

**INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE**  
**2002 SPECIAL 301 REPORT**  
**DOMINICAN REPUBLIC**

**EXECUTIVE SUMMARY**

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The effective implementation and enforcement of the 2000 copyright law is critical to the copyright industries, which have struggled against widespread copyright piracy in the Dominican Republic for more than a decade. The previous lack of effective legal mechanisms – such as low criminal penalties, very few criminal cases prosecuted, no civil *ex parte* remedy, high judicial bonds – proved to be significant barriers to effective copyright enforcement. The Dominican Republic adopted a new copyright law in October 2000, capping many years of effort to replace its inadequate 1986 copyright law. This legislative achievement represents success in advancing higher levels of substantive copyright protection, as well as expanding the battery of tools available for criminal, civil and administrative copyright enforcement in the Dominican Republic.

The government of the Dominican Republic has taken steps to address some of the issues and challenges it faces regarding copyright protection and enforcement, and this must be commended. Having ONDA (the National Copyright Office) in place has assisted several copyright owners in taking much needed enforcement action in the DR. The Government's continued funding and expansion of ONDA highlights its intention to try to address the many challenges copyright owners face in that country. ONDA is still far from effective and needs significantly more political support within the government in order to go beyond simple cases of IPR enforcement. In addition, the industries are worried about the provision stated in the amendments to the Criminal Procedure code that would eliminate ONDA's and the District Attorney's *ex officio* actions and invalidate the evidence collected by ONDA. Problems with the criminal justice system need to be addressed, and procedural codes must be amended to provide a more expeditious way to prosecute those who infringe on intellectual property rights. Levels of copyright piracy in the Dominican Republic remain quite high, well over 50% across almost all copyright sectors. In fact, television piracy worsened in 2001.

In order to support continued progress on effective implementation and enforcement of the copyright law, IIPA recommends that the Dominican Republic stay on the Priority Watch List and that the GSP/CBI review remain ongoing.

**DOMINICAN REPUBLIC: ESTIMATED TRADE LOSSES DUE TO PIRACY**  
*(in millions of U.S. dollars)*  
**and LEVELS OF PIRACY: 1996 – 2001**

INDUSTRY	2001		2000		1999		1998		1997		1996	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	2.0	60%	2.0	60%	2.0	80%	2.0	90%	2.0	100%	2.0	100%
Sound Recordings / Musical Compositions <sup>1</sup>	7.7	65%	2.0	80%	2.0	80%	2.0	80%	NA	NA	NA	NA
Business Software Applications <sup>2</sup>	8.0	70%	6.7	68%	7.4	69%	7.3	73%	NA	NA	NA	NA
Entertainment Software	NA	NA	6.0	NA	NA	NA	NA	NA	NA	NA	NA	NA
Books	1.0	NA	1.0	NA	1.0	NA	1.0	NA	1.0	NA	1.0	NA
<b>TOTALS</b>	<b>18.7</b>		<b>17.7</b>		<b>17.5</b>		<b>12.4</b>		<b>3.0</b>		<b>3.0</b>	

## SUMMARY OF BILATERAL IPR ENGAGEMENT

The IIPA and its members have supported high-level, bilateral engagement between the U.S. and the Dominican Republic.<sup>3</sup> As a result of lack of progress in both legislative reform and effective enforcement, IIPA filed a June 1999 petition with the U.S. government to initiate a review under two trade programs, the Generalized System of Preferences (GSP) and the Caribbean Basic Economic Recovery Act (CBERA, or CBI), of the eligibility of the Dominican Republic to participate in these programs due to its failures to provide adequate and effective copyright protection for U.S. copyright owners and to provide equitable and reasonable market access. The Office of the U.S. Trade Representative accepted this petition on February 14, 2000, and hearings were held on May 12, 2000. Currently, this review is ongoing.<sup>4</sup>

<sup>1</sup> RIAA reports that \$7.65 million (rounded to \$7.7 million, above) represents the estimated sales displacement to the legitimate industry. Actual revenue to music pirates is estimated at \$4.1 million. For the sake of comparison, the recording industry's loss estimate for 2000 of \$2 million was based on less complete information, and represented a projection of pirate revenue rather than industry losses.

<sup>2</sup> BSA loss numbers for 2001 are preliminary. In IIPA's February 2001 Special 301 filing, BSA's 2000 estimates of \$12.3 million at 70% were identified as preliminary. BSA finalized its 2000 numbers in mid-2001, and those revised figures are reflected above.

<sup>3</sup> For a full discussion on the copyright industries' and U.S. government's lengthy bilateral engagement with the Dominican Republic on IPR issues, see appendices D and E of IIPA's 2002 Special 301 report.

<sup>4</sup> In 2000, \$48.6 million of Dominican goods entered the U.S. under the duty-free GSP code, accounting for 1.1% of its total imports to the U.S. \$805.3 million entered under the CBI, accounting for 18.4% of its total imports to the U.S., and \$47 million of Dominican goods entered under the CBTPA. For the first 11 months of 2001, \$1.4 billion of Dominican goods entered under the CBTPA. For the first 11 months of 2001, \$33.6 million of Dominican goods (or 0.9% of the Dominican Republic's total imports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 21% decrease over the same time period last year. For the first 11 months of 2001, \$747 million of Dominican goods entered under the CBI, representing a 1.2% increase over the same period last year.

The Dominican Republic also became an eligible beneficiary country of the U.S.-Caribbean Basin Trade Partnership Act (CBTPA), found in Title II of the Trade and Development Act of 2000.<sup>5</sup> To maintain these CBTPA benefits, the Dominican Republic must meet all the CBERA criteria, as well as the CBTPA's explicit TRIPS-or-greater criteria. Furthermore, as a WTO member, the Dominican Republic is obligated to meet its substantive copyright obligations as well as the enforcement text of the TRIPS Agreement.

## **COPYRIGHT PIRACY IN THE DOMINICAN REPUBLIC**

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Piracy of sound recordings and music in the Dominican Republic remains rampant, with the overall estimated piracy rate at 65%. Estimated trade losses due to music recording piracy are \$7.7 million in 2001. The increase in losses between 2000 and 2001 is due to improved information-gathering by the recording industry. The piracy rate, previously estimated at 80%, is down due to better information gathering, and ONDA's response to piracy in retail outlets. The estimated piracy rate for audiocassettes is at 95%. Audiocassette piracy, which used to dominate the market, has now been over-taken by the financial impact of CD piracy, which is estimated at 30% in commercial stores, with higher piracy rates reported in the tourist areas of Boca Chica, Puerto Plata and Sosua. The piracy format of choice is CD-R (recordable CDs) and there has been a noticeable increase in the number of blank CD-Rs imported from the United States. Audiocassettes have decreased in total numbers as a medium, because of the increase in CD player sales. However, audiocassettes are nearly all pirate or counterfeit. The medium of choice for street vendors is the CD-R. Presently, street vendors and kiosks set up in the many plazas and tourist areas retain inventories that are 100% pirate or counterfeit. It remains government policy that street vendor sweeps in Santo Domingo, Santiago, and Puerto Plata are a low priority. Although ONDA has conducted street sweeps on occasion, the fact that the product is seized but the vendors are not arrested creates no disincentive for the vendors. Usually, within hours of losing their inventories, vendors are restocked and in business. Pirate audiocassettes cost between US\$1.00-2.00 per unit and counterfeit CDs/CD-Rs can range in price from US\$3.00-6.00. With the exception of a few counterfeit CDs that have been traced to the Ukraine, the majority of the counterfeit and pirate CD-Rs are being recorded within the Dominican Republic.

MPA reports that in 2001 there was a dramatic increase in television piracy, the only country in all of Latin America to show such a negative change in this form of piracy. MPA notes that the entire audiovisual industry, from local theaters to local video stores, is suffering increasing damage from the cable and MMDS system operators and UHF television broadcasters who engage in signal theft by making unauthorized retransmissions of U.S. satellite-carried programming. Since the Dominican Republic is located within the footprint of most U.S. domestic satellites, cable operators throughout the territory are able to downlink, decode and retransmit these signals to their subscribers. This type of piracy has caused far-reaching market distortions. The simultaneous retransmission of U.S. pay channels, featuring motion pictures still in their theatrical release in the

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<sup>5</sup> Trade and Development Act of 2000, Pub. L 106-200 (May 18, 2000). USTR subsequently determined that the Dominican Republic has implemented, or is making substantial progress toward implementing, certain customs procedures based on those found in NAFTA. This determination made the Dominican Republic fully eligible for the CBTPA trade benefits. See Press Release 00-68, Office of the U.S. Trade Representative, "Caribbean Basin Trade Partnership Act: Customs Procedure Designation," Oct. 5, 2000.

Dominican Republic, greatly reduces legitimate business opportunities in other media by disrupting the normal release sequence to theatrical exhibitors, retail video outlets and legal cable operators.

There are more than 90 cable television systems in the Dominican Republic, many of which illegally descramble and retransmit U.S. satellite signals. In addition, several large broadcast television stations periodically broadcast recent hit U.S. motion pictures without authorization. These transmissions are on VHF and UHF channels and use DVD or videocassettes as the source of the product. Signal theft piracy distorts the overall market. Thus, although a rate of video piracy of approximately 35% is not high compared to other countries in Latin America and although the overall rate of television piracy as a part of the total programming is not high, the systematic television broadcast of movies in current theatrical release pulls the rug out from under the entire audiovisual market by significantly reducing demand by potential consumers who have already seen new releases on television, albeit in unauthorized form. Annual losses to the U.S. motion picture industry due to audiovisual piracy in the Dominican Republic are estimated to be \$2 to 3 million in 2001.

Computer software piracy in the Dominican Republic comprises primarily hard-disk loading and end-user piracy. With hard-disk loading, Dominican resellers load unlicensed software onto computer hardware and sell the package to an end user. In some cases, the software is represented as legitimate and the purchasers may be unaware that they are buying illegal software. In other cases, the purchasers are complicit in the piracy. End-user piracy rates remain high among Dominican businesses of all sizes, from small family businesses to large, prosperous financial institutions and industrial concerns. In addition, investigations by the Business Software Alliance (BSA) have revealed some instances of counterfeiting in the Dominican Republic. Working with Dominican prosecutors in the *Fiscalía* offices, BSA has achieved six convictions of software piracy. Other prosecutions for counterfeiting are working their way through the Dominican courts. BSA is watching this trend closely, but it does not appear to be the focus of Dominican piracy at this time. Preliminary estimated losses due to business software piracy in 2001 are \$8.0 million, with a 70% piracy level.

For the book publishing industry, problems in the Dominican Republic primarily involve illegal photocopying of English as a Second Language (ESL) textbooks. Commercial piracy is diminishing as legitimate distributors increase. Estimated trade losses to the publishing industry remain at approximately \$1 million in 2001.

IDSA reports that there is piracy of entertainment software (including videogame CDs and cartridges, personal computer CDs, and multimedia products) occurring in the Dominican Republic. Estimated trade losses and piracy levels are not available for 2001.

## **COPYRIGHT ENFORCEMENT IN THE DOMINICAN REPUBLIC**

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### **A Consistent, Comprehensive Response to Piracy Across Multiple Enforcement Agencies Is Needed**

The good news continues to be that the 2000 copyright law now provides more tools for Dominican Republic agencies and rightholders to take more concrete action against piracy. Since the promulgation of the copyright law, a new interagency commission was formed in March 2001

to coordinate all the agencies dealing with intellectual property issues, including ONDA, foreign affairs, customs, public health and others. It is headed by the President of INDOTEL and has members from the Ministry of Industry and Commerce, Customs, the Health Ministry and the Culture Ministry. This commission, along with INDOTEL, has helped ONDA to obtain more funding for ONDA's activities. The commission also organized a seminar on intellectual property addressed to government officials on October 2001. While this interagency group is an important information-sharing forum for different government agencies, its primary focus should be to support the concrete enforcement efforts of ONDA, the *Fiscalía*, INDOTEL and other agencies.

The bad news is that the impact of the new copyright law has not been felt because of a lack of effective application and a lack of willingness to enforce the new measures. The Executive Branch has failed, for example, to fulfill its promise to coordinate action against piracy with the new measures by failing to develop a promised interagency effort to coordinate actual anti-piracy actions by the appropriate agencies, by failing to adequately support ONDA, by failing to encourage prosecutions under the new law and by failing to address television piracy by operators closely related to political elements within its own administration.

The key to real progress in the Dominican Republic is a serious commitment from the Executive to support and encourage effective action by ONDA, INDOTEL and criminal prosecutors in a consistent and comprehensive governmental response to piracy. From the executive branch, ONDA must be given the necessary support and resources to continue its aggressive campaign of investigations and raids against pirates, in an environment that is free from political pressure. The *Fiscalía* must continue to work with ONDA and others to prosecute pirates. The Office of the President can facilitate coordination between ONDA, INDOTEL, the *Fiscalía*, and the police, and can make the fight against piracy a top public priority. Dominican judges at the trial and appellate levels must be properly prepared to give the copyright law full effect. In particular, the judges must be willing to move swiftly to grant petitions for civil copyright claims, as provided under the new copyright law.

In order to address some of the enforcement-related problems IIPA members identify below, we suggest that the government of the Dominican Republic consider the following:

1. Continue to fund and expand ONDA to include satellite offices in the North and the South.
2. Move toward changing the criminal procedural codes to (a) amend the provision that will eliminate ONDA's and *Fiscalía's* powers to do *ex officio* actions; (b) amend the provision so that ONDA's evidence obtained through its inspections would be recognized according to the new intellectual property law; (c) permit a criminal case to be filed and heard without having to file a civil case; and (d) hear the criminal case expeditiously.
3. Ensure the addition of a prosecutor to assist the only prosecutor assigned to IPR cases in the DA's office.
4. Assign a squad of investigative law enforcement officers to follow-up on the cases after ONDA or INDOTEL has conducted a raid.
5. Direct political pressure, as well as enforcement resources, to halt the longstanding problem of television piracy.

And that ONDA:

1. Continue to conduct raids on behalf of all IPR organizations.

2. Begin to use the penalties under the new *Reglamento* (regulation/ordinance) to fine and close down retail outlets, including television stations, where infringing products have been identified and seized.
3. Continue to seek the assistance of copyright-based industry organizations.

## **ONDA's Administrative Actions in 2001 Reflect Much Improvement But Still Are Not Effective to Deter Piracy**

**The Structure of ONDA:** ONDA is the primary success story of the Mejia government's response to piracy in the Dominican Republic. When the government took office in August 2000, President Mejia appointed Mariel Leon as director of ONDA, and ever since then ONDA has carried out an aggressive campaign of inspections, raids and seizures against pirates. In the case of actions against software pirates, ONDA conducts inspections and routinely seizes computers that are found to contain illegal software. These computers become evidence against the pirates in criminal prosecutions. In some cases, ONDA follows up its initial inspection with raids.

It is an encouraging sign that ONDA is still located under the Ministry of Culture. While there was discussion in 2000 about moving ONDA to the Ministry of Industry and Commerce, ONDA is operating efficiently now in its present location, in an environment relatively free of political pressure. One concrete step toward improvement of enforcement actions in the Dominican Republic would be to foster closer coordination between ONDA and the police. ONDA has requested additional support from the police in its investigations of piracy, and also in providing security for ONDA personnel when they perform inspections and raids on suspected pirates. In both of these areas, police support would allow ONDA to operate more effectively. The police could assist ONDA with their inspections of the leads and tips ONDA receives about suspected pirates operating in the DR. In addition, ONDA inspectors have faced difficult situations in some of their inspections of suspected pirates. In addition, a special intellectual property enforcement unit should be set up among local prosecutors and police.

In March 2001 a *Reglamento* was passed which empowered the Director of ONDA to, among other things, continue pursuing violators in IPR cases. It provides the following:

- The Director of ONDA has the authority to fine any establishment (individual) selling pirated/counterfeit products on the spot. The fines levied can range from 5 percent to 200 percent of the minimum salary.
- The Director can also close down any establishment for 30 days, indefinitely in repeat cases.
- Recidivists can be fined up to 400 percent of the minimum salary and the establishment closed down indefinitely.

These administrative penalties are in addition to criminal penalties. This is a positive move. Unfortunately, it has yet to be used by ONDA. In the early part of January 2002, INDOTEL funded the publishing of the *Reglamento*, which allegedly was the hold-up in actually applying its penalties. The *Reglamento* was finally published in the Official Gazette and made available to the public on January 2002, even though in the publication it states the date of March 14, 2001. Presently, there are no known obstacles to the use of this additional tool.

ONDA presently has a contingency of nine inspectors in the Santo Domingo main office. The inspector/attorney in the Santiago office was released because of funding. ONDA needs to maintain an office in the North, preferably Santiago. In addition, funding should be made for an additional satellite office in the South.

**The Industries' Experience with ONDA:** The industries generally report a positive, cooperative attitude with ONDA officials, with results in the form of inspections and raids. However, the industries have varying views and experiences regarding the deterrent effect of ONDA actions, especially in the overall picture of effective enforcement, from initiation of investigations to conclusions.

BSA reports it has been able to work very effectively with ONDA and the *Fiscalía* in this new enforcement regime. In cases where illegal software is found, ONDA refers this evidence to the *Fiscalía* for criminal prosecution. BSA expects to keep working closely with ONDA and *Fiscalía* and would like to see continuing increase in the amount of raids taken by these two agencies.

The recording industry also reports that the positive change in enforcement since the Mejia Administration took office is due to ONDA and its efforts. While the ONDA raids have led to some minor improvements in enforcement, they have had little deterrent effect. One of the limitations of having ONDA conduct enforcement actions, in lieu of a law enforcement agency, is that there is no follow-up conducted after the inspection or raid. Therefore, outside of the initial *denuncia* (complaint), there is no investigation that provides for the identification of the source and/or location of the individuals involved with the manufacturing/production of the illicit product. While ONDA is effective in entering retail locations to conduct inspections, it does not have the capacity to move beyond that layer of criminality through to the identification of those who are higher up in the manufacturing and distribution chain. As such, there is little, if any deterrence for pirates.

The motion picture industry reports that television piracy is getting steadily worse. The government authorities, ONDA and INDOTEL, received political reprimands for taking action in January 2001. Nevertheless, the increased incidence of television piracy, apparently due to the continued conduct of a major television station related to a member of the political party in power, threatens to dilute the new attitude of ONDA and INDOTEL toward compliance in the television industry, as television stations begin to see an uneven application of the law and a tolerated model of unlawful conduct. Broadcast piracy has been a major problem in the Dominican Republic for a decade, and it remains very discouraging that this problem has been ignored by the Executive, apparently for political consideration of important operators involved in such piracy.

## **Criminal Enforcement Results in 2001 Were Mixed**

With the new copyright law, the levels of criminal penalties were increased to fines of 50 to 1,000 times the minimum wage, which at the current exchange rate is US\$8,200 to \$165,000. In July 1998, the government established a new Intellectual Property Department within the District Attorney's Office for Santo Domingo. However, when it comes to actual enforcement taken by the criminal authorities, the industries have mixed experiences.

**No progress on audiovisual piracy cases:** Interest in prosecuting audiovisual piracy cases has apparently been lost with the new administration and the cases against television piracy being

developed by former prosecutors have apparently been dropped. Overall, there is a clear step backward in applying the criminal law against copyright violation, specifically against television piracy. The audiovisual industry has not seen a serious attempt to coordinate copyright enforcement. MPA is particularly concerned with the obvious lack of cooperation from police and prosecutors.

**Recording industry reports minimal progress:** The recording industry reports that there were a total of 180 raids/seizures in 2001, resulting in the confiscation of 29,616 pirate audiocassettes and 35,973 pirate CDs/CD-Rs. These actions included raids of 15 illegal manufacturing and distributing facilities of pirate CD-R operations. RIAA surveyed approximately 57 tourist locations in the DR throughout the last quarter of 2001 and found that the majority of the locations were saturated by vendors selling pirate CD-Rs and audiocassettes. Their entire inventories were made up of illicit product. In these same areas, retailers carried inventories of approximately 35% pirate music. There has been a change in the upper ranks of the National Police Department, which appear to favor ONDA working together with the department. Should this relationship materialize, it would create somewhat of a task-force element that should address some of the concerns related to the location of manufacturing and distribution facilities throughout the country.

**Positive results with business software actions:** During the first half of 2001, the District Attorney's Office had a very active participation during the BSA Truce Campaign held from March to April 2001. During this period alone, the District Attorney's office conducted eight raids. BSA has also worked with ONDA to provide their inspectors with leads on suspected pirates. After conducting their own investigations, ONDA carries out inspections where appropriate and if any pirated software is found, ONDA confiscates it and any computers loaded with the illegal software. ONDA then prepares a report and refers the evidence of piracy to the *Fiscalía* for prosecution. These referrals resulted in the *Fiscalía* filing between 50 and 60 cases against software pirates during 2001. The *Fiscalía* continues to be very cooperative with BSA in prosecuting these cases. BSA understands that despite the large volume of files coming over from ONDA, the *Fiscalía* is up to date on filing criminal actions resulting from the ONDA inspections. BSA expects to keep working closely with ONDA and *Fiscalía* and would like to see more raids this year. It is clear to BSA that in order to achieve this expectation, it is imperative to adopt the amendments proposed to the Criminal Procedure Code that will allow ONDA and the *Fiscalía* to keep their powers to initiate *ex officio* actions. In addition, BSA worked with the National School of the Judiciary (*Escuela Nacional de la Judicatura*) and their judicial continuing legal educational program to develop curriculum for a judicial training course on the new copyright law. This initial course was held in October 2001. The curriculum was available to judges all over the Dominican Republic via a state-of-the-art distance learning program, which was a great success. During 2002, BSA is expecting to keep working with the National School of Judiciary in its continuing legal education program.

## **Judicial Action Has Been a Weak Element Historically, But Signs Appear Positive for Improvement in Both Civil and Criminal Cases**

An effective judicial system is a necessary ingredient in providing adequate and effective copyright protection.

**Criminal Cases:** Some feel that the Dominican Republic's judicial system is so dysfunctional that, as a practical matter, it is necessary to add a civil claim to the criminal case to



inform the Court that there is a victim interested in pursuing the case. The adding of the civil component to the criminal case only serves the interest of individuals looking for a way to circumvent the criminal system by pleading to the civil case in exchange for no jail time.

The law does provide for relief in case of a defendant's inability to pay restitution. This is provided by adding one day of jail time for every "peso" the defendant is unable to pay. However, without an expeditious court system, the deterrent aspect of this initiative will not work. Few copyright infringement cases have made it through the Dominican judicial system. RIAA reports that the court system has proven to be entirely dysfunctional in terms of processing and sentencing criminal copyright offenders. For 2001, the RIAA had a total of 32 cases pending, 12 of which date back to 1999. As of December 2001, RIAA has had six prosecutions where the defendants received a prison sentence, court fine and restitution. However, no one has been jailed as a result of these prosecutions. They have all appealed their cases and have been set for re-trials. The appeals process provides for a drawn out review of the initial trial and each step of the appellate process can take upwards of 10 months to be heard. In contrast, BSA has obtained several positive results in 2001.

There is a bill on the Criminal Procedure Code that has passed the Senate and is in the House, that would create a change such that criminal cases would be heard much more quickly (see discussion, below). In other words, instead of having cases rescheduled in mid-trial for months at a time, the trial would be heard continuously during the course of several days. This new code would also allow for the negotiation of restitution amounts, something that is not presently available. One part of the bill, however, removes ONDA's ability to function in any pro-active capacity without first receiving a complaint or *denuncia*. This is something that we have been working on removing from the Bill. The Senate did pass it in its entirety.

**Civil Cases:** There appears to be more optimism in civil cases. During 2001, BSA has received favorable judgments in five cases against pirates that had been filed under the old copyright law. In April 2001, BSA received a major judgment against Vimenca, a conglomerate run by Victor Mendez Capellan, a member of one of the ruling families of the DR. Vimenca was one of BSA's first end-user actions in the DR in 1998. The power of this company made it even more impressive when the court found Mendez Capellan personally guilty of software piracy and awarded BSA US\$300,000 in damages, US\$650 in fines, and US\$96,000 in interest (1% of the damages per month since BSA's claim was filed in November 1998). Vimenca is appealing in hopes that they can get the judgment reduced, and they are avoiding collection of the judgment at this time. In May, BSA obtained a Court of Appeals judgment against Compurent, which was the first raid made by BSA in 1997. The Court of Appeals confirmed fines of US\$650, and damages of US\$17,000. In August, BSA obtained a judgment against a pirate reseller, Kentucky Trade Dominicana. The judge ordered as fine US\$300 and as damages US\$3,000.

In October 2001, BSA obtained (under the new copyright law) two judgments against Refrigeración Antillana and CT Computer. In Refrigeración Antillana, the judge ordered \$1,100 as a fine, \$14,500 in damages, plus 3 months of jail time. In the case of CT Computer, the judge ordered US\$5,200 as a fine and US\$17,500 as damages. In both cases the defendants appealed the judge's decisions. In January 2002, on an action filed in December 1998, BSA obtained a judgment against Robotics that ordered the largest jail time to date. This judgment is against a reseller that imported and sold counterfeited Office 97. The judge condemned Robotics to one year of prison and imposed US\$17,500 as damages and US\$650 as a fine.

**ENFORCEMENT STATISTICS  
IN THE DOMINICAN REPUBLIC  
From Selected Industry Sectors**

<b>CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS 2000</b>			
ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE	SOUND RECORDINGS
Number of Raids conducted	40 Video – ONDA	58	180
By Police			
By Customs			
Number of cases commenced		8	
Number of defendants convicted (including guilty pleas)		3	6
Acquittals and Dismissals			
Number of Cases Pending			32
Total number of cases resulting in jail time		2	6
Suspended Prison Terms		2	
Maximum 6 months		2	5
Over 6 months			1
Over 1 year			
Total Suspended Prison Terms		2	
Prison Terms Served (not suspended)			
Maximum 6 months			
Over 6 months			
Over 1 year			
Total Prison Terms Served (not suspended)			
Number of cases resulting in criminal fines			
Up to \$1,000		3	
\$1,000 to \$5,000		58	1
Over \$5,000			5
Total amount of fines levied			102,000

CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS 2001			
ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE	SOUND RECORDINGS
Number of Raids conducted	40 Video by ONDA, 3 TV by ONDA and INDOTEL	72	
By Police		62	
By Customs		10	
Number of cases commenced		5	
Number of defendants convicted (including guilty pleas)		5	
Acquittals and Dismissals		2	
Number of Cases Pending		2	
Total number of cases resulting in jail time		2	
Suspended Prison Terms			
Maximum 6 months		2	
Over 6 months			
Over 1 year			
Total Suspended Prison Terms			
Prison Terms Served (not suspended)			
Maximum 6 months			
Over 6 months			
Over 1 year			
Total Prison Terms Served (not suspended)			
Number of cases resulting in criminal fines			
Up to \$1,000			
\$1,000 to \$5,000			
Over \$5,000		72	
Total amount of fines levied		62	

Notes for 2000 and 2001

All of the actions reported by the RIAA have been raids/seizures conducted by ONDA.

## Update on Civil *Ex Parte* Searches and the Imposition of Civil Damages

The new 2000 copyright law corrects a major omission in the former copyright law. The 2000 law provides expressly for civil *ex parte* inspections, as required by the TRIPS Agreement (Article 50). The omission of this remedy had severely harmed the ability of business software owners to protect their rights from unauthorized uses. Historically, civil damages awarded under the 1986 copyright law were completely inadequate, both as a statutory matter and as applied in practice, to compensate the copyright owner. Now that the new copyright law has been adopted, the copyright industries look for the courts of the Dominican Republic to apply its laws to afford civil remedies, including damages, at levels "adequate to compensation for the injury the right holder has suffered," as required by TRIPS Article 45.1.

## No Problems with Onerous and Discriminatory Bonds in 2001

The 2000 copyright law corrects a major problem in prior Dominican law and practice. The 2000 law expressly prohibits judges from imposing onerous bonds in cases brought by foreign

plaintiffs. The imposition of those onerous bonds made judicial enforcement of BSA members' copyrights virtually impossible. Under the Dominican civil code, only non-Dominicans could be required to pay bonds for instituting suits in Dominican courts.<sup>6</sup> However, the new law has had the desired impact in this area, and has relieved foreign rights holders of this burden when protecting their rights in Dominican courts. BSA has successfully argued against the imposition of bonds in six cases since the copyright law was passed. This is a major improvement in the practical ability of copyright holders to defend their ownership rights in Dominican courts.

## **COPYRIGHT LAW AND RELATED ISSUES**

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### **Copyright Law of 2000**

The Dominican government succeeded in its years-long effort to pass new copyright legislation which contained high levels of copyright protection. The bill was finally passed by the Chamber of Deputies on July 24, 2000 and by the Senate on July 26, and signed by new President Hipolito Mejia Dominguez on August 21, 2000 as Law No. 65-00. Although the official date of publication of this law is August 24, 2000, it was published in the Official Gazette on October 24, 2000, entering into effect that same day. President Mejia has spoken in support of enforcing IPR laws in his country, even mentioning intellectual property piracy in his inaugural address.

The law has many positive features which the IIPA has previously identified, and is a vast improvement over the 1986 copyright law. For example, the 2000 law corrects many of the key TRIPS substantive points, including protection for computer programs, databases, and the minimum term of protection. The lack of civil *ex parte* orders under the 1986 law has been remedied, thus providing a critical TRIPS-consistent enforcement tool. Also, the level of criminal fines was increased significantly, and are based on the statutory minimum wage, which is RD\$3,000 (US\$180) per month. The new law creates fines of 50 to 1,000 times the minimum wage, which at the current exchange rate creates potential fines of US\$8,200 to US\$175,000. The new law (like the old one) provides a term of three months to three years in jail for most criminal infringements. Importantly, the scope of exclusive economic rights for authors and producers of phonograms has been expanded, and comes close to meeting the obligations found in both of the WIPO treaties. The law does not provide producers of sound recordings with broad exclusive rights over all forms of communication, and in recognition of the changes in technology which in turn are changing the way music consumers get access to recorded music, such a right should be provided in the law.

The copyright regulation which provides for administrative fines, mandatory registration for computer resellers, liquidated damages calculated on a per-copy basis and more specific rules for software protection, was signed by the President on March 14, 2001. ONDA has started the implementation of this regulation.

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<sup>6</sup> The magnitude and discriminatory nature of those bonds appeared to violate the Dominican Republic's TRIPS national treatment obligation (TRIPS Article 3 provides that "Each Member shall accord to the nationals of other Members treatment no less favorable than it accords to its own nationals with regard to the protection of intellectual property...."). Such discriminatory treatment also conflicted with the government's current TRIPS Article 41(2) obligation, requiring that procedures concerning the enforcement of intellectual property rights be "fair and equitable," not "unnecessarily complicated or costly."

## Constitutional Challenge to the Copyright Law

BSA is currently defending against a constitutional challenge to the 2000 copyright law. A reseller defendant in a BSA case, Hard Soft, has filed a constitutional challenge in the Supreme Court of Justice in Santo Domingo, alleging that portions of the 2000 copyright law are unconstitutional. Among the challenged provisions are Article 37, which excludes software from the private copying safe harbor; Article 44, which exempts public communications; and Article 74, which explains uses authorized by a software producer. Hard Soft argues that the copyright law protects software more tightly than other media, and is thus unconstitutional because of unequal protection. Hard Soft also argues that because software is protected as a literary work, private copying should be permissible, as it is with other literary works; the exception for public communications should cover the public demonstration of computers for sale purposes. BSA has filed a brief refuting these arguments, and ONDA, CERALC (UNESCO's organization) and copyright expert Ricardo Antequera of Venezuela have also filed a brief against this constitutional challenge.

## Code of Criminal Procedures

The Dominican Congress is considering amendments to their Code of Criminal Procedure which would convert IPR cases, including copyright ones, to private criminal prosecutions, so that a *denuncia* (complaint) would be mandatory to initiate each case. This would take away current *ex officio* actions with ONDA and the *Fiscalía*. Industry *Fiscalía* counsel has testified against the bill, and stated that these amendments would be a step back from the new copyright law that the Congress passed in August 2000. Despite local industry efforts to improve the draft, the Senate passed the Criminal Procedure Code in December 2001 without considering the industries' suggestions.<sup>7</sup> BSA is currently organizing a press conference along with other copyright industry colleagues to oppose the Senate approval with the hope that the House of Representatives will amend the provisions of the bill of the Criminal Procedure Code so that ONDA and the *Fiscalía* can continue to take *ex officio* actions and validate ONDA's evidence obtained from its inspections.

## WIPO Treaties

The Dominican Republic should be encouraged to ratify the two 1996 WIPO treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Ratification is the natural next step for the Dominican Republic, especially because its 2000 copyright law already includes many of the treaties' obligations. In fact, the current ONDA administration supports ratification of these treaties. ONDA has filed a report with the Ministry of Culture, which is then to be sent to President Mejia.

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<sup>7</sup> IIPA does not have the text of this bill.