

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE
2002 SPECIAL 301 REPORT
LITHUANIA

EXECUTIVE SUMMARY

The most persistent problem confronting the copyright industries in Lithuania continues to be the lack of any effective, on-the-ground enforcement, resulting in devastatingly high piracy levels. Failures by the police, prosecutors, and especially by customs officials, to engage in effective domestic criminal enforcement are destroying the possibility of establishing legitimate markets for copyrighted materials in Lithuania. Plus, Lithuania is a major transshipment point for pirated materials. Lithuania must address these enforcement deficiencies by implementing better customs procedures and by using the new criminal law to punish illegal operations, including those run by organized crime elements. The police must commence raids and seizures as well as implement administrative actions (such as taking licenses away from infringing kiosks), and prosecutions must commence. Customs officers must strengthen their activities at the borders to intercept pirate product. Courts must also properly grant *ex parte* search orders against end-user pirates.

On the legislative front, there remains an urgent need to guard against legislative backsliding aimed at decriminalizing certain IPR infringements. Furthermore, clarifications and amendments must be made to ensure protection for foreign pre-existing works and sound recordings, among other issues. Stronger criminal sanctions against organized crime are necessary, including the commencement of criminal searches and raids. Several serious evidentiary hurdles that impede effective enforcement must be lifted.

IIPA acknowledges the legal reform progress made in 2001: Lithuania acceded to the World Trade Organization (WTO) and also deposited instruments of accession to the two WIPO "Internet" Treaties. Now, Lithuania's many news laws must be implemented and enforced in order to deter piracy in that country and to halt the transshipment of pirate materials through its porous borders. IIPA recommends that Lithuania remain on the Special 301 Watch List for 2002.

LITHUANIA: ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1999 - 2001

INDUSTRY	2001		2000		1999	
	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	1.5	90%	1.5	80%	NA	100%
Sound Recordings / Musical Compositions	7.0	85%	7.0	85%	5.0	85%
Business Software Applications ¹	2.5	76%	NA	76%	NA	80%
Entertainment Software	NA	NA	3.5	98%	NA	NA
Books	NA	NA	NA	NA	NA	NA
TOTALS	11.0		12.0		5.0	

In October 2001, USTR kept Lithuania on the Special 301 Watch List after its out-of-cycle review,² stating: “The U.S. Government is encouraged by the steps Lithuania has taken over the past year to strengthen its intellectual property legislation, including granting judiciary and customs officials *ex parte* search and seizure authority. In addition, resources for IP enforcement have been increased, most notably in the Customs Department. Moreover, USTR understands that Lithuanian courts have recently achieved convictions in software piracy cases and that the sentences in these cases included jail time, damage awards, and the confiscation of business assets. Despite those positive steps, however, Lithuania remains a market and transshipment point for pirated software, videos, and music....”² Lithuania also participates in the U.S. Generalized System of Preferences (GSP) program, which offers preferential trade benefits to eligible beneficiary countries and includes a discretionary criteria that the country must provide “adequate and effective” intellectual property rights protection.³

COPYRIGHT PIRACY IN LITHUANIA

Lithuania Continues to be a Transshipment Point for Pirated Traditional and Optical Media Products

Given its geographical location between East and West Europe, and its totally ineffective border enforcement, Lithuania remains a major regional exporter of pirated material – music CDs

¹ BSA loss numbers for 2001 are preliminary.

² Office of the U.S. Trade Representative, “USTR Announces Results of October 2001 “Special 301 Out-of-Cycle” Reviews on Intellectual Property Protection, Release 01-91, October 31, 2001.

³ In 2000, \$3.2 million of Lithuania’s imports to the United States benefited from the GSP program, accounting for 2.5% of its total imports to the U.S. For the first 11 months of 2001, \$11.3 million of Lithuanian goods (or 7.2% of Lithuania’s total imports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 342.2% increase over the same period last year. For more details on Lithuania’s Special 301 history, see Appendices D and E of this 2002 Special 301 submission.

and audiocassettes, CD-ROMs containing entertainment and business software, videos, and videogame cartridges. Most of the material is produced in other countries, especially Russia, Ukraine, and more recently, Belarus. It is then shipped through Lithuania to other countries in Eastern, Central, and Western Europe, specifically Poland, the other Baltic States, Germany and Scandinavia.

Up until January 2001, Lithuanian customs officials did not have the proper (*ex officio*) authority to do their jobs. Also, customs officials do not have the proper equipment and training to make much of an impact on the large quantities of material produced in the East and shipped to the West. There were reports of some improvements in the resources available to customs officials in 2001; but, it is clear that much more needs to be done to improve the situation at the border.

Indeed, customs officials continue to report that there are many shipments of Russian materials that are entering Lithuania, with the Russian distributor claiming (invalid) licenses to distribute there (i.e., "within the territory of the USSR"). Lithuanian officials have complained to IIPA that they have no means of verification, and no ability to stop this material. These officials need to be better trained, to have proper resources, and have use their authority to commence criminal investigations and seizures when they detect illegal activity.

Optical Media

There is at least one known CD manufacturing plant in Lithuania, but there may be as many as three such plants. It is unknown, both by the industry and Lithuanian law enforcement, how much, if any, of the production is at a legitimate level versus being illegal overproduction. The one known plant, which competes with other plants in the region (largely Polish and Russian plants) in meeting largely domestic and Baltic orders, is expected to expand, increasing its production capacity within the Baltic region. Industry reports suggest that this plant is planning to launch another two new lines (one of them DVD and VCD) in May 2002, and the old line is going to be moved to Estonia.

In order to avoid an expansive growth of illegal CD production within Lithuania, steps must be taken quickly to regulate optical disc plants. Lithuania should work with the copyright industries to adopt proper tools to regulate the production, distribution and export of optical media. Such regulations should include provisions to close plants that are caught illegally producing copyrighted material, to seize infringing product and machinery, and to monitor the importation of raw materials (optical-grade polycarbonate) used in the production of CDs, DVDs, CD-ROMs, and other optical disc media. Also, all of the plants must be required to adopt SID codes, so that the source of illegally produced CDs can be traced and any necessary actions taken against infringing manufacturers.

Internet Piracy

Internet piracy is beginning to take hold in Lithuania; most of this is in the form of web advertising of illegal hard-copy material. MPA reports that there are many amateur Websites marketing pirate videocassettes, VCDs and parallel imported DVDs. Cooperation with the ISPs (Internet service providers) reportedly has been positive to takedown these Websites. BSA reports encouraging progress with the police taken against Internet-based pirates. After a BSA investigation in the U.K., U.S., Germany and Australia, evidence supplied to the Lithuanian Tax Police enabled a criminal case to be filed against an illegal manufacturer and distributor of business software based

in Lithuania. In October 2001, the target's premises were raided, and several PCs and several thousand CDs were seized. Arrests followed the raid and a prosecution is planned for 2002.

The most popular form of piracy on the Internet in Lithuania is selling recorded CD-Rs (mostly from MP3s) by announcing lists available in Web pages or in special announcements sections and then delivering these CD-Rs by mail (or some other way) directly to the customer.

Piracy Remains High Across All Industries

The recording industry reports that, in 2001, the music piracy situation in Lithuania was worse than at any time. It appears that several organized crime groups are now involved in heavy pirate CD traffic, with little or no enforcement activity by the authorities. The streets of the main cities are still full of kiosks selling pirate CDs and video cassettes. The levels of piracy for sound recordings and music was 85% in Lithuania in 2000 (the same as in 1999). Estimated trade losses due to recording and music piracy were \$7 million in 2001. Cassettes and CDs are pirated in almost equal amounts. In January 2000, Lithuania finally joined the Geneva Phonograms Convention; this was one of the terms in the (un-ratified) 1994 Bilateral IPR Agreement with the U.S. Because it took so many years to join this treaty and to provide protection for foreign sound recordings, Lithuania became a haven for sound recording piracy during the 1990s and this remains a lingering problem.

Apart from the very high levels of domestic music piracy, one of the main problems for the recording industry is that Lithuania is the main transit country for pirate CDs from Russia, Ukraine and Belarus, which are then further shipped to Estonia and Latvia as well as to Poland and other neighboring countries. Before Russia and Ukraine took over as the region's largest pirate CD producers, Bulgarian pirate CDs were being shipped through Lithuania. However, investigating the transshipment of CDs through Lithuania has proven very difficult – shipments in transit cannot be seized by Lithuanian customs. According to recording industry sources, there were only four actions taken by the customs (with the assistance of the copyright industries participation through the producer's organization, FGPA). In total, 9,305 CDs and 14,574 audiocassettes were seized at customs. In one instance, a shipment from Russia (mostly Russian repertoire) to Germany contained illegal products (about one quarter of the total) mixed in with legal product; in another shipment from Belarus to Lithuania, 4,210 pirate audiocassettes were seized. Both these cases were taken over by Tax Police. In another case, 4,686 illegal CDs were seized, and a criminal case was initiated by customs; this seizure led to the further disclosure of an illegal production warehouse in Vilnius in which 205,566 pirate CDs were later seized. In the only officially recorded case of contraband during 2001, a shipment of illegal CDs (1,100 of them) was discovered on a train.

For the motion picture industry, the distribution of pre-theatrical release titles on videocassette is the primary piracy problem in Lithuania. Organized crime now dominates this trade, and titles are most often produced from clandestine camcordings from U.S. or Israeli theatres. These masters are first dubbed and then imported from Russia. Pirate cassettes are duplicated locally using the Russian-language masters, and subsequently shipped to Poland, Germany or other Baltic states – particularly through Lithuania's porous border with Belarus. Many amateur Websites posted by individuals can also be found marketing pirate videocassettes, VCDs and parallel imported DVDs. Cooperation with Internet Service Providers (ISPs) in Lithuania has reportedly been very good in removing such sites. Relatively high-quality Lithuanian-dubbed pirate videos have also been reported in the past year, with packaging ranging from poor quality to sophisticated

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

Television piracy is also on the rise, with small cable stations showing unlicensed blockbuster movies. There are currently four national television stations, 11 regional stations and 60-70 micro-cable television stations that appear to be largely unregulated. The lack of an effective anti-piracy regime in Lithuania is the major impediment to the development of business. Lithuania, though the largest of the three regional countries (Estonia, Latvia and Lithuania), has the least developed legitimate audiovisual market. Still, all of the MPA member companies are releasing legitimate films in local cinemas and on videocassette with subtitles and local publicity materials, but finding it very difficult to get established in the commercial marketplace. The MPA estimates its losses in Lithuania were \$1.5 million in 2001, with the video piracy rate estimated to be 90%.

The BSA reports that in Lithuania, the piracy rate remained constant over the past two years, at 76% in 2001. One of the most popular flea markets in Lithuania is Gariunai in Vilnius, a popular location where pirate software can be easily obtained.⁴ Estimated U.S. trade losses due to business software piracy in Lithuania is \$2.5 million in 2001.

The entertainment software industry reports that most of the illegal material (especially prerecorded silver discs) comes mostly from Russia. These pirated materials are then stored in Lithuania for distribution throughout Eastern and Central Europe, as well as for distribution in Lithuania itself, according to the Interactive Digital Software Association (IDSA). There is a small but growing local market involved with burning videogames on gold discs. In addition, Internet piracy is rapidly rising. As recently as 2000, estimated videogame piracy levels were over 90% of the market. This industry also reports problems with ineffective enforcement by Lithuanian customs officers. Estimated 2001 trade losses due to videogame piracy are not available.

COPYRIGHT ENFORCEMENT IN LITHUANIA

Lithuania needs to implement – in practice – its criminal, civil, administrative, and border provisions. To summarize, Lithuania took a major step forward to improve its legal regime with the adoption of its comprehensive Copyright Act in 1998, which replaced what was essentially the revised Soviet Civil Code. A second major positive step was adherence to the Geneva Phonograms Convention, effective January 27, 2000. This fixed the long-standing legal deficiency of the absence of a point of attachment for foreign sound recordings. Third, in May 2000, Lithuania adopted improvements to its criminal code and in January 2001, the customs code was revised to include the all-important *ex officio* authority to allow customs authorities to properly seize suspect material at the border. All these provisions must now be put to use by judges, customs officials, police and prosecutors to stop the organized criminal piracy activities within Lithuania.

Over the years, Lithuanian officials have adopted several plans to improve the domestic interagency infrastructure to support anti-piracy efforts. For example, in 1997, the Ministry of Internal Affairs set up a Special IPR Division for enforcement (including the Taxation Police). Also,

⁴ Matthew Peckham, "Soft Copy: Pirating around the world for fun and profit," CGOnline.com, Jan. 2, 2002.

copyright cases are heard in the regional courts, as opposed to the district courts, and this has been viewed by the industry as a positive step. Also in 1997, a judicial training center was established with the support of the Ministry of Culture, to help raise the level of judicial expertise on IPR issues. The Copyright Board has been working on a draft proposal to amend the Lithuanian copyright law in order to harmonize it with the most recently adopted EU Directives.

Enforcement Actions Taken by the Police, Prosecutors And Judges Must Improve in Order to Effectively Enforce the Laws

The recording industry reports that raids have occurred, but there is no deterrent effect to this activity. In 2001, there was one major seizure by the organized crime police in December 2001 in Vilnius which resulted in the seizure of approximately 200,000 pirate CDs coming from Belarus. Detailed statistics on all the 2001 actions are not presently available. The recording industry reports that prosecutorial enforcement remains almost nonexistent; there has been some, but not enough, cooperation from the enforcement authorities. For example, once the Economic Police conduct raids, interest is lost, and the cases close. In contrast, the Tax Police are making more concerted efforts to win cases, and as a result, encouraging precedents are beginning to be built. Successful enforcement actions by the relevant authorities, including the Economic and Tax Police, take place, but not as often as is needed.

BSA reports that in 2001, there were 60 raids and seizures directed at flea markets, resellers and end users. Forty-three tax police raids took place against illegal end users of business software. In 2001, there were 42 administrative judgments at lower court level: Significantly, lower courts have also begun to award civil damages in respect of copyright infringement to right holders as part of the administrative judgment process. As at early 2002, several further administrative cases are pending. In 2001, tax police also initiated eight criminal actions against resellers and end users. BSA has obtained its first criminal judgments against both end users and resellers in 2001: In September 2001, a District Court entered a criminal judgment against an illegal end user, imposing a fine of 25,000 Litas (US\$6,250), and ordering the company to pay 300% compensation in the sum of USD 28,476 (in civil damages). Also that month, a criminal judgment against an illegal reseller was made by a district court, with the defendant being given a three-month prison sentence, and being ordered to pay the sum of US\$15,700 as damages to the right holder. In November 2001, the Lithuanian Court of Appeal upheld that judgment. In December 2001, a separate District Court entered a further judgment against another Defendant in respect of end-user piracy, imposing a fine of 12,500 Litas (US\$3,000), with the civil compensation aspect to be decided.

Ongoing Evidentiary Hurdles to Investigations and Prosecutions

The Lithuanian police and prosecutors have been hampered by legal deficiencies and evidentiary problems, some of which have been resolved on the books but they need to be implemented in practice.

The major the legal deficiency up until May 2000, was simple – the criminal code did not apply deterrent penalties to copyright violations. The only way to stop organized pirate activities is by the actions of the police and prosecutors imposing criminal fines and jail sentences, but these sanctions were absent from Lithuanian law. This problem was addressed when the new criminal code was adopted, providing penalties, including fines and up to two years' imprisonment. These

penalties must now be applied to organized criminal syndicates working in Lithuania to stop the piracy. Also, in May 2000, the prosecutors were given the authority to commence intellectual property infringement cases on their own volition (that is, without a specified complaint from the copyright or neighboring right holder). The key is that this authority must now be utilized by the prosecutors to engage in effective enforcement action against IPR crimes. There remains a looming possibility, pushed by local associations of small Lithuanian businesses, of a repeal of criminal sanctions for pirate activity after only one year of reform and only a single case. Repeal of these laws would place Lithuania in even further violation of TRIPS obligations, and should be vigorously opposed.

To date, there have been several successfully prosecuted criminal cases. Some involve resellers of pirated business software. The recording industry reports that in early February 2002, they won their first criminal copyright case for copyright infringement of music in Lithuania. The penalty imposed was one year probation and confiscation of the seized materials. The case was initiated by the Tax Police in spring 2000. During 2001, the recording industry reports 15 criminal cases (one of them audio and video material, three of them audio material and computer software, and the rest only audio material). All 15 were started by the Tax Police.

Second, there is a burdensome evidentiary problem related to proof of authorship or ownership affecting several copyright industries.⁵ As with other countries in the region, the problem is that the police, prosecutors and courts will not apply a presumption of ownership or authorship. Therefore in order to prove that a suspect product is in fact pirate, a “specialist” must reach a conclusion, which is then presented as evidence. The police reported numerous instances to IIPA officials wherein even after they conducted raids, the perpetrators would likely not be prosecuted because the police were required to get an expert opinion (that can include a “recognized” specialist) to determine proof of ownership for each copy seized. Further, expert witnesses are needed cases to proceed. Private citizens, even though expert in this area of the law, are often barred; thus, only designated experts in some cases are allowed to serve this function, completely hampering those cases from moving forward.

The recording industry reports that its right holders also still have to go through extremely cumbersome expert reports to pursue administrative actions against piracy. For example, every single song on every single CD has to be listened to, accounted for, inventoried and such. The problem, especially for the recording industry, is that the seizures are mostly done only as the last part of illegal distribution chain, where there are respectively small amounts, but a very large variety of titles, which makes it difficult to account for all of them. And, as the regulations require, the recording industry has to account for every seized unit, in order to be sure that the case is concluded successfully. According to the regulations, the plaintiff has six months to prepare an expert report; the recording industry is doing its best to prepare these cases within a three-month time span. MPA notes that expert reports have to be filed for every videocassette seized. Still, local video distributors have cases and they have been processed relatively quickly (six months), but cases have been postponed because of technicalities found in the papers submitted.

⁵ The BSA indicates that this issue is no longer a problem for the business software industry in Lithuania. That is because a presumption of ownership is now applied by the courts for business software works. The difficulty remains for individually created copyrighted works, and in the production of evidence pertaining to the retail value of those works. This is because certain acts only “qualify” as offenses when the retail value of the work exceeds a certain amount (100 times the minimum wage). In those cases “expert” evidence is required to confirm ownership in the work as well as the retail value.

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

Fourth, the recording industry reports that unclear rules about court fees are generating problems. Courts have been inconsistent in their application of court costs, apparently confusing the general provisions (which involve 5% of the claim) and the civil code rules on intellectual property rights (100 litas). The application of this rule has to be clarified because the application of the 5% civil claim rule imposes an excessive financial burden on the rights holder and may impinge on their ability to bring a case in the first instance.⁶

Civil Actions

In 2001, BSA entered into approximately 20 civil settlements with illegal end-users and resellers, involving damages agreed at the statutory level. In addition, BSA has benefited from five civil judgments being awarded in its members' favor against end-users, all involving compensation awards at the top end of the maximum permitted statutory levels. The level of damages present in the Lithuanian law has attracted some adverse press, and led to "populist" efforts in the Lithuanian Parliament (SEIMAS) to have the levels relaxed or reduced. These have fortunately been rejected by the Parliament.

The business software industry did not try to commence any civil *ex parte* searches in 2001. That is because the courts require a significant "deposit" to be made to secure an order. In addition, the software industry believes the law is flawed because it can permit prior notice to be provided to the intended defendant, thus completely eviscerating the effectiveness of the remedy.

LEGAL REFORM: THE COPYRIGHT LAW, CRIMINAL CODE, CUSTOMS CODE, AND RELATED ISSUES

In order to comply with the WTO TRIPS obligations, Lithuania must put all of its enforcement tools into working order. The Criminal Code, the Customs Code, the Civil Procedure Code, and appropriate administrative sanctions all form the enforcement arsenal necessary to fight commercial piracy in Lithuania. The problem is they are not effectively used in practice.

Lithuania has experience a significant amount of legal reform over the past 10 years, at both the bilateral and multilateral level. In July 1992, Lithuania signed a bilateral Trade and Investment Framework Agreement with the U.S., in which it committed to provide intellectual property rights protection. On April 26, 1994, Lithuania and the U.S. entered into a Trade Relations Agreement and a Bilateral Intellectual Property Rights Agreement. The Bilateral IPR obligations, meant to bring the Lithuanian law up to Berne and Geneva Phonograms Convention standards, were supposed to be in place by the end of 1995. Unfortunately, this Bilateral never entered into effect because Lithuania did not ratify it. In May 2001, Lithuania acceded to the World Trade Organization.

⁶ A draft new code on civil procedure is due to be published in February 2002, to set a 3% fee. Note that this fee issue is not confined to Lithuania. Similar onerous fees are imposed in certain other Western European jurisdictions.

Criminal Code Revisions (2000)

Before May 2000, the only criminal provision for IPR crimes was Article 142 from the Soviet Civil Code. A new criminal code was adopted in May 2000. Reportedly,⁷ the new provisions include fines and a two-year term of imprisonment. Also, the revisions include penalties for infringements of digital rights, that is, rights management and technological protection measures, punishable by one and two year imprisonment terms, as well as fines. These new fines and terms of imprisonment must be enforced to stop the spread of digital piracy.

A very serious problem appeared in 2001. In the spring of 2001, an effort by some Lithuanian small business groups (such as retail shop owners, but more troubling, by some organized crime groups) began public lobbying efforts to remove some of the criminal sanctions for IPR violations and reduce the levels of compensation that can be awarded to right holders under the copyright law. Legislative efforts last year did not go far, and there have fortunately, to date, been no changes. However, reports suggest that this legislative effort has resumed and will continue in 2002. Since the criminal code has only been in place for a short time, and only sparingly used, any effort to repeal the criminal sanctions must be defeated to avoid Lithuania stepping further back from its obligations under international treaties and trade agreements.

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

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

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

Customs Issues

In January 2001, the Lithuanian Parliament adopted new provisions in the customs code granting the authority to customs officials to make *ex officio* seizures. Customs officials now have the authority to: (1) search, on their own initiative (with or without a judicial order), all persons, objects and vehicles that enter or leave Lithuania; (2) seize infringing copies of audiovisual works, including parallel imports; and (3) detain all persons in possession of such goods, is vital to prevent

⁷ IIPA has not been able to obtain or review a copy of the new criminal code and is unaware of the scope of amendments to the criminal procedure code.

piracy transmissions at the border. But in past meetings with IIPA and its members, customs officials have complained that they lack the proper training and resources to effectively conduct proper border enforcement action. Customs officers also point out that the Lithuanian Border Police should improve efforts to halt contraband (including pirate goods) at the border.

Copyright Law (1999)

Lithuania has taken several actions with respect to adhering to international copyright conventions. It joined the Berne Convention on December 14, 1994, and after years of delay, it joined the Geneva Phonograms Convention effective January 27, 2000. It also joined the Rome Convention on July 22, 1999. In particular, joining the Geneva Phonograms Convention was an important milestone to assure protections for U.S. and other foreign sound recordings by providing a point of attachment. Foremost, Lithuania must make it clear that it does provide protection for pre-existing sound recordings and works consistent with its obligations under the WTO TRIPS Agreement. For example, Lithuania must provide a minimum of 50 years of protection for foreign sound recordings created prior to January 27, 2000.

To review, the history of copyright reform in Lithuania began in 1991. After regaining its independence from the Soviet Union, Lithuania amended its copyright and administrative law, albeit only slightly, in May 1994. These 1994 amendments updated its old Soviet-style Civil Code with two new chapters that adopted a general framework for a Berne-compatible law, but which fell short of even the minimum standards of substantive protection. Also, these amendments fell far short of meeting TRIPS standards, especially with regard to civil and criminal remedies. In January 1996, a separate Law on Computer Programs and Databases was adopted, in part to provide laws compliant with the European Union directive on software. In 1995, Lithuania began the legislative consideration of an entirely new copyright bill that was finally adopted in 1999. IIPA submitted detailed comments to the Parliament on the penultimate draft of the bill in October 1998, at the request of the drafters of the law and the government of Lithuania. IIPA's comments expressed concerns that the draft copyright bill, although a major improvement over the existing Copyright Law of 1994 (civil code), if adopted, would still contain serious deficiencies that needed to be addressed if Lithuania were to adopt a modern copyright law and an effective enforcement regime.

The Lithuanian Copyright Law (Act No. VIII-1185) was finally enacted on May 18, 1999; the date of entry into force was June 9, 1999. The Ministry of Culture was appointed by the government (effective November 17, 1999) as the agency responsible for the implementation of the copyright law. Also, a special Copyright Board was formed effective January 2000 under the law, and this board includes representatives of the copyright industries to consider enforcement activities. The copyright law was a major step forward for the legal regime in Lithuania. Unfortunately, the law still contains significant deficiencies. The IIPA's comments⁸ of these deficiencies are summarized below:

- The transitional provisions of the copyright law should explicitly provide for protection for preexisting works and sound recordings in Article 72 (i.e., full retroactivity consistent with Article 18 of Berne and Article 14.6 of TRIPS). Of note, this article also fails to comply with the term of Lithuania's accession agreement with the EU, and the EU's Term of Protection Directive.

⁸ Many of these comments were also included in IIPA's October 1998 comments to the Lithuanian Parliament.

- Producers of sound recordings should be vested clearly with exclusive rights in respect of broadcasting and communication to the public. The law should make it clear that the remuneration claim does not substitute for an exclusive right. In fact, broadcast royalty payment obligations owned to U.S. phonogram producers and performers must be paid.
- The law should provide for a term of 95 years from first publication in the case of audiovisual works, or where the author is a legal entity.
- Amendments should be made to initially vest all economic rights in an audiovisual work in the producer of the work, subject to agreements to the contrary.
- The definition of an “author” of an audiovisual work is very broad and should be clarified.
- The law should provide for clear presumptions of authorship and ownership that would include not only “natural persons” but also a “legal person” (“legal entity”). This should include, for example, a provision that the producer (including a legal entity) of an audiovisual work or a sound recording is the initial owner of all economic rights. This would avoid the problem of proving ownership for illegal copies of works seized, and would permit one entity (producer) to commence legal actions on behalf of the authors and performers.
- The scope of the Lithuanian Copyright Law should apply to works or phonograms first or simultaneously published in Lithuania; the laws language requires clarification.
- The limitations on exclusive rights of copyright owners and producers of sound recordings should be narrowly tailored to fit the scope of the exceptions provided for in TRIPS. This includes: clarifying the TRIPS Article 13 tripartite test and clarifying the vague scope of the “fair practice” definition; narrowing the “personal use” exception; limiting the blank tape/recording equipment levies to analog (not digital) material; and preserving a meaningful practice of the copyright owner to add copyright protection technology to copies.
- The provisions with regard to collective management should delete the provisions that over-regulate author and producer contracts, make the collecting society more democratic, and lower the mandated administration fees.

IIPA also continues to press for clarifications to various definitions in the 1999 Act. We also argued that the copyright law should be extended to cover other organizations representing the collective interests of right holders, including anti-piracy organizations besides the one included in the law now.

WIPO Treaties

One positive legal reform note in 2001 was Lithuania’s accession to the two 1996 WIPO digital treaties – the WIPO Performances and Phonograms Treaty (WPPT) and WIPO Copyright Treaty (WCT). On January 26, 2001, Lithuania deposited its instrument acceding to the WPPT and on May 25, 2001 to the WCT.

In fact, in the 1999 copyright law amendments, Lithuania adopted some, but not all, of the provisions required by these treaties into its law. In particular, Lithuanian law must: (1) ensure that the right of reproduction covers temporary copies; (2) amend the Act's right of communication to the public to make clear it applies to all disseminations, not just "transmissions," and that there is no exhaustion of the distribution right by transmission and (3) allow right holders to fully enforce their rights against the circumvention of technological protection measures. Technological protection measures are the tools that right holders use to manage and control access to and copying of their works in the digital environment. Although the Lithuanian amendments (Article 64) cover some of these activities, full implementation would include a prohibition on the manufacture, importation, sale, distribution, or other trafficking not only in devices but also in services that are aimed at circumventing technological protection measures, as well as outlawing acts of circumvention (and not just the removal of a technological measure). The Lithuanian Copyright Act did add protections for so-called "copyright management information" that is attached to or accompanies a work, performance, or sound recording. However, the act does not provide the full panoply of rights for the protection against the alteration, removal, or falsification of this information, and it excludes the reproduction and offering for distribution or dissemination activities.

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

Government Software Legalization

In May 2001, the Lithuanian Ministry of the Interior signed an order entitled "A Recommendation on the Use of Software in State Institutions and Bodies." The recommendation is, according to the software industry (BSA), the first comprehensive central government software management decree in Eastern Europe. Among other things, the recommendation mandates (1) the appointment of a Chief Information Officer, (2) the completion of an initial software inventory (follow-up audits are to be conducted at the discretion of each agency), and (3) the centralized acquisition of software. In addition to binding central government departments, the recommendation also applies to third parties that have received government funding. The adoption of the recommendation follows over two years of intensive lobbying by the software industry which is now working to ensure its proper implementation.