

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE
2002 SPECIAL 301 REPORT
COMMONWEALTH OF INDEPENDENT STATES
(C.I.S.)

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

This report encompasses separate but similar reports on the following 10 countries of the Commonwealth of Independent States (C.I.S.):

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

IIPA recommends that each of these 10 countries of the C.I.S. be individually retained, or in a few cases placed, on the Watch List in 2002.

In 2001, IIPA recommended that all ten countries of the C.I.S. be placed on the Watch List. Seven countries were named to the Watch List by USTR in 2001: Armenia, Azerbaijan, Belarus, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan. Two countries were left off the Watch List but were subjected to an out-of-cycle (OCR) review conducted late in 2001: Georgia and the Kyrgyz Republic. USTR announced the results of those OCR reviews on February 12, 2002, announcing that though it was not placing either country on any list, the U.S. government remained “concerned with the key gaps in the legal regimes of both countries” and that these gaps “must be corrected to ensure the effective enforcement of intellectual property rights.” Moldova was left off of all lists.

As in years past, IIPA has grouped these 10 (of 12) countries of the C.I.S. under a single heading (Special 301 report) only for the convenience of reporting on the problems in these countries. This is due to the numerous similarities of the issues, including the legal reform and enforcement problems, confronting the copyright industries in each of these countries.

In the remaining two countries of the C.I.S. not covered by this report, namely **Ukraine** and **Russia**, much more serious piracy problems confront the copyright industries, in particular optical media production and distribution. The problems in those two countries warrant separate attention, so IIPA has filed separate reports on Ukraine and Russia, recommending that Ukraine be retained as a Priority Foreign Country in 2002, and that Russia be retained on the Priority Watch List.

After a few issues are treated collectively in the introduction to this report, each of the 10 countries of the C.I.S. listed above is then treated separately in alphabetical order.

There are common deficiencies in the legal regimes of every one of these countries. These include: (1) the failure to fully adopt the legal reforms and enforcement required in bilateral trade agreements signed and ratified by each country; (2) the failure to comply with the World Trade Organization (WTO) TRIPS Agreement, especially the enforcement obligations; (3) the failure to adopt optical media production and distribution controls; and (4) with the rise of Internet piracy, the need to accede, implement, and enforce the 1996 digital treaties of WIPO – the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Perhaps the most glaring legal shortcoming in almost half of the countries in the C.I.S. is the absence of any protection for foreign sound recordings. That is so because many of these countries are neither members of the Geneva Phonograms Convention nor the World Trade Organization TRIPS Agreement (and, the WPPT is not yet in force).

Thus, there is no point of attachment for American or other foreign sound recordings in five of the 12 countries of the C.I.S. This is so even though these countries were obligated by the bilateral trade agreements to provide this over seven, and in some cases, over eight years ago. In fact, the obligation was to make “best efforts” to join the Geneva Phonograms Convention in most cases by the end of 1993 – an obligation that has been flaunted by the delinquency of these countries.

It is very important that the U.S. government insist that each of these countries cure all of the current violations of these trade agreements. The IPR obligations in these early 1990s agreements were the then-minimal international standards for IPR protection and enforcement, pre-TRIPS. There is no excuse why for nine years these countries have not been even providing a point of attachment or national treatment for American works and sound recordings while the countries are themselves enjoying Normal Trade Relations (NTR). Without an effective legal and enforcement regime, the stakes (and obligations) have gotten even higher, especially with the growth of moveable optical media production and distribution operations, and with Internet piracy.

Introducing the necessary legal infrastructure to prevent the growth of piracy is much simpler than attempting to dismantle piratical operations once they are established. In the current environment in the region, replication facilities are easily moved from one territory to another. Today they are found mostly in Russia and Ukraine; but at any time, the production facilities could easily move, for example to Belarus, Georgia or Uzbekistan. Providing the necessary legal framework, especially an effective criminal enforcement regime, will go a long way toward dissuading this type of movement, or to effectively confronting it when does exist.

In almost all cases, even where legal reforms have been adopted, there is virtually no on-the-ground enforcement. That is, there are neither effective civil, administrative, criminal, nor border enforcement measures taking place. In a few countries, there are reports of sporadic police activity at the street level, but little else. With the growth of organized criminal syndicates in this region, the countries must adopt effective criminal enforcement regimes to combat this piracy by going beyond raids and seizures to the imposition of criminal penalties.

Instead, the lack of an effective enforcement regime has resulted in the countries in this region becoming a haven for the production and distribution of pirated material, including optical

media material consisting of music CDs, CD-ROMs containing business and entertainment software, and DVDs containing audiovisual material. The organized criminal enterprises operating within the region are mainly running the production and distribution apparatus. This is not only hampering the development of legal markets in the countries of the C.I.S., hurting domestic authors, musicians, publishers, producers, software developers and the like, but is spreading and thus doing significant harm to other legitimate markets in neighboring countries in Eastern and Central Europe. The combination of the failures in the legal regime, plus a total enforcement breakdown, especially poor border enforcement, acts as a bar to the entry of any legitimate copyright industries into the local markets; in addition, these are WTO TRIPS deficiencies.

Four steps are needed to curb this problem: (1) all works and sound recordings must enjoy protection consistent with the WTO TRIPS requirements – i.e., including materials released within the past 50 years (at a minimum – the U.S., for example is much more generous); (2) optical media production regulations must be implemented to shut down illegal plants and control the production and distribution of this material; (3) police and prosecutors must commence raids, seizures, and deterrent criminal actions, and judges must impose criminal sanctions; and (4) effective border enforcement must be implemented to prevent the widespread flow of material, including the optical media production facilities and product, throughout the region or into territories beyond the region.

COMPLIANCE WITH BILATERAL TRADE AGREEMENTS

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

All 12 of the former republics of the Soviet Union signed these agreements (see dates below). Once each agreement was signed, it was agreed it would enter into force upon an exchange of diplomatic notes between the U.S. and each new country. At such time that country would be eligible for "Most Favored Nation" (MFN; now known as "Normal Trade Relations") status. All of the countries have now put the agreements into force, and these agreements have been regularly renewed. Once in force, each country agreed to make its "best efforts" to enact all of the IPR components of the trade agreement, in the case of every country but the Russian Federation, by December 31, 1993. The Russian Federation agreed to complete its obligations by December 31, 1992.

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

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

The obligations of these identical bilateral trade agreements (Article VIII of each agreement and in the accompanying side Letter on IPR) include: (1) joining the Berne Convention (Paris Act); (2) providing protection for sound recordings, including a right of reproduction, distribution (and importation), and a commercial rental right; (3) providing a point of attachment for foreign (American) sound recordings and making best efforts to join the Geneva Phonograms Convention; (4) providing full retroactivity (per Article 18 of Berne); (5) protecting computer programs and databases (as “literary works” consistent with Berne, and now TRIPS); (6) providing adequate and effective protection and enforcement (which is understood to include deterrent civil and criminal penalties, as well as border measures); and (7) establishing a working group with each country to monitor the continuing progress of copyright and other IP protection and enforcement.

Berne Convention: Ten of 12 of the countries in the C.I.S. are members of the Berne Convention. They are: the Russian Federation (1995), Ukraine (1995), Georgia (1995), the Republic of Moldova (1995), Belarus (1997), Kazakhstan (1999), Azerbaijan (1999), the Kyrgyz Republic (1999), Tajikistan (2000), and Armenia (2000). This means that two countries, Turkmenistan and Uzbekistan, are in breach of this trade agreement obligation, and are not providing any protection for works in their countries.

Sound Recording Protection (Geneva Phonograms Convention and/or WTO TRIPS Agreement): Only seven of 12 countries in the C.I.S. provide any protection for American or other foreign sound recordings by virtue of their membership in the Geneva Phonograms Convention, or by their membership in the World Trade Organization (WTO TRIPS Agreement). The seven countries that do protect foreign sound recordings are: the Russian Federation (1995), the Kyrgyz Republic (1998), Georgia (1999), Ukraine (2000), Moldova (2000), Kazakhstan (August 2001) and Azerbaijan (September 2001).

Only five of 12 countries are members of the Geneva Phonograms Convention: the Russian Federation (1995), Ukraine (2000), Moldova (2000), Kazakhstan (August 2001) and Azerbaijan (September 2001). The Kyrgyz Republic and Georgia use their WTO membership as a point of attachment for foreign sound recordings since they are not Geneva Phonograms members (and Moldova can use either Geneva Phonograms, or its WTO membership effective July 26, 2001).

So, five of 12 countries provide no protection for foreign sound recordings over seven, or in some cases, over eight years after they obligated themselves to do so. They are: Armenia, Belarus, Tajikistan, Turkmenistan, and Uzbekistan.

In one case, Belarus, the WIPO digital treaty for neighboring rights, the WIPO Performances and Phonograms Treaty (WPPT), could provide a point of attachment for sound recordings when that treaty goes into force, hopefully sometime in 2002. In the meantime, to meet its obligations under the bilateral trade agreement and to avoid any confusion, Belarus should accede to the Geneva Phonograms Convention.

So, seven of 12 countries in the C.I.S. are in breach of the bilateral trade agreement obligation to join Geneva Phonograms. They are: Armenia, Belarus, Georgia, Kyrgyz Republic, Tajikistan, Turkmenistan, and Uzbekistan.

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

This absence of protection was also an issue in Ukraine until the passage in 2001 (effective September 5, 2001) of the copyright law amendments aimed at fixing the bar on such protection for pre-existing works and sound recordings. In fact, the provision in the Ukraine law of 1993 was nearly identical to that found in the Russian law. The Ukraine drafters clearly intended to provide protection for pre-existing works and sound recordings that are less than 50 years old. Although the provisions are a bit unclear, it is likely officials and courts will properly enforce them.

Belarussian experts claim that their law probably does provide protection for pre-existing works, though they acknowledge it is less clear with respect to sound recordings. For the other nine countries of the C.I.S. it is unclear what, if any, protection they do or do not provide for pre-existing works and sound recordings. Some of the countries, like the Kyrgyz Republic, probably intended to provide such protection, though the provisions are unclear; they should be clarified by copyright law amendment, by regulation, or by some other administrative means. Other countries of the C.I.S. are probably not providing protection for pre-existing works and sound recordings. They must be urged to do so to avoid breaching the bilateral agreement, and if they wish to be members of the WTO.

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

This problem of protection for pre-existing material, especially for sound recordings, is a regional problem because such protection has only recently (in the past year or two) been provided in neighboring countries such as Ukraine, Poland and the Czech Republic, thereby creating a region haven for the production and widespread distribution of back-catalog material. That back-catalog material competes with any new product and prevents the development of legitimate markets for musical recordings.

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

Criminal Code: Only a few of the countries have amended their criminal code to adopt any criminal provisions applicable for IPR violations; almost none of the countries have adopted deterrent penalties to stop commercial piracy, especially necessary against the organized criminal enterprises operating in this region. In the few cases where criminal codes have been adopted, while this first step should be lauded, it must be followed with actual imposition of criminal penalties especially aimed at the organized syndicates.

Customs Code: Neither have most of these countries adopted the necessary customs code revisions to provide *ex officio* authority to properly seize material at the border. At present, border measures are probably the weakest part of enforcement in this region.

Enforcement: None of these countries is providing “adequate and effective” enforcement on the ground as required by the bilateral agreements or the WTO TRIPS Agreement. There must be real engagement by the police, prosecutors, judges and customs officials to effectively enforce copyright and neighboring rights in this region to stop commercial piracy.

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

SUMMARY OF LEGAL REFORMS AND ENFORCEMENT ACTIVITY

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

World Trade Organization (WTO TRIPS Agreement): Only three of 12 countries in the C.I.S. are members of the World Trade Organization, and are thus bound by the TRIPS Agreement’s substantive and enforcement obligations. They are the Kyrgyz Republic (December 20, 1998), Georgia (June 14, 2000), and Moldova (July 26, 2001).

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

The U.S. Congress has made it clear in the legislation implementing the Uruguay Round that the Administration should work to encourage “acceleration” of WTO TRIPS compliance by existing and acceding WTO members. Consistent U.S. policy requires any nation newly acceding to WTO to be in full compliance with TRIPS at the time of accession. In IIPA’s view, the TRIPS obligations merely spell out in greater detail the C.I.S. countries’ *existing* bilateral obligations under the bilateral trade agreements with the U.S. to provide “adequate and effective protection and enforcement” of intellectual property rights. These obligations must also be further bolstered by accession and implementation of the WIPO digital treaties of 1996 to effectively enforce against Internet and other digital piracy.

WCT and WPPT: Five countries are members of the new WIPO Copyright Treaty (WCT). They are: Moldova (March 1998), Belarus (July 1998), the Kyrgyz Republic (September 1998), Georgia (July 2001), and Ukraine (November 2001).

Four countries are members of the WIPO Performances and Phonograms Treaty (WPPT). They are: Moldova (March 1998), Belarus (July 1998), Georgia (July 2001) and Ukraine (November 2001). Unfortunately, the Kyrgyz Republic bifurcated its membership in these important digital treaties and only joined the WIPO Copyright Treaty in 1998. It is hoped that they will accede to the neighboring rights (WPPT) treaty as well, early in 2002. The United States deposited its instrument of accession to the WCT and WPPT in September 1999. On March 6, 2002 the WCT will go into force and hopefully, soon after in 2002, the WPPT as well.

In December 2000, the Interparliamentary Assembly of the members states of the C.I.S. agreed in a resolution adopted in St. Petersburg that for those countries that have not yet done so “to recommend to the parliaments and governments”. . . to accede to the WCT and WPPT, and to modernize copyright and neighboring rights laws taking into account the two digital treaties. The assembly even adopted recommendations on the specific definitions and scope of new rights that need to be adopted by the states of the C.I.S. to properly implement the digital treaties. The resolution and recommendations were agreed to by all 12 members states of the C.I.S., working with officials from the W.I.P.O. This is an important step within the C.I.S. and one that should be encouraged by the U.S. government because of the rise of Internet and other digital piracy.

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

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

Civil Code Reform in the C.I.S.: A dangerous development in breach of the bilateral agreement continues to unfold in several countries of the C.I.S., including the Russian Federation

and Ukraine. This is the comprehensive reform of the civil codes with the inclusion of competing copyright provisions; such reform is underway in several of these.² In most cases, the efforts to revise the civil code is likely to result in the addition to that code of new and confusing copyright provisions inconsistent with Berne, TRIPS, and the bilateral agreements, and inconsistent with the more fully developed national copyright laws. These efforts to revise the civil codes should be opposed.

In 1996, the C.I.S. Interparliamentary Assembly in St. Petersburg adopted a so-called Model Civil Code for the countries of the C.I.S. Detailed provisions on copyright and neighboring rights were included that were contradictory to existing international standards of protection for copyrights. In Russia in 2001, drafts of the Civil Code reform that were circulated continued to include IPR provisions completely incompatible with the bilateral trade agreement, the Berne Convention, and TRIPS. In Ukraine in December 2001, the latest draft of Chapter IV of the Civil Code had been reduced to 14 articles; this is certainly an improvement over earlier drafts that contained over 140 articles (and then 50 in a subsequent draft), many which would have undercut the copyright law. However, even the shorted version could, if enacted, cause confusion because it overlaps the copyright provisions. And because it makes reference to over 90 other laws, it could make the civil code provisions obsolete if and when any of the other laws referred to is amended. IIPA continues to urge that the civil code should not be adopted in Ukraine or any of the other countries of the C.I.S., certainly not in a manner that would in any way weaken the copyright law or its enforcement.

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

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

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

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

Ukraine: December 23,1993, effective February 23, 1994; amended July 11, 2001, effective date September 5, 2001;

Uzbekistan: August 30, 1996; effective September 17,1996.

Turkmenistan has, for almost 10 years, been in the process of drafting new copyright legislation, so far without success. Until it is adopted, the Civil Code (Chapter IV, 1961) from the former Soviet era is still the operational law there. This is a very obsolete law that needs modernization.

Generalized System of Preferences (GSP): As a result of their MFN/NTR status, all of the countries are eligible to be beneficiaries under the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible countries (duty-free tariffs on certain imports). Part of the discretionary criteria of the GSP program is that the country provides “adequate and effective protection of intellectual property rights...” which includes copyright protection and enforcement. Georgia was added to the list of countries eligible for GSP benefits in June 2001.

In 2000 (the latest full year of statistics), the countries of the C.I.S. received the following preferential trade benefits under GSP:

<u>Amt. GSP duty-free (\$)</u>	<u>Percent of U.S. imports that benefit from GSP</u>
Armenia \$10,155,000	45%
Azerbaijan \$0	0
Belarus Suspended in 2000	--
Georgia \$0	0
Kazakhstan \$325,636,000	75.5%
Kyrgyz \$133,000	6.8%
Moldova \$257,000	0.2%
Russia \$514,664,000	6.6%
Tajikistan \$0	0
Turkmenistan \$0	0
Ukraine \$40,033,000 (suspended in 2001)	4.6%
Uzbekistan \$166,000	0.5%

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

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

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

At the other end of the spectrum, Ukraine has completely failed to comply with the Joint Action Plan signed by President Kuchma and then-President Clinton in June 2000 to address the optical media piracy problems in Ukraine and to adopt an effective regime of copyright protection and enforcement. As a result of this failure, the U.S. government announced the complete suspension of trade benefits to Ukraine under the General System of Preferences program; that decision was announced on August 10, 2001, effective August 24, 2001. In addition, trade sanctions were imposed against Ukraine by the U.S. government, effective January 23, 2002.

In 2001, the IIPA attempted to work directly with the governments of Kazakhstan and Uzbekistan to resolve the legal reform deficiencies that resulted in the filing of the IIPA's GSP petition. Unfortunately, neither country made the legal reforms necessary to fix the deficiencies detailed in this report and in the GSP proceedings that might result in the withdrawal of those petitions. It is hoped that in 2002, these countries and Armenia will adopt the necessary legal and enforcement reforms to resolve these issues. In the meantime, the United States government has not decided whether to withdraw or suspend GSP benefits in Armenia, Kazakhstan and/or Uzbekistan.

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

ARMENIA

LEGAL REFORM AND TREATY ADHERENCE

In April 1992, Armenia and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights (a summary of the trade agreement is provided in the introductory section, above). That agreement entered into force on April 7, 1992. Armenia did adopt a copyright law on May 13, 1996; it went into force on June 6, 1996. However, the law had many substantive deficiencies.

The National Assembly of Armenia adopted a new Law on Copyright and Neighboring Rights on December 8, 1999 to replace the 1996 law. The President signed the new copyright law on January 12, 2000; it went into force on February 12, 2000. In addition, the Civil Code of Armenia (effective February 1, 1999) includes one article on copyright (Article 63) and one on neighboring rights (Article 64). These two articles provide only general provisions pertaining to the subject matter and terms of protection.

Also in 2000, Armenia finally joined the Berne Convention, effective October 19, 2000. However, Armenia is not a member of any of the other relevant conventions, nor has it met its enforcement obligations as required by the bilateral agreement. These failures are long past the deadlines set in the agreement to take such action. For example, Armenia is not a member of the Geneva Phonograms Convention, leaving American sound recordings completely unprotected more than eight years after the bilateral trade agreement required such protection. The government of Armenia indicated in 2000 discussions with United States government officials that Armenia might join the Geneva Phonograms Convention in 2001, but that never occurred.

Armenia does not clearly provide protection for pre-existing works or sound recordings as required by the clear obligation in its bilateral trade agreement, as well as by Berne (Article 18), national treatment obligations, and the TRIPS Agreement (Article 14.6 for sound recordings and Article 9 for works). The Copyright Law of 2000 is silent on this matter in the relevant provisions for both works and sound recordings, and efforts either to amend that provision or clarify it by regulatory or other means have proven unsuccessful. Several times in 2000 and in 2001, IIPA provided the government of Armenia with suggested language to clarify the point of attachment and protection for pre-existing foreign works and sound recordings. Armenia must be encouraged to clearly provide such protection for pre-existing works and sound recordings for a minimum of 50 years, to meet its bilateral and multilateral obligations, and in order to create an environment for the development of the copyright industries there.

The Armenian Copyright Law of 2000 does provide enumerated protection for computer programs and databases as required under the bilateral trade agreement. The Civil Procedure Code was revised in 1998, effective January 1, 1999, but there are no provisions providing for civil *ex parte* search procedures.

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

Article 140 of the Armenian Criminal Code provides for fines of 10-20 times the minimum monthly wage for copyright violations, and (“obligatory social”) corrective labor of up to two years. However, there have not been any convictions under this law. There is no criminal or administrative liability for violations of neighboring rights in Armenia. Amendments to the criminal code, first drafted in 1997, have yet to be enacted. It is essential that Armenia establish an enforcement regime with strong criminal sanctions, if it is going to effectively stop the type of piracy, especially optical media production and distribution, that is rampant in this region.

The existing criminal code and the criminal procedures code do not provide police with the proper *ex officio* authority to commence criminal copyright cases. Armenian copyright officials have told U.S. government officials that they believed such authority does exist, but there has been no indication of any meaningful enforcement action to date. If the criminal code does not do so, these laws should be amended accordingly when the revisions to the code are considered. If it does already appear in the law, the criminal investigators should immediately begin to use this authority against the commercial piracy present in Armenia.

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

Armenia was not a signatory to either of the two new WIPO treaties. There are reports that Armenia may accede to these treaties early in 2002. The Armenian government should be encouraged to accede to and then fully implement both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). These treaties are essential to policing against Internet and other forms of digital piracy.

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Armenia is not currently providing “adequate and effective” enforcement with any meaningful police or prosecutorial activity, as required by the bilateral trade agreement, even if some (albeit weak) criminal, civil, and administrative remedies do exist. Also, border enforcement is very weak in Armenia, allowing illegal copies that are produced in any country in the region (like Russia and Ukraine) to freely cross borders for sale in Armenia and other countries. It was hoped in 2001 that the then-new customs code (effective January 1, 2001) would energize the customs authorities to take appropriate actions. Unfortunately, this did not occur. The failure to provide an adequate legal and enforcement regime in Armenia is causing significant harm to the copyright industries.

In addition, the environment is ripe for illegal optical media production facilities as well as other organized criminal production facilities. According to the recording industry (International

Federation of the Phonographic Industry, IFPI), there are no known optical media plants yet in Armenia, but there are at least two cassette manufacturing plants. Although most of the music piracy is in the form of audio cassettes, CDs are becoming more popular – both legal and pirate material. The level of music piracy is estimated at about 85%; trade losses for foreign rightholders in 2001 are estimated at \$4.5 million. It is estimated that in 2001, almost 645,000 CDs and 3.7 million cassettes were sold in Armenia; it is further estimated that of these figures, 525,000 CDs and 3.13 million cassettes were pirated copies.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$29.7 million in 2000; the level of piracy was estimated to be 89%. The final figures for 2001 are not yet available.

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

AZERBAIJAN

LEGAL REFORM AND TREATY ADHERENCE

In April 1993, Azerbaijan and the United States exchanged letters to implement a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights (a summary of the trade agreement is provided in the introductory section, above). That agreement entered into force on April 21, 1995. Azerbaijan adopted the Copyright and Neighboring Rights Law on June 5, 1996; it went into force on October 23, 1996. IIPA has not been able to obtain a copy of this law.

Azerbaijan adhered to the Berne Convention, effective June 4, 1999. Finally, in 2001, Azerbaijan began to provide a point of attachment for foreign sound recordings when it joined the Geneva Phonograms Convention, effective September 1, 2001 (six years after the bilateral trade agreement required such protection).

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

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

Article 158 of the “new” Azerbaijani Criminal Code (in force on September 1, 2000) provides liability for copyright and patent infringements if they result in “significant damage” to the rightholder concerned. The “significant damage” standard creates an unwarranted threshold in the fight against copyright piracy because it sets a vague standard for police and prosecutors to commence action. The law should be amended to include a low and clear threshold to instigate a criminal action, for example, 50 times the minimum daily wage. Not only would this help to identify criminal infringing acts for prosecutors, but it would also provide critical guidance for the police when they are conducting initial raids and need to assess, in a particular situation, whether a case should be brought under the criminal code or the administrative code. Article 158.1 of the Criminal Code provides for fines up to 200 times the minimum monthly wage for copyright and neighboring rights violations, or corrective labor for up to two years. Article 158.2 deals with repeat violations and actions committed by a group of persons based on collusion or agreement (conspiracy). In such cases, sentences of up to five years or fines up to 5,000 times the minimum monthly wage are available. There have been no known convictions under this law.

The Azerbaijani Customs Code was amended on June 10, 1997 and does contain provisions (Article 19) relevant to the importation or export of intellectual property. However, it is not clear if the provisions adopted in the Customs Code provide *ex officio* authority for customs officials to seize material at the border as required by the WTO TRIPS Agreement.

At present, the criminal code provides sanctions only for criminal liability for copyright and patent rights violations; neighboring rights violations are not covered at all. The criminal provisions that do exist are minimal and do not include jail terms. Neither the criminal code nor the Criminal Procedures Code provides police with the proper *ex officio* authority to commence criminal copyright cases. These laws should be amended accordingly.

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

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There is currently no “adequate and effective” enforcement in Azerbaijan; there is no meaningful police, customs or prosecutorial activity, as required by the bilateral trade agreement and the WTO TRIPS Agreement. There are administrative sanctions (Article 186-1) providing for fines of 20 times the minimum monthly wages for copyright infringements. However, these fines are only imposed if the infringement causes damages that equal more than 10 times the minimum monthly wages. None of the copyright industries report that these administrative sanctions, or any of the criminal penalties, have ever been levied in a copyright case.

Also, border enforcement is very weak in Azerbaijan. This is allowing illegal copies, especially of musical material produced in another country in the region, to cross borders freely for sale in Azerbaijan and other countries. The failure to provide an adequate legal and enforcement regime in Azerbaijan is causing significant harm to the copyright industries.

In addition, as in other countries in the region, the environment is ripe for illegal optical media production facilities, as well as other organized criminal production facilities. According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are no optical media plants in Azerbaijan. Most music piracy is in the form of audiocassettes. The level of music piracy is estimated at about 85%; trade losses for foreign rightholders in 2001 is estimated at \$13 million, an increase from 1999, when it was \$10 million. It is estimated by the industry that in total, 8.9 million cassettes and 1.6 million CDs were sold in Azerbaijan in 2001; of these, 7.6 million cassettes and 1.3 million CDs were pirated copies.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$29.7 million in 2000; the level of piracy was estimated to be 89%. The final figures for 2001 are not yet available.

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

BELARUS

LEGAL REFORM AND TREATY ADHERENCE

In January and February 1993, Belarus and the United States exchanged letters to implement a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights (a summary of the trade agreement is provided in the introductory section, above). That agreement entered into force on February 16, 1993. In May 1996, Belarus enacted a new law on copyright and neighboring rights. That law entered into force on June 18, 1996.

Belarus adhered to the Berne Convention (Paris Act) on December 12, 1997, in accordance with its bilateral obligation. In December 2000, Belarus signed a cooperation agreement with the World Intellectual Property Organization (WIPO) to improve its IPR regime. However, Belarus still has not joined the Geneva Phonograms Convention and therefore is not providing any protection for U.S. or other foreign sound recordings – two obligations it pledged to make “best efforts” to conclude over eight years ago.

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

These amendments were adopted not only for eventual WTO TRIPS compliance, but also to comply with the 1996 WIPO “digital” treaties. Belarus is not yet a member of the WTO. Belarus did deposit its instrument of ratification on July 15, 1998 for both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), becoming one of the first countries to do so.

However, even though Belarus ratified the WIPO Performances and Phonograms Treaty (WPPT), that treaty is not in force because 30 members have not yet ratified it. So, Belarus cannot rely on the WPPT to provide a point of attachment for American or other foreign sound recordings, which is why even with all of the other important legal reforms in place, Belarus must be urged to protect foreign sound recordings by acceding immediately to the Geneva Phonograms Convention.

The August 1998 Copyright Law added in the remedies section provisions relating to anticircumvention devices and services, and the removal or alteration of rights management

information (Article 39.5). The remedies for anticircumvention and rights management information protection include injunctive relief, monetary damages, and seizure of devices.

Criminal code provisions were adopted in 1999 and went into force on January 1, 2000. Those provisions reportedly (IIPA was never provided with a copy) provide for up to five years' imprisonment for copyright and neighboring rights violations. The criminal procedures code still needs revision to provide the proper *ex officio* authority for police officials to initiate copyright criminal cases. There are administrative remedies against violations of copyright and neighboring rights, including acts of illegal retail sale and distribution.

Even though customs code amendments were adopted in 1998 to include intellectual property materials, the proper *ex officio* authority was not granted to customs officials.

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

The Copyright law, as amended in 1998, does not clearly provide protection for pre-existing works. The protection for pre-existing sound recordings is less clear. Belarus is required by the clear obligation in its bilateral trade agreement, as well as by Berne (Article 18) national treatment obligations, and the TRIPS Agreement (Article 14.6 for sound recordings and Article 9 for works) to provide protection for pre-existing works and sound recordings, and should be urged to clarify its law immediately.

Belarussian officials insist this protection does currently exist, at least for works. The officials insist that since Article 42 of the 1996 law and Article 3 of the 1998 law make international treaties (such as the Berne Convention) self-executing in Belarus, absent any legislative action to the contrary, Article 18 of Berne should currently provide protection for pre-existing foreign works. While this may be a correct reading of the law, it should be clarified by amendment to the law to avoid any confusion on the part of police, prosecutors and judges tasked with enforcement of these rights. Further, the provisions cited (Article 18 of Berne), apply only to "works," not sound recordings; Belarus is not a WTO member. So, even though Belarussian officials believe that protection for pre-existing sound recordings is provided in the copyright law, absent membership in the relevant treaties, there is no point of attachment. Belarus should clarify that this protection is provided for both works and sound recordings to meet its international obligations.

Belarussian copyright law does provide explicit protection for computer programs and databases as required under the bilateral trade agreement. However, there are no known available civil *ex parte* search procedures; these are needed for effective enforcement against end-user pirates.

Neither are its anticircumvention or copyright management information provisions fully compatible with the new digital treaties. In particular, implementation of the anticircumvention requirement should include a prohibition on the manufacture, importation, sale, distribution, or other trafficking in devices or services that are aimed at circumventing technological protection measures, as well as outlawing acts of circumvention. In addition, rightholders need to be able to protect so-called "copyright management information" that is attached to or accompanies a work or

sound recording, including protection against the alteration, removal or falsification of this information. The Belarussian provisions provide some, but not all, of these essential rights to protect copyright material against Internet and other digital piracy.

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Levels of piracy remain extremely high, and enforcement remains virtually nonexistent in Belarus. This piracy and the lack of effective enforcement in Belarus is preventing entry by U.S. creative industries into the country. One additional change in the enforcement regime in 2001 was the disbandment of the Committee on Copyright and Neighboring Right and its incorporation into the State Patent Office. This does not bode well for the development of specialized enforcement entities to deal with the growing problem of piracy, especially the considerable growth in optical media production and distribution in Belarus and the region.

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

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

According to the recording industry (International Federation of the Phonographic Industry, IFPI), Belarus has large-scale illegal musical cassette production facilities for domestic and foreign consumption. There is confirmation of the involvement of organized criminal enterprises in the music piracy business in Belarus. These criminal organizations are not only producing musical cassettes in Belarus, but are producing optical disc media in neighboring countries, and distributing CDs and CD-ROMs containing musical recordings as well as business and entertainment software in Belarus and in these other countries. In fact, one of the Ukrainian CD plants was able to migrate to Brest on the Belarus-Poland border due to the lax enforcement regime in Belarus (and Ukraine). The plant and product migration is also a result of ineffective border enforcement measures that allow materials to flow freely in the region; in particular, illegal materials flow through Belarus to Ukraine, Poland, Russia, the Czech Republic, and a number of other countries.

The environment and infrastructure is ripe for additional illegal optical media production facilities. The one plant already there could be the start of other CD plants moving some of their production facilities. These optical disc plants are capable of producing thousands of CDs, DVDs, CD-ROMs, and even VCDs. The Belarussian authorities must act quickly to close the one illegal plant and to prevent other illegal production facilities from taking root in Belarus by adopting legislation controlling optical media production and distribution (including plant licensing regulations, raw material monitoring and Source Identification [SID] coding). Illegal optical media

production is a major regional problem. Adopting measures quickly will prevent the rapid growth of this problem in Belarus.

The growth of illegal musical cassette plants for the production and distribution of musical works in Belarus and the rise of optical media production in the region are very serious developments. Belarussian authorities need to implement systems to regulate and monitor the activities of the illegal cassette tape plants, to prevent their illegal reproduction and distribution with regular copyright compliance controls.

Customs officials must be better trained and equipped to prevent any illegal product made in Belarus from being exported, and to prevent the importation of material (tapes and CDs) made elsewhere in the region from entering into Belarus. In 2000, only nine cases were reported where the shipment of CDs (about 14,100 total) were stopped by customs; obviously, much more needs to be done to stop the heavy trafficking of illegal material into and out of Belarus.

In 2001, the IFPI continued to coordinate its anti-piracy actions against retailers and illegal manufacturers, seizing over 22,000 tapes, over 36,000 CDs, and over 30 recording devices, with a total value of US\$405,000. The recording industry considers this a modest figure, taking into account the huge Belarussian markets, and notes that much more enforcement activity is needed to successfully deter the pirates.

The music industry has endemic piracy problems: The recording industry estimates total trade losses for foreign rightholders in Belarus at \$20 million in 2001 (this figure was \$25 million in 1999); the piracy rate was estimated at 75% (ranging from 65% for the Russian and "local" repertoire to over 90% for foreign repertoire). In 2001, more than 3.6 million CDs and 10.8 million cassettes were sold in Belarus, of these 2.7 million CDs and 8 million cassettes were pirated copies.

In Belarus, pirated CDs sell for one-third the legitimate price, preventing the music industry from creating a market; and as mentioned, pirate tapes are a major problem. This is coupled with the lack of protection for pre-existing works (domestic or foreign), and the lack of any protection for foreign sound recordings (because Belarus does not provide a clear point of attachment). Belarus must adhere to the Geneva Phonograms Convention, and adopt strong enforcement mechanisms to allow a legitimate music market to develop. Only in 2001 were the first criminal cases instigated (a total of three cases); charges were filed against infringers of copyright and neighboring rights, but these cases have not reached final disposition.

The Interactive Digital Software Association (IDSA) reports that the scale of piracy in Belarus of entertainment software (including videogame CDs and cartridges, personal computer CDs, and multimedia products) has grown continually worse. Piracy operations have been completely taken over by organized crime syndicates, which have ties with the Russian crime groups. Although most of the material is produced elsewhere in the region (specifically Russia, and the Ukraine), Belarus serves as a major distribution point for pirate material that is then shipped to other parts of Eastern Europe, particularly Estonia and Poland, and throughout the C.I.S. There are reports that a CD plant, formerly located in Ukraine, has now been relocated to Belarus and may be producing both entertainment software and music material. The existence, location, and production output and capacity of this plant have not yet been fully substantiated. What is quite clear is the fact that Belarus is the source of a large amount of pirate material, whether produced in or simply shipped through Belarus to neighboring countries.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$29.7 million in 2000; the level of piracy was estimated to be 89%. The final figures for 2001 are not yet available.

The Motion Picture Association (MPA) reports that video and other forms of piracy remain rampant in 2001. Almost all videocassettes in Belarus' open markets are pirate Russian-language copies imported from Russia. The lack of border checkpoints between Belarus and the Russian Federation facilitates such cross-border piracy. Counterfeit packaging and tapes can also be bought separately in Russia and assembled locally. There was no enforcement activity reported by MPA, that is, the local authorities permit sales of pirate goods at open marketplaces. There is virtually no border enforcement. And pirate video dealers sell their wares at rock-bottom prices in the huge open markets; pirate cassettes are sold at retail stores at slightly higher prices.

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

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

GEORGIA

LEGAL REFORM AND TREATY ADHERENCE

In March 1993, Georgia and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights (a summary of the trade agreement is provided in the introductory section, above). That agreement entered into force on August 13, 1993. Until adoption of a separate (specialized) copyright law in 1999, the operating law in Georgia was the Civil Code of Georgia (Chapter IV), which entered into force on November 25, 1997. On June 22, 1999, Georgia adopted the Law on Copyright and Neighboring Rights; it came into force on August 16, 1999.

Georgia adhered to the Berne Convention, effective May 16, 1995. However, Georgia is not a member of the Geneva Phonograms Convention, eight years after it pledged to make “best efforts” to accede to that treaty in the trade agreement.

On June 14, 2000, Georgia became a member of the World Trade Organization (WTO) and obligated itself on that date fully to comply with the TRIPS Agreement, including substantive provisions as well as the important enforcement obligations. This meant that as of June 14, 2000, there was finally a point of attachment for American and other foreign sound recordings as a result of its WTO membership.

On July 4, 2001, Georgia deposited its instrument of ratification for both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The Georgian Copyright Law now needs to be amended to fully implement those important digital treaties to fight against Internet and other forms of digital piracy, and to create an environment for the future growth of e-commerce.

Also in June 2001, Georgia was added to the list of beneficiary countries under the Generalized System of Preferences (GSP) program by the U.S. government. One key component of the discretionary criteria of the GSP program under U.S. law is that the country provides “adequate and effective protection of intellectual property rights...” which includes copyright protection and enforcement. Georgia must improve its levels of protection and enforcement of copyright and neighboring rights in order to enjoy these GSP benefits.

The Georgian Copyright Law does not provide protection for pre-existing works as required by the clear obligation in its bilateral trade agreement, nor does it provide such protection for pre-existing sound recordings. However, as required by the WTO TRIPS Agreement (Article 14.6 for sound recordings, and Article 9 for works), Georgia is obligated to provide protection for pre-existing works and sound recordings that are less than 50 years old. It is presumed that since international treaties are granted supremacy under Georgian law that the TRIPS obligations are self-executing, and therefore this protection is afforded works and sound recordings. Since the Georgian Copyright Law is contrary to the international obligations, the copyright law should be amended to clearly provide for protection for pre-existing works and sound recordings (for a minimum of 50 years).

Georgia does provide explicit copyright protection for computer programs and databases as required under the bilateral trade agreement.

There are no known civil *ex parte* search procedures under Georgian law; these are needed to provide for effective enforcement against end-user pirates.

In June 1999, Georgia adopted Criminal Code amendments; these amendments came into force on July 1, 2000. Article 189 applies to copyright and neighboring rights violations. The penalties range from fines of between 300 to 500 times the minimum wage, or obligatory social labor for up to two years, for illegal reproduction, importation or export. They increase up to 1,000 times the minimum wage and the same temporary limitation on freedom, for the unauthorized "use" or "release" (including first publication, i.e., moral rights violations) of copyright and neighboring rights material. For repeat offenders, the temporary limitation of freedom increases up to three years; there is a jail sentence of up to one year.

There are no known provisions in the criminal code or the criminal procedures code to provide police with the proper *ex officio* authority to commence criminal copyright cases. This is an essential tool for copyright enforcement and an obligation to meet the WTO TRIPS standards of adequate and effective enforcement.

Customs code amendments were adopted on June 23, 1999. IIPA has never been provided with a copy of those amendments, but they reportedly did not provide customs officials with *ex officio* authority to seize suspected infringing material at the border as required by the TRIPS Agreement, and as is necessary to conduct effective border enforcement. The 1999 amendments explicitly provided for border enforcement measures relevant to intellectual property violations. Customs officials are authorized to seize suspected IP materials and hold them until a court renders a decision; however, one provision that significantly weakens the effectiveness of these provisions requires that an application be submitted by the rightholder before such action can commence.

Several years ago, Georgia was considering major revisions to its civil code. The proposal would have incorporated an extensively reworked copyright law into the civil code, inconsistent with its international treaty obligations including Berne and the WTO TRIPS Agreement. That effort, opposed by the European Union, the U.S. government, the WIPO, and the IIPA, seems now to have been abandoned, which is fortunate.

On April 30, 2001, Ambassador Zoellick announced that although not listed on the Watch or Priority Watch Lists, Georgia would be the subject of an out-of-cycle review in 2001 by the U.S. government for enforcement and legal reform deficiencies. On February 12, 2002, Ambassador Zoellick announced the completion of that review, noting that the U.S. government "is concerned with key gaps in the legal regime" of Georgia and that these deficiencies "must be corrected to ensure the effective enforcement of intellectual property rights, such as the lack of *ex officio* authority (the authority to undertake action without a right holder's complaint) for customs and criminal authorities, as well as the lack of civil *ex parte* search and seizure procedures conducted without notice to the alleged infringers." The U.S. government pledged to continue monitoring the situation in Georgia until these deficiencies are corrected, something that the IIPA strongly encourages.

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Georgian law and its enforcement regime is currently not providing “adequate and effective” enforcement as required by the WTO TRIPS Agreement obligations found in Articles 41 through 61, and as required by the bilateral trade agreement.

The copyright industries report that there is still no meaningful police, prosecutorial, judicial or customs activity to stop retail distribution, much less organized criminal enterprises producing and distributing material in Georgia and trafficking that material in neighboring countries.

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

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

In addition, as in other countries in the region, the environment is ripe for illegal optical media production facilities as well as other organized criminal production facilities. According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are no known optical media plants yet in Georgia. The reports that in the near future some of the illegal Ukraine CD plants may move their operations to Georgia are very troubling. Most of the music piracy in Georgia is currently in the form of audiocassettes. The recording industry estimates that trade losses for foreign rights holders in Georgia in 2001 were \$6 million; the piracy rate was estimated at 86%. In 2001, about 825,000 CDs and 4.7 million cassettes were sold in Georgia; of these, 725,000 CDs and 4 million cassettes were pirated copies.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$29.7 million in 2000; the level of piracy was estimated to be 89%. The final figures for 2001 are not yet available.

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

KAZAKHSTAN

LEGAL REFORM AND TREATY ADHERENCE

In May 1992, Kazakhstan and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights (a summary of the trade agreement is provided in the introductory section, above). That agreement entered into force on February 18, 1993.

On June 10, 1996, Kazakhstan passed the Law on Copyright and Neighboring Rights. That law entered into force on June 12, 1996. Among its many features, the 1996 law for the first time protected computer programs and sound recordings. The 1996 law provided copyright owners with the exclusive rights of: (1) reproduction; (2) distribution including importation, rental, and public lending; (3) public display and public performance; (4) communication to the public; (5) broadcasting; and (6) a right of translation as well as adaptation. The law enacted a Berne-compatible term of life-plus-50 years.

Kazakhstan joined the Berne Convention, effective April 12, 1999. Effective on August 3, 2001, Kazakhstan became a member of the Geneva Phonograms Convention, providing a point of attachment for foreign sound recordings, albeit more than seven years after the bilateral trade agreement required such protection.

Kazakhstan was a signatory to both of the WIPO digital treaties. The Kazakh government should be encouraged to ratify both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), early in 2002, and to adopt the appropriate legislation to fully implement these treaties to effectively fight against Internet and other forms of digital piracy, and to create an environment for the future growth of e-commerce.

In 2001, IIPA met several times with officials from the government of Kazakhstan to try to resolve the legal reform and enforcement issues that have persisted in Kazakhstan detailed in this report. It was hoped that if these revisions, including accession to the digital copyright treaties, were undertaken, Kazakhstan could develop into a successful marketplace for the copyright industries as a result of its transformation into an effective copyright enforcement regime; in exchange, it was hoped that the threatened suspension or withdrawal of GSP benefits instigated by the IIPA would be lifted. Those GSP benefits in 2000 (the last full year of available statistics) resulted in over \$325 million in trade benefits to Kazakhstan. But unfortunately, the needed legal reforms including treaty accessions and the adoption of a stronger, more effective, and enforced copyright, customs (regulations), criminal, and criminal procedure codes, did not materialize in 2001. On September 26, 2001, the government of Kazakhstan issued a resolution (#1249) instructing the appropriate government ministries to draft laws and regulations that would fix the acknowledged deficiencies in the Kazakh enforcement regime. Perhaps these revisions can be completed early in 2002.

The Kazakh Copyright Law even after the 1996 “modernization” contains several deficiencies. Perhaps most fundamentally, the copyright law does not contain a provision that

clearly provides protection for pre-existing works and sound recordings as required by the obligation in the bilateral trade agreement as well as by Berne (Article 18), under national treatment obligations, and under the TRIPS Agreement (Article 14.6 for sound recordings and Article 9 for works). Kazakhstan's Copyright Law (Article 4) states where there is a conflict between the Kazakh Law and an international treaty obligation (i.e., Berne Article 18), the latter shall govern and be self-executing in Kazakhstan. However, when Kazakhstan adhered to Berne in April 1999, it did not make clear in a directive or decree how or if it was complying with its obligations under Article 18 (for works) and would thereby provide full protection for older works. And, there is no equivalent treaty provision for the protection of pre-existing sound recordings (that is, it is not found in the Geneva Phonograms Convention). That is why the Kazakh law must be amended to clearly provide such protection for pre-existing works and sound recordings (at a minimum of 50 years) to meet its international obligations. Proposals to amend the Copyright Law in 2002 are reportedly being prepared; they should include these changes for pre-existing works and sound recordings, as well as full and proper implementation of the digital treaties.

The Kazakh Copyright Law does provide explicit copyright protection for computer programs and databases as required under the bilateral trade agreement.

There are no known civil *ex parte* search procedures under Kazakh law; these are needed to provide for effective enforcement against end-user pirates.

On July 16, 1997, Kazakhstan adopted criminal code amendments; these amendments went into force on January 1, 1998. Pursuant to the bilateral agreement obligations, the criminal code revisions in 1997 included important sanctions for copyright and neighboring violations. Article 184 of the Criminal Code includes substantial fines of between 100 and 800 times the statutory minimum monthly wage; detention (arrest) of up to six months; and imprisonment up to five years for repeat offenders.

There is one major shortcoming in these provisions: They are limited to actions committed for the purposes of "deriving profits" and which cause "considerable harm." The imposition of unclear thresholds, especially the considerable harm standard, has been a particular problem for effective enforcement in other countries, notably Russia. The considerable harm standard is a vague one that shifts the burden of proof away from the pirates onto copyright owners. In other countries, this threshold has resulted in otherwise clear piracy cases being dismissed because the burden could not be met to move forward – either the prosecutors refuse to press charges, or judges dismiss cases. The threshold is not only a burden for identifying infringing acts under the criminal law, it also provides critical guidance for the police when they are conducting the initial raids, and must determine whether the cases should be brought under the criminal code or the administrative code.

The threshold for criminal violations should be clear and it should be a relatively low standard applied against those in commercial activities. Proposed amendments to fix the considerable harm threshold at 500 times the minimum monthly wage were considered but not adopted in 2001. The IIPA recommends that such a threshold is too high for copyright piracy, and should be much lower to commence a criminal case. A low threshold is important not only for identifying infringing acts under the criminal law but also for providing critical guidance for the police when they are conducting the initial raids, and they must assess the situation and determine whether the case should be brought under the criminal code or the administrative code. IIPA

would recommend (as it has been considered in other countries) that the threshold be lowered to 50 times the daily minimum wage.

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

The Law on Customs was amended on June 16, 1999. It contained five articles on IP border control (Articles 218-1 to 5). Effective February 15, 2001, the customs code was further revised. According to Kazakh officials, the 2001 customs code revisions did, for the first time, provide customs officials with the proper *ex officio* authority to seize suspected infringing material at the border as required by the TRIPS Agreement and as is necessary to conduct effective border enforcement. Reportedly, new customs code regulations will implement these changes some time in 2002, so they have not yet been put to use. IIPA urges the Kazakh government to quickly adopt these regulations to provide Customs officials with the proper authority to effectively enforce against IPR violations at the border, at present, a very serious problem for the copyright industries.

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

COPYRIGHT ENFORCEMENT

As in past years, there are reports that piracy of all copyrighted products – music, sound recordings, business applications software, interactive entertainment software (on all platforms, CDs and cartridges), motion pictures, videos, television programming, books and journals – is widespread throughout Kazakhstan. Levels of piracy are extremely high and enforcement is very weak, especially at the border.

Kazakh government officials reported significant improvements in 2001 in the amount of pirated product that was seized and destroyed by the police (over 112,600 copies valued at 20.6 million tenge (US\$135,000)). Further, Kazakh officials pointed to a newly adopted licensing law (Article 22) for businesses that, it is hoped, will be used as an effective administrative tool against copyright pirates. IIPA suggests that such police and administrative activity would be a very positive first step and that stepped up seizure and confiscation of illegal copyright materials should be undertaken, as well as the closure of shops and businesses conducting illegal business using the licensing law. The next step should be imposition of the criminal penalties against large commercial pirates, especially those involved in the criminal syndicates working with the region.

In 2000, the Kazakh government employed a structural change to enhance IPR enforcement when the Copyright Agency was moved into and under the direction of the Ministry of Justice. So far, that has not proven to be as successful as was hoped, in the stepping up of enforcement operations, especially against criminal piracy operations.

To date, none of the copyright industries report any cases that have moved forward and utilized the “new” (1997) criminal penalties, now four years after their adoption. IIPA again urges

the government of Kazakhstan to direct prosecutors to utilize these new penalties scaled to multiples of the monthly salary or income of individuals convicted, so that they can be imposed in a way that they actually deter piracy. The availability and application of criminal penalties at levels sufficient to deter piracy are necessary for effective copyright protection, and are required under the bilateral agreement, as well as the WTO TRIPS Agreement.

In addition, as already noted, the customs law must be fully implemented with the necessary regulations and then put to use to stop the flow of materials across the region, a particular problem region-wide to stem the flow of material being imported from or exported to Russia, Ukraine, Belarus, the Czech Republic and Poland.

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

The recording industry reports trade losses for foreign rights holders in Kazakhstan were \$25 million in 2000 (up from \$20 million for all rightsholders in 1999). The piracy rate was estimated at 78% (but considerably higher for the international repertoire segment of the music market). It is estimated that in 2001, more than 2.87 million CDs and 12.4 million pirated cassettes were sold in Kazakhstan. The recording industry reports that more than 190 raids were run in 2001, but only about 13,600 CDs, 13,600 cassettes and 8 recording devices were seized. So, obviously most of the "raids" were taken against very small operations, and only minimal administrative sanctions were levied against infringers.

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

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

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$29.7 million in 2000; the level of piracy was estimated to be 89%. The final figures for 2001 are not yet available.

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

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

KYRGYZ REPUBLIC

LEGAL REFORM AND TREATY ADHERENCE

In May 1992, the Kyrgyz Republic and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights (a summary of the trade agreement is provided in the introductory section, above). That agreement entered into force on August 21, 1992.

In January 1998, the Kyrgyz Republic adopted the Law on Copyright and Related Rights; the law went into force on January 22, 1998. The civil code was amended in 1998 by introducing a new Part IV (of the former Soviet Code) with very detailed provisions on intellectual property, including 40 articles on copyright and neighboring rights. These provisions now contradict the copyright law; this is a problem that needs repair to clarify that the copyright law provisions take precedent over the civil code amendments, so that Kyrgyz copyright law is consistent with international norms and obligations.

The January 1998 copyright law included, for the first time, protection for computer programs and sound recordings. It provided authors with a full set of rights, including the rights of reproduction (that includes the “storage of a work in a computer memory”); distribution; importation; public presentation and public performance; communication of the work to the public by broadcasting, or rebroadcasting (or by cable); translation; and adaptation. The law adopted a life-plus-50-year term of protection. The rights afforded to producers of sound recordings include reproduction, adaptation, distribution (including rental) and importation. However, the law provides a right of remuneration only for producers of sound recordings for the public performance, broadcasting or transmitting by cable of their phonograms. The law should be further amended to provide producers with a broader public performance (or making available) right, at a minimum, for digital transmissions.

The Kyrgyz Republic joined the Berne Convention, effective July 8, 1999. The Kyrgyz Republic is still not a member of the Geneva Phonograms Convention as it was required (to make “best efforts” to accede) in the bilateral agreement over eight years ago. Kyrgyz copyright officials reported that the Kyrgyz Republic would likely consider acceding to the Rome Convention and the Geneva Phonograms Convention sometime in 2001, but that never transpired. On September 10, 1998 the Kyrgyz Republic deposited its instrument of ratification of the new WIPO Copyright Treaty (WCT); that treaty comes into force on March 6, 2002. Unfortunately, the Kyrgyz Republic did not also ratify the WIPO Performances and Phonograms Treaty (WPPT). This was a major oversight that needs to be corrected to provide protection for digital works and sound recordings to fight on-line piracy and to develop an environment to encourage e-commerce.

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

In 2001, IIPA met with officials from the government of the Kyrgyz Republic to try to resolve the legal reform and enforcement issues that have persisted in the Kyrgyz Republic detailed

in this report. But unfortunately, the necessary legal reforms, including accession to treaties (Geneva Phonograms and the WPPT), did not take place in 2001; hopefully these reforms can be undertaken early in 2002.

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

The Kyrgyz Copyright Law does provide explicit copyright protection for computer programs and databases as required under the bilateral trade agreement.

There are no known civil *ex parte* search procedures under Kyrgyz law. These are important for effective enforcement against end-user pirates; if these procedures are not currently available, they must be adopted in the Kyrgyz Republic civil procedure code.

In 1999 a package of intellectual property law amendments was adopted along with implementing regulations in order to comply with the WTO TRIPS Agreement. Currently, criminal sanctions in the Kyrgyz Republic provide for imprisonment of up to five years for intellectual property violations (Article 150 of the Criminal Code). Administrative sanctions provide for liability (fines) for minor violations of copyright and neighboring rights, with the possibility of confiscating infringing copies (Article 340).

The Customs Code contains a special Chapter IV on customs measures applicable to IP goods; this has been in force since 1998. However, as was acknowledged in meetings and correspondence with IIPA, these provisions do not provide customs officials with *ex officio* authority to seize suspected infringing material at the border. Instead, customs actions can only be instigated by an application from the copyright owner. The *ex officio* authority to seize goods and commence investigations is required by the TRIPS Agreement and is necessary to conduct effective border enforcement; the Kyrgyz Republic should adopt the necessary amendments to fix this deficiency.

There is nothing in the criminal code or the criminal procedures code to provide police with the proper *ex officio* authority to commence criminal copyright cases. This is another important tool for enforcement officials that need to be implemented.

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

On April 30, 2001, Ambassador Zoellick announced that although not listed on the Watch or Priority Watch lists, the Kyrgyz Republic would be the subject of an out-of-cycle review in 2001 by the U.S. government for enforcement and legal reform deficiencies. On February 12, 2002,

Ambassador Zoellick announced the completion of that review, noting that the U.S. government “is concerned with key gaps in the legal regime” of the Kyrgyz Republic and that these deficiencies “must be corrected to ensure the effective enforcement of intellectual property rights, such as the lack of *ex officio* authority (the authority to undertake action without a right holder’s complaint) for customs and criminal authorities, as well as the lack of civil *ex parte* search and seizure procedures conducted without notice to the alleged infringers.” The U.S. government pledged to continue monitoring the situation in the Kyrgyz Republic until these deficiencies are corrected, something that the IIPA strongly encourages.

COPYRIGHT ENFORCEMENT

In meetings with IIPA officials, Kyrgyz government officials cited statistics about the numerous copyrighted materials that have been seized by enforcement officials in 2000 and throughout 2001. Unfortunately, IIPA members report that the number of items seized, and police activity in general, is still relatively low compared with the high levels of piracy prevalent in the Kyrgyz Republic. In sum, the Kyrgyz Republic enforcement regime is not providing “adequate and effective” enforcement as required by the WTO TRIPS Agreement obligations found in articles 41 through 61, and as required by the bilateral trade agreement.

Illegal copyright material continues to be imported across the border from China, as well as musical material into and from Russia and Ukraine. There remains a woeful lack of meaningful police, prosecutorial, judicial or customs activity to stop the ongoing distribution of this material, much less organized criminal enterprises producing and distributing material in the Kyrgyz Republic, who are also trafficking this material in neighboring countries.

Last year, the government announced it would authorize the State Customs Agency to begin seizing illegal copyright material, especially singling out audio and video pirate product. Further, the government announced a series of decrees and resolutions ordering the enforcement bodies to improve enforcement, and for the government ministries to prepare better enforcement laws. These efforts, however well intentioned, have not yet led to actual on-the-ground police and prosecutorial enforcement, or to effective border enforcement.

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

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

In addition, as in other countries in the region, the environment is ripe for illegal optical media production facilities as well as other organized criminal production facilities. According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are no known optical media plants or cassette plants in the Kyrgyz Republic. Like Kazakhstan, the danger

is that the former military bases are targets to be converted into illegal manufacturing operations. Currently, most of the music piracy is in the form of audio cassettes. The recording industry estimates trade losses in the Kyrgyz Republic were \$8 million in 2001, with the level of piracy estimated to be about 85%. Out of approximately 490,000 CDs and 4.4 million cassettes sold in the country in 2001, 390,000 CDs and 3.8 million cassettes were pirated copies.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$29.7 million in 2000; the level of piracy was estimated to be 89%. The final figures for 2001 are not yet available.

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

One provision in the package of 1999 amendments and regulations established a single office with responsibility for intellectual property law enforcement to act as a focal point for interagency activity, bringing together the efforts of the police, customs officials and the judiciary. Now over two years later there are still no reports of the successful progress or activity of this office, other than reports that it has ordered the preparation of "additional" laws; in fact in late 2001, additional decrees were issued for improvements in the IPR legal regime. Legal reforms are certainly needed as detailed above. But, actual enforcement is also needed; clear government strategies and lines of authority should be developed by this office and implemented with effective on-the-ground enforcement by the police, prosecutors, courts, and at the border, by customs officials.

REPUBLIC OF MOLDOVA

LEGAL REFORM AND TREATY ADHERENCE

In June 1992, the Republic of Moldova and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights (a summary of the trade agreement is provided in the introductory section, above). That agreement entered into force on July 2, 1992.

The Republic of Moldova adopted a comprehensive copyright law on November 23, 1994; it went into force on May 2, 1995. Some additional, but mostly minor, amendments were added on May 28, 1998; additional amendments were adopted on July 28, 2000.

The Republic of Moldova is a member of the Berne Convention, effective November 2, 1995. On July 17, 2000, Moldova finally provided a point of attachment for foreign sound recordings when it became a member of the Geneva Phonograms Convention. The Republic of Moldova is also a member of the Rome Convention (December 5, 1955).

On March 6, 1998, Moldova deposited its instrument of accession to both new WIPO treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The Republic of Moldova has not yet adopted additional copyright or neighboring rights provisions to fully implement the WCT or WPPT; it should be encouraged to do so to protect against Internet and other forms of digital piracy and to create an environment for the growth of e-commerce. There has already been one report by the American book publishers of a Moldovan Internet Website offering illegal copies of (English language) published materials; proper implementation of the treaties will give the police the tools they need to stop this form of piracy.

On July 26, 2001, the Republic of Moldova became a member of the World Trade Organization and thus was obligated on that date to all of the substantive and enforcement provisions of the TRIPS Agreement.

The Copyright Act of the Republic of Moldova adopted in late 1994 was intended to comply with the Berne Convention obligations. It provides a Berne-compatible term of life-plus-50 years. It provides authors with exclusive rights of reproduction; distribution, including rental for computer programs and sound recordings; importation; public presentation and public performance; communication of the work to the public (but without an explicit right of making available); translation; and adaptation. The producers of phonograms are afforded the exclusive rights of reproduction, distribution (including rental), adaptation, and importation. However, the law provides a right of remuneration only for producers of sound recordings for the public performance, communication of a phonogram over the air, or by cable. The law should be further amended to provide producers with a broader public performance (or making available) right, at a minimum, for digital transmissions.

In 2000, the Moldova government clarified that the Moldova Copyright Law does provide protection for pre-existing works or sound recordings as required by the clear obligation in its

bilateral trade agreement, as well as by Berne (Article 18) and the TRIPS Agreement (Article 14.6 for sound recordings and Article 9 for works). This clarification came through an exchange of letters between the United States government and the government of the Republic of Moldova (government of Moldova Letter of October 16, 2000) acknowledged that their copyright law provides protection for works and sound recordings that are less than 50 years old. The letter cited Article 3 of the Moldova Parliamentary Decision No. 294/XII of November 23, 1994. The IIPA noted in our report last year that this issue had been resolved as a matter of legal reform; however, IIPA continues to seek actual on-the-ground enforcement by the police (and the courts) that will provide the real proof that this law is working to protect older works and sound recordings.

The Moldova Copyright Law does provide copyright protection for computer programs and databases. The Civil Procedure Code (Articles 31, 135, 136, and 140-142) was cited by the government of Moldova (Letter of October 16, 2000) as clearly providing for the availability of civil *ex parte* searches. Again, the exchange of letters in 2000 resolved the legal reform issue; but unfortunately, in 2001, there were no such searches commenced to put this provision to the test. These procedures, if in fact available, must be implemented by the courts to allow copyright owners to effectively bring enforcement actions against end-user pirates.

The Republic of Moldova introduced criminal sanctions into its Copyright Law (Article 38, Paragraph 12). It contains a provision for criminal liability for copyright and neighboring rights infringements, providing up to three years of imprisonment and/or fines of between 100 and 1,000 times the minimum monthly wage. However, Moldova should also amend its criminal code to include special criminal provisions for IPR violations. IIPA remains concerned that some of the provisions in the current criminal code only apply to works and not to sound recordings, and that overall the provisions are still not strong enough to provide deterrent penalties. The criminal procedures code does provide police with the proper *ex officio* authority to commence criminal copyright cases.

The Government of Moldova (Letter of October 16, 2000) noted that in 2001 improvements to the Criminal Code and Criminal Procedure Code were expected in compliance with the WTO TRIPS Agreement, but IIPA is unaware of any such changes to these codes.

The Republic of Moldova did reportedly amend its customs code to provide *ex officio* authority for customs officials to seize material at the border as required by the WTO TRIPS Agreement in 2001 (but IIPA was unable to obtain a copy of these changes). These provisions are necessary to conduct effective enforcement at the border; this was acknowledged by Moldova authorities in the Letter of October 16, 2000, along with an agreement to fix the then-deficient provisions. If the reports are correct about their adoption, the provisions need to be properly implemented for effective border enforcement.

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

COPYRIGHT ENFORCEMENT

Even after accession into the WTO, the on-the-ground copyright enforcement regime in the Republic of Moldova is not “adequate and effective” as required by the TRIPS Agreement or the bilateral agreement. That is, although there are signs of stepped-up police activity, there must now be prosecutions and convictions under the criminal law for Moldova to meet its international obligations to provide an effective enforcement regime.

There have been some signs of improvement in Moldova, especially cooperation with the police. For example, Moldovan law enforcement officials raided a warehouse in Kishinev Moldova in January 2001, seizing over 558,000 CDs of international (and Ukraine) repertoire, along with videogames and business software (CD-ROMs). The estimated value of this single warehouse seizure was US\$2 million. Unfortunately, since the warehouse was used as a transshipment point, the police were not able to establish and prove any links between the senders (in Ukraine) and recipients outside of Moldova. The case was closed. But the court did order the destruction of the pirated goods after they were determined to be pirate by expert industry analysis (IFPI). The destruction was undertaken in February 2002. There have been no other instances where violators were charged and convicted under criminal or civil liability in 2001.

Thus, Moldavian enforcement officials must take the next steps to provide and implement adequate civil, criminal, administrative and customs provisions against commercial piracy. Although civil and administrative sanctions exist, they are not being used adequately. These would be most effective against retail (including kiosk) businesses.

To date, the copyright industries report that there has not been any successful administration of the criminal sanctions in a copyright case. Border enforcement remains weak in the Republic of Moldova, allowing illegal copies, especially of musical material produced in Ukraine, freely to cross borders for sale in the Republic of Moldova and other countries. This is causing significant harm to the copyright industries.

In addition, as in other countries in the region, the environment is ripe for illegal optical media production facilities, as well as other organized criminal production facilities. According to the recording industry (International Federation of the Phonographic Industry, IFPI), there is reportedly at least one illegal optical media plant in the Republic of Moldova, but this has not been confirmed. The threat of CD piracy is, however, very great; Moldova is an attractive location for the production of illegal material that could then be distributed to other countries in the region. The IFPI reports that CDs and musical cassettes are being imported into Moldova from Russia and Ukraine. The recording industry estimates trade losses for foreign rightsholders in the Republic of Moldova was \$5 million in 2001, with the level of piracy estimated to be about 86% out of 660,000 CDs and 3.74 million cassettes sold in Moldova in 2001.

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

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$29.7 million in 2000; the level of piracy was estimated to be 89%. The final figures for 2001 are not yet available.

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

TAJIKISTAN

LEGAL REFORM AND TREATY ADHERENCE

In July 1993, Tajikistan and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights (a summary of the trade agreement is provided in the introductory section, above). That agreement entered into force on November 24, 1993.

On November 13, 1998, the Republic of Tajikistan adopted the Law on Copyright and Neighboring Rights, providing a comprehensive revision of the copyright law in Tajikistan; the law went into force on December 17, 1998.

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

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

Tajikistan deposited its instrument of accession to the Berne Convention on December 9, 1999 and became a member of Berne effective March 9, 2000. However, Tajikistan is not providing any protection or rights to U.S. or any other sound recordings, nor is Tajikistan a member of the Geneva Phonograms Convention—two obligations of the trade agreements it pledged to make “best efforts” to conclude over eight years ago. So U.S. (and other foreign) sound recordings remain completely unprotected in Tajikistan.

Tajikistan *does not* clearly provide protection for pre-existing works or sound recordings in its copyright law as required by the clear obligation in its bilateral trade agreement and the Berne Convention. Tajikistan must amend its law to clearly state its protection for pre-existing works and

sound recordings that are (at a minimum) less than 50 years old in order to comply with its bilateral trade agreement obligations and international norms.

The Tajik Copyright Law does provide explicit copyright protection for computer programs and databases as required under the bilateral trade agreement.

There are no known civil *ex parte* search procedures in existence in the Tajik law; these provisions must be adopted and implemented for effective enforcement against end-user pirates.

Tajikistan has not amended its criminal code, following passage of the November 1998 copyright law, to adopt criminal provisions for IPR violations, in breach of the bilateral agreement's obligation to provide "adequate and effective" protection and enforcement. The criminal code must provide deterrent penalties. In addition, there is nothing in the criminal code or the criminal procedures code to provide police with the proper *ex officio* authority to commence criminal copyright cases.

The customs code must be amended to provide customs officials with *ex officio* authority to seize suspected infringing material at the border as required by the TRIPS Agreement and as is necessary to conduct effective border enforcement. The customs code, last revised in November 1995, does make one liable for the transfer of illegal goods, including intellectual property material, through the border. This is, however, an ineffective tool that must be revised.

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

COPYRIGHT ENFORCEMENT

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

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

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

According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are no known optical media plants in Tajikistan. Most of the music piracy is in the form of audio cassettes, some produced in Tajikistan. The recording industry estimates trade losses for foreign rights holders in Tajikistan were \$3 million in 2001 (up from \$500,000 in 1999); music piracy levels were estimated to be at about 83%. Of 4 million cassettes, 3.36 million were pirated copies; for CDs the figures were 450,000 total sales, of which 393,000 were pirated copies.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$29.7 million in 2000; the level of piracy was estimated to be 89%. The final figures for 2001 are not yet available.

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

TURKMENISTAN

LEGAL REFORM AND TREATY ADHERENCE

In March 1993, Turkmenistan and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights (a summary of the trade agreement is provided in the introductory section, above). That agreement entered into force on October 25, 1993. For almost nine years since that time, however, Turkmenistan has done little to modernize its copyright regime or to join any of the relevant treaties as it obligated itself to do in the bilateral agreement.

In the first instance, Turkmenistan never adopted a comprehensive Copyright and Neighboring Rights Law. In October 1993, Turkmenistan formally incorporated the Soviet-era Civil Code (Chapter IV) into its legal structure. On March 1, 1999, the Civil Code was revised, with extensive amendments pertaining to copyright. So, the operational copyright laws are those that were last amended by the Civil Code (1961) as amended in 1999. The Civil Code does contain provisions for the protection of computer programs, databases, and sound recordings, but the rights and provisions necessary to comply with international norms are still lacking. A draft Law on Copyright and Neighboring Rights was under consideration a few years ago, but reportedly was never adopted by the Parliament.

Turkmenistan is not a member of the Berne Convention. So, Turkmenistan is not providing any protection for American works—books, films, musical compositions, or software (entertainment or business). Nor is Turkmenistan a member of the Geneva Phonograms Convention, leaving U.S. (and other foreign) sound recordings completely unprotected. These are all obligations of the bilateral agreement that Turkmenistan obligated itself to fulfill more than eight years ago.

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

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

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

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The addition into the Turkmen copyright law of basic civil, administrative, criminal and customs remedies is essential to bring the copyright enforcement legal regime up to international norms.

Turkmenistan, in the absence of these essential provisions and the lack of any police, prosecutorial, judicial or border activity, is clearly not providing “adequate and effective” enforcement as required by the bilateral trade agreement. The Turkmen government must be encouraged to adopt the necessary legal reforms. Then, at a minimum, the authorities must commence police raids and seizures, and must act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions.

The criminal code currently does not provide any sanction for copyright or neighboring rights infringements. The administrative code does not provide any sanctions for violations of copyright or neighboring rights infringements.

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

The recording industry (International Federation of the Phonographic Industry, IFPI) reports that in the absence of substantive legislation granting protection to foreign works and phonograms, it is impossible to distinguish the “pirated” product from the “legitimate” copies. Most of the music sold is in the form of audio cassettes. Because of the flagrant legislative failures, the music industry has decided not to quantify the piracy percentages this year. Rights holders remain very concerned that almost every copy produced and distributed in the country is done so without authorization. The music industry reports that illegal musical cassettes produced in neighboring countries, including Uzbekistan in particular, are entering Turkmenistan as the result of the very poor border enforcement regime (on both sides of the border). The IFPI reports that there are still no known optical media plants in Turkmenistan. The recording industry preliminary estimates trade losses for foreign rights holders in Turkmenistan were (by estimating the possible size of the “legal” market) \$5 million in 2001 (up from \$3 million in 1999). In 2001, a total of 4.25 million cassettes and 750,000 CDs were sold in Turkmenistan.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$29.7 million in 2000; the level of piracy was estimated to be 89%. The final figures for 2001 are not yet available.

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

UZBEKISTAN

LEGAL REFORM AND TREATY ADHERENCE

In November 1993, Uzbekistan and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights (a summary of the trade agreement is provided in the introductory section, above). That agreement entered into force on January 13, 1994.

On August 30, 1996, the Uzbek Parliament adopted the Law on Copyright and Neighboring Rights providing a comprehensive revision of the copyright law in Uzbekistan; the law went into force on September 17, 1996. Since that time, there have not been any thorough revisions to the copyright act, or to the relevant enforcement laws, even though Uzbekistan obligated itself to undertake important changes in the bilateral agreement over eight years ago. The exception was in December 2000, when two amendments to the copyright law were adopted; however, as noted herein, major deficiencies remain.

Uzbekistan has not acceded to any of the relevant copyright or neighboring rights treaties, as it obligated itself to do in the bilateral agreement over eight years ago. In fact, in discussions with the IIPA and the United States government in 2000, Uzbek government officials stated that they did not expect to join the Berne Convention or the Geneva Phonograms Convention before the end of 2003. As a result of Uzbek reluctance to meet its bilateral obligations, IIPA filed a petition to withdraw the GSP benefits of Uzbekistan in 1999; the U.S. government accepted that petition. IIPA continues to press for the withdrawal or suspension of GSP benefits as the result of the Uzbek government's total failure to adopt the necessary legal reforms, treaty accessions, and enforcement obligations.

The Uzbek Law on Copyright and Neighboring Rights of 1996 established protection for the first time of computer programs, databases, and sound recordings (further amended by the December 2000 provisions). The exclusive economic rights provided to authors (Article 22) include "the right to exploit the work in all forms and by all means" such as by reproduction and dissemination; public presentation; rental; public performance; broadcasting, including cable distribution or satellite transmission; recording of a work by technical means, and communication of a technical recording (including by radio or television); and translation or transformation. There are numerous provisions that remain that regulate the terms and conditions of authors' contracts. The producers of phonograms are afforded the exclusive rights of public presentation, adaptation or other transformation, distribution (including commercial rental), and importation.

Until 2001, the neighboring rights section of the law did not provide for a basic right of reproduction for producers of sound recordings; one of the two December 2000 amendments added "copying of a record" to the enumerated rights of producers to fix that glaring deficiency. The copyright law provides a right of remuneration only for producers of sound recordings for the public communication of the recording, the broadcasting, or the communication to the public by cable. The law should be further amended to provide producers with a broader public performance (or making available) right, at a minimum, for digital transmissions.

Uzbekistan is not a member of the Berne Convention. Uzbekistan is currently not providing any rights to U.S. or other foreign sound recordings. Nor is Uzbekistan a member of the Geneva Phonograms Convention, so U.S. (and other foreign) sound recordings are completely unprotected. Joining Berne and Geneva Phonograms and providing protection for U.S. sound recordings are all obligations of the bilateral trade agreement that Uzbekistan promised to fulfill over eight years ago. Uzbek officials suggested in meetings with IIPA members that a point of attachment could be available for works and sound recordings under the Foreign Investment Law. Since it pledged to join the international copyright and neighboring rights treaties (eight years ago), the Uzbek government should, instead, be urged to clearly provide copyright and neighboring rights protection under these relevant treaties (Berne and Geneva Phonograms) and via its copyright law. The second December 2000 amendment added a broad national treatment obligation into the law (Article 56.3), but not a clear point of attachment for all works and sound recordings.

Uzbek law does not clearly provide protection for pre-existing works (or sound recordings, since it provides no protection for new or old foreign recordings). When Uzbekistan extends protection for foreign sound recordings, it must clearly protect pre-existing works, and sound recordings that are at least 50 years old, to comply with the bilateral treaty obligations and international norms.

The Uzbek Copyright Law does provide explicit copyright protection for computer programs and databases as required under the bilateral trade agreement.

There are no known civil *ex parte* search procedures in the Uzbek law; these must be adopted into the civil procedure code in order to commence actions against end-user pirates. These are important enforcement tools that the Uzbek government must be encouraged to implement.

Uzbekistan did not amend its criminal code following passage of the 1996 Copyright Act to adopt deterrent penalties for intellectual property violations, in breach of the bilateral agreement's obligation to provide "adequate and effective" protection and enforcement. The Criminal Code (Article 149) does provide for liability for infringement of copyright and patent violations, but does not include neighboring rights violations. In any case, the existing penalties are too weak and must be amended to strengthen and broaden the provisions for all copyright and neighboring rights violations. Uzbek officials reported that Article 149 would be revised in 2001, but that never transpired. IIPA has not seen any drafts currently under consideration.

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

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

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

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The Uzbek copyright regime is, at present, among the weakest of all of the countries in the C.I.S. It is not in compliance with the bilateral obligations it made to the United States eight years ago, and woefully is insufficient for any future WTO membership. The legal regime in Uzbekistan must be overhauled to provide basic civil, administrative, criminal and customs remedies to bring the enforcement regime up to international norms. Currently, Uzbekistan is not providing “adequate and effective” protection and enforcement as it is obligated to do under the bilateral agreement. There are significant legal reform deficiencies and there is no effective police, prosecutorial, judicial or border activity underway. The Uzbek government must adopt the necessary legal reforms, including accession to the relevant treaties to protect foreign works and sound recordings. Then the authorities must commence police raids and seizures at a minimum, and must act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions.

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

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

The recording industry (International Federation of the Phonographic Industry, IFPI) reports that, as in Turkmenistan, in the absence of substantive legislation granting protection to foreign works and phonograms, it is impossible to distinguish the “pirated” product from the “legitimate” copies. That is why the music industry will not provide piracy rates in Uzbekistan. Rights holders remain very concerned that almost all of the material produced and/or distributed in Uzbekistan is done so without authorization. The recording industry reports that illegal musical cassettes produced in neighboring countries, particularly Russia, are entering Uzbekistan as a result of poor border enforcement (on both sides of the border). The IFPI reports there are no known optical media plants in Uzbekistan, although the opportunity is there for the startup of pirate CD and cassette operations due to the climate and infrastructure. The recording industry preliminary estimates trade losses for foreign rightsholders in Uzbekistan (by calculating the size of the potential legal market) were \$35 million in 2001 (up from \$30 million in 2000). In total, 24 million cassettes and 6 million CDs were sold in Uzbekistan in 2001.

The Business Software Alliance (BSA) estimates that trade losses due to software piracy in the Commonwealth of Independent States (C.I.S.) other than Russia were \$29.7 million in 2000; the level of piracy was estimated to be 89%. The final figures for 2001 are not yet available.

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