

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2005 SPECIAL 301

SPECIAL MENTION

BAHAMAS

Copyright law deficiencies: Copyright legislation in The Bahamas is poor. The copyright law does not provide protection for foreign sound recordings; it has not joined the Geneva Phonograms Convention, nor joined the WTO (which would afford protection for sound recordings, nor has it ratified or implemented the WIPO Performances and Phonograms Treaty (WPPT). Moreover, with respect to other works, The Bahamas is a party only to the Brussels Act (1948) of the Berne Convention. The immediate impact of these inadequacies is that international sound recordings do not receive the same treatment as local sound recordings and that Internet exploitation of music may be unprotected. Moreover, The Bahamas may lack border measures to prevent the trafficking of counterfeit products.

The Bahamas must improve its national legislation by, at a minimum, ratifying the WPPT, the WIPO Copyright Treaty (WCT), and the Paris Act (1971) of the Berne Convention, and amending its domestic legislation accordingly to meet the obligations in these treaties as well as the requirements of TRIPS. Additionally, it must organize enforcement actions that would discourage the sale of pirate products.

Enforcement deficiencies: Little or nothing is currently being done to provide effective enforcement against the spread of physical goods piracy. We are not aware of any police actions that serve as real deterrents against the commercial sale of pirate goods. The lack of adequate legislation and enforcement discourages potential local and international investments and threatens the growth of a local music industry. The Bahamas has the potential to be a successful market for the legitimate recorded music industry due to high levels of tourism and per capita income. The legitimate industry is also very interested in the exploitation of local and international repertoire in public locations, including cruise ships, and by broadcasters.

Letters of agreement: On February 18, 2000, the Motion Picture Association and the Television Association of Programmers filed a Special 301 petition that highlighted the fact that the Government of The Bahamas had implemented a compulsory license that violated international copyright norms. As a consequence, the Government of the United States entered into negotiations with the Government of The Bahamas. The negotiations resulted in an exchange of letters dated October 26 and November 9, 2000 constituting an Agreement between the two parties. Under that Agreement, The Bahamas committed to conform its cable compulsory license to international norms. Even though more than four years have now passed, The Bahamas still has not met its commitments under that agreement.