

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2002 SPECIAL 301 REPORT

RUSSIA

EXECUTIVE SUMMARY

In the past five years it is estimated that the copyright industries have lost over \$5 billion due to piracy in Russia. There are three major reasons for these staggering losses and they must remain the focus of U.S. and Russian government attention to reverse this situation: (1) optical media piracy and the need to adopt an appropriate regulatory and enforcement response; (2) the lack of deterrence in the Russian enforcement system to the widespread commercial piracy that persists there; and (3) the need for critical legal reforms especially including the adoption of laws that comply with both the substantive and enforcement obligations of the WTO TRIPS agreement.

Russian optical media piracy continued to grow in 2001; in fact, production has eclipsed the production capacity of the region's worst offender, Ukraine. This is in part because some of the Ukraine plants have migrated to Russia as a result of the international pressure brought to bear on Ukraine, but it is largely the result of the Russian failure to adopt its own effective optical media production regulatory and enforcement scheme. The Russian optical media problem consists both of domestic production and lax border enforcement resulting in the receipt and distribution of product from Asian countries and Ukraine. Although Russia is still one of the major destination and transshipment points for pirate optical media product from these other markets, it also is quickly becoming one of the leading producers of illegal recorded music.

For another year, the copyright industries reported raiding by the police and the municipal authorities, but still without the necessary follow-up by prosecutors and the courts. With one notable exception, no deterrent sentences were meted out or actually served (in fact, in May 2000 all of the deterrent sentences were voided by the general amnesty). Amendments to the criminal procedure code were adopted on December 18, 2001, and will enter into force on July 1, 2002; further amendments to the criminal code are reportedly in progress. Russia failed in 2001 to use its existing provisions to impose deterrent penalties. The amendments to the criminal procedure code that it did adopt last year do not properly address the problems facing the copyright industries. The passage of inadequate provisions was a failed opportunity to upgrade and improve procedures for effective enforcement; this was combined with the continued failure to use existing provisions effectively. Absent these key steps, it remains almost impossible for Russia to keep up with its piracy problem.

As a sign it was losing patience, in 2001 the U.S. government accepted the IIPA's petition to examine whether Russia should continue to be eligible to receive duty-free trade benefits under the Generalized System of Preferences program. Hearings were held in March 2001, but no decision has yet been announced by the U.S. government on whether to fully or partially suspend GSP benefits for Russia. For the first 11 months of 2001, Russia exported goods valued at \$359.2 million to the U.S., which received preferential duty-free treatment under the GSP program (in

calendar year 2000, Russia exported \$514.7 million of such goods). While Russia was receiving these benefits, losses to U.S. industries from copyright piracy in Russia in 2001 amounted to \$849.3 million.

Very high estimated piracy levels in all copyright sectors accompany these massive losses. The piracy levels reported by the copyright industries are as follows: the recording industry is at 64%; the motion picture industry is at 80%; the software industry is at 83% for business software and 90% for entertainment software; and the book publishing industry reported high levels of piracy, but was unable to provide actual statistical levels.¹

For the past several years, the powerful and organized criminal syndicates that control much of the pirate market in Russia have continued to increase in strength and wealth. That is why the most significant problem in Russia continues to be the lack of deterrence in the criminal justice system, with low penalties meted out and currently only a small number of jail sentences for piracy. IIPA has again outlined (below) its enforcement benchmarks; these are steps it believes are necessary to begin to bring down the piracy levels.

There are a number of crucial legal reforms that are necessary to improve enforcement in Russia. These include the need to adopt: (1) proper optical media regulations; (2) amendments to the Criminal Procedure Code to provide police with the proper *ex officio* authority (amendments adopted in 2001 to the Criminal Procedure Code made many changes but ignored this most important one, and essentially left unchanged the commencement and investigation of copyright criminal cases); (3) amendments to the Criminal Code (the problems with Art. 146 "grave harm" provision); (4) amendments to the Arbitration Procedure Code and Civil Procedure Code (to provide for *ex parte* search provisions); (5) amendments to strengthen the Administrative Code; (6) amendments to the Customs Code (to provide *ex officio* seizure authority). The threat of deleterious amendments to the Civil Code remains, though the IPR provisions have now been broken off into Part IV of the Civil Code, which may result in the opportunity to defeat, or at least significantly improve and shorten, the current deficient and dangerous draft.

Despite a relatively good copyright law, Russia's legal regime is still deficient in a few key areas. Protection for pre-existing works and sound recordings is still not provided. This applies to U.S. sound recordings prior to the 1995 accession to the Geneva Phonograms Convention (and for domestic recordings prior to the 1993 Copyright Law); and, for works it applies to pre-May 27, 1973 material (the date of Russia's official accession to the Universal Copyright Convention as a successor state to the Soviet Union's obligations). A number of draft copyright law revisions have circulated over the past several years; the drafts reviewed by IIPA in 2001 would, we believe, correctly address the protection for pre-existing works and sound recordings. The current draft reviewed by the IIPA was prepared by an amalgam of government ministries under the supervision of ROSPATENT, the agency in charge of copyright matters since 2000, and serves as a joint draft of two key parliamentary committees tasked with enactment of the law. These draft provisions to correct the protection for pre-existing works and sound recordings must be adopted in 2002, not only to comply with the Bilateral Trade Agreement and the Berne Convention (and eventually WTO TRIPs), but also as an effective anti-piracy measure to stop the flood of back-catalog material

¹ In an article in the IPR strategic business information database (July 23, 2000), Lieutenant-General Magomed Abdurazakov, deputy chief of the Main Department for Public Order in Russia, estimated that in the case of videocassettes, audio products and computer software, the overall piracy rate was 90%. He called it one of the most profitable criminal businesses in Russia.

from drowning out legitimate markets. The draft copyright law is also intended to add new provisions to implement the new WIPO Internet treaties. Unfortunately, these amendments appear stalled at the moment as the result of many competing ministerial versions and interests, and a misguided prioritization of adopting Civil Code (Part IV) amendments ahead of the more critical copyright amendments.

In 2001, President Putin met with representatives of the information technology industries and later announced the adoption of a program entitled “Electronic Russia” to facilitate the development of these industries, including the software industry, in Russia. In addition, upon the urging of all of the major copyright industries, the President’s Office and the Ministry of Justice prepared amendments for the Duma to the Criminal Code aimed at strengthening copyright protection. Although the proposed amendments still need additional improvement if they are going to result in effective enforcement, they are seen as a step in the right direction.

Nevertheless, Russia’s copyright regime remains TRIPS-incompatible substantively, and especially with respect to enforcement.

For these reasons, IIPA recommends that the Russian Federation remain on the Priority Watch List in 2002, and further, that the United States aggressively utilize the GSP program to obtain the needed enforcement actions from the Russia government, as well as the necessary legislative reforms.²

RUSSIA: 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								
Motion Pictures	250.0	80%	250.0	90%	250.0	90%	312.0	85%	312.0	85%	312.0	95%
Sound Recordings / Musical Compositions	285.0	64%	250.0	70%	200.0	70%	170.0	75%	165.0	65%	170.0	70%
Business Software Applications ³	92.7	83%	89.0	89%	134.5	89%	196.1	92%	174.5	89%	298.2	91%
Entertainment Software	173.6	90%	NA	94%	241.1	95%	240.8	97%	225.8	95%	223.0	93%
Books	48.0	NA	48.0	NA	48.0	NA	45.0	NA	45.0	NA	45.0	NA
TOTALS	849.3		637.0		873.6		963.9		922.3		1048.2	

²For a history of Russia’s involvement in the Special 301 process, see Appendix E.

³ BSA loss numbers for 2001 are preliminary. In IIPA’s February 2001 Special 301 filing, BSA’s 2000 estimates of \$124.4 million at 89% were identified as preliminary. BSA finalized its 2000 numbers in mid-2001, and those revised figures are reflected above.

COPYRIGHT PIRACY IN RUSSIA

Optical Media Production Grows

Over the past several years, Russia's capacity to produce pirate optical media product (music CDs, videogames, VCDs and, increasingly DVDs) has grown significantly. It is now estimated that 17 optical media plants operate in Russia with a total capacity of at least 150 million units per year, and possibly that number is as high as 183 million units. The motion picture anti-piracy organization (RAPO) reports that there are now three DVD plants in Russia: Two are in Moscow (Repli Master and Russobit-Soft) and one in Odintzovo, 15km from Moscow (ROFF), with a combined maximum capacity of 3.6 million discs per year. The Repli Master plant is a new plant opened in 2001. The copyright industries also know of one pirate DVD plant just outside Moscow that is under investigation and could be producing up to 25,000 discs a month. RAPO reports that pirate DVDs are appearing on the market within two days of legitimate release of theatrical motion pictures. The recording industry reports that two new CD plants opened in 2001 and six of the existing plants increased their production capabilities.

Russia remains one of the largest destination points for pirate optical media product, and as these figures show is now one of the major producers as well. Most of the imported material is smuggled in from neighboring states like Ukraine and from pirate operations throughout Southeast Asia (Malaysia, Thailand, Hong Kong, Macau, etc.).

To stop the growth of optical media piracy in Russia, the government must improve its efforts at the border (to stop the import and export of this material), and it must adopt comprehensive optical media regulations and enforcement provisions. In 2001, Russia did adopt a law intended to improve enforcement against local optical disc plants. That law, "On Licensing Separate Activities" (under which production facilities must be licensed by the Ministry of Press and Information effective February 1, 2002), unfortunately is an inadequate response to the serious problem of optical media regulation. The Russian government must work with the international copyright industries to adopt regulations and enforcement provisions that have worked successfully in other countries to stop this form of piracy. In fact, the copyright industries report that sales of illegal optical media material increased in 2001, in part because of a weakening of the administrative measures aimed at regulating the production, distribution and sale of this material.

Proper optical media regulations and enforcement provisions would effectively strike at the production and distribution operations in Russia. In the absence of these provisions, the copyright industries have had to rely on raids and seizures of pirate optical media product; while successful, these activities do not result in closing or stopping production at illegal plants. As in other years, such raids and seizures continued in 2001.

In June 2001, IFPI reported on the successful completion of an investigation and prosecution of members of an international organized crime group implicated in the illegal manufacturing and distribution of CDs. Since many raids and seizures do not end in criminal convictions, this operation was a notable success. In this case, the Russian Ministry of Interior (Investigation Unit) was responsible for the ultimate conviction of the head of the organized crime group, who was given a three-year sentence, and 11 members of that group. The members were sentenced to a variety of terms, and were convicted of criminal offenses including customs and

contraband violations. The syndicate had been involved in illegal CD manufacturing in Bulgaria, including distribution in Russia dating to 1997; the IFPI estimated that over 2 million CDs were smuggled and distributed in the Russian territory through over 20 fictitious companies and agreements in Bulgaria and Russia and a network of wholesale distributors. The key to the investigation was the discovery by Russian customs officials of CDs and inlay cards coming from Bulgaria to Russia through an intricate network of couriers. A raid on the organization resulted in the confiscation of 400,000 CDs and a very large number of inlay booklets (as well as many false contracts and delivery agreements). IFPI estimated that its member companies lost \$300,000 due to this one operation.

In June 2000, IFPI investigators, together with officials of local police departments, conducted a number of joint raiding operations, which resulted in the seizure of 6,540 CDs consisting of international repertoire. The director of the VITACOM Company was charged with violations of the administrative code, and all of the products seized in a raid on that plant were destroyed. Despite this fact, the company continued its unlawful activity, albeit with more care in light of the raid and administrative law action. In April 2001, IFPI investigators, acting undercover, made test purchases from the company's catalogue; they ordered over 66 CD titles of clearly pirate product. In late May 2001, investigators ordered an additional 500 pirate CD titles. Local police officers conducted raids in June 2001 and confiscated 22,200 CDs and 59,600 inlay booklets in the same company's warehouse. Further investigations are underway; in October several company employees were charged with administrative law violations and the seized CDs were destroyed. But no criminal prosecutions have yet resulted.

The 2001 raids followed several successful ones in 2000 including the January 2000 raid by the Ministry of the Interior's Economic Crime Unit against the Moscow-based Storm Company, in which 600,000 illegal music CDs and other pirate optical media product plus 2 million inlay cards destined for the domestic market and export were seized. The company was making and distributing pirate CDs for sale in Russia and other European countries. But like many cases, this one did not lead to a criminal conviction; in fact, the case was closed due to the May 2000 amnesty declaration. In October 2001, the 600,000 CDs that had been seized were destroyed.

In September 2000, the film industry's anti-piracy organization, RAPO, seized 62,000 CD-ROMS containing titles in MPEG4 format (ripped from DVDs) at various Moscow metro stations. In December 2000, RAPO seized 110,000 CD-ROMs with MPEG4 titles and identified the plants suspected of producing these discs, one in Zelenograd near Moscow and the other in the Urals, Siberia. These plants appear to have ceased the manufacture of CD-ROMs containing MPA member company titles following approaches by RAPO, and this, combined with RAPO's retail raiding activity, reduced the availability of such discs. Smaller, yet to be identified facilities are, however, still suspected to be in operation. Throughout 2001, RAPO seized a total of 890,000 MPEG-4 CD-ROMs and over 5,300 pirate DVDs.

The pattern of successful raids without successful prosecutions (with the exceptions noted above) dates back several years. In September 1999 the recording industry, assisted by the Ministry of the Interior and other agencies, seized over 12,000 mostly music CDs on the Belorussian border which were destined for shipment to Poland. This then led to the first-ever raid on a CD plant, Disk Press MSK, located in the Moscow region, that had begun operations in 1998 without the required license. This plant's production capacity was then about 5 million units annually. In that case, 100,000 CDs and 500 stampers were seized from the plant's premises, and the plant's equipment has been seized. However, even after tens of thousands of discs were seized and four

members were accused of crimes, only two members of the reported “criminal gang” responsible were arrested, and even their convictions remain elusive.

The business software industry reports that in 2001, 46 police raids against CD-ROM resellers were undertaken, but only one of those cases was considered a “large-scale” raid. In that case, about 50,000 CD-ROMs containing illegal software were seized.

Piracy of videogames in console and PC optical media formats continues to be rampant. However, the vigorous enforcement efforts and large seizures noted just a few years ago (in IIPA’s 2000 submission, for example) have greatly diminished due to the dangerous conditions that exist because organized criminal elements control videogame piracy in Russia.

That is why there is virtually no importation at present of pirate PC entertainment software products from other countries. The Russian syndicates are now able to produce more than sufficient amounts to meet domestic demand and are exporting their additional production into other countries in the region (such as Estonia and Bulgaria) and throughout the world. CD factory production has increased; in part this is due to the migration of production facilities back to Russia from Ukraine. It is believed that this increased production capacity is due to the exclusive involvement of organized crime in the piracy operations in Moscow. It is widely suspected that during 2001 these criminal syndicates consolidated their efforts and divided the markets among themselves. In the past, individual syndicate operations were smaller in scale; now, with the suspected consolidation of these syndicates, the operations are so large that they can potentially destroy legitimate markets in the Scandinavian countries, as well as expand into the Western and Eastern European territories. Russian pirates take advantage of company localization of games into Russian and sell pirate copies throughout Russia. They also export a large quantity of the videogames in the Russian language to Israel.

There is little enforcement on-going in Russia against entertainment software piracy at present. This is largely due to control of the market for PC entertainment software products by these syndicates. The raids that are conducted are only against small retail operations; thus, these actions have little or no effect on ridding the market of pirate game products. In some instances, police officers know where pirate products are being sold, but will only conduct raids on establishments if money is paid by the right holders to the police. If the pirate “outbids” the legitimate distributor, the goods will often be returned to the pirate after the “raid.” No further action or prosecution is taken. For obvious reasons, it is difficult to document these instances of government corruption. The IDSA member companies and other videogame publishers now have legitimate local contractors in place, but the problems of insufficient enforcement and corruption are major obstacles to successfully launching their businesses. The situation is comparable to the era when legitimate motion picture home video distribution was brought to Russia. As was the situation then, the danger faced by local distributors from organized crime groups is considerable; the crime syndicates routinely threaten legitimate game publishers. So it is very difficult, if not impossible, to bring any enforcement action, and to operate a business with success, in this climate.

RASPA, the Russian anti-piracy organization for the entertainment software industry, continued its frequent raids, especially in the Mitino and other markets as well as throughout Moscow’s metro stations. RASPA succeeded in seizing hundreds of thousands of Sony PlayStation® and PC-based pirate games over the course of the year. IIPA has no further information on court actions, but some were brought as a result of these raids. Nevertheless, lack of follow-up and court

action with deterrent penalties also continue as a core problem, as with piracy of other copyrighted products.

The piracy rates in the area of videogames remains at an estimated 90%. Total losses in 2001 in the entertainment software industry were estimated at \$173.6 million.

While a large amount of pirate optical media product continues to be smuggled, domestic Russian pirate production capacity has increased to between 150 and 180 million units a year, and production itself has increased to 42 million CDs a year (including local and international repertoire), which is a 20% growth from the previous year. Illegal VCD, DVD and CD-R product is showing up in markets with increasing regularity. For the motion picture industry, optical discs are growing in popularity, even though they remain generally eclipsed by VHS use. RAPO now believes that most of the pirate DVD material available on the market is being produced in Russia. Ukraine used to be a major supplier to Russia, but due to the closure or suspension of some of the plants there production has slowed; in some cases plants or lines have migrated into Russia. CD-ROMs containing movies "ripped" from DVDs with Russian language tracks are indications of the increased sophistication of those that are producing pirate products for the Russian population. In addition, some producers are taking advantage of the legal gap that denies protection to pre-1973 works, and are manufacturing and distributing DVDs containing important back catalog titles.

In sum, the success caused by the raids and seizures of illegal musical, audiovisual, videogame and software material noted above, will remain limited, without proper optical media regulations combined with a vigorous campaign of convictions and deterrent penalties to control further pirate production.

Other Piracy Problems and Piracy Levels

Video piracy around Moscow remains at an estimated 50%; piracy outside Moscow remains at about 70% to 90%. Organized criminal gangs control over 50% of the duplication and initial distribution of pirate videos. Distribution occurs through selected wholesalers that operate in large outdoor markets and through private "stores" that act as warehouses to replenish retail stock in a defined territory. The increased availability of legitimate product in the marketplace has resulted in consumer demand for better quality copies (which in turn has resulted in higher quality counterfeits).

A major step in early 2001 was the closing of the infamous Gorbushka outdoor market in January. Until its closure it was the major source of pirated material in Moscow, with many distribution hubs located in the vicinity. Now that Gorbushka has closed, the market has been split into two separate markets (in an enclosed pavilion and army sports center), making it somewhat easier to enforce and control piracy. However, the local anti-piracy organization (RAPO) reports that video piracy has returned to the new Gorbushka market (which is partly owned by the Moscow city government) and that it is encountering severe difficulties in securing any police enforcement there. The Mitino market, which was the second major outdoor market after Gorbushka, remains open and has now surpassed Gorbushka as the major focal point for pirate distribution and regular raids by RAPO. It is also a major source of pirate optical discs. RAPO also reports that the Moscow police have become less willing to conduct raids anywhere in the past few months and that RAPO is encountering increasing problems with corruption. Senior police officers are no longer interested

in intellectual property protection. The reduced raiding activity is leading to an increase in the availability of pirate product of all kinds on the streets.

The recording industry reports that the closure of the Gorbushka market resulted in the migration of illegal sales moving to the nearby Lia-Lia Park, a new trade center for music piracy that has created a very serious problem. The Moscow city government has pledged to clean up Lia-Lia Park and to regulate the sale there of only legal product, but so far this has not transpired.

During 2001, RAPO began to expand its activities outside of Moscow; it now has local operations in St. Petersburg, Ekaterinburg, Novosibirsk, Rostov-on-Don and Nizny Novgorod. RAPO's raiding activity outside Moscow included one raid on a pirate video laboratory in Nabereznaya Chelny, Tatarstan. In the raid, RAPO found 190 VCRs recording pirate product. The packing operation occupied two rooms that included packing machines, a scanner, 11,000 recorded VHS tapes, 50,000 blank tapes and 6,000 masters. Documents found during the raid indicated that during the past year this one lab had produced and sold in the neighborhood of 700,000 pirate VHS tapes. This resulted in about \$1.2 million in income to the pirates.

From the above, it is clear that raiding activity remains substantial. However, significant piracy rate reductions will only come with criminal prosecutions and deterrent penalties.

Although broadcast television piracy continues to be a problem outside Moscow, the government has made significant progress in regulating this industry. The Federal Service for Television and Radio (FSTR), began in 1998 by working with MPA member companies to regulate the broadcast market; it has now been folded into the new Ministry of Press, Television and Mass Media. The new ministry, along with RAPO, has established an inter-ministerial "Expert Committee" to forge strategies to fight this type of piracy. Their actions resulted in several stations receiving fines. In addition, RAPO institutes two or three regulatory actions a month and has been involved in several criminal actions.

Cable piracy in Moscow has all but disappeared, but there are still rampant abuses in the rest of the country. RAPO is working closely with the Ministry of Press on this issue.

The recording industry conducted around 300 raids against music pirates in 2001, and seized and destroyed a considerable number of CDs, inlay cards and equipment. Audiocassette piracy levels remain very high (at about 64%) despite this major raiding activity and the expenditure of major resources by IFPI. Moscow and its region are accountable for most of the nation's pirate market and constitute a key transshipment point. Audiocassettes are still the dominant format, but the CD market is rapidly growing. In fact, for the first time, the volume of counterfeit cassette sales decreased by approximately one million copies. Out of a total of 154 million counterfeit cassettes sold in Russia in 2001, 94 million were international repertoire, which is 40 million less than in 2000. The reason for this is partly due to the expansion by some of the U.S. and European labels of their legal catalog in Russia at competitive prices, so the pirates moved into the market with more local repertoire. Also, there are more illegal copies available now than in previous years of MP3 format material, which is offered at very low prices (70 rubles, or less than US\$3) for hours of music per disk. This has contributed to the increase in CD production and distribution. It is estimated that approximately one million counterfeit CDs with MP3 music were sold in Russia in 2001. Music piracy will continue to grow unless there is considerably more effort undertaken by the Russian law enforcement agencies and the courts against pirates, including

imposing deterrent penalties. Efforts also have to be taken to increase general public awareness of and the harm done to the local economy (and local artists) by piracy.

As noted above, the level of piracy for entertainment software is 90% of the market; losses incurred by the entertainment software industry in 2001 were estimated at \$173.6 million. Just as the growing penetration of computers and the Internet in Russia is causing a growth in online piracy of music and sound recording in the MP-3 format, it also has resulted in a growth in the amount of online piracy of games in Russia. There are also a large number of hacker rings in Russia that have caused problems, particularly for the videogame industry.

The business software industry reports losses of \$92.7 million in 2001 (these are preliminary figures; final figures will be available later in 2002). The preliminary piracy level was estimated to be 83%.

Book piracy continues to flourish in the difficult Russian economy. While bestsellers were the target of the pirates in the early 90's, they have now turned to reference works and textbooks, a large market in Russia. Unlicensed imports of pirated reprints from the Ukraine, pirated reference books and medical texts still abound. A new wrinkle seems to be the unlicensed translations of fiction bestsellers that are available for download on Websites in Russia. This phenomenon is appearing in a number of the C.I.S. countries, but more often in Russia than in any of the other countries. Increasingly, the Russia crime syndicates control the pirate book business. The "hidden print run" and "overrun" problems remain, where printers of legitimate editions deliver additional unauthorized copies to crime syndicate distributors before delivering books to legitimate publishers. The Association of American Publishers (AAP) estimates losses in Russia in 2001 were \$48 million.

COPYRIGHT ENFORCEMENT

Criminal Enforcement

Inadequate criminal enforcement cutting across all copyright industries remains the most glaring deficiency in the Russian copyright system. This is especially true as the role of organized crime syndicates have grown in influence in commercial piracy in Russia. This lack of effective criminal enforcement has kept piracy levels at unprecedented high levels (see the trade loss and piracy rate chart above). The federal police and the IP unit in the Ministry of the Interior have generally been cooperative in running raids against major pirates (the Unit "R" has had IPR enforcement jurisdiction taken from it). At the retail level, however, it is now clear that anti-piracy actions must be conducted by municipal authorities and in these cases pirates are subject to administrative, not criminal, remedies.

To assist in combating piracy, an Alliance for IP Protection was formed in early 2000 with IFPI Moscow, RAPO, BSA and RASPA (representing the videogame industry) joining together. The activities of this organization have been limited to training activities.

Growing out of the 1999 raids that resulted in the seizure of 3500 DVDs of 15 MPA member titles, two of the accused were sentenced, in November 2000, to three years'

imprisonment by the Meschansky District Court in Moscow, but were able to avail themselves of the amnesty proclaimed by the state Duma in May of 2000 and were released. It is hoped that these lengthy sentences are indicative of a change in attitude toward piracy by the Russian courts and judges.

The local anti-piracy organization for the film industry, RAPO, conducted a total of 1,839 raids in 2001, seizing over 1 million pirate videocassettes, 890,000 pirate CD-ROMs containing films in MPEG4 format, and 5,330 DVDs. In addition, they seized 4,500 VCDs and over 3.5 million preprinted sleeves.

In 2001, RAPO initiated police raids on 232 clandestine video and optical disc duplication labs and distribution centers. These raids resulted in the seizure of hundreds of VCRs and tens of thousands of illegal cassettes, optical discs, sleeves and false holograms.

RAPO initiated 256 criminal cases in 2001 and received 80 favorable decisions. Unfortunately, 32 cases were dropped, and 35 ended with a not guilty verdict. On far too many occasions, prosecutors continue to dismiss cases citing a lack of public interest, particularly when RAPO is not directly involved. This is likely to continue until the copyright law can be amended and copyright offenses can be listed as serious crimes.

As reported above, the recording industry reported a large number of seizures and raids. However, most of these cases were later dismissed or were turned into administrative cases with *de minimis* fines (on average, a fine of five times the minimum daily wage, i.e., 500 rubles, or roughly US\$16).

In 2001 the business software industry assisted with 46 police raids against the CD-ROM resellers resulting in 15 court verdicts based on Article 146 of the Criminal Code. In almost all of these cases, the defendants were lone individuals distributing the products. Unfortunately, the police investigators were either not willing or not able to go after wholesale distributors and the producers of counterfeit products in 2001.

In addition the business software industry obtained two criminal convictions against computer shops selling computers with illegal software installed onto the hard discs (HDL piracy). Notably, in one of these cases, the criminal court found guilty not only the actual salesperson, but also the managing director of the infringing company. This trial court ruling was later affirmed on appeal. Unfortunately, such court rulings have been extremely rare. In fact, a large number of these cases were simply terminated by prosecutors on the notion that there was no proof of "grave harm" – evidence that the threshold in the criminal code is a hindrance to effective enforcement. Despite the fact that there were a few police raids against software end users (companies using illegal software in their business activities), there were no cases initiated against any of the individuals responsible in those instances.

Through RASPA, many IDSA member companies also undertook raids of larger targets hoping for criminal prosecutions. However, most raids involved seizing product in the local markets in cooperation with the Ministry of the Interior and the Economic Crimes Unit. IIPA has no statistics on the total number of seizures or on cases commenced and convictions obtained.

**CRIMINAL COPYRIGHT
ENFORCEMENT STATISTICS
2001**

ACTIONS	MPA	IFPI	BSA
Number of Raids conducted	1839	266	99
Number of indictments filed	256	337	42
Number of defendants convicted (including guilty pleas)	80	60	14
Ratio of convictions to the number of raids conducted	4.3%	22.6%	NA
Ratio of convictions to the number of indictments	14.3%	17.8%	NA
Total number of cases resulting in jail time	28	NA	9
1 to 12 months	17		8
13 to 24 months	8		1
25 to 36 months	3	1	
37 to 60 months			
Over 61 months			
Number of cases resulting in criminal fines	17	NA	8
Total amount of fines levied			\$3,500
US\$0-\$1,000	5		6
\$1,001-\$5,000	6		2
\$5,001-\$10,000	4		
\$10,000 and above	2		
Total amount of restitution ordered) in how many cases (e.g. \$XXX in Y cases)	NA	\$2 million	

Clearly, these results will not succeed in significantly reducing piracy levels in Russia for some time. Any reduction that does occur will be achieved only through the massive use of resources to take product off the streets through raiding activity, without the concomitant deterrence of prosecutions and deterrent penalties.

Administrative Enforcement

Retail cases are increasingly handled under administrative machinery, resulting in very small fines, or none at all. While pirate product is generally confiscated, shop operators are normally not the owners and the latter seldom get caught and fined. For the third straight year, the recording industry and the motion picture industry report that administrative raids have been positive; RAPO reported that it is able to average nearly 19 administrative court decisions a week against pirate retailers that order illegal product to be confiscated and that impose small fines (on average less than US\$17). Market seizures continue to involve the employment of huge resources, since administrative penalties remain totally inadequate to deter over the long term. Statistics below show the significant number of cases with *de minimis* penalties.

**ADMINISTRATIVE COPYRIGHT
ENFORCEMENT STATISTICS
2001**

ACTIONS	MPA	IFPI	BSA
Number of raids/searches conducted	1072	266	4
Number of administrative cases brought by agency	1061	235	NA
Number of defendants found liable (including admissions/pleas of guilt)	986	203	4
Ratio of convictions to the number of raids conducted	91%	76.3%	100%
Ratio of convictions to the number of cases brought	92%	86.4%	100%
Number of cases resulting in administrative fines	986	183	4
Total amount of fines levied	\$16,433	\$3000	
US\$0-\$1,000	986		4
\$1,001-\$5,000			
\$5,001-\$10,000			
\$10,000 and above			
Total amount of restitution ordered in how many cases (e.g. \$XXX in Y cases)			

Civil Enforcement

RAPO has brought and won a few civil cases in 2001 (civil add-ons to criminal prosecution), including one case in Rostov on Don in August 2001 in which the Court ordered the defendants to pay US\$122,300 in damages to the rights holders (in addition to fines totaling US\$2,533 and taxes of US\$22,857). The court found that the accused had been part of an organized gang engaged in piracy for over a year. RAPO had seized 119 VCRs and 11,800 pirate cassettes in a raid on the gang's laboratory. One of the accused was given a suspended sentence of three years; two others received six month suspended sentences.

In 2001, the business software industry chose to file separate lawsuits in the arbitration court, rather than pursue civil claims as an adjunct to a criminal prosecution. In 2001, a major case was won against one of the biggest Russian PC assemblers installing illegal copies of business software onto sold computers. The Moscow Arbitration Court granted the rights holder damages in the amount of almost US\$20,000. The higher courts then affirmed the court decision.

However, deficiencies in the copyright law still make it very difficult to apply civil remedies in end-user piracy cases. In 2001, courts issued contradictory rulings in similar civil cases against end-user companies caught using illegal software in their business activities.

**CIVIL COPYRIGHT
ENFORCEMENT STATISTICS
2001**

ACTIONS	MPA	BSA
Number of civil raids/searches conducted	25	NA
Post Search Action		4
Cases Dropped	20	0
Cases Settled		4
Cases Adjudicated	5	
Value of loss as determined by Court (\$USD)	\$327,500	
Judgment Amount (\$USD) in how many cases (e.g. \$XXX in Y cases)		
US\$0-\$1,000		
\$1,001-\$5,000		
\$5,001-\$10,000		
\$10,001-\$20,000		
\$20,001-\$50,000	1	
\$50,001-\$100,000	2	
\$100,000 and above	2	
Settlement Amount (\$USD) in how many cases (e.g. \$XXX in Y cases)		\$18,660

IIPA Enforcement Objectives and Benchmarks

For the past five years, IIPA has outlined a series of benchmarks that the USG has periodically provided to the Russian government on improvements needed in Russia's enforcement system. To date, these have not been implemented. That is unfortunate, because IIPA believes that these steps would go a long way toward the implementation of an effective enforcement regime in Russia.

In addition to taking more forceful and consistent enforcement actions in 2002, the Russian government needs to take a number of structural and political steps to make progress against the massive levels of piracy threatening the very existence of their own copyright industries. While the Russian government has not seen fit to implement any of these obvious measures (first proposed by the IIPA in 1997), they remain fully valid today. Now that the U.S. government has accepted the IIPA's GSP petition and heard testimony on these very proposals, it is hoped that the Russian government can be persuaded in bilateral talks under the Special 301 and GSP process to move this agenda forward.

The President and the Prime Minister should issue a decree or internal directive making copyright enforcement a high priority.

The Interministerial Task Force and all enforcement agencies must be directed to treat commercial copyright infringement as a serious crime that should be dealt with *ex officio* by all enforcement authorities. Customs should be taking actions to enforce copyright laws at the border. The Public Prosecutor's Office must be tasked to vigorously prosecute copyright offenses; this is critical, since police officials often refuse raiding requests on the grounds that prosecutors will not follow-up with prosecutions. Such directives should be issued by the President and/or Prime Minister in order to obtain the attention of the various ministries.

The Supreme Court and Supreme Arbitration Court should issue an explanatory instruction to the lower courts concerning copyright enforcement.

The Supreme Court and Supreme Arbitration Court should base such instruction on their review and analysis of existing court practice in the area of IPR enforcement. The instruction should contain clarifications of certain points of law (e.g., the presumption of authorship and rights ownership, and the necessity to put the burden of proof on the violator, not the right holder; admittance of evidence regarding title/ownership, etc.) that are currently subject to debate among judges, prosecutors and law enforcement officials. Judges should be instructed to consider infringements of copyright and neighboring rights as serious crimes.

A permanent interministerial task force on enforcement should adopt a binding plan to coordinate nationwide enforcement by all relevant agencies.

There are currently no clear governmental strategies and no clear lines of authority for copyright enforcement in Russia. The Ministry of the Interior already has the lead responsibility as the major criminal enforcement agency in Russia, working with other agencies, like the Anti-Monopoly Ministry, Customs, and the Ministry of Justice, playing their appropriate roles. The Task Force should meet at least once per month and deal separately with copyright matters focusing on those issues causing the largest losses for Russian and foreign right holders. It should be headed by one of the deputy prime ministers.

Enforcement (police and customs) and prosecutorial pools should be established in each major city and region.

Piracy enforcement requires specialized knowledge and focused resources. Piracy rings are sophisticated and often have international connections. Only organized enforcement authorities can successfully curb the illicit activities of organized crime syndicates. Anti-piracy actions targeted at the Russian Mafia could boost government and public confidence that economic crime can be dealt with. For example, the Economic Crime Units (at both the militia and federal levels, i.e., Interior Ministry) specializing in IPR cases should be properly manned and counterparts should be set up in other major cities outside Moscow. Customs should also be involved. In addition, IIPA recommends that prosecutors be brought fully into this system; it is imperative that prosecutors develop more specialized knowledge about IPR cases.⁴ Without deterrent financial penalties and imprisonment, experience shows that piracy, indeed economic crime in general, cannot be brought under control.

⁴ IIPA has been told that because prosecutors and judges are not part of the executive branch of government, they do not normally participate in any groups or pools with police, customs, etc. However, special teams consisting of prosecutors, police officers and representatives of other enforcement agencies often conduct investigation of other serious crimes.

A plan should be formulated and commenced for the training of judges, prosecutors, magistrates, and police as a regular part of ongoing enforcement efforts.

The U.S. and EU governments and the private sector, including IIPA members, stand ready to assist in this objective. The U.S. government proposed a comprehensive training program to the Russian government; but only one or two sessions have been held in past years. This program, which also relies on IIPA members, must be continued and more training undertaken if the full benefits of these initial training programs are to be realized.

GENERALIZED SYSTEM OF PREFERENCES (GSP) PROGRAM

Even with piracy rates among the highest in the world, Russia continues to receive significant trade benefits through the GSP program. For the first 11 months of 2001, Russia exported goods valued at \$359.2 million to the U.S. that received preferential duty-free treatment under the GSP program (in calendar year 2000, Russia received \$514.7 million). This preference was granted to Russia even while the copyright industries were losing close to \$1 billion a year (for each of the past five years); the more precise number is that the industries lost \$849.3 million in 2001. As a result of the frustratingly slow progress against piracy in Russia, the IIPA filed a petition (in August 2000) to suspend some or all of Russia's GSP benefits. The U.S. government accepted the IIPA petition in 2001 and held hearings in March 2001. It is hoped that the U.S. government will announce its decision soon and that it will suspend these benefits unless or until there is significant progress with the enforcement regime in Russia.

DEFICIENCIES IN THE STATUTORY AND REGULATORY REGIME

Copyright Law and Enforcement Provisions

While adoption of the criminal code amendments in 1996 (and discussed in previous submissions) was a critical step forward, these amendments were not altogether satisfactory and further amendments are necessary. Another frustrating step was the adoption in 2001 of a new Criminal Procedure Code without adopting the key enforcement tool of providing *ex officio* authority to the police as recommended by the U.S. government and the IIPA for a number of years. In addition, it is critical that Russia extend full protection to pre-existing sound recordings and works consistent with the TRIPS Agreement (and Berne/bilateral) obligations, and that Russia adopt civil *ex parte* search procedures in its Civil Procedure Code and Arbitration Procedure Code. All of these are clear TRIPS requirements.

For the past several years, IIPA has provided an analysis of draft amendments to Russia's copyright law, and to the criminal code, the criminal procedure code and the administrative codes, all with the goal of increasing the penalties for copyright infringement and providing more effective enforcement procedures. Unfortunately, with the exception of the disappointing Criminal Procedure Code, these laws have remained unchanged. In addition, some of the proposed amendments remain TRIPs incompatible, and if adopted, may result in further delaying Russia's progress toward WTO accession.

Regarding the copyright law amendments, it was hoped that 2001 would be the year of the adoption of improved draft laws, but this was not the case. The most recent draft that is now “in play” is the amalgamation of several ministerial and parliamentary committee drafts that are now reportedly being reconciled by a working group into a single draft (the “consolidated draft”) in order to move the process forward.

As previously noted, the most positive development in the past two years was the placing of responsibility for copyright matters under ROSPATENT, which also has the portfolio for patent and trademark matters. The agency sought the help of WIPO and other experts on the draft laws. In discussions with the IIPA in 2001, the drafts that were provided to IIPA would properly correct the “retroactivity” (protection for pre-existing works and sound recordings) deficiencies; the draft law was also intended to make other changes, most notably adding provisions directed at implementing the WIPO treaties. Russia has also announced that it wants to join the WTO sometime in 2003; this will necessitate a major legislative push, both on the copyright law as well as on enforcement-related laws to make its laws compatible with the TRIPs agreement.

Recent reports are that the so-called “consolidated draft” (incorporating the ROSPATENT, the “Komissarov” and the Duma Committee on Culture’s competing draft laws) is now being discussed and reconciled by a working group so that it can be formerly submitted by the Committee on Culture and Mr. Komissarov for the Duma’s consideration. The consolidated draft reportedly contains the following provisions:

- a. Provisions providing protection (for a minimum of 50 years) for pre-existing works and sound recordings. These so-called “retroactivity” provisions appear to be satisfactory, but there should not be any transition period for selling off previously unprotected material;
- b. There is a new “making available” right for works and phonograms;
- c. The term of protection for works is extended to life plus 70 years (or 70 years from publication), but left at 50 years for phonograms – which is inadequate;
- d. There have been improvements in the computer program decompilation provisions from earlier drafts;
- e. New provisions were added in 2001 governing technological protection measures (TPMs) and rights management information (RMI), both WIPO treaties requirements;
- f. Provisions that would clarify the TRIPs rental rights: One troubling development is a provision that would narrow the rental rights granted to copyright holders with respect to computer programs;
- g. Some of the other troubling provisions in the draft include: the failure to clarify the protection for temporary copies; the failure to clarify the scope of exclusive rights for producers of sound recordings; new provisions giving collecting societies even more power and interests; failure to rectify the scope of the existing private copying levy in the digital environment; and the failure to narrow certain overbroad exceptions to the rights of authors and producers of sound recordings.

While most of the revisions are positive (with exception of the term for sound recordings and the brief points highlighted in (f) and (g) above), there remains opposition within certain quarters of the Putin Administration and the Duma to passage of the copyright law. It is hoped that the USG will continue to engage the Russians to ensure that the law passes both quickly and with provisions that repair all substantive TRIPs deficiencies and correctly implement the WIPO treaties.

A new Code on Administrative Misdemeanors was adopted on December 30, 2001 and it will come into force on July 1, 2002. Pursuant to this Code, it will be possible to initiate administrative cases against legal entities and to impose fines on them in the amount from US\$900 to US\$1,200 for copyright infringements. However, the practical implementation of this new law is likely to be very limited because it falls under the competence of underqualified municipal police. It is also unfortunate that none of the long-pending amendments to the Criminal and related Procedure and Administrative Codes were adopted (even though the Criminal Procedure Code was revised last year).⁵

The following details the history of the enforcement-related amendments that still await and which must be passed:

In the December 1996 amendments to the Criminal Procedure Code (CPC), certain amendments were added that proved troublesome. These were supposed to be technical amendments to align the CPC with the June amendments to the Criminal Code, but the amendments changed two key provisions, making enforcement more difficult. In 1995, the CPC was amended to place copyright violations under police jurisdiction (Article 126) and to provide for *ex officio* copyright infringement actions (Article 27). The 1996 revisions returned primary jurisdiction to investigate copyright infringement to the prosecutor's office, and required a formal complaint by the copyright owner to initiate a case. The former change limits copyright enforcement because prosecutors have fewer resources than police and because copyright enforcement will now depend on the different priority given to infringement by each district's prosecutor. The latter change limits copyright infringement complaints to the number that copyright owners can make and follow up, a number unlikely to be sufficient to address the magnitude of the piracy problem. Enforcement outside Moscow will be difficult where copyright owners do not have representatives. Industry and the U.S. government must press to reinstate the 1995 provisions of the CPC; this has been made even more difficult because these changes were ignored in the 2001 amendments adopted to the CPC, effective July 1, 2002.

Amendments proposed in the past to the Criminal Code and the Criminal Procedure Code should now be adopted, in addition to the Copyright law amendments:

Current Article 146 of the criminal code deals with infringement of copyright and neighboring rights. It provides for fines (200 to 400 times the minimum wage, or U.S.\$700 to U.S.\$1400) or two to four months of the defendant's income, correctional labor (from 180 to 240 hours), or imprisonment (of up to two years) for unlawful acts which cause "grave harm"/"significant damage." Fines and jail terms are higher (doubling the fines, and up to five years) when the infringing acts are committed repeatedly or by an organized group. These fines and jail terms entered into effect on January 1, 1997. The following amendments should now be retabled and adopted in 2002:

⁵ Amendments to the Administrative Offenses Code were passed in 2000, effective March 1, 2001.

1. Adopt amendments to define the standard of “significant damage”/“grave harm” in Article 146.

This standard must be defined to cover all cases in which the retail value of the pirated works exceeds a minimum amount. IIPA is told that other articles in the criminal code contain a “significant damage” standard and that a monetary amount defining the standard is provided expressly. For example, the general theft provision in the new criminal code defines “significant damage” as 500 times the minimum wage (about US\$1,500). IIPA believes this general threshold is too high for copyright piracy and should be much lower. Not only is such a low threshold important for identifying infringing acts under the criminal law, it also provides critical guidance for the police when they are conducting the initial raids and must assess the situation and determine whether the case should be brought under the criminal code or the administrative code. There was, in years past, a proposal to further lower the threshold to 50 times the minimum wage, or US\$150, but this was never adopted.

In July 1995, Russia adopted administrative measures to enforce the copyright law. However, Article 150-4 of the administrative code also contains a reference to the “significant damage”/“grave harm” standard found in Article 146 of the Criminal Code. The uncertainty around this standard must be resolved if both criminal and administrative enforcement is to be effectively implemented in Russia.

In December 2001, President Putin sent Parliament an amendment to Article 146 to abolish the “significant damage/grave harm” language, and to substitute for it a formal criterion of what would be used to determine “in a significant amount” for criminal infringement of works and phonograms. The concept of the amendment, setting a fixed amount, is consistent with industry proposals, but reportedly the threshold amount still is too high in the proposal. The proposal reportedly defines two thresholds: a “grand-amount offense” (200 times minimum wage) and a “gross-amount offense” (500 times minimum wage). The punishment for convictions would increase from 200 to 400 times the minimum wage (approximately US\$600 to US\$1200) for grand-amount offenses; it would increase for up to 3 to 6 years imprisonment for “gross-amount offenses”. If these thresholds can be further lowered to a fixed but reasonable amount (starting, for example, at 50 times the minimum wage), then this will improve criminal enforcement when coupled with the tougher penalties, if such a proposal can be actually implemented by the courts.

2. Introduce and adopt amendments to add specific substantive and procedural provisions to the criminal code which would grant police the authority and legal basis to confiscate infringing goods, materials, and the equipment used to produce such items.

Before passage of the criminal code amendments, the copyright industries lobbied to include a provision on confiscation in the IPR provision of the criminal code; this was supported by a number of Russian enforcement agencies, including the Ministry of Interior. Legislators felt that because no other criminal code article contained such a specific confiscation provision, it was not possible to add it to Article 146.

There are general provisions in the Russian Criminal Procedure Code providing that the “objects (or tools) of crimes” can be destroyed by court order or by the decision of the investigator only when the criminal case is closed (often the investigator is entitled to do so only with the

approval of the prosecutor). The criminal code also provides for the confiscation of personal property of a convicted defendant as a type of sanction. However, copies of infringing works or sound recordings very often do not constitute the personal property of a convicted person. As a result, confiscation of personal property as a sanction under the criminal code does not cover illegal copies. The 1995 amendments to the administrative code also provide for the seizure of pirate goods and equipment, but these seizures are only available for administrative offenses. Amendments made in July 1995 to the 1993 Copyright Law required mandatory confiscation of infringing works and sound recordings (Article 49) and allowed confiscation of equipment and materials used for their production. There do not appear to be any procedures or guidelines in effect on how to treat goods once seized. Both the civil and criminal laws need to provide procedures for police, prosecutors, and courts to hold onto confiscated goods for use at trial. IIPA is unaware of any amendments pending on these issues.

3. *Introduce and adopt amendments to increase levels of fines because they are too low and therefore inadequate to deter commercial piracy.*

For example, a single business application program for engineers (AutoCAD) costs approximately \$4,000. A commercial pirate of such a program will view low fines as a cost of doing business. These amendments must provide for increased penalties for copyright infringement. IIPA was told last year that the Duma's IP Working Group was considering amendments to increase the maximum jail term to seven years and to make copyright infringement a "most serious crime," which purportedly would trigger special attention by the enforcement authorities.

4. *Introduce and adopt an amendment to the Criminal Procedure Code to return jurisdiction over criminal violations to the police authorities from the prosecutors.*

The June 1996 amendment to the Criminal Procedure Code (in effect after December 25, 1996) was a serious setback to copyright enforcement. The 1995 amendments put criminal violations under police jurisdiction. The 1996 amendments returned jurisdiction to the prosecutors; the police may no longer be able to act *ex officio* without the consent of the prosecutors. Furthermore, the amendment removed from the category of a public crime any copyright offense other than that conducted by an organized group, necessitating a formal complaint in all other cases. Although it had been reported in 2000 that the Duma's IP Working Group might delete from Article 27 of the Criminal Procedure Code the reference to copyright crimes, resulting in the repeal of a requirement that a private complaint be filed before a criminal case can begin, the CPC amendments were adopted in 2001 without this important change. Also unchanged by the 2001 amendments, but in serious need of revision, is Article 126 of the CPC, which allows actions once taken directly by the police not to be subject to prosecutorial authorization. The U.S. should press for passage of these changes.

Two other procedural or enforcement-related amendments are needed:

First, the Russian government and Duma must introduce and adopt amendments to the Civil Procedure Code and the Arbitration Procedure Code or the copyright law to provide *ex parte* search authority. While the current Civil Procedure Code (Articles 134 and 136) and Arbitration Procedure Code appear to permit imposition of liens on property as security for judgment measures, the law must secure evidence through civil searches and civil seizures in *ex parte*

proceedings to be able to commence civil relief. This is a critical deficiency, particularly for the software industry. Russia must correct this omission to permit right holders to obtain civil *ex parte* searches against suspected infringers if Russia is to accede to the WTO. Article 50 of the TRIPS Agreement requires the availability of civil *ex parte* search procedures.

Second, the Duma must introduce and adopt amendments to the Customs Code to ensure full authority to seize pirate product at the border and to bring Russia's border controls at least into compliance with Articles 51-60 of TRIPS. Imports of pirate optical media product continue from Eastern Europe (Czech Republic), from other countries of the CIS with production capacity (i.e., Ukraine), and from Asia. It was reported in 2000 that the State Customs Committee was working on a draft of a new Customs Code with the assistance of the Ministry of Economic Development and Trade; however, these provisions were never adopted. Reportedly, a new Customs Code will have its second reading in the Duma in March 2002. Since the Russian government is seeking WTO acceptance, the U.S. government should insist that Russia make these necessary changes before its accession to the WTO can proceed so that Russia will have a fully TRIPS-compatible Customs Code in place.

Civil Code

The effort to include detailed copyright provisions as part of comprehensive civil code reform remains a continuing threat. In December 2001 it was again reported that the IPR provisions of the Civil Code are very much alive, and supported by many entities both within and without the Russian government. Last year, the controversy surrounding this issue resulted in a decision to place the IPR issue into Part IV of the Civil Code, where it could be dealt with independently. It is imperative that Russia not adopt the copyright provisions in the latest draft IIPA has seen. That draft continues to contain numerous provisions incompatible with the bilateral Trade Agreement, Berne and TRIPS. At most, Russia should do what Belarus has done, merely referring to the existing statutory law in its (brief) IP civil code section.

If adopted, these Civil Code amendments would create significant ambiguities and risks, as courts would attempt to determine which of two competing and inconsistent laws governs. The draft being proffered would also seriously undermine Russia's already faulty enforcement regime. The U.S. government has always vigorously opposed these dangerous and Berne-incompatible amendments, and must continue to do so.

Stamp Tax

An issue of concern for the past couple of years was the Moscow Stamp Tax. Until January 2001, the Moscow city government required all video and audio cassettes, optical discs and computerized information carriers to have a "protective identification mark" (i.e., a stamp) tax. The stamps bore no relation to copyright ownership, yet purported to legalize product in the market. Protests against this tax from the copyright industries resulted in another ordinance (Ordinance No. 73) that abolished the stamps but created a registration stamp/mark in its place. There is a lingering question whether or not the new registration stamp/mark is mandatory because the law is not clear. However, this discussion is, for most industries, theoretical because in practice most of the copyright industries continue to purchase the stamp/marks out of fear of retaliation. There is now discussion in the Russian government about creating a federal stamp. For at least one industry, a

self-regulating program of affixing holograms and monitoring compliance on behalf of rights holders is now under consideration as well.

Tax on Video Rental Profits

In 1992, Russia imposed a 70% profit tax on revenue from video rentals, along with other "vice" activities such as gambling. From the time of its enactment, this tax effectively barred legitimate companies from entering and developing a video rental market in Russia, and instead protected and promoted pirate activity. On January 1, 2002, Chapter 25 "On Profit Tax of Organizations" of the Russian Federation Tax Code came into force. The 70% tax is excluded from this law, and video rentals will now be taxable at the general rate of 24%. Although this is still a very high rate, it is obviously a major improvement from the oppressive existing tax. Hopefully, this will help the video market's growth in Russia.

The video rental market in Russia has the potential to generate hundreds of millions of dollars per year. Typically, legitimate home video releases are distributed by way of rental when first entering a new market. Until now, as a result of the 70% tax, companies were forced to enter the video market (if at all) with sell-through product only, which essentially limited the market to only those few consumers who could afford higher end entertainment. Since buying a video is beyond the means of the average Russian consumer, but renting a video is not, it is hoped that the rental market can now expand.

Optical Media Regulation

There are reportedly at least 17 CD plants in Russia, including one underground plant. With the reduction in the availability of pirate product from Bulgaria, China and Ukraine, these plants have increasingly become involved in producing for pirates. In fact, some of the Ukraine plants migrated to Russia during the past year. Russia remains a haven for CD pirates.

A licensing law, signed by President Yeltsin in 1998, required any plant manufacturing audio or video product on CD to obtain an operating license; but that law failed to extend to all copyrightable subject matter, and was inadequate. Then, in 2001, Russia adopted a law intended to further improve enforcement against local optical disc plants. That law, "On Licensing Separate Activities" (under which production facilities must be licensed by the Ministry of Press and Information effective February 1, 2002), was unfortunately a further inadequate response to the serious problem of optical media regulation.

As the scope of the problem of optical media production in Russia has grown, the need for comprehensive and effective regulations and enforcement laws has become even more critical. IIPA and its members continue to urge the U.S. to press Russia to implement an overall optical media regulation program, following those that have been proposed for or adopted in many Asian and other Eastern European countries. This must be undertaken quickly before the problem gets even worse. The elements of an effective optical media regulatory and enforcement plan are:

- Centralized licensing of all optical media mastering or manufacturing facilities. In most cases, the government should implement a comprehensive licensing scheme on the basis of existing statutory authority in the field of business licensing.

- Centralized licensing of importation, exportation, and internal transfer of optical disc mastering or manufacturing equipment and machinery. An automatic licensing regime consistent with WTO requirements would generally be sufficient to create needed transparency. In most cases, it should be possible to utilize existing customs or import/export laws as a statutory basis for much of the regulatory regime in this field.
- Centralized licensing of importation of optical-grade polycarbonate, the key raw material used in the production of optical media products. Here too, the licensing regime could be an implementation of existing customs laws, and an automatic licensing system would generally be sufficient.
- Requirement for the placement of a secure unique internationally recognized identifier (such as a source identification [SID] code or its successor) on all masters (stamper) and finished products produced within the country, indicating the source of manufacture.
- Record-keeping requirements, including full information on all orders placed at and fulfilled by the optical disk manufacturing facility, and documentation of the order placer's right to commission reproduction of the material. Records must be preserved for a stated period; order documentation should be accompanied by a sample of the product produced pursuant to the order. At a minimum, the licensing body should have the statutory authority to obtain the above information and to share it with rightsholders in its discretion. These requirements create the transparency which is essential to the success of the entire regime.
- Plenary inspection authority by an enforcement agency for the examination of all records, search of all facilities, etc., for the purpose of ensuring compliance with all the preceding requirements. Surprise, off-hours inspections should be explicitly authorized. Public inspection (e.g., by right holder organizations) should also be authorized as appropriate.
- Violation of any significant aspect of this regime should be criminally punishable and lead to license revocation. Offenses should include: conducting manufacturing or mastering operations without a license; importation, exportation or trafficking in manufacturing equipment or optical-grade polycarbonate without a license; production of masters or finished products without a secure identification code; failure to maintain or to permit immediate inspection of records, including orders; or interference with an inspection, search, or other official action undertaken to enforce the regime. The regulatory agency or agencies should also be granted emergency authority to immediately shut down the operations of an unlicensed facility or one otherwise shown to be operating in violation of the regulatory regime.

While the framework outlined above should be implemented in all countries posing an optical media piracy threat, additional measures may be needed in Russia (and for selected copyright industry sectors) in order to bring optical media piracy fully under control. These additional measures could include:

- Title verification requirements, under which producers of optical discs must clear orders for certain products with relevant representatives of right holders before beginning production;
- Imposition of controls similar to those outlined above on the importation, in-country distribution, and/or exportation of certain finished optical disc products (in addition to production equipment and raw materials).

WIPO Treaties and Electronic Commerce

In addition to the other legal reforms, Russia should adopt legislation that fully implements the digital treaties (WCT and WPPT); this is critical to Russia's future in the new world of e-commerce. IIPA also understands that there is a federal draft law "On Electronic Trade" which was submitted to the Duma in November 2000. This draft law should be carefully watched by the industries and the U.S. government to ensure that e-commerce is not over-regulated and that liability issues for copyright infringement on the Internet are dealt with in a manner to ensure that right holders can properly and effectively enforce their rights, consistent, for example, with the U.S.'s 1998 copyright law revisions pertaining to ISP liability and remedies in the Digital Millennium Copyright Act (DMCA).