

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE 2003 SPECIAL 301 REPORT

SPECIAL MENTION COUNTRIES

IIPA and its member associations have identified copyright-related issues requiring attention of the U.S. government in the following seven countries. Unlike the full country reports which appear elsewhere in this IIPA 2003 Special 301 submission, IIPA does not propose a Special 301 ranking for these countries.

CAMBODIA

Cambodia has not joined the WTO, the Berne Convention, or the WIPO digital treaties. We understand that a new copyright law was approved by the National Assembly on January 21, 2003, and hope to review this legislation. We remain concerned about the adequacy of Cambodia's enforcement mechanisms (or other regulatory schemes) to control the production, distribution, and importation of pirate optical media product or the raw materials for producing pirate product given that it now hosts a relocated optical disc plant with two production lines.

The proximity of Cambodia to Thailand makes the problem of plant migration a foreseeable event unless steps are taken at this early date to address the lack of an appropriate legal regime to deal with optical disc plant overproduction as well as the overall piracy situation. Crucial to the efforts to stem the unhindered movement of optical disc plants is the institution of an effective border enforcement regime.

CROATIA

The lack of effective and sustained enforcement activities is problematic in Croatia, particularly for the business software industry. The level of piracy experienced by this industry remains at unacceptably high levels. With respect to business software, BSA reports considerable delays with criminal raids. BSA found that the police took action in only about 40% of cases reported to them. More recently, the police now appear to be placing greater emphasis on these cases and shortened delays. While the police are generally cooperative, they lack sufficient resources, the appropriate equipment and expertise to effectively conduct enforcement efforts. For example, the Ministry of Interior's decision to suspend its anti-piracy program in 1997 reduced government resources and led to a noticeable increase in video piracy, according to the Motion Picture Association of America (MPAA).

With respect to videogames, IDSA reports that the market in 2002 improved over the prior year. IDSA member companies and local video game industry representatives are getting good cooperation from law enforcement agencies in anti-piracy efforts. As a result of these cooperative efforts, the police were able to take action against a videogame Internet pirate called "Thunder;" the case is currently with the State Attorney's Office. Over all, the entertainment software industry is generally quite pleased with Croatian law enforcement efforts.

On a positive note, in January 2002, the Croatian Minister of the Interior announced the creation of a special police unit specialized in computer crime and intellectual property protection within the Ministry. BSA reports that the State Inspectorate (market police) did act on referrals from the industry in a timely manner, but coordination between the State Inspectorate and police is minimal, leading to cases that are never properly prosecuted under Croatian law. Civil injunctions often take longer than six months to be issued, as compared to three days to three weeks, on the average, for the rest of Central Europe. Finally, one of the most serious right holder concerns remains poor border enforcement. IDSA member companies and the local video game representatives began lobbying efforts to push for the enactment of the draft border enforcement legislation. However, despite hopes that the draft legislation would be enacted in 2002, such has not yet taken place. As a result, Croatia continues to experience an inflow of pirated product on a regular basis.

LAOS

Two pirate optical disc plants with two production lines have relocated to Laos from other Asian territories. Like Cambodia, Laos is not a member of the WTO, Berne Convention, and WIPO digital treaties and currently has no copyright law that would enable it to deal effectively with factory overproduction. Laos also shares a border with Thailand, and this proximity makes plant migration almost inevitable. Strong border enforcement is needed to intercept pirated optical disc products coming from Thailand as well as to effectively quell additional plant relocation within its borders.

MACEDONIA

Copyright enforcement is weak in Macedonia, according to all of the copyright industries active there. For example, high levels of piracy in the business software sector is reported, including the widespread use of unlicensed software in companies and public enterprises. CD shops routinely sell pirated business software, and computers regularly are sold with illegal software pre-installed. Furthermore, police, prosecutors and customs officials lack the necessary equipment and expertise to conduct raids, perform investigations, and commence cases against copyright infringers. Also, the Copyright Inspectorate (which can take administrative enforcement actions) has failed to refer cases that merit criminal investigation to the police and prosecutors. Unhelpfully, the State Market Inspectorate does not have the authority to enforce Macedonia's copyright law, thus burdening already scarce police resources. Although the criminal and copyright laws permit the seizure and destruction of equipment used to make pirated goods, police and other enforcement bodies fail to do so in-practice.

Piracy at the border is a particular concern, and customs authorities do not take appropriate action to prevent the shipment of pirated products to and across Macedonia. Two particular problem areas are Macedonia's borders with Kosovo and Bulgaria. Another issue is excessive procedural delays. The business software industry reports that court procedures take an inordinately long time (for example, cases of criminal software infringement begun in 2001 are still pending almost two years later). Also, it is rare for Macedonian courts to issue injunctions in criminal cases, even though there are legal provisions permitting such injunctions. When judgments are handed down by courts, they usually only involve minimal fines, rather than fines or prison sentences that constitute a deterrent to further infringement.

MYANMAR (BURMA)

There are two known pirate optical disc plants with four production lines now in Myanmar—having likely relocated from Malaysia. It has not updated its copyright law (a version of the 1911 colonial British law is still in effect) nor has it joined any of the international copyright treaties or conventions. Although courts do occasionally decide copyright cases, the current law is still inadequate and enforcement is virtually nonexistent. The problem of plant migration is also an issue in Myanmar given that, like Cambodia and Laos, it shares a border with Thailand. Thus, the same border measures that are crucial to those countries are also required for Myanmar to prevent it from becoming a pirate haven

SPAIN

Organized crime syndicates are taking over the recorded music market in Spain. Despite increased enforcement activities in 2002, music piracy exceeds 40%—probably the highest rate of any developed country in the world, and losses continue to mount. The entertainment software industry is also experiencing increasing difficulties in Spain. In 2002, Spanish authorities seized over 4,000 counterfeit multi-game cartridges for the Nintendo Game Boy, some which were shipped from China. Internet piracy is also growing; many top videogame titles are being downloaded from the Internet before they are localized for launch in the domestic market. Factory-produced pirate music CD products dominate the street market, although the availability of pirated videogames is increasing. There have been some positive developments for the business software industry in 2002, although Spain continues to have one of the highest business software piracy rates in the European Union.

VIETNAM

Despite the entry into force of the Bilateral Trade Agreement between the U.S. and Vietnam, the country has not been the subject of a great deal of attention from the U.S. government. This must change as the country is now the location of two optical disc plants with two production lines. U.S. government efforts must seek to strengthen the country's institutional capacity to enforce its copyright law, as well as address market access barriers for U.S. copyright industries.

While Vietnam does not share a border with Thailand, its geographical location within the ASEAN territories makes Vietnam a viable country for migration of optical plants as other ASEAN nations step up enactment, implementation, and enforcement of optical disc licensing laws.