO treaties. Russia has also announced that it wants to join the WTO by the end of 2001, which will necessitate a major legislative push, both on the copyright law as well as on enforcement-related laws.

Recent reports are that the ROSPATENT draft is now being discussed in the Committee on Culture of the Duma and that some controversies have developed. The ROSPATENT draft contained the following new provisions:

- a. Retroactivity provisions appear to be satisfactory, though the transition period is too long;
- b. There is a new "making available" right for works and phonograms;
- c. The term of protection for works is extended to life plus 70 years, but left at 50 years for phonograms;
- d. There is some improvement in the computer program decompilation provision.

However, there were no provisions governing technological protection measures (TPMs) or rights management information (RMI), both WIPO treaties requirements. Protection for temporary copies was not clarified either.

This draft was introduced into the Duma and a new draft based on this prepared under the auspices of Mr. Komissarov, with the drafting assistance of RAO and ROMS, was also tabled. Mr. Komissarov is not a member of the Culture Committee and reports are that the ROSPATENT draft and this new draft are acquiring a number of opponents in other ministries and committees. The Komissarov draft, which has not been reviewed by IIPA, includes provisions on both TPMs and RMIs and may be sufficient to implement the WIPO treaties. However, it appears to contain other provisions that might be troublesome for IIPA members. At last report, the Committee on Culture may be creating a yet third draft.

While excellent news, there is still opposition within certain quarters of the Putin Administration and the Duma. The USG should engage closely with both bodies to ensure that the law passes both quickly and with provisions that repair all substantive TRIPS deficiencies and correctly implement the WIPO treaties. On the negative side, however, none of the long-pending amendments to the Criminal and related Procedure and Administrative Codes has been pursued.<sup>6</sup>

The following details once again some of the history and the enforcement-related amendments that must be passed:

In the December 1996 amendments to the Criminal Procedure Code (CPC), certain amendments were added that proved troublesome. These were supposed to be technical amendments to align the CPC with the June amendments to the Criminal Code, but the

---

<sup>6</sup> New amendments to the Administrative Offenses Code were passed in 2000 effective March 1, 2001. It does not get at the critical deficiencies but does increase the penalties for legal entities

amendments changed two key provisions, making enforcement more difficult. In 1995, the CPC was amended to place copyright violations under police jurisdiction (Article 126) and to provide for *ex officio* copyright infringement actions (Article 27). The 1996 revisions returned primary jurisdiction to investigate copyright infringement to the prosecutor's office, and required a formal complaint by the copyright owner to initiate a case. The former change will limit copyright enforcement because prosecutors have fewer resources than police and because copyright enforcement will now depend on the different priority given to infringement by each district's prosecutor. The latter change will limit copyright infringement complaints to the number that copyright owners can make and follow up, a number unlikely to be sufficient to address the magnitude of the piracy problem. Enforcement outside Moscow will be difficult where copyright owners do not have representatives. Industry and the U.S. government must press to reinstate the 1995 provisions of the CPC.

Amendments proposed in the past to the Criminal Code and the Criminal Procedure Code should now be adopted, in addition to the Copyright law amendments:

Current Article 146 of the criminal code deals with infringement of copyright and neighboring rights. It provides for fines (200 to 400 times the minimum wage, or U.S.\$700 to U.S.\$1400) or two to four months of the defendant's income, correctional labor (from 180 to 240 hours), or imprisonment (of up to two years) for unlawful acts which cause "grave harm"/"significant damage." Fines and jail terms are higher (doubling the fines, and up to five years) when the infringing acts are committed repeatedly or by an organized group. These fines and jail terms entered into effect on January 1, 1997. The following amendments should now be retabled and adopted in 2001:

1. *Adopt amendments to define the standard of "significant damage"/"grave harm" in Article 146.*

This standard must be defined to cover all cases in which the retail value of the pirated works exceeds a minimum amount. IIPA is told that other articles in the criminal code contain a "significant damage" standard and a monetary amount defining the standard is provided expressly. For example, the general theft provision in the new criminal code defines "significant damage" as 500 times the minimum wage (about US\$1,750). IIPA believes this general threshold is too high for copyright piracy and should be much lower. Not only is such a low threshold important 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 assess the situation and determine whether the case should be brought under the criminal code or the administrative code. There have also been proposal to further lower the threshold to 50 times the minimum wage, or US\$175, but we have heard no reports of this amendment pending.

In July 1995, Russia adopted administrative measures to enforce the copyright law. However, Article 150-4 of the administrative code also contains a reference to the "significant damage"/"grave harm" standard found in Article 146 of the Criminal Code. The uncertainty around this standard must be resolved if both criminal and administrative enforcement is to be effectively implemented in Russia.

2. Introduce and adopt amendments to add specific substantive and procedural provisions to the criminal code which would grant police the authority and legal basis to confiscate infringing goods, materials, and the equipment used to produce such items.

Before passage of the criminal code amendments, the copyright industries lobbied to include a provision on confiscation in the IPR provision of the criminal code; this was supported by a number of Russian enforcement agencies, including the Ministry of Interior. Legislators felt that because no other criminal code article contained such a specific confiscation provision, it was not possible to add it to Article 146.

There are general provisions in the Russian Criminal Procedure Code providing that the "objects (or tools) of crimes" can be destroyed by court order or by the decision of the investigator only when the criminal case is closed (often the investigator is entitled to do so only with the approval of the prosecutor). The criminal code also provides for the confiscation of personal property of a convicted defendant as a type of sanction. However, copies of infringing works or sound recordings very often do not constitute the personal property of a convicted person. As a result, confiscation of personal property as a sanction under the criminal code does not cover illegal copies. The 1995 amendments to the administrative code also provide for the seizure of pirate goods and equipment, but these seizures are only available for administrative offenses. Amendments made in July 1995 to the 1993 Copyright Law required mandatory confiscation of infringing works and sound recordings (Article 49) and allowed confiscation of equipment and materials used for their production. There do not appear to be any procedures or guidelines in effect on how to treat goods once seized. Both the civil and criminal laws need to provide procedures for police, prosecutors, and courts to hold onto confiscated goods for use at trial. IIPA is unaware of any amendments pending on these issues.

3. Introduce and adopt amendments to increase levels of fines because they are too low and therefore inadequate to deter commercial piracy.

For example, the cost of a single business application program for engineers (AutoCAD) costs approximately \$4,000. A commercial pirate of such a program will view low fines as a cost of doing business. These amendments must provide for increased penalties for copyright infringement. IIPA was told last year that the Duma's IP Working Group was considering amendments to increase the maximum jail term to seven years and to make copyright infringement a "most serious crime," which purportedly would trigger special attention by the enforcement authorities. We have no updated information but urge the U.S. to press for such provisions and for increased fines as well.

4. Introduce and adopt an amendment to the Criminal Procedure Code to return jurisdiction over criminal violations to the police authorities from the prosecutors.

The June 1996 amendment to the Criminal Procedure Code (in effect after December 25, 1996) was a serious setback to copyright enforcement. The 1995 amendments put criminal violations under police jurisdiction. The 1996 amendments returned jurisdiction to the prosecutors; the police may no longer be able to act *ex officio* without the consent of the prosecutors. Furthermore, the amendment removed from the category of a public crime any copyright offense other than that conducted by an organized group, necessitating a formal complaint. Again, last year it was reported that the Duma's IP Working Group was considering

legislation that would delete from Article 27 of the Criminal Procedure Code the reference to copyright crimes, resulting in the repeal of a requirement that a private complaint be filed before a criminal case can begin. IIPA has no more recent information. Also needing amendment is Article 126 of the CPC, which allows actions once taken directly by the police not to be subject to prosecutorial authorization. The U.S. should press for passage of these changes.

Two other procedural or enforcement-related amendments are needed:

First, the Russian government and Duma must introduce and adopt amendments to the Civil Procedure Code or Arbitration Procedure Code or the copyright law to provide *ex parte* search authority. While the current Civil Procedure Code in Article 134 and 136 appears to permit imposition of liens on property to secure potential future enforcement of rights, there is no *ex parte* relief available under current law. This is a critical deficiency, particularly for the software industry. Russia must correct this omission to permit right holders to obtain civil *ex parte* searches against suspected infringers if Russia is to accede to the WTO. The availability of civil *ex parte* searches is required by Article 50 of the TRIPS Agreement. Amending this provision is not, and should be, a topic being considered in the Duma's IP Working Group.

Second, they must introduce and adopt amendments to the Customs Code to ensure full authority to seize pirate product at the border and to bring Russia's border controls at least into compliance with Articles 51-60 of TRIPS. Imports of pirate optical media product continue from Eastern Europe (Czech Republic), from other countries of the CIS with production capacity (Ukraine and Moldova), and from Asia. Recent reports are that the State Customs Committee is working on a draft of a new Customs Code with the assistance of the Ministry of Economic Development and Trade. Apparently, some broad provisions have already been approved, but IIPA does not know whether anything has been accomplished on IPR and Customs enforcement. We understand the Russian government is seeking WTO acceptance to broad principles in conjunction with its WTO application. The U.S. government should resist any effort for Russia to join the WTO until a full TRIPS-compatible Customs Code is in place.

## Civil Code

The effort to include detailed copyright provisions as part of comprehensive civil code reform remains a continuing threat. The most recent report is that the IPR provisions of the Civil Code are very much alive, and supported by many entities both within and without the Russian government. Fortunately, however, the controversy surrounding this issue has resulted in a decision to place the IPR issue into Part IV of the Civil Code where it can be dealt with independently. It is imperative that the copyright provisions in the latest draft IIPA has seen not be adopted. The draft IIPA continues to contain numerous provisions incompatible with the bilateral Trade Agreement, Berne and TRIPS. At a minimum, Russia should do what Belarus has done, merely referring to the existing statutory law in its (brief) IP civil code section.

If adopted, these Civil Code amendments would create significant ambiguities and risks, as courts would attempt to determine which of two competing and inconsistent laws governs. The draft being proffered would also seriously undermine Russia's already faulty enforcement regime. The U.S. government has always vigorously opposed these dangerous and Berne-incompatible amendments, and must continue to do so.

## Stamp Tax

In January 1999, the Moscow City Government adopted Ordinance No. 33, requiring all video and audiocassettes, optical discs and computerized information carriers to have a "protective identification mark" (i.e., a stamp tax). Audiovisual products were required to have the stamp as of July 1, 1999; audio and business software products were required to affix the stamp by December 1, 1999.

Administered by "Informzaschita" (a state-owned company established to administer the tax), the cost of the stamp is 3.5 rubles per cassette. While the cost is not prohibitive, it is an additional cost that the legal video distributors have to endure in the face of high rates of piracy, the 70% tax on video rental profits and difficult economic conditions.

The stamps bear no relation to copyright ownership, yet purport to legalize video product in the market. City authorities use government facilities to enforce the sticker, removing unstickered product from the market. Counterfeit stamps are also widely available.

Following appeals by the industries arguing that the Stamp Tax was illegal and unconstitutional, the Russian Procurator General's Office recently instructed the Moscow Procurator's Office to protest against the Stamp Tax. The Moscow Procurator's Office subsequently filed a protest with Mayor Luzhkov, requiring that he revoke a number of the provisions of Ordinance No. 33, and that he also revoke his decree of March 23, 1998, which requires vendors to obtain separate licenses to sell video and audio carriers. The provisions of Ordinance No. 33 disputed by the Procurator's Office included those establishing mandatory payments for the stamps and transferring those payments to the account of Informzaschita. However, the introduction of the stamp as such was not disputed by the Procurator's Office, and further efforts by industry may be required to secure the abolition of the entire stamp system.

Mayor Luzhkov reportedly informed the Moscow Procurator's Office that its protests would be honored and instructed the Moscow Communications and Media Committee to prepare the necessary documents. The Mayor subsequently repealed his decree of March 23, 1998. However, it remains unclear whether this repeal of the 1998 decree affects the mandatory stamping of audio and video products for the purposes of their sale in Moscow. RAPO has requested the Moscow Procurator's Office to explain the situation and, if necessary, to take additional measures to secure the repeal of the Stamp Tax. One videogame company reports that pirates who do not use the stamps merely pay a small fine and then gets all the pirate goods back.

## 70% Tax on Video Rental Profits

In 1992, Russia imposed a 70% profit tax on revenue from video rentals, along with other "vice" activities such as gambling. This tax has effectively barred legitimate companies from entering and developing a video rental market in Russia, thereby protecting and promoting pirate activity. The video rental market in Russia has the potential to generate hundreds of millions of dollars per year.

Typically, legitimate home video releases are distributed by way of rental when first entering a new market. However, in Russia, companies have been forced to enter the video market (if at all) with sell-through product only, which essentially can reach only those consumers

who can afford higher-end entertainment. Particularly after the 1998 economic crisis in Russia, buying a video is beyond the means of the average Russian consumer; however, renting a video is not.

At this point, there is broad-based support within the Russian audiovisual industry for elimination of this anachronistic tax. The Russian and U.S. film industries have been pushing together for years to get this tax eliminated. However, they have been confronted with new governments that did not understand the problem, and a Duma which has been slow to act on needed tax reform.

The new Tax Code under consideration by the Duma reportedly would eliminate the 70% tax on video rental profits (although we have not yet seen the relevant provision). The U.S. Government has taken up this issue with the Russian government in the past. Continued USG pressure on this issue could be vitally important to ensure its elimination in the foreseeable future

## Optical Media Regulation

There are reportedly 13 CD plants in Russia, including one underground plant. With the reduction in the availability of pirate product from Bulgaria, China (and hopefully soon from Ukraine), these plants have been, and will be increasingly, involved in producing for pirates. As reported last year, Russia is one of those countries which have become a haven for CD pirates.

A new licensing law, which President Yeltsin signed on October 3, 1998, would require any plant manufacturing audio or video product on CD to obtain an operating license. Unfortunately, the scope of this provision extends to all optical media but not all copyrightable subject matter. IIPA and its members urge the U.S. to press Russia to implement an overall optical media regulation program, following those being proposed for many Asian and other Eastern European countries. This should be done quickly; IIPA understands that the Ministry of Justice is now in the process of considering implementing regulations to this 1998 law. The elements of this plan are:

- Centralized licensing of all optical media mastering or manufacturing facilities. In most cases, the government should implement a comprehensive licensing scheme on the basis of existing statutory authority in the field of business licensing.
- Centralized licensing of importation, exportation, and internal transfer of optical disc mastering or manufacturing equipment and machinery. An automatic licensing regime consistent with WTO requirements would generally be sufficient to create needed transparency. In most cases, it should be possible to utilize existing customs or import/export laws as a statutory basis for much of the regulatory regime in this field.
- Centralized licensing of importation of optical grade polycarbonate, the key raw material used in the production of optical media products. Here too, the licensing regime could be an implementation of existing customs laws, and an automatic licensing system would generally be sufficient.
- Requirement for the placement of a secure unique identifier (such as source identification [SID] code or its successor) on all masters (stampers) and finished products produced within the country, indicating the source of manufacture.

- Recordkeeping requirements, including full information on all orders placed at and fulfilled by the optical disk manufacturing facility, and documentation of the order placer's right to commission reproduction of the material. Records must be preserved for a stated period; order documentation should be accompanied by a sample of the product produced pursuant to the order. These requirements create the transparency which is essential to the success of the entire regime.
- Plenary inspection authority by an enforcement agency for the examination of all records, search of all facilities, etc., for the purpose of ensuring compliance with all the preceding requirements. Surprise, off-hours inspections should be explicitly authorized. Public inspection (e.g., by rightholder organizations) should also be authorized as appropriate.
- Violation of any significant aspect of this regime should be criminally punishable and lead to license revocation. Offenses should include: conducting manufacturing or mastering operations without a license; importation, exportation or trafficking in manufacturing equipment or optical grade polycarbonate without a license; production of masters or finished products without a secure identification code; failure to maintain or to permit immediate inspection of records, including orders; or interference with an inspection, search, or other official action undertaken to enforce the regime. The regulatory agency or agencies should also be granted emergency authority to immediately shut down the operations of an unlicensed facility or one otherwise shown to be operating in violation of the regulatory regime.

While the framework outlined above should be implemented in all countries posing an optical media piracy threat, additional measures may be needed in Russia (and for selected copyright industry sectors) in order to bring optical media piracy fully under control. These additional measures could include:

- Title verification requirements, under which producers of optical discs must clear orders for certain products with relevant representatives of right holders before beginning production;
- Imposition of controls similar to those outlined above on the importation, in-country distribution, and/or exportation of certain finished optical disc products (in addition to production equipment and raw materials).

## **WIPO Treaties and Electronic Commerce**

IIPA is most please to see that Russia is making progress toward correcting some TRIPS deficiencies such as lack of full retroactivity as well as considering amendments that would implement the WIPO treaties. Russia should waste no time adopting legislation that fully implements the treaties; it is critical to Russia's future in the new world of e-commerce.

IIPA also understands that there is a federal draft law "On Electronic Trade" which was submitted to the Duma in November 2000. IIPA has not reviewed this draft law but it should be carefully watched by the industries and the U.S. government to ensure that e-commerce is not overregulated and that liability issues for copyright infringement on the Internet are dealt with in a manner to ensure that rightholder's can vindicate their rights. The DMCA and the EU's E-Commerce Directive are the models.