

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2005 SPECIAL 301 REPORT

### LATVIA

#### EXECUTIVE SUMMARY

**Special 301 Recommendation:** Latvia should remain on the Special 301 Watch List.

**Overview of Key Problems:** Latvian enforcement efforts continue to be inadequate to combat piracy, in particular, to stop the shipment of illegal materials from Russia into Latvia for sale in the local market, or for further shipment into other countries. IIPA is disappointed by the Latvian government's continued failure to provide appropriate levels of effort or resources, now over the past ten years, to adequately address high piracy rates and to provide effective enforcement. The legitimate market for copyright materials in Latvia has significantly decreased as a direct consequence of the overall poor enforcement regime there. In short, many of the necessary legal reforms are in place, but on-the-ground enforcement remains woefully weak.

One significant shortcoming is the lack of effective border enforcement. Customs officials are rarely taking any actions to properly inspect or seize shipments entering the country, nor have they properly targeted materials transshipped through (and stored in) Latvia destined for other territories. In 2004, there were no known instances where Customs officials and rightholder organizations worked together on cases of smuggled goods. A related problem is the continued lack of communications between police and customs officials. The Economic Police remain under-resourced and under-utilized. The on-the-ground enforcement agencies continuously point to "insufficient financial and human resources" as the excuse for ineffective investigations and seizures and an overall lack of activity. The Latvian authorities need to make IP crimes a priority, as they have pledged to do in their bilateral and multilateral commitments with the United States government. The recent establishment of the centralized state IPR division under the Ministry of Interior is a long-awaited positive step by the Latvian government to undertake effective IPR enforcement. The copyright industries welcome the establishment of this structure, and hope it will engage in effective actions against commercial piracy.

The Municipal Police in Riga organized seminars for their officials, but these well-intentioned training programs were not followed up with any significant enforcement measures. Overall, the few actions taken by enforcement authorities, in particular by the Municipal Police in Riga, have been undermined by poor cooperation with prosecutors, onerous evidentiary requirements, and courts reluctant to properly adjudicate copyright cases. Prosecutors continue to make copyright cases a low priority; penalties for copyright infringements are minimal (usually comparable to fines for minor administrative offenses); and the courts return infringing goods back to the pirates. For example, in 2004, the Municipal Police in Riga initiated and performed several successful raids; these were followed with administrative cases, and expert reports from the State Expertise Center which verified that the seized goods were pirate. However, despite the well-prepared evidence, in three cases, charges were dropped and the pirate copies were returned. This type of court action can only discourage the Municipal Police from taking further actions against piracy. There needs to be more communication, and thus more successful cooperation between the enforcement authorities, including the Economic Police, the Municipal Police, State

Police, Customs, prosecutors and courts (including establishment of an IPR enforcement inter-ministerial committee which is under review), as well as more effective cooperation with rightsholder organizations.

Latvia's 2000 copyright law was further amended in April 2004 (in force April 29, 2004) in order to implement the WIPO digital treaties. The two sets of amendments were also intended to comply with the EU directives for Latvia's EU accession, which took place on May 1, 2004. The copyright law still contains several key deficiencies, most importantly the absence of TRIPS-mandated civil *ex parte* search procedures, and the recent elimination of a WPPT-compliant definition of "broadcasting."

## **Actions which the Latvian Government Should Take in 2005**

### **Enforcement**

- The government needs to instruct Latvian enforcement agencies to make copyright piracy a priority issue for action;
- The government must complete the creation of the inter-ministerial committee for IPR enforcement—including the Interior, Justice, Culture and Finance ministries—consistent with the 2003 Prime Minister's decree; and the Interior Ministry must ensure that the dedicated IPR crime unit is fully funded (US\$300,000) and effectively and properly staffed;
- Enforcement authorities must increase the number and frequency of criminal raids and prosecutions, and implement administrative actions, including against organized crime elements;
- Customs officers must strengthen their activities to intercept pirate product and act on their own initiative, *ex officio*, as permitted under the law;
- Administrative remedies (like removing business licenses and issuing fines) must actually be imposed (but not as a substitute for criminal actions, as appropriate);
- The Latvian judiciary must relax its onerous evidentiary burdens regarding preparation of expert reports in criminal cases involving sound recording, computer software, and audiovisual piracy;
- The Latvian judiciary must improve the speed of the proceedings in copyright cases and impose deterrent penalties;
- Improve cooperation between customs and the police, and as well as the police, prosecutors and the judiciary (the proposed IPR enforcement inter-ministerial committee would help accomplish this goal). Intensive educational training for enforcement bodies including judges and prosecutors has started and needs to continue;
- Establish better cooperation with Estonian and Lithuanian customs agencies;
- Establish a system at the borders to track the importation of blank optical media products.

### **Legislation**

- Amend the Civil Procedure Code and the Copyright Law to provide for a civil *ex parte* search order, as required by TRIPS;
- Amend the Criminal Law and Administrative Offenses Code to increase criminal and administrative sanctions to levels which deter piracy.

**LATVIA**  
**Estimated Trade Losses Due to Copyright Piracy**  
*(in millions of U.S. dollars)*  
**and Levels of Piracy: 2000-2004<sup>1</sup>**

INDUSTRY	2004		2003		2002		2001		2000	
	Loss	Level								
Motion Pictures	NA	NA	NA	85%	NA	85%	1.5	NA	1.5	85%
Records & Music	12.0	85%	10.0	80%	8.0	67%	NA	NA	4.0	65%
Business Software <sup>2</sup>	9.0	58%	10.0	57%	7.4	58%	NA	59%	NA	77%
Entertainment Software <sup>3</sup>	NA	80%	NA	95%	NA	NA	NA	NA	NA	NA
Books	NA	NA								
<b>TOTALS</b>	21.0		20.0		15.4		1.5		5.5	

In September 2003, the U.S. government welcomed the European Commission's decision to accept a political understanding with the U.S. to preserve U.S. bilateral investment treaties (BITs) with several EU-accession countries, including Latvia.<sup>4</sup> The Latvian BIT provides important copyright-related obligations for broad national treatment for U.S. works and sound recordings. There were reports in 2004, that Latvia might abrogate the BIT, notwithstanding the agreement with the E.U., but IIPA understands this was never accomplished. The copyright industries urge the U.S. government and the Latvian government to maintain the current BIT agreement.

## **COPYRIGHT PIRACY**

**Weak border enforcement and transshipment:** Weak border control and lack of co-operation between enforcement agencies and the judiciary allows an unimpeded flow of pirated goods into and through Latvia. The copyright industries urge the Latvian customs authorities to start taking action, including *ex officio* investigations/searches when they detect border trade and domestic enforcement violations. Customs requires training and resources to address this problem effectively. Numerous pirated materials enter the country from Lithuania, Belarus and Russia, which damages the local market for legitimate products; the software industry reports that the majority of pirated software comes from Russia and Belarus transshipped to Latvia via Lithuania. Pirated material from Russia is often imported into Latvia through the use of false documentation (with non-existent Russian companies claiming licenses) that Customs officials and the courts accept in good faith. Much of the pirate material, including audio CDs, CD-ROMs containing business software, videos, and audiocassettes, arrives from Lithuania. One method of

<sup>1</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2005 Special 301 submission at [www.iipa.com/pdf/2005spec301methodology.pdf](http://www.iipa.com/pdf/2005spec301methodology.pdf).

<sup>2</sup> BSA's final 2003 figures represent the U.S. software publisher's share of software piracy losses in Latvia, as compiled in October 2004 (based on a BSA/IDC July 2004 worldwide study, found at <http://www.bsa.org/globalstudy/>). In prior years, the "global" figures did not include certain computer applications such as operating systems, or consumer applications such as PC gaming, personal finance, and reference software. These software applications are now included in the estimated 2003 losses resulting in a higher loss estimate (\$10 million) than was reported in prior years. The preliminary 2003 losses which had appeared in previously released IIPA charts were based on the older methodology, which is why they differ from the 2003 numbers in this report.

<sup>3</sup> ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses."

<sup>4</sup> For more details on Latvia's history under the Special 301 trade program, see Appendix D of IIPA's Special 301 report at (<http://www.iipa.com/pdf/2005SPEC301USTRHISTORY.pdf>), as well as and Appendix E at (<http://www.iipa.com/pdf/2005SPEC301HISTORICALSUMMARY.pdf>) of this submission. Latvia was, until its entry into the European Union on May 1, 2004, a beneficiary country under the U.S. Generalized System of Preferences (GSP) trade program, which contains IPR criteria. In 2003, \$11.1 million worth of Latvian goods entered the U.S. under the duty-free GSP code; in 2004 (ending on April 30), only \$3.5 million work of goods received the benefits.

entry is via bus—Latvia “trade-tourists” frequent the largest Lithuanian flea market (Gariunai) and return to Latvia with this material. Most of the illegal prerecorded optical media material containing sound recordings comes from Russia. However, an increase in the numbers of CD-Rs with unauthorized reproduction has been noted, the likely source being local CD-R burning operations. The business software industry estimates that, as in years past, almost all of the illegal software on CD-ROMs found in Latvia was made elsewhere and that Latvian customs have yet to seize a single shipment (which it could do if it used its *ex officio* authority). The entertainment software industry reports that all pirated CD and DVD imports come into Latvia from Russia, regardless of where they are manufactured. Much of the product for play on PCs is made in Russia.

The recording industry is aware of the transshipment of mostly Russian-made pirate sound recording material through Latvia; this is a problem Latvia shares with its neighbours Estonia and Lithuania. The material is ultimately destined for (many of) the countries of the European Union. The key to stopping this problem is through effective action, especially at the eastern border, which is particularly problematic. This is true of Estonia and Lithuania as well, where effective border enforcement measures on the Russian or Belorussian sides should be of paramount importance.

**CD-R piracy and Internet piracy:** Illegal copying on CD-Rs and the absence of any enforcement action against this type of piracy is one of the main reasons for the decline of a legitimate music market in Latvia. Sales of blank optical media are growing rapidly. For example, a local company, Acme Plus, reportedly imported into Latvia nine million CD-Rs in 2004. The sales of legitimate music CDs have not reached one million units since 2002. Legitimate music sales in 2004 fell between three and four times compared to 2003, and no album reached the local gold or platinum status. Latvia continues to be a fast-growing Internet piracy source. Many websites illegally host musical material in MP3 format or offer physical discs for sale. The entertainment software industry faces problems with “warez” sites offering pirated videogames for direct download, and “master” copies from which to burn CDs. In Latvia, some illegal sites operate from government-controlled servers. In 2004, the recording industry identified and sent 56 “cease and desist” notices to 15 infringing sites estimated to contain around 1,000 illegal files; 13 of those sites (87%) were removed from the Internet. Despite the increasing figures, several websites have been operating with impunity for over four years without any prosecutorial action to shut them down. While there were some successes against such sites in neighboring Lithuania in 2004, there were no reported actions taken against these sites in Latvia. IIPA is unaware of any court cases dealing with Internet piracy. It is critically important that the Latvian enforcement authorities begin such efforts especially now that the 2004 amendments implementing the WIPO digital treaties are completed.

BSA reports that no Internet-related raids or arrests have taken place in relation to business software in 2004. Latvian ISPs are generally cooperative in terms of taking down sites that are identified to them as hosting infringing material. While BSA members experience problems in Latvia associated with the unauthorized use of FTP servers, an increasingly significant problem concerns the growing use of file sharing technologies in Latvia.

**Copyright piracy levels are high across almost all industry sectors:** Piracy of sound recordings and music continues to be widespread in Latvia. The local recording industry group, LaMPA, reports that due to ineffective enforcement the estimated level of music piracy is rising every year, currently reaching 85% of the market in 2004 (the piracy level for local repertoire is approximately 70 to 75%). The biggest distribution points are bazaars in Riga, which have 60 to 100 sales points for pirated audio products. The prices of pirated music CDs rose

slightly, to approximately US\$5 for international repertoire and US\$6 for local repertoire (most pirated local repertoire is CD-R). Another significant problem is the parallel importation of legal sound recordings which are for distribution only in Russia; according to Article 148 of the Criminal Code, such distribution of legal copies not authorized by the rightsholders is considered to be a copyright crime in Latvia. One particularly disturbing form of piracy is the hardly detectable “hand-to-hand” piracy, i.e., sales of pirated sound recordings offered in the catalogue by the physical persons. In general, the recording industry reports that the police have not taken decisive action against the open markets; there are no seizures or raids, much less prosecutions.

The Business Software Alliance (BSA) reports that almost all of the infringing business software in this market comes from Latvia’s neighbors. Poor border enforcement and the lack of cooperation between neighboring countries (especially Estonia and Lithuania) are problems that need the most attention. In May and December 2004, BSA held meetings with the State Revenue and Customs authorities; these meetings highlighted the weak border enforcement and the various methods of distribution of pirated software into Latvia.

The Motion Picture Association (MPA) reports that the video piracy rate in Latvia remains very high (actual piracy rates, which were 85% in 2003, were not available for 2004). Corruption and organized criminal activity are major problems. Although piracy is not as overt as it has been in the past, street traders still solicit customers with pirate catalogues. Pirate copies are available in video rental stores as early as two months before their Latvian theatrical release. Web-based piracy now exists as well. Pirate sites marketing hard goods are expected to be a growing problem.

The entertainment software industry (Entertainment Software Association, ESA) reports that poor border enforcement remains a significant problem. Most of the pirated entertainment software products entering the market are imported from Russia by the same organized criminal syndicates running piracy operations in Russia and apparently throughout the region. Internet café piracy continues to be a problem, with only a few of the cafés using licensed products. Pirated products remain readily available at retail establishments and particularly at flea market venues. There were more raids and seizures in 2004 against retail locations (mostly involving PC games, although a few console games were also found). However, there was very little action taken against the criminal syndicates involved in the distribution of pirated products. While many cases remain pending, an ESA member company was able to successfully prosecute a case to conclusion (in that case, a company director was sentenced to five months probation and assessed damages for the seizure of 140 pirated video game discs). Improvements to the country’s border enforcement regime are essential if the flow of pirated products from Russia is to be stopped. Action must likewise be taken against the organized criminal syndicates involved in piracy, using special anti-organized crime statutes if available. Local piracy rates for entertainment software product remained very high in 2004.

## **COPYRIGHT ENFORCEMENT**

**Lack of centralized coordination and communication:** In November 2004, a consultative council on IPR enforcement (the “Council”) was established in the Ministry of Interior; the Council includes IPR rightholder groups (copyright and industrial property), as well as government officials from the Ministry of Interior. In January 2005, the Ministry of Interior established a dedicated IPR enforcement division within the Economic Police (with an annual budget of US\$300,000 and a staff of 20); it is intended to commence action in March 2005. Unfortunately, the plans do not include the all-important Customs authorities who are critical for

effective enforcement. It is critical for the Ministry of Finance to instruct Customs authorities to work in close cooperation with the new division. The copyright industries welcome the establishment of this new division and hope that it will prove effective. Three years ago, the Latvian government agreed to establish and fund (at about US\$350,000) an anti-piracy department within the State Police but a dedicated IPR enforcement division of the state police was never established and the monies were spent elsewhere. IPR enforcement was relegated to a special department in the Economic Police that, according to the Minister of Interior in a September 2004 news account, only employs six officers; it is unclear whether these six officers will now be reassigned. The Economic Police currently responsible for IPR enforcement are generally not effectively cooperating with other enforcement agencies. The government has to change the direction of this type of under-financed, poorly executed, and low priority type of enforcement.

In late 2003, the Prime Minister issued a decree to establish an inter-ministerial Working Group in the Ministry of Justice, including the Culture, Finance and Interior ministries, with the main task to implement the Action Plan that was prepared and submitted to the Government by the non-governmental organizations (CIPR, BSA, LaMPA and the collecting societies LaIPA and AKKA/LAA). The implementation of the Action Plan included: (a) preparing draft amendments to the different legislative acts such as the Civil Procedure Law and the Copyright Law (including an *ex parte* provision—which is still to be implemented); (b) preparing new legislative acts (for example, regulations on destruction of pirated goods); and (c) the establishment of an inter-ministerial committee for IPR enforcement. The Working Group has met only one time to date. The Justice Ministry proposed terminating the Working Group. The copyright industries prepared their own report urging the government to follow its own Action Plan including the establishment of a true inter-ministerial committee for IPR enforcement consisting of representatives from the ministries of Interior, Culture, Justice, Finance, Economic Affairs and Agriculture, as well as rightholders. In short, the Action Plan needs to be fully implemented so that effective enforcement can commence.

**Border enforcement remained weak in 2004:** Since most of Latvia's piracy problem is due to heavy importation of infringing materials from Russia, Belarus and Lithuania, it is essential that border measures be enforced in practice. As part of Latvia's WTO accession package in 1999, several laws and decrees were passed to improve substantive border enforcement measures.<sup>5</sup> In 2002, the Latvian government allocated 20 new customs regional officials and two additional persons to the Customs Head Office solely for IPR protection; unfortunately these officials have not been effective to date.

Customs officers are barely taking any actions, not to mention exercising the *ex officio* authority granted to them in Government Regulation No. 420. Customs officials need to make IPR a priority and need to coordinate Latvian, Estonian and Lithuanian activities to help stem the tide of pirated Russian material entering all three countries, especially on the eastern border with Russia. Reportedly, Russian organized crime groups have threatened and/or bribed Customs authorities to dissuade IPR enforcement actions (especially by acceptance of clearly forged documents). Russian customs officials agreed to cooperate and share cross-border information several years ago. In fact, BSA reports that Russian and Latvian, Lithuanian, and Estonian customs officers began working together in 2001, but have yet to focus on IPR-related seizures.

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<sup>5</sup> Two laws from the basis for Customs enforcement measures in Latvia: (1) the 1997 Customs law (of June 11, 1997); and (2) a Cabinet of Ministers Regulation on Customs measures for IPR protection (of February 9, 1999) which entered into force on July 1, 1999.

**Low level of police raids and results despite moderate cooperation with industry:** The Economic Police reported (in news accounts) that in the first eight months of 2004, 13,000 pirated CDs and over 16,000 DVDs and video recordings were seized. The same report noted that in 2004 (through September) only one criminal case was commenced for copyright and neighboring rights violations, plus 39 “other” (presumably administrative) cases were underway for a total of 339 administrative law violations.

The LaMPA organized some raids with the Economic Police that failed, as the target outlets and market places were informed in advance. Retailers of all pirated goods (music, films, software) operate as if they are untouchable because of high levels of corruption in enforcement regimes. Throughout 2004, LaMPA member companies made regular visits to the largest pirate markets and outlets, and collected comprehensive evidence of the illegal trade which was passed on to the Economic Police. Even with this evidence, there were no serious raids taken against the well known and biggest importers, distributors and retailers of pirate goods. In June 2004, the Economic Police detained four individuals known to be major suppliers of pirate recordings at the notorious Latgalite market (consisting of about twenty illegal dealers). The police seized a total of 5,036 CDs and 741 DVDs from the suspects’ cars and homes and instigated criminal cases in accordance with Article 149 of the Criminal Law (“Unlawful Acts with Objects of Copyright and Neighboring Rights”). There is no evidence that the cases were followed up. The IPR team within the Economic Police is marred by corruption and regular and unwarranted transfers of its few effective members to unrelated departments. The recording industry reports further that cooperation with the regional police (for whom LaMPA provides expert reports on a regular basis) is generally good. There are raids on smaller targets: for example, on February 1, 2005, the Economic Police conducted a raid in Riga which netted 326 pirate DVDs and 37 VHS tapes, and even for its small size also garnered press coverage. In addition, there have been over the years numerous training programs, such as the program the software industry (BSA) provided for the Riga Municipal Police in 2004.

The Business Software Alliance (BSA) reports some cooperation, albeit on a limited number of cases, from the Economic and Finance Police; mostly, this has focused on end-user raids. The Economic and Finance Police conducted a total of 22 raids in 2004 with the cooperation of BSA: 20 of these concerned end-users, two identified the illegal sale of counterfeit business software applications. As a result, two criminal cases, and nine administrative cases, were initiated. Only one case resulted in a conviction in 2004—it was a reseller action. The reseller in question was punished with 80 hours of forced labor.

**Prosecutorial delays:** The problems of prosecutorial delays—anywhere from 18 months to two years just to begin a trial—persist. This is because criminal cases must proceed through three stages: first, the police review the preliminary records; second, there is a police investigation; and finally, a prosecutor must review and get the Prosecutor’s Office to issue a formal charge. Delays at the prosecution stage are the most frequently mentioned problem with effective enforcement by rightsholders. Several IIPA members have conducted training seminars for prosecutors over the last few years, but the level of expertise among state prosecutors in relation to IPR matters remains low.

**Inadequate administrative penalties:** Copyright infringement cases in Latvia are often pursued as administrative offenses, which can take a short amount of time (anywhere from two to four months). As noted, there were 322 such cases in the first eight months of 2004. Businesses, especially illegal kiosks and stores that sell pirated material, should be fined and/or their business licenses revoked; however, these penalties are not applied. Instead, convicted

pirates are fined only 50-100 Lats (US\$92 to US\$183) and, in case of repeat infringers, a maximum of 250 Lats (US\$458), which is too weak to act as a deterrent.

**No civil *ex parte* search provision:** A glaring deficiency of the 2000 copyright law, not corrected in the 2004 amendment, is that the law does not provide for a TRIPS-required civil *ex parte* search remedy. This omission must be corrected. In end-user piracy cases, the civil *ex parte* remedy is an essential enforcement tool, the absence of which leaves BSA overly dependent upon police cooperation, which is, for practical and policy reasons, difficult to secure.

BSA has been working for several years, with many delays, in order to get these provisions implemented. BSA is concerned that the provisions of the draft EU Enforcement Directive relevant to civil search and seizure provisions may cause further delays in implementation.

**Judicial obstacles and delays:** The main reason for the slow and burdensome proceedings in IPR cases is that, due to the lack of relevant knowledge, the judiciary has created its own rules on IPR procedures based on the former Soviet Union procedural codes. These procedural provisions are woefully antiquated and result in substantial difficulties in prosecuting cases, especially because they call for the securing of detailed (and unnecessary) expert reports in copyright infringement cases before criminal actions can proceed against pirates. These delays have the effect of “pushing” criminal cases into the administrative areas, where they are quickly disposed of, with the application of weak penalties. Further, as illustrated above, cases can be dismissed and pirate goods returned even if the expert reports are correct.

## **COPYRIGHT AND RELATED REFORM**

On January 21, 1999, the Latvian Parliament adopted a package of amendments to several copyright-related laws, including the Code of Administrative Offenses, the Criminal Code, the Consumer Protection Act and the Customs Act as part of its accession to the World Trade Organization (WTO). In April 2004, as part of its accession to the WIPO digital treaties, and in order to more fully comply with the EU directives, the Latvian Parliament adopted additional copyright amendments. These amendments, effective April 29, 2004, included provisions allowing rightsholders to prevent the circumvention of technological protection measures, as well as to protect so-called “copyright management information.”

In 2000, Latvia deposited its instruments of accession to both the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty; Latvia became a member of the WCT and WPPT in 2002 when each of those treaties entered into force.

**The Copyright Law of 2000 and the 2004 amendments:** Latvia’s 2000 copyright law was the result of a series of reforms undertaken in the late 1990s.<sup>6</sup> The 2000 law contained significant improvements over the prior 1993 law, including a right of “making available” and stronger remedies for software piracy infringements (both end-user and reseller). The 2004 amendments added technological protection measure and copyright management information provisions consistent with the digital treaties, as well as full national treatment for foreign authors

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<sup>6</sup> Latvian copyright reform began in 1993, when Latvia overhauled its old Soviet-style copyright law. Latvia became a member of the Berne Convention (August 11, 1995) and the Geneva Phonogram Convention (August 23, 1997); it also became a member of the Rome Convention (August 20, 1999). After a series of revision efforts in 1998 and 1999, Latvia’s new copyright law was enacted, effective April 27, 2000 (with some provisions in force on January 1, 2001 and others on January 1, 2003).

and neighboring rightholders [Article 56(5)] and proper legal presumptions for neighboring rightholders [Article 47(8)]. However, several deficiencies remain in the law:

- No exclusive rights for phonogram producers, which are provided to other rightsholders such as authors and performers (Article 51). Latvia should give performing artists and phonogram producers an exclusive right of public communication, instead of merely a claim for remuneration.
- The new law deleted the definition of “broadcasting” (it was defined in the Broadcasting Act very broadly to include webcasting and simulcasting). A WPPT-compliant definition must be added back into the Copyright Law.
- Article 63(5) makes the rental right for phonogram and film producers subject to mandatory collective management (diminishing the exclusive rights of producers).
- No civil *ex parte* search procedure, a TRIPS-required tool, which is especially critical to enforcement in business software actions.
- Low administrative penalties that do not deter piracy.
- An objectionable provision regarding the destruction of equipment used to produce illegal copies, which permits the equipment (and perhaps the illegal copies) to be donated to charity rather than destroyed [Article 69(3)].

**Criminal law:** Latvia’s current criminal law entered into force on April 1, 1999, with amendments adopted effective on November 11, 2002. Although some provisions were improved, the fines imposed for the infringement of copyright and neighboring rights are disproportionately low. The criminal law provides that for certain type of criminal actions, the judge can apply a penalty up to, for example, 200 minimal monthly salaries, which is about 16,000 Lats (~US\$30,500). Unfortunately, the reality is that courts still impose very low penalties.

The Latvian government started drafting a new Criminal Procedure Law in 2001 through a special parliamentary committee. The draft law passed its first reading in the Parliament on June 19, 2003. Missing, however, are special provisions and procedures regarding copyright and neighboring rights cases. Although the draft provides simpler procedures, the efforts of music industry and other rightsholders to include the principle of presumption of ownership, and liability for juridical entities, are not adequately addressed.

**Administrative Offenses Code and the civil law:** In 2003 (effective July 24, 2003) amendments to the Administrative Offenses Code were enacted. Administrative penalties apply for the acquisition of pirated goods with the aim of distribution, storage or the hiding of pirated goods. Second time offenders are subject to criminal penalties as are certain cases involving the distribution of pirated goods.

In 2002, a proposal that would have increased fines against juridical entities infringing copyrights was unfortunately rejected by the Parliament.

There are no known pending amendments regarding civil penalties. Consistent with the legal regime, the copyright law only includes the measures rightsholders can take in civil proceedings (in Article 69). However, the Civil Code (Articles 1770-1792) does not provide the necessary sanctions for copyright infringements.

**Government software management:** BSA reports that the level of unlicensed use of business software applications within the Latvian public sector remains at a high level, but that a series of reviews of software installations and purchases of missing licenses did take place in

2004 in the central government in Latvia. The ministries of Defense, Education and Science, Finance, State and Treasury did conduct internal software audits and purchased the necessary licenses. BSA praises the Latvian Government for these very positive steps, as the government's use of licensed software is seen as an critical model for business users of software: it is essential that government take all the necessary steps to regularize and legalize its use of business software applications in order to set an example to the software-using community.