

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE 2004 SPECIAL 301 REPORT

SPECIAL MENTION

SERBIA AND MONTENEGRO

The lack of adequate legislation and effective enforcement activities remains problematic in Serbia and Montenegro, particularly for the business software and recording industries. The level of piracy experienced by these industries remains at unacceptably high levels.

Legislative amendments are necessary to bring copyright protection in Serbia and Montenegro into compliance with international standards, to adequately protect right holders, and to ensure effective enforcement. For example, the current law does not provide for effective provisional measures in practice. On a promising note, after much delay, the Federal Intellectual Property Office has prepared draft copyright amendments. These draft amendments would, if adopted without any significant changes, represent a substantial improvement of the copyright system in Serbia and Montenegro. The Council of Ministers must pass these amendments without any further delay, failing which the deficiencies in copyright protection will persist and will encourage pirates to increase their illegal business. In cases of criminal copyright infringement, the Copyright Law and the Penal Code of the Republic of Serbia cover the same criminal act in a conflicting manner with respect to both procedure and penalties.¹ BSA reports that this conflict has resulted in significant confusion and delays in enforcement cases. Furthermore, the Market Inspectorate currently does not have the necessary legislative authority to enforce copyright law.

Although the recording industry does report several encouraging *ex officio* actions by the Ministry of the Interior, enforcement of copyright is generally still weak, inefficient and ineffective. While current legislation certainly requires amendment, legislative deficiencies cannot stand as an excuse for enforcement in Serbia and Montenegro. Current law already provides numerous, albeit imperfect, options for the protection of copyright. BSA reports that the police took action in only a small percentage of cases reported to them, and then only after considerable delays with criminal raids. Police, prosecutors and customs officials lack the necessary equipment and expertise to conduct raids, perform investigations, and commence cases against copyright infringers. In 2003 the government created a special inter-ministerial antipiracy commission, which adopted an ambitious work program. In the first half of 2003 this led to some spectacular enforcement actions against blatant street trade in pirate copyright products, especially in Belgrade. However, the initiative gradually lost its steam and most points of the action plan remain unfulfilled. This includes the adoption of a much-needed optical disc regulation. Finally, one of the most serious right holder concerns remains poor border enforcement. In the last week of 2003, a government decree on IP border measures was issued but its actual enforcement remains to be seen. Currently, Serbia and Montenegro continues to experience an inflow of pirated product on a regular basis.

¹ Under the CRL the offence cannot be prosecuted *ex officio*, but under the PCRS the offence can be prosecuted *ex officio*. Furthermore, the penalties for the same criminal act differ in the CRL and the PCRS—a maximum of three years and eight years, respectively.