

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2005 SPECIAL 301

### SPECIAL MENTION

#### ESTONIA

**Enforcement deficiencies:** There has been little improvement in IPR enforcement activity in Estonia over the past several years. The piracy levels remain high and have negatively impacted the legitimate content industries. Weak border enforcement, Internet piracy, growing CD-R/DVD-R piracy, traditional and hand-to-hand piracy in the physical market, as well as a failure to implement effective civil search and seizure remedies are the major issues. The Estonian Government, in particular the Finance and Interior Ministries, must demonstrate proper political will to implement effective IPR enforcement in co-operation with rightholders' organizations.

Weak border enforcement remains a major problem, particularly along the eastern border with Russia. According to the copyright industries, in 2004, at least 70% of the pirated copies of music CDs in Estonia, came from Russia. The Estonian anti-piracy organization EOCP reports that smuggling of illegal pirate copies on the Eastern Estonian border continue. These reports were confirmed by the 2004 seizure by neighboring Finnish Customs officials of 13,000 pirate copies. While imports of pirated DVDs from Russia remain a threat to the motion picture industry, locally burned DVD-Rs are a growing source of pirated filmed entertainment in Estonia. Pirated business software also appears to originate primarily from neighboring countries, in particular Russia and Latvia. Despite the obvious presence of Russian-originated illegal product, Estonian Customs has not been doing its job. In 2003, BSA received only one request from Estonian Customs to assist with a seizure of suspect software products; in 2004, no requests were received. This despite BSA's participation in several training programs for Estonian Customs officials, in order to enable them to identify and seize counterfeit and illegally copied product pursuant to their *ex officio* powers.

The copyright industries urge the Estonian Government to mandate Estonian Customs to exercise their *ex officio* powers in order to stem the flow of counterfeit and pirate product into Estonia from Russia and Latvia.

The police have failed to take any effective actions against Internet piracy as well as against the illegal trade in the physical market. Those involved in Internet piracy operate with impunity, especially on FTP (file transfer protocol) servers and on popular illegal peer-to-peer services such as KaZaa and eDonkey. Rights holders contemplating legal action against Internet pirates face difficulties in identifying infringers due to restrictions in the Telecommunications Law. Local Internet Service Providers have refused to identify their users based on an IP address, as they (wrongly) consider this to be a "surveillance" which can only be undertaken in criminal proceedings.

The large-scale trade in pirate goods in the Tallinn harbor area targeted at Finnish tourists, as well as trade in Eastern Estonia, continues unabated, without any threat of police action. Pirates in Tallinn are charging as much as \$US13.00 for CD-Rs with pirate content. The police should focus on thoroughly investigating large-scale traders, uncovering warehouses and

instigating cases against those controlling the pirate trade. Effective enforcement measures, such as well prepared raids, expeditious prosecutions, and deterrent sentencing, should be undertaken. The requirement for such action is clear: in Tartu, over 22,000 pressed CDs and DVDs were seized from a pirate distribution center; and in Tallinn, a pirate distribution center housing some 8,000 CDs and DVDs was discovered in 2004. There has been no evidence of basic communication and co-operation between the police and customs with respect to pirate goods, although this is an essential and basic requirement in any government program that is serious about tackling piracy.

BSA has been discussing the implementation of civil search and seizure procedures with the Government of Estonia for many years. Estonia is now close to ten years late in implementing a TRIPS-compliant civil search and seizure remedy. Without this remedy, private right holders are severely restricted in their ability to enforce and protect their own intellectual property rights. BSA urges the implementation of an effective civil search and seizure remedy without further delay

Finally, the Estonian government must direct its attention to optical disc plant activity in Estonia. In 2004, there was a significant amount of activity in connection with setting up OD replication operations in Estonia. While there has not yet been evidence or indication of unauthorized production, the Estonian Government should start preparing optical disc regulations. The copyright industries' worldwide experience shows that the absence of such regulations, combined with a highly competitive market, can prove difficult for struggling OD plants wishing to comply with copyright laws, when competitors are generating revenue from illegal activities.