

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2001 SPECIAL 301 REPORT

SLOVAKIA

EXECUTIVE SUMMARY¹

IIPA recommends that Slovakia be placed on the Watch List.

Wide scale piracy of entertainment software (including videogame CDs and cartridges, personal computer CDs, and multimedia products) exists in Slovakia. Business software piracy is also a problem, although there were some signs of cooperation by the Slovak authorities in early 2000. In 2000, the leading piracy concerns in Slovakia for the motion picture industry continue to be video and cable television piracy. The music industry reports imported CDs from Ukraine as the major problem, and CD-R piracy is on the increase.

IIPA applauds the Slovak government's action in becoming a charter member of the WIPO treaties, and its partial implementation efforts in the amended Copyright Act (2000). At the same time, the government's decision not to include express *ex parte* civil search provisions in the Copyright Act was disappointing. IIPA hopes the government will provide this important enforcement tool in amendments to the Civil Code this year (and will then implement such provisions in practice).

Estimated losses to the copyright industries in Slovakia topped \$14.7 million in 2000.

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	2.0	20%	2.0	20%
Sound Recordings / Musical Compositions	0.5	10%	NA	NA
Business Software Applications ²	5.2	45%	7.9	46%
Entertainment Software ³	7.0	85%	NA	NA
Books	NA	NA	NA	NA
TOTALS	14.7		9.9	

¹ This is IIPA's first-ever report on the copyright situation in Slovakia.

² BSA loss numbers for 2000 are preliminary.

³ IDSA estimates for 2000 are preliminary.

PIRACY AND ENFORCEMENT IN SLOVAKIA

Wide scale piracy of entertainment software (including videogame CDs and cartridges, personal computer CDs, and multimedia products) exists in Slovakia. The copyright industries are in the process of gathering investigative information on pirates in Slovakia and forwarding this information to the Slovak authorities, mainly the police. As copyright piracy is a relatively new area for the police, trainings of the kind provided by the business software industry in 2000 will be important. Business software piracy is also a problem in Slovakia. There were a number of successful raids in 2000 to combat this form of piracy, with improved cooperation between the police and the industries, but more regular reporting is needed to monitor its progress. The first raid of a computer reseller engaged in hard-disk loading (the loading of unlicensed computer software onto a computer prior to sale) occurred in December 2000.

In 2000, the leading piracy concerns in Slovakia for the motion picture industry continue to be video and cable television piracy. Flea markets appear to be almost free of pirate material, but the rental of back-to-back pirate videocassettes remains pervasive. Though regular inspections have reduced piracy levels in the flea markets (and newly-imposed visa requirements hinder Ukrainian pirate traders), many pirates have shifted to mail order and private home operations, making enforcement more difficult. Mail order piracy requires extensive investigation and notarized test purchases before a complaint can be filed. Mail order videos are usually copied from "masters" rented from video rental outlets, and the copies are of poor to medium quality. These videos appeal to mainly less affluent members of society, and often do not bear any protective labels or holograms; if they do, the labels are usually stripped from old discarded legitimate cassettes.

Though recorded home-made movie CDs do turn up in small quantities, pressed pirate VCDs are not a piracy problem. Given the lack of videocassettes dubbed into Hungarian, Hungarian-language piracy is often found in the south of the country where most of the 10% Slovak-Hungarian minority reside. Web-based marketing of pirate hard goods is also beginning to appear.

Cable retransmission piracy is still a problem in Slovakia. The piracy levels for cable piracy were 60% in 2000, up from 50% in both 1998 and 1999, but the market is currently in flux given some change in ownership of small stations within the territory. Ninety-nine cable companies were licensed to retransmit satellite and terrestrial signals, and many of them regularly retransmitted foreign programming without authorization. Because of differences in programming release times between Western Europe and Slovakia, these pirate retransmissions damage home video releases in the country. While some of the pay channels now offer subscriptions through existing cable companies (e.g. HBO), no pay television is being offered yet for individual owners of satellite dishes; hence, there has been some temptation on the part of the satellite dish owners to purchase pirate smart cards or decoders so they can watch pay channels coming over satellite without authorization, which are advertised in technical journals. There is very little broadcast piracy in Slovakia (2% in 2000, down from 10% in both 1998 and 1999).

COPYRIGHT LAW AND RELATED ISSUES

Amendments to the Copyright Act and Two New Laws (on Collecting Societies, and on Broadcasting and Retransmission) Enacted in 2000

On June 20, 2000, the National Council of Slovakia (the legislature) reportedly approved amendments to the 1997 Copyright Act (Act No.383/1997); IIPA understands that these amendments went into effect on August 1, 2000. In addition, a new Collecting Society Law (234/2000 Coll.) and a new Broadcasting and Retransmission Act were passed in the same session.

The amendments to the Copyright Law were intended to bring Slovakia's law into compliance with TRIPS (ambiguities in the law prior to amendment included, e.g., lack of express protection for pre-existing works and sound recordings, etc.), and attempted to implement certain requirements of the WIPO "Internet" treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). For example, the legislation reportedly includes: a right of "making available" works to the public; a rental right; provisions prohibiting the circumvention of technological measures, including the prohibition of those that use devices "designed partially" to circumvent technological measures, as well as the prohibition of the business of dealing in such devices; and provisions prohibiting the alteration of rights management information. The amended law reportedly strengthens enforcement procedures, particularly providing for the possibility of seizure and destruction of infringing copies, but significantly, reportedly fails to provide for such remedies with respect to materials and implements used in the infringement, a major TRIPS-deficiency. The Slovak Criminal Code, Section 152, remains unchanged, providing for up to two years imprisonment or a fine, the seizure of infringing materials, and imprisonment for a period of six months to five years if "considerable profit" (100 times the minimum salary) is shown. The law also imposes new reprographic reproduction levies.

The amendments failed to provide express protection for pre-existing works and sound recordings, a major shortcoming. The amendments reportedly failed to remedy a presumption against permitting monetary compensation for infringements, which has resulted in difficulties in getting adequate damages in copyright infringement cases. The amendment also reportedly rejected requests that civil *ex parte* provisions, required by Article 50 of the TRIPS Agreement, be included. The Slovak government expressed the opinion that it would be more appropriate to amend the general Civil Code. The government's decision to exclude civil *ex parte* provisions from the amended Copyright Act, contrary to the recommendation of the software industry, was a disappointment. This omission makes it vital that police understand the issue of software piracy and take appropriate action to enforce the laws proscribing it.

The Broadcasting Act of 1991 requires, as a condition of cable and broadcast television licenses, that the cable system or broadcaster declare how they plan to secure transmission rights from right holders. It provides for the withdrawal of licenses if operators fail to comply with its provisions. However, the Act does not apply to cable systems with fewer than 100 subscribers, unfortunately encouraging the growth of small pirate "community video" cable systems in apartment complexes (hence, cable piracy rates remain unacceptably high).

Slovakia Joined the WIPO “Internet” Treaties

On January 14, 2000, Slovakia deposited its instruments of ratification of both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Slovakia has been a member of both the Berne and Geneva Phonograms Conventions since January 1, 1993, and has been a member of the WTO effective January 1, 1995. IIPA applauds the Slovak government’s action in becoming a charter member of the WIPO treaties, and also its partial implementation efforts in the amended Copyright Act (2000). The WCT and WPPT raise the minimum standards of copyright protection, particularly with respect to network-based delivery of copyrighted materials, and foster the growth of electronic commerce.

Generalized System of Preferences

Slovakia currently participates in the U.S. GSP Program, offering duty-free imports of certain products into the U.S. from developing countries. In order to qualify for such unilaterally granted trade preferences, USTR must be satisfied that Slovakia meets certain discretionary criteria, including whether it provides “adequate and effective protection of intellectual property rights.” At the same time that Slovakia caused losses to the U.S. due to piracy, Slovakia imported (during the first eleven months of 2000) \$60.3 million of products into the United States without duty (26.8% of its total imports into the U.S.). Slovakia should not expect such favorable treatment at this level if it fails to meet the discretionary criteria in this U.S. law.