

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2004 SPECIAL 301 REPORT

TURKEY

EXECUTIVE SUMMARY

Special 301 Recommendation: We recommend that Turkey remain on the Watch List.

Overview of Key Problems: Turkey is one of the world's worst markets for book piracy. In addition, optical disc pirate production, mainly of "burned" CD-Rs, increased in 2003, with little reaction by enforcement authorities. The sale of pirate discs, including CD-Rs by street vendors (directly supplied by local networks operating in complete secrecy) also continued to proliferate. There were some raids and seizures of pirate materials in 2003, but fines are non-deterrent and the courts pose numerous hurdles for right holders, who also suffer from long delays in adjudication. In September 2003, the Ministry of Culture and Tourism (MOCT) agreed to address the issue of street sales of pirated materials by legislating to ban all street vending of copyrighted materials. Unfortunately, this Bill also would significantly lower criminal penalties achieved in the 2001 amendments to the copyright law. The Bill has reportedly been sent to the Turkish Council of Ministers. The government should reconsider its position on decreasing criminal penalties that were a lynchpin of the 2001 modernization of Turkey's law.

Actions to be taken in 2004

- Run sustained enforcement on three fronts:
 - Close down printers and copyshops engaged in piracy of published materials.
 - Enact regulations, then investigate sources of production of optical discs (including factories and commercial duplicators of "burned" CD-Rs).
 - Follow the MOCT plan to shut down all pirate street vendors.
- Invigorate activities of Enforcement Committees, by empowering them with adequate resources; create better cooperation with prosecutors to bring cases to final conviction.
- Enforce the copyright law through the courts by: granting civil *ex parte* search orders; imposing deterrent sentences on pirates, including jail time and significant fines; decreasing delays and burdens placed on right holders; awarding increased civil damages and costs.
- Improve the banderole system so that it decreases fraud and ensures that right holders are not increasingly burdened by such a system.
- Enforce copyright at the borders through customs' efforts to stop pirate imports and exports.
- Introduce, without delay, essential changes to the copyright law and related enforcement legislation, and join the WIPO "Internet" treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.
- Pass and implement a new law banning street sales of pirated materials, but amend the Bill so that criminal penalties will remain as they exist in the 2001 law.

For more details on Turkey's Special 301 history, see IIPA's "History" appendix to this filing.¹ Please also see previous years' reports.²

¹ <http://www.iipa.com/pdf/2004SPEC301HISTORICALSUMMARY.pdf>.

² <http://www.iipa.com/countryreports.html>.

TURKEY
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1999 – 2003³

INDUSTRY	2003		2002		2001		2000		1999	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	50.0	45%	50.0	45%	50.0	40%	50.0	50%	50.0	85%
Records & Music ⁴	15.0	75%	18.0	75%	3.5	35%	4.0	40%	4.0	30%
Business Software ⁵	NA	NA	38.5	58%	22.4	58%	78.6	63%	78.2	74%
Entertainment Software	NA	NA	NA	NA	23.7	90%	116.2	96%	95.1	82%
Books ⁶	25.0	NA	25.0	NA	27.0	NA	28.0	NA	32.0	NA
TOTALS⁷	NA		131.5		126.6		276.8		259.3	

COPYRIGHT PIRACY IN TURKEY

Turkey Is One of World's Worst Book Piracy Markets

The book piracy situation in Turkey is one of the world's worst and remained largely unchanged in 2003. There has been a noticeable increase of pirate reprints in bookstores in 2003 (for example, in public markets such as Kadiköy Carsisi, Beyazit Meydani). The book piracy problem occurs all over Turkey, including in Istanbul, Ankara, Izmir, and Adana. Piracy levels as to academic materials remain high, including illegal photocopying and unauthorized translations of science, technical and medical texts (with levels of piracy ranging from 40 to 90%, depending on the type of media and time of year, with many being high-quality, four-color editions), and unauthorized ESL (English as a Second Language) materials. Copy shops near the universities thrive in the pirate trade, and increasingly, professors at public universities endorse the practice of having students purchase "bound notes" for their classes, containing unauthorized copies of entire sections of books. Illegal photocopying and piracy in the higher education sector are also evidenced by increased requests by teachers for access to free supplementary materials through electronic databases in areas where sales have plummeted. This problem is likely to worsen as digital copying and print-on-demand technology become more common. Certain local distributors have also been caught attempting the unauthorized sale of "India-only" reprints, much to the dismay of their foreign publisher suppliers.

CD-R Piracy Is the Dominant Form of Piracy in Turkey in 2003; Retail Markets Continue to Be Swamped by Piracy

³ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2004 Special 301 submission at <http://www.iipa.com/pdf/2004spec301methodology.pdf>.

⁴ Loss figures for the record industry in 2002 in Turkey reflect an in-depth examination of the market, rather than a rapid surge in piracy compared with previous years.

⁵ BSA's 2003 piracy statistics were not available as of February 13, 2004, and will be made available in the near future and posted on the IIPA website at <http://www.iipa.com/>. BSA's statistics for 2003 will then be finalized in mid-2004 and also posted on the IIPA website. 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 reflect losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

⁶ Loss numbers decreased in 2002 due to the shrinking overall market in Turkey, but the number of pirated copies increased, and the latter trend has continued throughout 2003.

⁷ In IIPA's 2003 Special 301 submission, IIPA estimated that total losses to the U.S. copyright-based industries in Turkey were \$93.0 million. IIPA's revised loss figures are reflected above.

The predominant method of pirating in Turkey in 2003 was “burning” of content onto blank optical media (i.e., CD-Rs). Burned CD-Rs constituted over 90% of music optical discs in Turkey in 2003, and almost all movie discs are burned CD-Rs, with only a few of the discs being imported from abroad as masters. These “burned” CD-Rs are produced locally in small- to medium-sized facilities, “workshops,” and in private residences. On the other hand, almost all pirate DVDs are imported from abroad (while DVD-Rs are rare), and other optical discs are similarly imported from Asia (e.g., from Malaysia, Hong Kong, Thailand, Taiwan, Ukraine, Bulgaria, and Russia, with the number of pirate DVDs imported from Ukraine and Russia increasing in 2003).⁸ Much of the pirated product is smuggled in, as pirates often carry pirated materials in personal luggage on airplanes. The domestic market (with Istanbul as the center of distribution) is replete with pirated CD-Rs, sold by street vendors in Turkey and sometimes “under-the-counter” in retail shops.⁹

On top of domestic production of pirate CD-Rs and import piracy, the growth in optical disc production capacity in Turkey must not escape notice. In 2003, sources indicate that Turkey had eight known optical disc plants in operation, with at least 18 known production lines, for a total optical disc production capacity of at least 63 million discs,¹⁰ while Turkey has a legitimate domestic demand of roughly 7 million discs. Given that this represents overcapacity in Turkey, the government should pass and implement an effective optical disc law.

Other Piracy Phenomena in Turkey

Several other forms of piracy appear in Turkey. For example, the growth of the Internet has introduced the country to pirates advertising the sale of hard goods and home-burned CD-Rs over the Internet (websites or newsgroups). Other problems for the motion picture industry include unauthorized public performances of new and popular films (25% piracy level),¹¹ and broadcast piracy (15% piracy level).¹² There is also music broadcast piracy in Turkey, with only 41 out of over 1,500 radio and television broadcasters having a proper license agreement with local recording industry group, MÜ-YAP. A new phenomenon in music piracy has recently occurred, especially in Turkey’s tourist hot spots: hotels (including well-known international hotels), bars and clubs selling on-the-spot made, illegal CD-R copies of the music they play. Moreover, most of the sources of music played in bars and discos are illegal copies or Internet downloads. Business software piracy continues to be a significant problem in Turkey. Both the unlicensed use of software in a business setting (corporate “end-user” piracy of business software), and the loading of many programs onto the hard drive of a computer prior to its sale (so-called “hard-disk loading”) are found in Turkey.

⁸ Entertainment software products in optical disc format (typically factory-produced silver discs) continue to be imported from Asia, while cartridge-based games continue to be imported from China.

⁹ New motion picture titles are available prior to or upon their theatrical release at an average price of US\$1.50 per title. Pirate DVDs of newly released titles with Turkish sub-titles can be found in retail stores for about US\$8 to \$10. The average number of pirate CD-Rs varies between 50 and 300 per retailer, and between 50 and 800 per street vendor.

¹⁰ Production capacity of optical discs is derived by multiplying the number of lines by 3.5 million; this is by all accounts considered a conservative estimate.

¹¹ Unauthorized public performances include DVDs and VCDs on wide screen systems at schools, cafes and bars, cultural centers, and unlicensed video theatres are frequently encountered. Certain inter-city coach services also show films during journeys without authorization.

¹² It is now estimated that approximately 15% of the 230 local broadcast stations continue to engage in transmitting domestic and foreign films using videocassettes and pirate VCDs as masters.

COPYRIGHT ENFORCEMENT IN TURKEY

TURKEY CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 2003

ACTIONS	BUSINESS SOFTWARE	SOUND RECORDINGS
Number of raids conducted	6	375 ¹³
Number of VCDs seized	-	280,099
Number of DVDs seized	-	
Number of CD-Rs seized	-	199,616
Number of investigations	-	30,271
Number of VCD lab/factory raids	-	932,175
Number of cases commenced	2	44
Number of Indictments	-	495
Number of defendants convicted (including guilty pleas)	-	
Acquittals and dismissals	1	245
Number of cases Pending	11	
Number of factory cases pending	-	10
Total number of cases resulting in jail time	-	
Suspended prison terms		
Maximum 6 months		
Over 6 months		10
Over 1 year		
Total suspended prison terms		
Prison terms served (not suspended)		
Maximum 6 months		
Over 6 months		10
Over 1 year		
Total prison terms served (not suspended)		
Number of cases resulting in criminal fines	-	
Up to \$1,000		
\$1,000 to \$5,000		
Over \$5,000		
Total amount of fines levied (in US\$)	-	

TURKEY CIVIL COPYRIGHT ENFORCEMENT STATISTICS FOR 2003

ACTIONS	BUSINESS SOFTWARE
Number of civil raids conducted	2
Post-search action	
Cases pending	1
Cases dropped	
Cases settled or adjudicated	1
Value of loss as determined by right holder (\$USD)	
Settlement/judgment amount (\$USD)	7,500

There are many serious obstacles to effective enforcement against piracy in Turkey. Chiefly among them are the lack of true government will to eradicate piracy in all its forms, non-deterrent results from actions that are taken, tactics used by pirates, such as employing children in the piratical trade, and the secretive and elusive way organized piracy operations are conducted. Each industry has a slightly different story to tell in 2003, with all agreeing that

¹³ Results are for Istanbul only. No other data is available.

enforcement efforts by the Turkish government are highly inadequate. For example, the book publishers continued to receive some raids in 2003,¹⁴ but fines remained non-deterrent. The Turkish government seems unwilling to tackle the problem of piracy on university campuses, e.g., they will not instruct universities to implement policies to ensure that professors and students are using only legal materials. Certain practices by the Ministry of Education and the Council of Educational Policy (*Talim Terbiye Kurulu*) have actually helped the pirates by keeping legitimate books out of the market.¹⁵ For example, they often change prescribed books on extremely short notice, giving publishers little or no opportunity to import legitimate versions of books. For the motion picture industry, raiding in 2003 generally focused on seizures of “burned” CD-Rs and pirate DVDs.¹⁶ In addition, there was one very successful result working with Turkish Police, arresting the main distributor of Russian-manufactured pirate DVDs in Istanbul in early September 2003.¹⁷

Regarding retail and CD-R piracy, too few actions were taken to close down street piracy or sources of production in 2003. Gunay Gormez, Deputy Director General for Copyright Issues at the MOCT, indicated that sweeps on street vendors would begin once a draft law banning street sales of copyrighted materials could be enacted. Meanwhile, some actions were taken against street sales in Istanbul (the only major city in Turkey where the Enforcement Committee, with the assistance from right holder organizations such as MÜ-YAP and AMPEC, has active operations), but these failed to effectively address the piracy problem.

“Enforcement Committees” May Hinder Enforcement Efforts

In 2002, 81 Enforcement Committees (one for each province in Turkey) were officially established. However, very few actually started operations due to lack of funding, and consequently, the establishment of these committees has had little to no effect in reducing piracy in Turkey. It should be noted that the few committees that have started some enforcement actions have been discouraged by frequent case dismissals at the judicial level. The strength of these committees is that they can act *ex officio*,¹⁸ but the Committees thus far have been poorly resourced and equipped, and since they have power to override the actions of prosecutors, the result has been in some cases that the activities of prosecutors were hindered.

Notwithstanding these difficulties, at least the Committee in Istanbul appears to be getting some results. In 2003, the Istanbul Enforcement Committee carried out a reported 375 operations against 1,084 offenders, seizing over 35,700 music cassettes, over 199,600 music CDs, over 280,000 CD-Rs containing movies, over 87,900 videogame and software discs, over

¹⁴ A trade group of scientific publishers reported that out of 346 raids run between June 1, 2002 and June 1, 2003, more than 350,000 pirated books were seized.

¹⁵ For example, on August 28, 2003, the *Talim Terbiye Kurulu* wrote to the provincial governors revoking the approval for a number of imported coursebooks to be used in schools. In addition, foreign publishers are required to pay at least double the standard fee to have books approved by the Ministry of Education and the TTK. Decisions such as these are made non-transparently and without explanations as to reasoning. Finally, MOE has never taken any steps to discourage students from bringing pirated books to school.

¹⁶ For example, the chief industry group for the motion picture industry reported that by the end of 2003, 500,411 pirate CD-Rs and 41,560 pirate DVDs had been seized.

¹⁷ Motion picture industry representatives, working with Turkish Police, raided a warehouse located in the Tahtakale district, seizing 2,135 pirate DVDs with Turkish sub-titles, 810 pirate interactive games, and 125 pirate music DVDs, almost all of which were imported from Russia and Ukraine. The 24 year-old pirate had already been arrested twice since the beginning of 2003, but escaped the first time, and had the Istanbul Special Court order him to face only administrative sanctions the second time.

¹⁸ Before the revision of the Copyright Law, the initiation of criminal actions could often be cumbersome as *ex officio* actions were not normally possible for copyright offenses.

51,900 books, 44 CD burners and over 9,300,000 CD inlay cards. Nationwide, however, the committees need to do more.¹⁹ IIPA recommends that the Committees continue their *ex officio* activities, but make some changes to improve their effectiveness. Most notably, the government should make substantially more funds available for the Committees, which could come from income from the banderole system and private copying levies. At the same time, selected right holder organizations should be made competent to take independent enforcement actions on behalf of their members. This could be done by an implementing regulation.

Specialized IPR Courts Not Working

The copyright industries considered the prospect of establishing specialized intellectual property courts (*Fikri Haklar mahkemesi*) under Article 76 of the 2001 Copyright Law as a very positive development, but with almost three years' experience, IIPA is deeply disappointed at the slow speed with which the government has moved to set up the courts,²⁰ the many procedural hurdles that remain in the system, and the largely non-deterrent results in copyright cases.²¹ The chief reasons for the continued inadequacy of the court system in Turkey include the following: judges do not consider copyright piracy to be a serious offense warranting high fines and imprisonment in severe cases; the courts' dockets remain seriously overloaded (leading to delays in adjudication of copyright cases);²² the courts do not provide presumptions of ownership to right holders, but instead impose burdensome documentary requirements on right holders to prove ownership;²³ copyright cases are given low priority by prosecutors and courts; the Attorneyship Law requires that a private copyright owner representative hire a local lawyer to be an intermediary for many aspects of a copyright case;²⁴ and the use of "court experts" and, specifically, defendants' use of objections and experts has led to excessive delays and even wrongful acquittals.²⁵ A fundamental problem is the amount of time cases take to move through the system; for example, the entertainment software industry has cases pending

¹⁹ For example, according to the U.S. publishers, out of 70 complaints from 2002 to 2003, the Enforcement Committees have followed up on only 7 complaints.

²⁰ For example, IIPA understands only one court has been established to date in Istanbul, and this court remains seriously overloaded with cases.

²¹ There have been six first-instance court decisions issued under the 2001 copyright law. The defendants in the first two cases appealed to the Supreme Court. In the first, the result was no conviction, with the court finding there was no evidence that the pirate discs displayed in the defendant's shop had been personally manufactured by him. The second case is still pending before the Supreme Court. In the next four first instance decisions, all issued in 2003, the courts initially sentenced defendants to two-year prison terms and fines ranging from US\$7,000 to US\$11,000. However, due to the defendants' good conduct, the courts later reduced the sentences by 1/6 (as per the Turkish Criminal Code) in all four cases, resulting in all sentences becoming *de facto* within suspendable limits; consequently, no appeals were filed by the defendants.

²² Copyright infringement cases generally take two years to adjudicate in the first instance, and up to one year further to appeal. Since 2002, MÜ-YAP initiated 495 music piracy cases, of which 245 ended up in court. However, only 10 suspects were sentenced to a suspended prison term. This means that, despite the huge piracy level, there is still no actual prison term being served for music piracy.

²³ For example, in cases brought by U.S. publishers, many judges are now demanding notarized translations of original contracts between the author and publisher in order to prove copyright ownership for each title.

²⁴ The Attorneyship Law adds additional burdens and substantial costs to bringing cases in Turkey. As a result, lawyers must be hired for five key phases of any case: (1) to file an initial complaint with the Public Prosecutor; (2) to obtain a special search warrant from the judge; (3) to obtain a search warrant from the Public Prosecutor; (4) to conduct a raid with the police; and (5) to have the Public Prosecutor press charges and to provide assistance in the courtroom to obtain a conviction.

²⁵ For example, in the past, courts were known to have called upon experts to answer questions on basic issues of law, such as whether unauthorized reproduction of software on the hard disk of a computer is a copyright infringement. In some cases, courts appeared to favor Turkish defendants over foreign plaintiffs and would interpret provisions of the copyright law in ways prejudicial to the foreign right holder. IIPA understands that the new specialized IP court has taken some steps to obtain evidence and appoint experts with more urgency and care than in the past.

from as far back as 1999. Such timeframes cannot provide the deterrent needed for an industry whose product has a short shelf life. Another problematic feature of judicial enforcement in Turkey involve the difficulty of obtaining *ex parte* civil searches, as required by TRIPS.²⁶ Finally, courts must make reasonable costs and fees available in Turkey in civil and administrative actions.

It is of paramount importance that judges recognize the seriousness of the crime of commercial piracy, and sentence defendants in accordance with the current copyright law, which provides for fines from TL10 to 150 billion, and up to four years imprisonment. Unfortunately in Turkey, severe penalties for copyright infringement are not often imposed and jail sentences rarely ever served; fines that are actually imposed are ridiculously low. Sentencing guidelines could help guide judges to mete out deterrent punishments. The recording industry reports that in the second half of 2003, judges trained abroad were appointed to the specialized IPR courts in major cities; this move, along with amendments that will hopefully strengthen the law would, we hope, make the courts more effective in combating copyright piracy in Turkey.

The Banderole System Needs Improvements

It remains the case in Turkey that the banderole (sticker) system does not function well as an anti-piracy tool. Some strengthened provisions were introduced in the 2001 copyright law (including the possibility of criminal penalties for unauthorized uses of banderoles or dealing in works without banderoles), but those remain largely untested. The MOCT, together with local offices in Istanbul, reportedly reviewed applications more strenuously in 2003 and banderoles issued were reported to the right holder organizations. Nonetheless, some plants continue to hold unnecessarily large quantities of unused banderoles, which are not secured adequately.²⁷ Additionally, pirates are often inserting pirate discs into original jewel cases that have already used banderoles to make them look “legitimate.” If the government decides to keep the banderole system, it must take immediate steps to ensure that those who are caught dealing in copyrighted works without banderoles, or using banderoles without authorization, are prosecuted to the full extent of the copyright law (Article 81 provides for fines and imprisonments for such offenses).

COPYRIGHT LAW AND RELATED ISSUES IN TURKEY

2001 Copyright Law

Amendments to the 1951 copyright law in Turkey (Law No. 5846) enacted in 2001 brought Turkey’s copyright regime considerably closer to international treaties standards and implemented many of the requirements of the WIPO “Internet” treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.²⁸ Passage of the amended law

²⁶ For example, the business software industry relies on civil *ex parte* searches in order to carry out enforcement against unlicensed uses of software in a business setting (so-called “end-user” piracy of business software), and others (e.g., U.S. publishers) need this mechanism as well. The 2001 Copyright Law provides for *ex parte* civil searches, according to the Ministry of Justice, but practice and precedent with respect to *ex parte* civil searches have not yet been firmly established, and IIPA is unaware of a single instance in which the search and seizure provisions have been successfully used in Turkey.

²⁷ For example, the publishers report that the banderole system for books was set up and is administered by Edisam, an association of book importers, local publishers and authors; since it is not regulated, booksellers could order batches of stickers which might easily be diverted to infringing copies.

²⁸ While certain key elements of the WCT and the WPPT still do not appear in the law in Turkey (the most notable deficiency is the failure to prohibit the circumvention of technological protection measures, including the trafficking in

must not signal the end of Turkey's efforts to modernize its copyright system, but should lead to proper implementation through strict enforcement of the law. There are a few remaining ambiguities or deficiencies in the Law regarding which further changes may be needed.²⁹

New Amendments to Copyright Law Amendment and Cinema, Video and Music Works Law

IIPA understands that MOCT has drafted legislation designed, among other things, to "ban" all street sales of copyrighted materials. MOCT is also to be commended for working on the necessary documents for ratification of the WCT and WPPT. IIPA understands that the draft was finalized in January 2004, and that legislative amendments are expected to be finalized by the end of February 2004. The amendments to the copyright law would accomplish the following:

- Prevent the street sales of copyrighted products (even if the products are legal);
- Qualify piracy as an organized crime;
- Introduce full *ex officio* obligations for law enforcement agencies in copyright piracy cases (something that, under the present system, is apparently still not the case);
- Increase the effectiveness of customs border controls (including an *ex officio* obligation);
- Qualify importation of illegal products as organized smuggling;
- Prevent unauthorized radio and television broadcasting/retransmission;
- Increase the effectiveness of the banderole system and the enforcement activities related to this system;
- Establish a data base for rights verification;
- Reduce prison terms and fines and give judges the option to apply one or the other, repealing the current requirement to apply both; in cases of recidivism, however, criminal penalties could not be suspended or commuted.

Along with the copyright law amendments, the MOCT is also working on updates to the 1986 Cinema, Video and Music Works Law (Law No. 3257). In December 2002, a new bill entitled "Law on the National Cinematography Institute" was introduced by the government.³⁰ This law would delete provisions conflicting with the Copyright Law (the Cinema Law is as important as the Copyright Law from an enforcement perspective, because the authorities tend to use this law rather than the Copyright Law for piracy cases involving film and music works). The bill would establish the National Cinematography Institute as a separate legal entity within the Ministry of Culture and Tourism. The NCI would be the central body to oversee the cinema and audiovisual sectors in Turkey.³¹ The bill would apparently keep in place an "inspection" system (a kind of censorship); and classification criteria, which are not stated in the bill, would probably be determined by Ministry regulations. Because the present Cinema Law would be repealed by this legislation, IIPA notes that the courts and the Banderole Commission,

circumvention devices; the Turkish Criminal Code, Article 525 *et seq.*, provides limited protection of this sort against circumvention of computer encryption). This should not discourage Turkey, if possible, from seeking immediate accession to the WCT and WPPT, and swift deposit in Geneva.

²⁹ A more detailed discussion of these concerns is contained in IIPA's 2003 Special 301 report on Turkey, which can be found at <http://www.iipa.com/rbc/2003/2003SPEC301TURKEY.pdf>.

³⁰ Minister of Culture announcement on December 24, 2002; text of the bill was posted on the MOCT website on December 30, 2002.

³¹ The duties of the NCI would include making administrative and legal determinations, providing support for the industry to issue licenses, inspecting and classifying audiovisual productions, arranging for co-productions, and setting up and operating establishments and facilities, including archives, libraries, studios, and an observatory.

among others, would no longer be able to apply the Cinema Law for piracy offenses rather than the Copyright Law in order to bypass stiff criminal penalty provisions in the Copyright Law; of course, the effect of this change will be mitigated by a sharp decrease in criminal penalties should the copyright law amendments, as currently drafted, be enacted.³² IIPA urges swift passage of these related laws, but notes concern about the Government of Turkey's intention to lower criminal penalties. We fear that reducing penalties would send a negative signal to pirates and would reinforce judges in their current practice of applying the lowest possible levels of penalties.

The Need for Optical Disc Legislation

The strategic location of Turkey in a region where copyright protection and border enforcement are weak makes Turkey an appealing site for pirate optical media production. In addition, the proliferation of optical disc manufacturing facilities in the past couple of years calls for the immediate introduction of an effective law to regulate optical disc production in Turkey. The global community has agreed on the key elements to be included in an effective law, which would include licensing of facilities that wish to produce blank or finished discs; identification codes for discs, moulds and stampers/masters in order to trace the source of production back to the facility; coverage of key parts used to make discs (stampers and masters); licensing of import/export of machines, key parts, and raw materials used to make discs; inspection authority (including participation by right holder groups); and deterrent penalties for engaging in unlawful acts (like producing without a license, gouging or using false identification codes, etc.). Because of Turkey's rampant CD-R "burning" problem, the law should also require registration of those engaging in commercial duplication of recordable discs.³³ The MOCT is reportedly working on a regulation of optical disc plants in the form of a Directive.

Generalized System of Preferences

In 2003, the U.S. government formally announced that in 2001, it closed the investigation into whether Turkey remains eligible to enjoy benefits under the Generalized System of Preferences (GSP) trade program. To qualify for benefits under the GSP Program, namely, duty-free imports of many important Turkish products into the U.S., the United States must be satisfied that Turkey meets certain discretionary criteria, including whether it provides "adequate and effective protection of intellectual property rights." While the official investigation was closed, IIPA notes that one key element of the Action Plan agreed to by Turkey has not been fully implemented, namely, that it carry out adequate and effective enforcement against copyright piracy, sufficient to bring down piracy levels. This most important benchmark still has not been met. In the first eleven months of 2003, almost \$649.3 million in goods from Turkey were imported into the United States duty free under the program, accounting for almost 18.7% of its total imports to the U.S. In 2002, \$472.4 million in Turkey's imports to the United States benefited from the GSP program, accounting for 13.4% of its total imports to the U.S.

³² Under the current system, some prosecutors have referred anti-piracy cases to municipalities for administrative fines per the Cinema Law instead of filing criminal cases under the Copyright Law.

³³ A more detailed discussion of optical disc legislation is contained in IIPA's 2003 Special 301 report on Turkey, which can be found at <http://www.iipa.com/rbc/2003/2003SPEC301TURKEY.pdf>.

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