

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2002 SPECIAL 301 REPORT

ROMANIA

EXECUTIVE SUMMARY

The copyright industries continued to confront very high piracy rates and losses in Romania during 2001 because of systemic inaction by government authorities, a pattern that has repeated itself over the past few years. Improvements made to the copyright and criminal laws in the mid-1990s, combined with some cooperation from the police for some industries, still have not been enough to reduce rampant piracy. Overall, Romanian anti-piracy efforts remain woefully underfunded and a low government priority. For several years, the Romanian government has pledged to commit anti-piracy resources to conduct effective enforcement, but those promises have gone unfulfilled. Besides a lack of resources, the absence of clear lines of authority within the government has hampered effective copyright enforcement. IIPA renews its call to the Romanian government to clearly define the organizational responsibilities for copyright enforcement to combat the high piracy rates, and especially the growth of pirate optical media now widely available in the Romanian markets. Romania must meet its long-overdue TRIPS Agreement enforcement obligations and take actions to deter piracy. In addition, Romania should implement the two WIPO digital treaties and correct omissions in the copyright law (in particular, the lack of civil *ex parte* search authority). The motion picture industry continues its opposition to the state-mandated hologram sticker program for its products. As a result of these continuing problems, IIPA recommends that Romania remain on the Watch List in 2002.¹

ROMANIA: 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										
Motion Pictures	6.0	65%	6.0	60%	6.0	60%	6.0	50%	10.0	50%	20.0	90%
Sound Recordings / Musical Compositions	14.0	70%	11.0	55%	25.0	85%	20.0	90%	15.0	90%	15.0	85%
Business Software Applications ²	NA	NA	17.1	77%	9.8	81%	17.6	86%	12.4	84%	8.3	86%
Entertainment Software	NA	95%	6.9	91%	NA	NA	NA	NA	NA	NA	NA	NA
Books	2.0	NA	NA	NA								
TOTALS	22.0		43.0		42.8		45.6		39.4		45.3	

¹ For more details on Romania's Special 301 history, see appendices D and E to this filing.

²BSA loss numbers for 2001 are considered preliminary, and are not available at this time. In IIPA's February 2001 Special 301 filing, BSA's 2000 estimates were identified as preliminary. BSA finalized these figures without change in mid-2001.

COPYRIGHT PIRACY

Optical Media: Importation of Piratical Goods and Domestic Production

The copyright industries in Romania are faced with the importation of large quantities of pirate audiocassettes and CDs, videos, and CD-ROMs containing entertainment and business software. Most of this material is produced in and imported from Russia, Ukraine and other neighboring countries. An estimated 60% of the pirate CD material is coming from Ukraine (as inventory from past years piratical production there). Perhaps 15-20% of the pirate market is the result of small CD-R operators. The two main entry points for pirate material are Siret (by truck and train) and Galat-Reni (by boat) along the Danube. It is estimated that 20% of the illegal material enters Romania from the former Yugoslavia, with Russia being an additional source. The Business Software Alliance (BSA) reports that most of the CDs containing illegal business software are copies made in Bucharest of Ukrainian master CDs.

Poor border enforcement, and little or no effective police and prosecutorial activity, have allowed piracy to continue unabated in this manner. Additionally, the law governing the protection of intellectual property under customs provisions is inefficient and ineffective; it cannot properly regulate the transport of pirated material, and does not provide for adequate notification of rights holders regarding searches and seizures.

Last year (2000), for the first time, the recording industry reported production of CDs in Romania, mostly of Rumanian repertoire. However, local pirate CD production is not the main problem in Romania. The Kanami CD plant was issued a SID code and has been using it since last year.

Piracy Levels Remain High Across All Industry Sectors, and Internet Piracy Is Reported

For the motion picture industry (the Motion Picture Association, MPA), the major problems in Romania are still video, broadcast and cable television piracy. The video piracy rate, once 100%, has decreased markedly to approximately 60% in 2001 in the wake of limited legitimate market entry and a series of police actions under the 1996 copyright law. Street vendors and video shops in Bucharest removed their displays of pirate product, and overt video piracy has not returned. However, the lack of consistent enforcement has allowed under-the-counter sales in video shops to continue in Bucharest; and, in small towns outside of the capital, pirate tapes are still sold at weekend markets. MPA and its local distributors continue to oppose the state-mandated hologram sticker that must be placed on audiovisual works (see discussion below). Cable television is widely available in Romania and inexpensive, at only US\$2.50 per month. Approximately 350 small cable companies are scattered across the country. Market development and increased self-regulation by the 57 members of the Cable Television Association have helped reduce the rate of cable piracy. However, cable piracy outside of Bucharest continues to be a major problem. Most cable systems retransmit satellite television programs intended for Germany, Italy, and other Western European countries, dubbing them into Romanian. Some stations also broadcast pirate videos. MPA notes that there have been some notable successes undertaken against TV piracy in Romania.

The MPA reports that Internet piracy could become a major problem, especially because the Romanian law is silent or unclear on important Internet rights. VCDs are starting to make inroads in the Romanian market, but because of low computer penetration throughout the country, pirate copies are mainly found in Bucharest. To "service" the capital city, small CD burning operations are scattered through the countryside. A limited amount of videocassettes and a large number of VCDs destined for other markets are transshipped from Ukraine. Romanian law does not forbid parallel importation, so a significant number of Zone 1 DVDs (DVDs programmed for playback and distribution in North America only) are beginning to enter the upper end of the local market. The MPA reports that annual losses to the U.S. motion picture industry due to audiovisual piracy in Romania remained at an estimated US\$6 million in 2001.

The motion picture industry continues to improve its local anti-piracy activities. In 1999, a local anti-piracy organization (ARA) was organized by the motion picture industry (MPA). It was hoped that this organization would ensure better cooperation among Romanian officials and the film industry, including action against pirate television and cable stations. Immediately after a February 2000 ARA-MPA sponsored seminar for police, ORDA and Customs officials, several successful raids and seizures took place. In November 2001, ARA was renamed ROACT (Romanian Organization Against Copyright Theft), and elected as its president, Senator Sergiu Nicolaescu, a former chairman of the Senate Cultural Committee and a film director with significant copyright and anti-piracy experience.

The primary problem confronting the recording industry continues to be the flood of illegal material (CDs and cassettes), most of it from Ukraine, that comes into Romania due to poor border enforcement. The recording industry had some success in 2000 with raids and seizures, including one seizure of Ukraine material (CDs) in a sophisticated smuggling network. In fact, since 1999, according to the National Police, there was a 100% increase in the number of cases commenced (actually the number of seizures and raids undertaken). As a result, the overall level of piracy for sound recordings declined from 85% in 1999 to 55% in 2000, and estimated losses also dropped. However, initial optimism at the start of 2001 proved premature. Due to a sharp increase in CD piracy, including CD-R piracy, the overall music piracy level for 2001 rose to an estimated 70%, with U.S. trade losses estimated at \$14 million. The lack of deterrent penalties, the continued dismissal of cases by prosecutors for "lack of social harm" and the absence of a deterrent threat against pirates from the Central Economic Police responsible for IPR crimes were all a step in the wrong direction. In fact, the music pirates in Romania do not feel threatened. And, as in the other industries, the recording industry reports successes at the seizure level, but few prosecutions.

For the recording industry, the most serious legal deficiency of the last several years was corrected when Romania acceded to the Geneva Phonograms Convention (effective October 1, 1998). Actually, Romania should have been providing such protection beginning in 1996 under their WTO/TRIPS national treatment obligations, but membership in Geneva Phonograms ended any doubt; it did, however, leave a large amount of back-catalog material in the market. The WTO Agreement clearly requires that Romania provide protection for pre-existing sound recordings that are less than 50 years old. So, as a WTO member, Romania must make it clear in its legal system that it is providing this protection, if necessary through an appropriate court ruling, as required by Article 14.6 of the TRIPS Agreement. To date, the industries are aware of any specific action or pronouncement that the government may have made on this important matter.

With respect to business software, the Business Software Alliance (BSA) reports high levels of piracy among small businesses using 5-10 computers and state-owned companies. Small

businesses justify their piracy as a matter of ignorance of the copyright laws and insufficient funds to pay for legal software. Some state-owned companies apparently continue to use pirated software based on their perception that political cover and immunity from police investigations will shield them. Hard-disk loading for individuals and small company piracy represent major channels of business–software losses in Romania. Regarding Internet-based piracy of business software, one trend in Romania is advertisements online, asking potential end users to request software by sending an e-mail message to an address given in the advertisement. Estimates for 2001 business software piracy losses and piracy levels in Romanian are not yet available.

The Interactive Digital Software Association (IDSA) estimates that piracy levels of entertainment software in Romania rose to 95% of the market in 2001. IDSA reports that pre-recorded CD-ROMs of entertainment software continue to be produced in or shipped from Ukraine, Bulgaria, Russia, Belarus and other countries in the C.I.S. and even from Southeast Asia, which are transported for sale in Romania due to lax border enforcement there. Reports indicate that Russian organized crime groups ship much of this material. For example, pirate industrial copies (silver) of games for the new PlayStation2® platform already has half (50%) of the Romanian market, with the Far East being the source of this piracy. In addition, there are disk-burning syndicates that produce and distribute material (with the use of advertisements) via the mail in Romania. Some estimates place the CD-R market for burned games (gold discs) at almost 70% of the market. In sum, the entertainment industry is confronted with a moderately good law that is rarely enforced. Estimated U.S. trade losses for videogame piracy in Romania for 2001 are not available.

Piracy of U.S. books, especially textbooks and popular fiction, continues at a moderate level in Romania, amounting to an estimated loss of \$2 million.

COPYRIGHT ENFORCEMENT

In light of the scope of its piracy problem, Romania has not undertaken enough enforcement activity since its new copyright law entered into effect in June 1996. Romania has still not met its TRIPS enforcement obligations two years after the transition period ended (January 1, 2000). This inaction has been very frustrating for the copyright industries, because the Romanian government showed that it could engage in effective enforcement when it provides the necessary resources and has the appropriate willpower. Right after the copyright law was adopted in 1996, the Romanian government undertook a series of very effective raids directed at audio and video piracy. But that was a phenomenon that lasted only a few months; since then, on-the-ground enforcement has not reached an appropriate level to address the wide scale piracy problem. In addition, effective enforcement is hampered due to prosecutorial indifference and the lack of police resources to pursue large-scale pirate operations.

Hologram Decrees and Mixed Anti-Piracy Results

Two decrees were issued requiring the affixation of holograms to certain copyrighted products. In January 2000, a governmental decree was issued to establish a registration and hologram program for the production and distribution of phonograms. It is administered by UPFR under the supervision of ORDA. The failure to comply with these provisions results in fines and

confiscation of illegal material; the provisions went into effect on March 2, 2000. Second, on August 31, 2000, a decree (a so-called "emergency ordinance") was enacted bringing software and audiovisual works under a stickering program. The software industries were able to get amendments passed to make that decree acceptable to them in order to help police act against illegal distributors and permit quick access to information on piracy cases initiated by ORDA.

However, the motion picture industry was and remains very much opposed to this ordinance and the resultant stickering program. (The ordinance was actually initiated by local motion picture representatives, but in an entirely different form). The motion picture industry objects to the program because it is a state-mandated (that is, an ORDA approved) hologram stickering system. It requires the application of "distinctive marks" on each copy of an audiovisual work. This type of state-mandated stickering system, attempted in other territories (such as in Moscow, Russia) is counterproductive to anti-piracy efforts because it results in "legalizing" pirate material once the stickers are themselves forged. Alternatively, it prevents the legal distributor from getting product into the marketplace because the bureaucracy that issues legal stickers works very slowly and inefficiently, so pirate material is more readily available than legal material.

The provisions pertaining to audiovisual works and software went into force on February 1, 2001 (although there are reports it has not been fully implemented yet). ROACT (formerly ARA) continues to fight against the stickering system administered by ORDA (and the Ministry of Culture). Rather than accept a state-organized system, ROACT is now working to amend the emergency ordinance so that it or another nongovernmental organization could manage a voluntary program. It is unclear why the stickering system was forced upon the audiovisual industry. It requires all audiovisual distributors (who must be registered at the National Film Office and receive certificates for every title) to purchase stickers from a state-appointed private company. Until the two houses of Parliament (the Senate and Chamber of Deputies) agree to reject the ordinance, it remains applicable under the Romanian Law of Ordinances.

The ordinance, as amended, also introduced new penalties for IPR infringements and permits right holders to have control over certain criminal proceedings. Under the provisions, right holders have to provide ORDA with a model license agreement and must satisfy certain other procedural requirements. Even though the decree was revised so that it can be supported (for the most part) by the software industry, because of the strong opposition from the motion picture industry, the ordinance should either be rejected by the Parliament or it should be further revised consistent with the concerns of the motion picture and software (business and entertainment) industries.

Although there was some discussion in a Parliamentary commission of extending the mandatory stickering regime to business software, such a measure did not progress in 2001. The BSA remains opposed to extending the stickering regime to business software.

Record producers purchased 16,400,000 holograms in 2001, compared to 15,584,000 in 2000. However, the hologram program did not result in productive monitoring of the production or importation of sound recordings, as was hoped. In fact, as expected, the holograms were placed on illegal products. Holograms were delivered to small companies that pretended to be producing music but, in fact, were engaged in the illegal trafficking of the holograms. There were also reports of counterfeit holograms being used, and legitimate holograms having been stolen. Most of these holograms were found on pirate products. Nevertheless, the recording industry continues to support the use of holograms. But that is only the case if the local industry group, UPFR, can

remain in charge of the administration of the hologram program. IIPA urges the government of Romania to prevent ORDA from seeking any legislative changes that would unrightfully exclude UPFR from the administration of the hologram program; the recording industry initiated this program and must be permitted to continue to administer it.

Criminal Enforcement In Romania Is Abysmally Ineffective

Lack of Clear Lines of Authority, Lack of Resources, Lack of Results

The state body responsible for copyright enforcement, ORDA, has direct reporting lines to the Council of Ministers and the Economic Police Unit. However, the National Police never created a specialized unit for IPR protection, and there are only a handful of police officers assigned to IPR protection. For years, provisions have languished that would amend the Copyright Act to add enforcement responsibilities to other agencies in addition to those granted to ORDA. ORDA personnel have police powers. However, the seemingly constant staff changes within ORDA (also a problem in other agencies with IPR responsibilities in the National Police offices and Customs) have contributed toward an overall lack of efficiency. ORDA continues to face severe internal and budgetary problems, which is doing grave harm to its ability to work effectively. Resource scarcity is true in all of the law enforcement organizations, such as the National Economic Crimes Unit (the economic police), the financial police, the ONC (National Film Office, formerly the CNC), as well as the local police, prosecutors, and the judiciary. There are reports that some agencies, such as the Ministry of Finance and the Competition Office (enforcing the 1996 competition law) still conduct isolated anti-piracy actions.

ORDA's working relationship with the police is frustrated by poor communication, a lack of clear authority, and a lack of resources, all of which significantly hinder effective enforcement. In addition, effective enforcement is seriously frustrated by ORDA's attempt, through a proposal of legislative changes, to completely sideline the rightholders' representatives in the area of enforcement. By excluding the rightholders' organizations, ORDA is gravely undermining an enforcement system that is already weak and often ineffective.

The blurred lines of authority within the government have hampered effective enforcement. The only way enforcement will be effective is if the Romanian government commits the needed resources to the police, the National Economic Crimes Unit, and to ORDA to undertake the proper criminal enforcement activity. IIPA has called on the government in the past to clearly define the organizational responsibilities for copyright enforcement, and we continue to do so. Amendments to the 1996 copyright law, pending consideration for a number of years, would extend copyright enforcement to organizations other than ORDA to officially act in IPR enforcement activities. These amendments, submitted by local copyright industry representatives have been repeatedly ignored; they were excluded from the two "emergency ordinances" (the administrative decrees, discussed above) that were passed in 2000. Furthermore, ORDA has succeeded in getting amendments adopted that further exclude local copyright industry representatives.

As noted in the IIPA filing last year, 2000 could have marked a turning point in the level of cooperation between the various private copyright industries and government institutions. As one example noted by many of the copyright industries, ARA (now ROACT) and local U.S. Embassy officials worked together to create a monthly roundtable where copyright issues raised by the music, software, and audiovisual industries, would be brought to the attention of the proper

officials in the Romanian government. This group still meets, but ORDA representatives have not attended recent meetings.

So, 2001 was a disappointing year. ORDA is actively trying to exclude UPFR, the recording industry group from any effective enforcement activity duties. This is especially frustrating because ORDA's own enforcement actions do not compare well with those carried out by the police in cooperation with UPFR. ORDA must not be able to succeed in excluding UPFR from its administration of the hologram program. For 2001, the recording industry reports that its 288 actions with ORDA resulted in the seizure of 11,671 pirate music CDs and 15,059 pirate audiocassettes, resulting in fines amounting to US\$167,000 (5.02 billion ROL). In working with the police, the recording industry reports 3,198 field operations, which resulted in 341 actions.

The business software industry continues to report good relations with Romanian police, but despite police assistance, piracy continues to flourish. The BSA reports that the Romanian police were very active in 2001 in undertaking enforcement actions. Romanian police raided 247 end-users and 55 resellers in 2001, which is about 100 more than the number of raids carried out in 2000. The police seemed a bit more willing to conduct raids on end user companies in 2001. There were at least seven raids on companies with 25 or more computers (in one case, the target had 55 PCs). However, raids on smaller end users were more common, continuing trends in recent years in which it has been suspected that police unwillingness to undertake raids of large end users stems from the political influence wielded by such targets and their owners. Most of the resellers targeted by the police in 2001 were street resellers of CDs containing illegal software. BSA also reports that ORDA was responsive to complaints regarding piracy during 2001; however, ORDA does not have a sufficient number of inspectors to deal with the volume of business software piracy cases.

Few Prosecutions and No Deterrent Sentences

In 2001, the copyright industries (especially the software industry) began to receive some cooperation from the police to conduct raids and seizures of infringing product, but all industries report they had virtually no prosecutorial support even for the few raids and seizures that were conducted. There have still been no reports of any effective (i.e., non-suspended and not for time already served) jail terms imposed to date in Romania for copyright piracy – four years after the new laws were enacted.

The recording industry reports that there have been more cases of criminal prosecutions under the 1996 law than in the past, even though many cases are still dismissed due to a lack of public interest (the “no social harm” threshold). Of the 347 criminal cases involving recording piracy brought in 2001, the police forwarded 287 files to the prosecutors, and the recording industry claimed damages in all of these cases. The prosecutors dropped 132 of these cases. Twenty-two cases reached the court, with penalties ranging from suspended jail sentences to criminal fines.³

³ The breakdown of these 22 recording cases in 2001 is as follows: 4 convictions – 6 months imprisonment, suspended; 1 conviction – 1 year and 6 months imprisonment, suspended; 1 conviction – 1 year imprisonment, suspended and with an appeal filed; 10 convictions – with undetermined criminal fines; 1 acquittal; 3 convictions – with undetermined criminal fine and with an appeal filed; 2 cases still to be tried.

The BSA reports some progress in enforcement by the courts during 2001. Of 302 raids conducted, 280 cases were commenced. There were seven judgments during 2001 involving illegal use of business software; however, most of these are expected to be appealed. In one case that may not be further appealed, the Ploiesti Court of Appeals affirmed a lower court's judgment convicting a reseller for piracy, ordering the reseller to pay a US\$200 criminal fine and to pay damages to the software producers. The case was the first instance of a conviction that was affirmed at two higher levels of the appeals courts. In another case, a group of four end-users were found guilty of, among other things, criminal association and illegal reproduction of software. The sentences imposed were from one year to 1.5 years imprisonment, and were not suspended. However, time already served (while under arrest) was subtracted from the sentences. This case represents the first instance of actual imprisonment in a case involving software piracy in Romania. However the defendants have appealed the judgment. The software industry's experience shows that these judgments, even of minor fines, require a considerable exertion of effort and time to obtain, and represent a small fraction of the total cases initiated by police. The BSA reports that the average time required to obtain a criminal court decision in Romania is between one and two years. A ruling on appeal requires another 18 to 36 months. This lengthy period naturally remains a cause for concern.

In contrast with the progress made by the other industries in criminal actions, MPA reports that there have been no prosecutions or decisions rendered in audiovisual cases in 2001. Last year, the motion picture industry assisted on 151 criminal raids, of which only four cases commenced.

Civil Remedies Still Fail to Provide Effective *Ex Parte* Search Authority

Even though there are civil and administrative remedies available, they are not used in practice. This is due in large part to the lack of resources and expertise, and the low priority given to these matters by the government of Romania. However, the glaring TRIPS deficiency is the lack of an effective civil *ex parte* remedy.

The BSA confirms that no civil *ex parte* searches were granted in Romania in 2001. There are still no provisions in the copyright act to actually provide for civil *ex parte* search orders in the Romanian law. The only existing measures provide for the securing of evidence to prevent "imminent damage or to secure redress" and the current practice is for Romanian judges to deny a request for an *ex parte* search on the basis of that provision. Provisions in Romania's Civil Code (Article 239) are similarly ineffective. These provisions permit rights holders to request a court bailiff to "record certain [evidentiary] facts" outside the normal procedures for gathering proof, and clearly fall short of granting *ex parte* searches. There are provisions in the Criminal Code that permit police (*ex parte*) searches, but these provisions are not used effectively. In order to comply with the TRIPS Agreement, civil *ex parte* search provisions must be made to work effectively, and the police must engage in criminal searches. In order to ensure that the software industry (in particular) can rely on civil, as opposed to criminal, laws to enforce its rights, civil *ex parte* provisions need to be clearly included in Romania's Copyright Act.

With respect to civil damages, BSA reports that in 2001, it did apply for civil damages in conjunction with some criminal cases. Some US\$40,775 was received in either settlements or judgments.

Border Measures Must Be Strengthened

The Romanian government must adopt provisions to permit *ex officio* search orders by customs officials, and it must effectively train and run its border enforcement operations. It is critical that Romania's border enforcement system improve, because it is far too easy for pirated product, including optical media, to be imported into and exported out of Romania.

At last report, the Romanian government had stepped up its customs training programs partly due to pressures resulting from its prospective European Union accession; this in turn has improved enforcement at its borders according to some industry reports. Unfortunately, corruption has been a problem, but recent changes in the top ranks of the customs authority may lead to more effective controls. Equally important however, are the resources made available to customs to do its job well. In May 2000, the unit specially created for the protection of intellectual property within customs was dismantled, and there are now only six people in the central customs office with responsibility for fighting IPR smuggling and piracy. The government of Romania must commit more resources to combat this problem effectively.

LEGAL REFORM AND RELATED ISSUES

In 1996, Romania became a member of the World Trade Organization. In 1998, Romania joined the Paris Act of the Berne Convention (they have been Berne members since 1927), and the Geneva Phonograms Convention. In so doing, Romania fulfilled obligations it made in the U.S.-Romania Trade Agreement of 1992, and among other things, provided a clear point of attachment for foreign sound recordings for the first time. In February 2001, the government of Romania deposited, its instrument of ratification to the new digital treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Romania currently participates in the U.S. Generalized System of Preferences (GSP) program.⁴ Romania should not continue to expect such favorable treatment at this level if it is not providing adequate and effective protection and enforcement of copyright material as required under that program.

Copyright Act of 1996

The Copyright Act of 1996 strengthened penalties for copyright infringement. The law provides criminal fines ranging from 200,000 Romanian ROL to 10 million ROL (U.S.\$6 to U.S.\$315) and imprisonment of one month to five years (Articles 140-142). Romanian judges reportedly interpret these provisions as requiring fines for first offenses and imprisonment for subsequent offenses. Unfortunately, the fine levels in the criminal provisions have been ravaged by inflation and are now too low to effectively deter piracy, particularly by criminal organizations in Romania.

⁴ In 2000, \$77.1 million of Romania's imports to the U.S. benefited from the GSP program, accounting for 16.4% of its total imports to the U.S. For the first 11 months of 2001, \$93.4 million of Romanian goods (or 19% of Romania's total imports to the U.S. from January to November) entered the U.S. under the duty-free GSP code, representing a 32.8% increase over the same period last year.

Three actions could stabilize and improve the dearth of prosecutions and deterrent sentences. First, fines should be tied to more stable figures to avoid the effects of hyperinflation. Second, ORDA's exclusive authority to investigate and identify pirate product (Article 142) needs to be interpreted more expansively. ORDA has a small staff (which has been increased to 10 investigators) to cover the whole country; they are not capable of properly handling all investigations. Third, the act of "offering" pirate product for commercial sale should be sanctioned with criminal penalties (currently, a sale has to be completed). The criminal code needs to be amended. It should make clear that possession of illegal material, including the possession of the equipment used to make illegal material, could result in criminal sanctions.

The Copyright Act of 1996 also made other significant improvements in enforcement. It provides for: *ex officio* criminal copyright enforcement by the police; civil damages awards and/or seizure of illegal profits; preliminary and permanent injunctive relief; and seizure, forfeiture, and destruction of infringing profits (Article 139). The copyright law now defines unauthorized satellite and cable retransmissions as copyright infringements. The criminal code provides police with the proper (*ex parte*) search authority, but these searches have not been undertaken as needed.

As mentioned above, there are no express provisions in the copyright act to actually provide for civil *ex parte* search orders in the Romanian law. Civil code provisions in Article 239 have been referred to by the government of Romania as pertaining to such searches, but these are neither *ex parte* provisions *per se*, nor do they work effectively in any case, at securing evidence. As noted above, no civil searches were executed in 2001, so they cannot be said to work effectively. There also are several substantive changes in the law that still need to be addressed as well, especially those concerning the ownership by and rights of audiovisual producers. One provision currently requires cinemas to get prior authorization from and to compensate authors of music performed in publicly exhibited films; this is unusual and hinders film distribution in Romania. A second provision unfairly divides performance royalties and will further hurt the film distribution business, and will have an adverse market impact.

WIPO Treaties

Romania officially ratified both of the new digital treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT), by depositing its instruments of ratification with WIPO in February 2001. This was a very positive step. The ratification and eventual implementation of the appropriate laws will protect against Internet and other forms of digital piracy, and encourage e-commerce. Efforts are now underway to make all of the necessary amendments to the laws of Romania to comply with the treaties.

The copyright law does correctly provide that the right of reproduction covers temporary copies; however, it is limited to computer programs, so it must be amended to include all works in order to provide the necessary protections against digital piracy. In fact, to comply with the treaties, Romania must adopt numerous amendments. These include: adoption of a more complete right of communication to the public, including a right of making available; and provisions to allow right holders to 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. Implementation of this 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. A current provision in the law provides some anti-circumvention protection, but it is not as broad as the right noted above, and it is limited to computer programs. In addition, right holders 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.

On June 8, 2001, the Romanian government and WIPO signed a bilateral “Program of Cooperation” in which WIPO will assist the Romanian government in modernizing its IP system. Among the various actions to be taken, WIPO reported that activities will include “initiatives to upgrade the intellectual property enforcement system in Romania, intensified training in intellectual property, and concrete assistance to combat piracy of music, software, and audiovisual materials.”