

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2003 SPECIAL 301 REPORT

RUSSIAN FEDERATION

EXECUTIVE SUMMARY

Special 301 recommendation: IIPA recommends that the Russian Federation remain on the Priority Watch List in 2003¹ and that a short out-of-cycle review be undertaken as well. IIPA also recommends that the United States government suspend Russia's duty-free trade benefits that it enjoys under the Generalized System of Preferences (GSP) program. We make these recommendations because Russia's copyright piracy problem is one of the most serious of any country in the world. Overall copyright industry losses exceed \$1 billion per year—totaling \$6 billion in losses for the past six years with no end in sight. Russia's law and enforcement regime is not in compliance with the 1992 Bilateral NTR Trade Agreement even though Russia agreed to implement it by December 31, 1992—now 10 years later; nor is Russia in compliance with the Berne Convention (as a member since 1995). Last, Russia should be prevented from accession into the World Trade Organization until its copyright regime, now far short, is brought into compliance with the WTO TRIPS obligations.

Overview of key problems: The three problems of the highest priority in Russia are: (1) the explosive growth of illegal optical media plants run by organized crime syndicates with widespread distribution networks—Russia is now one of the world's largest producers and distributors of illegal optical media material; (2) lax enforcement, in particular, the lack of deterrence in the Russian criminal enforcement system to address persistent commercial piracy; and (3) the need for critical legal reforms.

Actions to be taken by the government of Russia: The most urgent problem that must be addressed by the Russian government is the widespread production and distribution of optical media produced in Russia and distributed throughout the world. The steps that need to be taken by the government of Russia are:

- Immediately closing the illegal plants using existing law (especially by withdrawing licenses for plants operating on government property), and adopting a comprehensive optical media regulatory and enforcement scheme;
- Enacting and enforcing effective border measures to stop the export and import of illegal material (Russia is also a major transshipment point for illegal product);
- Significantly improving criminal investigations and raids against pirates engaged in commercial distribution (and administrative procedures against street piracy);
- Directing prosecutors to bring cases swiftly and especially aimed at major commercial pirates; getting the courts to impose deterrent criminal penalties;
- Making the necessary legal reforms in the copyright law, criminal code, criminal procedure code, and administrative code detailed in this report, to facilitate stronger and more effective enforcement compatible with WTO TRIPS and the WIPO digital treaties.

¹For a history of Russia's involvement in the Special 301 process, see Appendix E.

RUSSIA
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1998 - 2002²

INDUSTRY	2002		2001		2000		1999		1998	
	Loss	Level								
Motion Pictures	250.0	80%	250.0	80%	250.0	90%	250.0	90%	312.0	85%
Records & Music	371.9	66%	285.0	64%	250.0	70%	200.0	70%	170.0	75%
Business Software Applications ³	93.9	87%	90.6	87%	89.0	88%	134.5	89%	196.1	92%
Entertainment Software	NA	90%	173.6	90%	NA	94%	241.1	95%	240.8	97%
Books	40.0	NA	48.0	NA	48.0	NA	48.0	NA	45.0	NA
TOTALS	755.8		847.2		637.0		873.6		963.9	

COPYRIGHT PIRACY IN RUSSIA

Illegal Optical Media Production and Distribution

By far the greatest threat to the copyright sector in Russia is the manufacturing, distribution, and sale of pirated optical media products (music CDs, videogames, VCDs and, increasingly DVDs) from Russia's growing number of unregulated optical disc plants. Russia's 26 known CD plants, including at least 5 DVD (that is, audiovisual) lines, are wreaking havoc on the Russian domestic market. The number and the overall capacity of these plants has more than doubled in the past two years, from 12 plants in 2000 to 26 in 2002. In addition, illegal discs are being exported from Russia into neighboring countries and throughout Europe and other parts of the world (such as Israel), disrupting markets everywhere.

To combat this problem, optical media plants must be properly licensed and regulated to stem the flow of illegal materials. In March 2002, IIPA proposed a series of detailed proven legislative and regulatory steps to combat this problem. These materials were presented to the government of Russia by the U.S. government; in addition, IIPA presented these materials to

² The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2003 Special 301 submission, and is available on the IIPA website (www.iipa.com/pdf/2003spec301methodology.pdf).

³ BSA's estimated piracy losses and levels for 2002 are preliminary, and will be finalized in mid-2003. In IIPA's February 2002 Special 301 filing, BSA's 2001 estimates of \$92.7 million at 83% were identified as preliminary; BSA finalized its 2001 numbers in mid-2002, and those revised figures are reflected above. BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA's trade loss numbers released separately in its annual global piracy study which reflects losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

ROSPATENT copyright experts. Russia has as yet taken no steps to adopt these legislative and regulatory provisions (outlined later in this report). IIPA urges the government of Russia to work with the international copyright industries to adopt comprehensive regulations and enforcement provisions that have worked successfully in other countries to stop this form of piracy.

Russia's present manufacturing capacity of CD plants is estimated at 300 million units per annum and bears no relationship to present legitimate demand—probably close to 18 million units. In just the past year, at least six new plants came on-line. It was only a few years ago that Russia's production eclipsed the production capacity of the region's then worst offender, Ukraine. This was caused in part by some of the Ukrainian plants migrating to Russia. But in larger part, the explosive growth in Russia has been the result of the criminal syndicates operating in Russia expanding their operations, in the absence of any deterrence. The Russian optical media problem is one of both domestic production as well as lax border enforcement resulting in the receipt and distribution of product from Asian countries (Malaysia, Thailand, Hong Kong, Macau, etc.) and, to a lesser degree, Ukraine. Russia remains a major destination and transshipment point for pirate optical media product from these other markets.

There are currently at least four DVD plants in Russia, of which two plants (Repli Master and Russobit) are in Moscow. The recording industry (International Federation of the Phonographic Industry, IFPI) reports that ten new CD plants opened in 2002 and four of the existing plants increased their production capabilities. During 2002, five new production lines were acquired to add to the existing manufacturing capacity (namely, two lines at the Urals Electronic Plant, one line at RMG Company, one line at Ruphon and one line at Astico-Center).

As a corollary to the adoption of comprehensive optical media regulations and enforcement provisions, Russia must significantly improve the lax border enforcement that permits the easy trafficking of illegal material into and out of Russia.

In 2001, Russia adopted a general plant licensing law ("On Licensing Separate Activities" effective February 1, 2002). In June 2002 "Reproduction Licensing Regulations" were adopted. Although these laws and regulations fall far short of the legal reforms needed for effective optical disc regulation, they could be used immediately to close some of the illegal optical disc plants, while more comprehensive laws are adopted. The laws/regulations require production facilities to be licensed by the Ministry of Press and Information. The pirates unsuccessfully challenged the regulations in the Russian courts. The Ministry of Press then began to implement the regulations (including the issuance of licenses and inspections of inspect replication facilities) for compliance. The motion picture industry reports that a number of pirate VHS labs have been discovered and the ministry has refused to issue a license to one of the known DVD plants with a history of pirate activity. The Inspection Commission recently inspected some CD plants and one of them was caught engaging in piratical production. Unfortunately, most of the copyright industries report that the laws have not yet been used to close or properly regulate the plants producing illegal CDs.

In addition, some of the optical disc plants are located on property owned by the government (in fact, eight CD plants and one DVD plant are on premises limited to special enterprises by the government). At a minimum in 2003, the government of Russia should take immediate steps to ensure that all known optical media plants operating on government-owned property are not producing illegal materials which would otherwise implicate the government directly in copyright infringements, and must close those plants that are operating illegally.

While awaiting adoption of proper optical media regulations and enforcement provisions, the copyright industries have had to rely on raids and seizures of pirate optical media product. Although the industries can report some successful raids and seizures, these activities have not resulted in any appreciable reduction in the amount of pirate optical disc product being produced in Russia. Pirate manufacture continues unabated and the pirates are being more entrenched. What is required is commitment by the Russian government to take action against the organized criminal enterprises that operate in the country. Copyright owners on their own cannot face down such groups but require the help of governments particularly in this area of law enforcement. With profits rivaling those made through the distribution of illegal drugs, it will require a similar commitment by governments to clean up criminal syndicates running piracy operations.

Raids and Seizures in 2002

As in past years, the copyright industries reported raiding by the police and the municipal authorities, but still without the necessary follow-up by prosecutors and the courts. More disappointing, Russia has continuously failed to use its existing criminal law provisions to impose deterrent penalties.

In October 2002, the Russian cabinet agreed to establish an Interministerial Commission to combat piracy. The commission, it was announced, would be headed by the Prime Minister (this duty has now fallen to Press and Information Minister Lesin as “acting” head) and authorized to issue instructions to all the Russian enforcement bodies, including the Federal Security Service (FSB), the Organized Crime Police, and Customs. This has been a long-standing request by IIPA and its members and is a welcome development. It is hoped the Commission will focus not just on stepped up raiding and seizure activity but on the imposition of deterrent penalties especially directed at organized crime syndicates. It was immediately reported that there would be a greater willingness on the part of the police to assist in raids, and even, for the first time, cooperation by the FSB with raids.

After the announcement in October, there was a reported increase in raids, but these were directed at retail outlets, kiosks and street markets. Now only three months later, IIPA members already report a drop-off in activity. It should be further noted that street raids are, by themselves, meaningless unless parallel investigations are also run on the organizations behind these operations (either directing or supplying the street outlets). Unless action is taken against the organized criminal enterprises producing the large quantities of pirate material, running street raids will not be sufficient to clear the markets of Russia.

The pattern of successful raids without successful prosecutions (with the exceptions noted) has been a recurring problem for years. There was one notable exception, albeit three years, after the raid. In 1999 a CD plant, Disk Press MSK, located in the Moscow region was raided. The plant’s production capacity was then about five million units annually. At the time, 100,000 CDs and 500 stampers were seized from the plant’s premises, and the plant’s equipment was seized. Unfortunately, several of those arrested were not charged with crimes, even though there was ample evidence of the involvement of a “criminal gang.” However, on June 18, 2002, two defendants who controlled the organized crime group were sentenced to four years for various offenses, including smuggling of counterfeit CDs, tax evasion and copyright (and neighboring rights) violations. The general director of the plant was sentenced to two years imprisonment as well.

There were, as noted some successful raids and seizures in 2002. It is hoped that these will lead to successful and meaningful prosecutions in 2003.

On November 13, 2002, the film industry's anti-piracy organization, RAPO seized over 72,000 pirate DVDs in a major raid on a warehouse and packing facility in Moscow (which also contained CDs and videos—in total 250,000 copies were seized). The raid followed a two-month-long investigation conducted by RAPO in co-operation with the Organized Crime Police. The warehouse is located on a large defense complex (a research Institute called "Precision Instruments"). In order to gain access to the premises, RAPO had to secure the cooperation and attendance of officers from a special police department in the Ministry of Interior that is charged with guarding Russian defense facilities. At the time of the raid, there were 15 women in the facility packing discs into plastic DVD boxes. The raid also netted over one million high-quality printed sleeves and thousands of DVD cases. Following the raid, the police wanted to leave the pirate product behind and to seal the building, but RAPO feared that the pirates would remove the product overnight. RAPO eventually secured permission to move the product to the premises of a local RAPO member, where it could be securely guarded. On the following day, RAPO discovered a second premise within the same defense complex and seized 44,000 additional pirate discs (and over 60,000 sleeves), bringing the total number of discs seized in this one operation to over 116,000. The same company implicated in the earlier raid operated the second facility. In total in 2002, RAPO reported seizing over 226,000 pirate discs from DVD distributors and retailers.

On November 25, 2002 RAPO and the police conducted a raid on a clandestine optical disc plant in Korolov near Moscow and seized a dual-purpose CD and DVD line. The raid also uncovered a warehouse containing over 500,000 pirate CDs. In another raid in 2002 in Warsaw, Poland, the local anti-piracy organization seized over 4,000 Russian-made DVDs of current title feature films. The DVDs were English-language with subtitling in over 14 other language choices, but not including Russian. Thus the pirates in Russia are clearly producing material for export into other markets. The MPAA's anti-piracy programs in countries across Central and Eastern Europe and elsewhere have been seizing Russian, made pirate DVDs in 2002. The local Russian market has now become so saturated with pirate DVDs that the pirates have resorted to selling them on the streets by the kilo. Sales of legitimate DVDs in Russia have fallen back to 1999 levels despite a large increase in the number of households with DVD players.

Pirate DVDs are being sold everywhere, at street markets, in kiosks and retail stores and over the Internet. Some films are available on pirate DVD even before their theatrical release in the U.S. The pirate DVDs are very professionally produced and contain subtitles in many European languages.

In a raid in the city of Samara in September, RAPO and local police seized 25,000 pirate DVDs, 25,000 MPEG-4 CD-Rs, 20,000 VCDs and 95,000 videocassettes. The raid was conducted on a videocassette and packaging lab located in a warehouse, as well as against two associated retail stores.

In the past year, RAPO has been able to move some criminal cases forward. On September 2, 2002 the criminal court in Rostov-on-Don sentenced two videocassette pirates to prison, with one defendant receiving a two-and-a-half year sentence, and the other receiving a two-year sentence. Neither sentence was suspended by the court and both defendants are currently in prison. The Russian courts typically refuse to jail defendants for copyright crimes and if a sentence is imposed, it is usually suspended. The fact that the men were sent to prison

is a good sign and the length of their incarceration provides some hope that the judges are finally beginning to take IP crimes seriously. Despite these successes, however, prosecutors continue to regard copyright offenses as minor crimes and on far too many occasions dismiss cases, citing a lack of public interest. Such decisions discourage the prosecution of other defendants by police and prosecutors.

In 2002, the recording industry (IFPI) assisted in the investigation, and in raids and seizures on a number of suspected producers and distributors of illegal recorded material. Many of these investigations, and raids and seizures, were undertaken with the Public Prosecutor's Office. The following is a brief summary of some of the music industries' actions against replication plants, including raids and seizures on plants and warehouses in 2002.

After a two-year investigation, the criminal case against the Synograph CD replication plant is still ongoing (there were several meetings between IFPI and the General Prosecutor's Office). The investigation revealed a total of 140 titles found to have been replicated illegally: Counterfeit CDs from that plant were traced to Finland, Poland, Bulgaria, Romania and the U.S. In another case, evidence continued to be collected (some seized by Israeli police) of pirate product from the Bars Media replication plant in Kazan, Tatarstan. The plant was raided in August 2002 by the police; they also raided a warehouse and four distribution outlets connected to the plant (a total of 6,940 pirate CDs were seized). After the raid, the Kazan Prosecutor's Office initiated a criminal case that is ongoing. In another case, there were two raids undertaken in 2002 (November and December) by Ministry of Interior authorities (and IFPI) against the ZZMT replication plant. In those raids, a total of 234,493 discs with music, games, software, and film copies were discovered; 85,014 of these were counterfeit musical CDs. In all, a total of 88,158 discs (including 42,125 musical CDs) were seized and the rest were sealed on the premises. The Prosecutor's Office is initiating a criminal case.

In another case, the CD replication plant Tine-Invest Replication Plant, situated in the city of Korolev was investigated. At the Komposit factory (part of the Tine-Invest operation) CD replication equipment was discovered along with 23,860 illegal CDs and 47 stampers—all were seized. The investigation revealed two clandestine CD wholesale warehouses in Moscow—including one at a scientific institute under a special security (i.e., government) regime. After two raids by the police in November 2002 the equipment was shut down (and the entire plant personnel disappeared). As a result of this investigation a warehouse in Moscow containing 562,956 CDs and 600 inlays were seized. A criminal case has been initiated.

In an October 2002 raid, 41,700 CDs were seized; of these 30,000 were determined to belong to the De Luxe Company. In January, a raid on a wholesale warehouse of the Park Line Service Company resulted in the seizure of 63,500 CDs. The investigation revealed that the company was supplying small wholesale customers in Moscow and other Russian cities. A criminal case was commenced against the managing director of the company, but he only received a suspended sentence.

In October, the Moscow City Police (with IFPI cooperation) raided a company selling music material over the Internet. The operation resulted in the seizure of 7,000 infringing CDs. The director of the company (the Landy Star Company) was charged with administrative violations with possible sanctions of fines and confiscation pending.

The business software industry reports that in 2002, 42 police raids against CD-ROM resellers were undertaken, but only one of those cases was considered a "large-scale" raid. In that case, about 800,000 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 have greatly diminished due to the dangerous conditions that exist because organized criminal elements control videogame piracy in Russia. There are now believed to be four main criminal syndicates controlling piracy operations of entertainment software in Russia. These syndicates have attached “logos” or “brand” names to their illegal product and localize their product for competitive advantage. While all Nintendo Game Boy® products and Xbox entertainment software still continue to be imported from Asia, the Russian syndicates now produce 100% of videogame software for PCs and 40% of PlayStation® 2 software. These criminal syndicates are extremely powerful, controlling not only the illegal distribution networks in Russia but also in the surrounding countries. It is widely believed that the Russian groups control piracy operations in Eastern Europe, particularly the Polish market.

RASPA, the Russian anti-piracy organization for the entertainment software industry, continues to conduct raids on behalf of the Interactive Digital Software Association (IDSA) member companies, but these are mostly seizures of street market inventory. IDSA believes that the Russian government must take action against the organized criminal syndicates that run these piracy operations. The massive over production is destroying not only the Russian market, but markets in surrounding countries.

High Piracy Levels and Other Problems

Very high estimated piracy levels in all copyright sectors accompany massive losses. The piracy levels reported by the copyright industries are as follows: The recording industry is at 66%; the motion picture industry is at 80%; the software industry is at 87% 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.⁴

These high piracy levels are costing the Russian economy millions of dollars in lost jobs and lost taxes. For example, the motion picture industry estimates lost tax revenues on DVDs and videos in Russia was \$131 million last year. A few years ago, the software industry estimated that if levels of piracy could be reduced to regional norms (that is, realistic levels), ten of thousands of jobs and several hundred million dollars in tax revenues would be realized from that sector alone.

But instead of creating jobs, Russia is losing them. That’s because the powerful and organized criminal syndicates that control much of the pirate market in Russia are becoming entrenched. The only solution is for Russian authorities to use the criminal justice system to impose deterrent penalties. Instead, Russia continues to mete out low penalties 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 if Russia ever hopes to generate legitimate income, taxes and jobs from the copyright sector.

RAPO now believes that most of the pirate DVD material available on the market is being produced in Russia. Organized criminal gangs control most of the duplication and initial

⁴ 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.

distribution of pirate videos and DVDs. 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).

Two years ago, the infamous Gorbushka outdoor market was closed. Up until its closure it had been the major source of pirated material in Moscow, with many distribution hubs located in the vicinity. Once Gorbushka was closed, the market was 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 remains a problem in 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 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.

The recording industry reports that the closure of the former Gorbushka market resulted in the migration of illegal sales moving to the nearby building of the Rubin Trade Center (La-La Park), where most of the dealers sell pirate audio products. Last year, the Moscow city government pledged to clean up La-La Park and to regulate the sale of only legal product there, but that never happened. However, the administration of the market recently proposed to the Moscow Regional office and the National Federation of Phonogram Producers (NFPP) to develop joint measures to fight piracy there.

Audiocassette piracy levels remain very high (at about 61.5%) despite 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, in 2002 the volume of counterfeit cassette sales decreased by approximately two million copies. Out of a total of 152 million counterfeit cassettes sold in Russia in 2002, 86.3 million were international repertoire, which is 7.7 million less than in 2001. 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—sometimes including up to ten standard CDs. This has contributed to the increase in CD production and distribution. It is estimated that over 2.7 million counterfeit CDs with MP3 music were sold in Russia in 2002 (compared to one million such CDs 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. Total piracy losses for the recording industry in 2002 were estimated to be \$371.9 million.

The motion picture industry reported losses of \$250 million in 2002.

The level of piracy for entertainment software is at 90% of the market. The PC format is 100% pirate. Russian syndicates also control 100% of the production of PlayStation® games. IDSA reports that 60% of the pirate PlayStation® 2 software available on the market is imported from Asia, while the remaining 40% is produced in the country and localized. All Microsoft Xbox

and Nintendo Game Boy products continue to be imported from Asia, particularly China. There are currently 5,500 Internet cafes in the country, few of which are licensed. The retail markets in St. Petersburg and Vladivostok are all full of pirate videogame product.

The business software industry reports losses of \$93.9 million in 2002 (these are preliminary figures; final figures will be available later in 2003). The preliminary piracy level was estimated to be 87%.

Book piracy continues to flourish in the difficult Russian economy, although increased licensing of legitimate product resulted in some improvement in the piracy rates. While bestsellers were the target of the pirates in the 1990s, they have now turned to reference works and textbooks, a large market in Russia. Unlicensed imports of pirated reprints from the Ukraine and Belarus, 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 2002 were \$40 million.

COPYRIGHT ENFORCEMENT

Criminal Enforcement

The only way to combat the organized crime syndicates is by effective criminal enforcement. Unfortunately, the criminal enforcement system in Russia is the weakest link in the Russian copyright regime. This deficiency has resulted in the extraordinarily high piracy levels and trade losses. The federal police and the IP unit in the Ministry of the Interior have generally been cooperative in running raids against major pirates (although the Unit “R” has had IPR enforcement jurisdiction taken from it). At the retail level, however, anti-piracy actions must be conducted by municipal authorities and in these cases pirates are subject to administrative, not criminal, remedies.

Three years ago, to assist in combating piracy, an Alliance for IP Protection was formed. It combined the forces of IFPI Moscow, RAPO, BSA and RASPA—thus combining the representatives of the recording, motion picture software and videogame industries. To date, the activities of this organization have been limited to training activities.

The film industry reported over 2,600 raids in 2002, resulting in the seizure of over 226,000 pirate DVDs and over 1.1 million pirate videocassettes.

The recording industry reported 209 seizures and raids in 2002, seizing a total of 949,000 CDs, 211,000 cassette tapes, 38,000 CD-ROMs, 600,000 inlays, 53 audiocassette recording devices, and eleven computers. The estimated value of the seized equipment is \$14.8 million. As in years past, many cases were later dismissed or were turned into administrative cases with *de minimis* fines.

In 2002, the business software industry assisted with 42 police raids against the CD-ROM resellers, resulting in 12 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 2002.

In addition the business software industry obtained three criminal convictions against computer shops selling computers with illegal software installed onto the hard discs (HDL piracy). Unfortunately, such court rulings have been extremely rare. In fact, a large number of cases were simply terminated by prosecutors on the notion that there was no proof of "grave harm." This clearly shows that the threshold in the criminal code is a hindrance to effective enforcement. Despite the fact that the police conducted a few raids against companies using illegal software in their business activities, no criminal cases were initiated against any of the individuals responsible.

Through RASPA, some IDSA member companies have continued to conduct raids in Russia. However, there are no statistics available at this time as to the number of raids.

**CRIMINAL COPYRIGHT
ENFORCEMENT STATISTICS
2002**

ACTIONS	MPA	IFPI	BSA
Number of Raids conducted	712	209	69
Number of indictments filed	322	863	NA
Number of defendants convicted (including guilty pleas)	71	249	23
Ratio of convictions to the number of raids conducted	9.9%	61.5%	NA
Ratio of convictions to the number of indictments	22%	39.4%	NA
Total number of cases resulting in jail time		1	
1 to 12 months	26		15
13 to 24 months	21	1	
25 to 36 months	11		
37 to 60 months	4		
Over 61 months	1		
Number of cases resulting in criminal fines	34	NA	8
Total amount of fines levied	NA		
US\$0-\$1,000	11		8
\$1,001-\$5,000	10		
\$5,001-\$10,000	6		
\$10,000 and above	7		
Total amount of restitution ordered) in how many cases (e.g. \$XXX in Y cases)	\$3,280,000	\$9,200,000 (863)	\$120,000 (10)

As in past years, these results are disappointing and will not succeed in significantly reducing piracy levels in Russia. Any reductions that do 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

As in past years, 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. As in past years, the recording industry and the motion picture industry report that administrative raids have been positive; RAPO reported that it is able to average nearly 30 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\$22). 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. The recording industry reported that though the law makes those liable who distribute material, the sources and channels of illegal material are rarely pursued. In lieu, most administrative actions against shop owners and sellers pay on average \$60 to \$90.

ADMINISTRATIVE COPYRIGHT ENFORCEMENT STATISTICS 2002

ACTIONS	MPA	IFPI	BSA
Number of raids/searches conducted	1919	209	12
Number of administrative cases brought by agency	1594	345	12
Number of defendants found liable (including admissions/pleas of guilt)	1484	345	9
Ratio of convictions to the number of raids conducted	77.3%	65.7%	%
Ratio of convictions to the number of cases brought	93.1%	92.2%	%
Number of cases resulting in administrative fines	1201	294	9
Total amount of fines levied	\$26,270	\$4704	
US\$0-\$1,000	1201	294	9
\$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)	NA	NA	

Civil Enforcement

In 2002, 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. As a result, several significant cases were won against software system builders installing illegal copies of business software onto sold computers as well as corporate end-users that used illegal copies of software in their business operations. However, deficiencies in the copyright law still make it very difficult to apply civil remedies in end-user piracy cases.

Other industries report that Russia judges (for example at an IPR seminar in March 2001) note their opposition to giving standing to foreign non-governmental organizations to represent copyright owners, and to granting national treatment to foreign persons, in Russian

courts. In short, the government of Russia must train its judges to respect foreign rightsholders as is required under international treaties, and to take IPR cases seriously.

As the following chart shows, the motion picture industry reported six cases that were commenced as the result of civil raids and searches -- and all six cases were dropped before judgment.

**CIVIL COPYRIGHT
ENFORCEMENT STATISTICS
2002**

ACTIONS	MPA	BSA
Number of civil raids/searches conducted	6	NA
Post Search Action		
Cases Dropped	6	
Cases Settled		
Cases Adjudicated		
Value of loss as determined by Court (\$USD)	\$	
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		
\$50,001-\$100,000		
\$100,000 and above		
Settlement Amount (\$USD) in how many cases (e.g. \$XXX in Y cases)		\$

IIPA Enforcement Objectives and Benchmarks

For over five years, IIPA has outlined a series of benchmarks that the U.S. government has provided to the Russian government on improvements needed in Russia's enforcement system. With one exception, these have not been implemented. Last year, the Russian cabinet did agree to establish an interministerial committee on enforcement (although it is not clear, as IIPA has requested, that this would be a permanent, instead of an *ad hoc*, committee. IIPA urges the government of Russia to take these steps, including a number of structural and political ones—they would go a long way toward the implementation of an effective enforcement regime in Russia:

- **The President and the Prime Minister should issue a decree or internal directive making copyright enforcement a high priority (tasking the Public Prosecutor's Office to vigorously prosecute copyright offenses).**
- **The Supreme Court and Supreme Arbitration Court should issue an explanatory instruction to the lower courts concerning copyright enforcement to treat infringements of copyright and neighboring rights as serious crimes.**
- **The interministerial task force should become a permanent committee with the authority to adopt a binding enforcement plan to coordinate nationwide**

enforcement of copyright and neighboring right violations with all relevant agencies.

- **Enforcement (police and customs) and prosecutorial pools should be established in each major city and region. Investigating organized criminal syndicates should become a primary enforcement goal.**
- **A plan should be formulated and commenced for the training of judges, prosecutors, magistrates, and police as a regular part of ongoing enforcement efforts.**

GENERALIZED SYSTEM OF PREFERENCES (GSP) PROGRAM

Even with piracy rates and losses among the highest in the world, Russia receives trade benefits from the U.S. government. That is why in August 2000 IIPA filed a petition, accepted by the U.S. government in 2001, to examine whether Russia should continue to be eligible to receive duty-free trade benefits under the Generalized System of Preferences program. That petition is still pending (hearings were held in March 2001); the U.S. government now must decide whether to fully or partially suspend GSP benefits for Russia. For the first 11 months of 2002, Russia exported goods valued at over \$340 million to the U.S., which received preferential duty-free treatment under the GSP program (in calendar year 2001, Russia exported \$378 million of such goods). While Russia was receiving these benefits, losses to U.S. industries from copyright piracy in Russia in 2002 amounted to the hundreds of millions of dollars.

IIPA recommends that these benefits be suspended as soon as possible to force Russia to improve its copyright enforcement regime.

DEFICIENCIES IN THE RUSSIAN LEGAL REGIME

Overview of Legal Reforms

There are a number of critical legal reforms that Russia must undertake to improve copyright protection and enforcement, as well as to ensure accession into the World Trade Organization. These reforms include the need to adopt:

- Proper optical media regulations to address (with criminal sanctions) the protection and distribution of optical discs and the equipment and machinery used to produce them;
- Amendments to the copyright law to fix a number of deficiencies and to make it WTO TRIPS and WIPO digital treaty compatible—in particular the protection for preexisting foreign works and sound recordings;
- 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);
- Amendments to the Criminal Code (the problems with Art. 146 "grave harm" provision);
- Amendments to strengthen the implementation of the Administrative Code;

- Amendments to the Customs Code (to provide *ex officio* seizure authority).

The threat of deleterious amendments in the Russian Civil Code pertaining to IPR protection remains; the Russian government must not allow any such amendments to be adopted.

A detailed discussion of each of the proposed legal reforms (including the necessary changes to the Copyright Act, and the problems related to the draft Civil Code) follows.

Optical Media Regulations

There are reportedly at least 26 CD plants in Russia; at least 5 plants can produce DVD material with the rest focused on musical CD and CD-ROM (of business and entertainment software) materials. Two licensing laws, and one set of regulations, have been enacted in this area of law in the past two years. But neither law, nor the regulations, resulted in effective action undertaken against the illegal plants. The two laws enacted were: (1) a law signed by President Yeltsin in 1998, requiring any plant manufacturing audio or video product on CD to obtain an operating license—unfortunately, that law failed to extend to all copyrightable subject matter, and has not been used adequately even against those products it does cover; and (2) a law adopted in 2001, intended to further improve enforcement against local optical disc plants. That law, “On Licensing Separate Activities” required that production facilities had to be licensed by the Ministry of Press and Information effective February 1, 2002. In June 2002 “Reproduction Licensing Regulations” were adopted—but these too have only recently (and not yet effectively) been utilized.

The government of Russia must use its existing authority to withdraw the licenses of illegal plants and thus stop their production, especially those plants operating on government soil.

In addition, 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. The proposals below were presented by IIPA and, formally, by the U.S. government to the government of Russia in 2002. Since the size and scope of the optical media problem has doubled in size in the past two years, Russia must act quickly.

The elements of an effective optical media regulatory and enforcement plan that Russia must adopt (including criminal enforcement sanctions) are as follows:

- 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. Currently, CD-ROMs containing software are not subject to the licensing regulations—they should be included.
- 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 (stampers) 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 rightholders in its discretion. These requirements create the transparency that 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 permitted. Inspections conducted by or with participation of experts (e.g., by right holder organizations) should also be provided for 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 of 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 include:

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

Copyright Law Amendments

Since the passage of the copyright law in 1993, IIPA, its members, and the international copyright community have been anticipating amendments to fix (and now to update) that law. It is hoped that in 2003, these efforts will prove successful. Certainly, a positive development of the past several 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, and in particular on the copyright law amendments.

On October 16, 2002, amendments to the Copyright Law passed a first reading in the Duma; a second reading is expected in 2003. Several dozen amendments, many of them very deleterious, were circulated in late 2002 for possible consideration as part of that second reading. The failure to adopt stronger protections and to cure the key copyright law deficiencies, foremost being the failure to protect preexisting works and sound recordings, will otherwise delay Russia's accession into the World Trade Organization. IIPA urges the government of Russia and the Russian Duma to adopt a WTO TRIPS and WIPO digital treaties compatible law, and to defeat amendments aimed at weakening the copyright regime.

The draft copyright amendments that passed the first reading in October includes provisions aimed at correcting the problem pertaining to the protection for pre-existing works and sound recordings. The draft law also intends to make other changes, most notably adding provisions directed at implementing the WIPO digital treaties. A brief set of IIPA comments on this law is provided below which, except where noted, are positive features. In sum, the draft law includes:

- Protection for a minimum of 50 years for pre-existing works and sound recordings. There remains some concern that the provision is not as clearly worded as it could be and might cause confusion; the wording should be fixed so it is completely consistent with the Berne and WTO TRIPS obligations. In addition, any amendments to weaken this proposal with, for example, the inclusion of a transition period for selling off previously unprotected material should be defeated;
- A new "making available" right for works and phonograms (as well as a right of "public communication"). Missing from the draft are necessary amendments to the definition of "broadcasting" and "communication to the public" that are consistent with and necessary for compliance with the WIPO digital treaties.
- An extension of the term of protection for works to life plus 70 years (or 70 years from publication). A key deficiency in the draft is its failure to extend the term for phonograms beyond the existing 50 years;
- Improvements pertaining to the limited exception for the decompilation of computer programs to make the provisions compatible with international norms;
- Provisions for technological protection measures (TPMs) and rights management information (RMI), both WIPO digital treaties requirements;

- Provisions to clarify rental rights. One troubling development is a proposed provision that would narrow the rental rights granted to copyright holders with respect to computer programs.

Provisions in the copyright law as adopted in the first reading that are of concern to the IIPA and its members are: (1) the definition of the reproduction of a phonogram is too limited and inadequate; (2) the failure to clarify the protection for temporary copies (for works and sound recordings); (3) the failure to provide a clear exclusive making available right for and the failure to limit statutory licenses applying to the rights of producers of sound recordings; (4) new provisions giving collecting societies even more power and interests; (5) the failure to rectify the scope of the existing private copying levy in the digital environment to ensure that the private copying exception is limited to analog copying by a natural person for their own private non-commercial purpose and does not apply to digital copying; (6) the failure to narrow certain overbroad exceptions (including “personal use”) to the rights of authors and producers of sound recordings and (7) a new provision requiring the verification of notices by collecting societies to terminate Internet infringements—this will, if adopted, create a serious obstacle to the effective fight against Internet piracy.

Also, the draft in its present form fails to provide presumptions of ownership for the benefit of phonogram producers. This is a provision that is sorely needed given the extent of piracy and the difficulties in enforcing rights in court.

While most of the revisions are positive steps, it is hoped that the U.S. government will continue to engage the government of Russia to ensure that the law passes both quickly and with provisions that repair all substantive deficiencies to the Bilateral NTR Trade Agreement, WTO TRIPS and the WIPO digital treaties.

Criminal Procedure and Criminal Code Amendments

Amendments to the criminal procedure code entered into force on July 1, 2002, but they failed to provide the key missing ingredient—to provide police with *ex officio* authority.

Amendments to the criminal code, especially Article 146, were considered in 2002, and a (revised) second reading took place on February 5, 2003. But the amendments have not yet been enacted. The earlier proposed amendment to Article 146 would have weakened, and not strengthened the criminal code—IIPA and the U.S. government communicated the concerns about this proposal and it was fortunate the provisions did not pass. IIPA understands that developments in February 2003, prior to the (revised) second reading, may have restored some of the stronger provisions back into the draft Article 146.

The history of the Criminal Code and Criminal Procedure Code reform is as follows. In 1996, amendments to the Criminal Procedure Code (CPC) were adopted, but these turned out to create more problems rather than solutions for the copyright industries. The amendments were supposed to be technical amendments to align the CPC with the 1996 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 limited copyright enforcement because prosecutors have fewer resources than police

and because copyright enforcement became dependent on the different priority given to infringement by each district's prosecutor. The latter change shifted copyright infringement complaints to the copyright owners, thus limiting the number of cases that would commence, especially outside of Moscow (where copyright owners do not have representatives). These amendments must be reversed. Unfortunately, these changes were ignored in the 2001 amendments adopted to the CPC, effective July 1, 2002.

The history of the Article 146 Criminal Code provision is as follows. 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 US\$600 to US\$1,200) 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.

In 2001, President Putin sent the Duma 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, was consistent with industry proposals, but the threshold amount remained is too high. The proposal would have defined two thresholds: a "grand-amount offense" (200 times minimum wage) and a "gross-amount offense" (500 times minimum wage). The punishment for convictions would have increased for up to 3 to 6 years imprisonment for "gross-amount offenses." IIPA recommended that these thresholds be further lowered to a fixed but reasonable amount (starting, for example, at 50 times the minimum wage) to improve criminal enforcement.

In 2002, a proposal to "fix" the Article 146 "grave harm" problem was adopted in a first and then a second reading in the Duma. Unfortunately, last-minute changes to the provision would have further and significantly weakened, not strengthened, the provision. The proposal would have lowered the threshold to 100 (not 50) times the minimum wage. But it would have used the basis for the calculation as the price of the pirated products rather than the price of the legal products raising the threshold to an unreasonably high level thus leaving most cases outside of the scope of criminal sanctions. Plus, it failed to explicitly mention the purchase, transportation and storage of pirate products as crimes—another major shortcoming. Luckily, through the intervention of the U.S. government and copyright industries and pro-copyright officials in Russia, this provision was not adopted. A revised provision was put forward and another second reading considered by the Duma on February 5, 2003. But passage of the revised (and improved) version remains uncertain.

Article 146 must be amended to define the standard of "significant damage"/"grave harm" as follows: The standard must be defined to cover all cases in which the retail value of the pirated works exceeds a minimum amount. IIPA has been 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—this is what should be adopted.

There are three other criminal code/criminal procedure code amendments that need to be adopted.

First, the government of Russia should introduce and the Duma should adopt amendments to add specific substantive and procedural provisions to the criminal code and criminal procedure code that 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 in 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.

Second, the government of Russia should introduce and the Duma should adopt amendments to increase the 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 the low fines as a cost of doing business. These amendments must provide for increased penalties for copyright infringement. For several years the Duma has considered but not adopted amendments to increase the maximum jail term to seven years and to make copyright infringement a “most serious crime”; adoption of these amendments would likely trigger special attention by the enforcement authorities.

Third, the government of Russia should introduce and the Duma should adopt amendments to the Criminal Procedure Code to return jurisdiction over criminal violations to the police authorities from the prosecutors. The 1996 amendment to the Criminal Procedure Code was a serious setback to copyright enforcement. The 1995 amendments put criminal violations under police jurisdiction. The 1996 amendments returned jurisdiction to the prosecutors and the police no longer could 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 a few years ago a proposal to delete from Article 27 of the Criminal Procedure Code, effective at the time, the reference to copyright crimes was considered it was not adopted. Such a useful

amendment would result in the repeal of a requirement that a private complaint be filed before a criminal case could begin.

Unfortunately, the 2001 CPC amendments ignored this important change as well as the needed revision to Article 126 of the CPC, which allows actions once taken directly by the police not to be subject to prosecutorial authorization. The U.S. government must continue to press for passage of these changes.

Civil Procedure Code Amendments

For several years, IIPA has mentioned the need to revise the Civil Procedure Code and the Arbitration Procedure Code (or the copyright law) to provide *ex parte* search authority. This authority is critical to the software industry in particular for effective enforcement.

In 2002, Russia adopted a new Civil Procedure Code that went into effect on February 1, 2003. While the code regulates the procedures for initiating and examining civil cases including disputes pertaining to copyright and neighboring rights infringements, the proper civil *ex parte* search procedures were not included in this new law. Russia's accession to the WTO requires (in Article 50 of the WTO TRIPs Agreement) that the law provide rightholders with the opportunity to obtain civil *ex parte* search orders against suspected infringers. Effective as of September 1, 2002, the newly amended Arbitration Procedures Code in Article 72 introduced new civil *ex parte* search provisions. This is a very encouraging development, especially welcomed by the software industry. However, it remains to be seen how the new provisions will work in practice (expected in 2003), because the article has not yet been tested.

Customs Code Amendments

The Russian 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 WTO TRIPs. Imports of pirate optical media product continue from Eastern Europe (especially from the Czech Republic), from other countries of the CIS with production capacity (i.e., Ukraine), and from Asia.

Over two years ago the State Customs Committee began work on a draft new Customs Code with the assistance of the Ministry of Economic Development and Trade. While it was expected that the Customs Code might be adopted in 2002 it was not completed. The U.S. government should insist that Russia make these necessary changes before can accede to the WTO so that Russia will have a fully TRIPs-compatible Customs Code in force.

Code of Administrative Misdemeanors

A new Code on Administrative Misdemeanors was adopted in December 2001 and went into force on July 1, 2002. Pursuant to this code, it is now 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 very limited because it falls under the competence of underqualified municipal police.

Civil Code

The effort to include detailed copyright provisions as part of comprehensive civil code reform remains a continuing threat to strong IPR protection. For over 10 years, opponents of strong copyright protection have threatened to “redo” and weaken the copyright law with provisions in the Civil Code. The Copyright Law should remain self-standing, and nothing in the Civil Code should undermine that detailed law.

The current draft amendments to the Civil Code separated the IPR provisions into Part IV of the Civil Code. The government of Russia must prevent an attack on copyright protection by the inclusion of amendments in the Civil Code to weaken prevailing copyright protections. If the Russian Duma insists that Civil Code reform pertaining to IPR is necessary, it should ensure that (1) a bare minimal number of provisions are adopted; (2) that any such provisions provide “skeletal” protections and that it clearly state that the copyright law continues to be the prevailing law and that the latter provide the details of IPR protection and enforcement; and that (3) it provide clear instructions to courts and prosecutors that the copyright law is the prevailing law to avoid judicial confusion or any weakening of the existing copyright system. If adopted by the “anti” copyright forces, the extensive and undermining Civil Code IPR amendments would create significant ambiguities and risks, as courts would attempt to determine which of two competing and inconsistent laws governs. This would only further undermine Russia’s already faulty enforcement regime.

Throughout 2002, there was much parliamentary maneuvering pertaining to the IPR provisions within the Civil Code. IIPA urges the Russian government to send strong signals to the Duma that it will not accept weakening amendments to the copyright regime and will veto any such provisions if they do prevail in the Duma. To do otherwise will mean the adoption of provisions incompatible with the Bilateral NTR Trade Agreement, Berne, and WTO TRIPS.

Other Concerns: Stamp Tax and the Tax on Video Rental Profits

One issue of concern 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.

One lingering question is whether or not the new registration stamp/mark is mandatory, because the law is not clear. For most industries the question is only theoretical because in practice most of the copyright industries continue to purchase the stamp/marks out of fear of retaliation. For the past year there was discussion within 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 right holders is under consideration as well.

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 was excluded from this law, and video rentals became 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. It was hoped that this would help the video market's growth in Russia, but the growth of DVD piracy has, for the most part, overwhelmed the legitimate market for rentals.

This is unfortunate because 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 last year 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, there is continued hope that the rental market can expand, especially if DVD (and video) piracy can be contained.

WIPO Treaties; Electronic Commerce; Notice and Takedown Procedures

In late 2002, Russia considered but then decided not to accede to the WIPO digital treaties (WCT and WPPT). It is hoped that in 2003, the Russian government will accede and that, in addition to the other legal reforms, Russia will adopt legislation that fully implements both of these digital treaties. Some of the implementation provisions are part of the Copyright Law that passed its first reading in 2002. Complete implementation is critical to Russia's future in the new world of e-commerce.

IIPA also understands that a federal draft law "On Electronic Trade" submitted to the Duma in November 2000 may be considered in 2003. 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).

A particularly troublesome provision in the draft Copyright Law is Article 48 which would, among other things, make "notice and takedown" procedures subject to verification and confirmation by collective management organizations. This will be a very counterproductive measure, if adopted. As the U.S. experience has shown, notice and takedown, when undertaken by copyright owners directly to on-line service providers and host sites works very efficiently and effectively. The use of an intermediary—a collective management organization—will significantly bog the process down in time delays, and ministerial hurdles that will totally undermine the effectiveness and the purpose of "notice and takedown"—to have a fast, efficient and fair process. Individual copyright owners need to maintain the right to enforce their rights directly and that is why the proposed new Article 48.2 must be deleted.

Rome Accession and Article 16 Reservation

On December 20, 2002, Russia completed its accession papers for membership in the Rome Convention, due to be effective in 2003. Although the United States is not a member of the Rome Convention, IIPA is very troubled by Russia's decision to make an exception to its national treatment obligations and adopt the reservations permitted by Article 16 of the Rome Convention. In short, this reservation will mean that American record producers and performers will be denied broadcasting remunerations even though the U.S. is a member of the WPPT (and

even after Russia accedes to that treaty). This is a very unfortunate and short-sighted decision by the government of Russia and one that IIPA hopes will be reversed. As an example, the United States copyright law does not deny the digital transmission right to foreign sound recording producers, and will not deny this right to Russian sound recording producers even after Russia's unilateral decision regarding the Rome Convention. Russia should be encouraged to abandon this one-sided discrimination against U.S. repertoire and should accept broad national treatment obligations.