

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2005 SPECIAL 301 REPORT

SERBIA & MONTENEGRO

EXECUTIVE SUMMARY

Special 301 Recommendation: IIPA recommends that Serbia & Montenegro be added to the Special 301 Watch List in 2005.

Despite some successes in combating piracy in 2003, the situation in Serbia & Montenegro got worse in 2004. The bulk of criminal copyright cases remain stuck at the prosecutorial level, thus rarely resulting in convictions or sentencing. In a positive development, the first two criminal convictions against software infringers were issued. Unfortunately, overall enforcement remains poor. Although a new copyright act was passed in December 2004, it has not resulted in effective enforcement. The level of piracy experienced by the industries is still at unacceptably high levels.

Overview of Key Problems: Though there were some encouraging signs in 2003, with legitimate sales showing a marked growth, piracy increased in 2004. Enforcement of copyright is generally still weak, inefficient and ineffective; the newly enacted Copyright and Neighboring Rights Law has just begun to be applied. While we have not had an opportunity to review the law in detail, we understand it solves many of our legislative concerns. Thus, legislative deficiencies can no longer stand as an excuse for poor enforcement in Serbia & Montenegro. Certain elements of the police do take action (for example, the BSA reports that police increased the number of actions in the second half of 2004, in cases reported to them) but prosecutors generally fail to commence cases against copyright infringers and customs officials lack the necessary equipment and expertise to provide any meaningful border enforcement. Indeed, one of the most serious rightholder concerns remains poor border enforcement. In the last week of 2003, a government decree on IP border measures was issued. According to reports, in 2004, the first enforcement action occurred with encouraging results. The long term effects of this measure remain to be seen, as Serbia & Montenegro is regularly experiencing an inflow of pirated product.

In 2003 the government created a special inter-ministerial anti-piracy 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 steam and most points of the action plan (including adoption of a much-needed optical disc regulation) remain unfulfilled. This group was inactive throughout 2004.

The Copyright and Neighboring Rights Law, enacted by the Parliament in December 2004, took effect on January 1, 2005. Though IIPA has not had an opportunity to review the amendments as passed (except in summary), if, in large measure, it is the draft prepared in 2003, then the new law is a substantial improvement of the copyright system in Serbia & Montenegro. For example, the copyright law and the criminal code previously covered the same criminal act, resulting in a conflict with respect to both procedures and penalties.¹ Reportedly, the new copyright law does not contain criminal provisions; criminal copyright infringement is now solely covered by the criminal code. Thus, the conflict no longer exists. Furthermore, we understand that the government of Serbia has approved amendments to the criminal code. IIPA has not had an opportunity to review an English-language version of these amendments, which are awaiting review by Parliament. One significant shortcoming at present is that the Market Inspectorate still remains without the necessary legislative authority to enforce copyright law.

Actions Which the Government of Serbia & Montenegro Should Take in 2005: In order to improve its copyright regime, the government should take the following actions—

- Adopt without delay strong criminal copyright provisions, including the addition of deterrent prison sentences;
- Instruct all levels of the judiciary to prioritize criminal copyright prosecution;
- Improve judicial training on copyright matters so that courts expeditiously and effectively enforce all aspects of the copyright law;
- Adopt strong optical media regulations to prevent illegal optical media production and distribution;
- Instruct the enforcement agencies to make combating piracy a priority and set goals to ensure active criminal investigations, raids and prosecutions;
- Improve administrative anti-piracy efforts to close down and fine kiosks and other retail operations which engage in the selling and distribution of pirated materials;
- Give customs and border police a clear mandate and legal competence to act *ex officio* against cross-border trade in infringing goods;
- Instruct customs and border police to stop importation and exportation of pirated goods, including optical media product;

¹ Under the previous CRL, the offense could not be prosecuted *ex officio*, but under the PCRS the offense 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.

SERBIA & MONTENEGRO Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2000-2004²		
INDUSTRY	2004	
	Loss	Level
Records & Music ³	12.0	80%
Entertainment Software ⁴	NA	NA
Business Software ⁵	NA	NA
Motion Pictures	NA	85%
Books	NA	NA
TOTALS	12.0	

COPYRIGHT PIRACY

Piracy and Its Impact on the Market

The markets in Serbia & Montenegro are swamped with pirate products of all sorts. Illegal copies of music, films, business and entertainment software on optical discs and cassettes are openly offered for sale in kiosks, and in open markets throughout the country. Although the number of retail outlets that exclusively sell legitimate product has increased, huge numbers of street sellers with illegal materials are seriously undermining the development of a legitimate market. International repertoire as well as local copyright products are massively pirated. Several years ago, during the Milosevic era, the government openly encouraged the infringement of foreign copyrights as an act of anti-Western patriotism. The current government, especially in Serbia, increasingly speaks out against piracy, but the heritage of the recent past is

² The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2005 Special 301 submission, and is available on the IIPA website at www.iipa.com/pdf/2005spec301methodology.pdf.

³ Estimated trade losses for the recording industry reflect the impact of significant devaluation during 2002. The level of pirate product in 2003 is based on a third-party survey to improve accuracy of the statistics.

⁴ ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses."

⁵ BSA's final 2003 figures represent the U.S. software publisher's share of software piracy losses in Serbia & Montenegro, 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 significantly higher loss estimate 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.

still strongly felt. A campaign to promote anti-piracy is being launched in early 2005 with government support.

International recording companies, as well as local labels, saw their sales grow in 2003 after the government launched an anti-piracy campaign. Unfortunately, the subsequent government failed to take the piracy issue seriously and large numbers of illegal traders returned to the streets. Soon thereafter, legitimate sales started to drop again and the promising developments of 2003 were reversed in 2004. The widespread availability of illegal copyrighted materials, the shortcomings of the law, and the lack of meaningful enforcement, especially at the prosecutorial level, make it extremely difficult for legitimate commercial interests to survive in Serbia & Montenegro. Sadly, the country, with more than 10 million inhabitants, could support a promising legitimate market. As it stands, the recording industry reported a piracy level of at least 80%, with losses to the U.S. music industry amounting to \$12 million in 2004.

Copyright piracy in Serbia & Montenegro is not limited to distribution and retail sales. The country hosts at least one optical disc plant, which was involved in large-scale pirate production (see below), not only for the local market, but also for export to other countries in the region. The bulk of illegal material in this market is available on cassettes (MC ("Music Cassettes") and VHS) and industrially produced optical discs. This includes pirate VCDs and DVDs imported from the Far East. However, CD-R (CD-Recordable) piracy is clearly increasing. Pirate cassettes and CD-Rs are primarily replicated locally in underground "burning" facilities. The extent to which local plants contribute to unauthorized pressed CDs cannot be ascertained at present, without a comprehensive set of exemplars from the optical disc lines present in the country. In addition, a certain number of illegal CDs are imported, mainly from Bulgaria, Ukraine, Russia, and most likely, Bosnia. Rightholders' investigations revealed, beginning in 2001, that there is also an increase in Internet piracy by illegal sites hosted in Serbia & Montenegro. For the entertainment software industry, these illegal "warez" sites provide not only video game software to download for free but also serve as a source of video games for burn-to-order operations.

Kiosks and street traders selling illegal copyright materials can be found in large numbers in every town in Serbia & Montenegro. For example, several kiosks selling pirated materials can still be found near the Serbian Ministry of Trade, Tourism and Services in front of the SKC (Student Cultural Center) on the Generala Zdanova in Belgrade. The main piracy problem is caused by large numbers of street vendors with bags and stalls with low quality CD-Rs. The network is well organized. All vendors have the same titles and type of product, which suggest the presence of a network of centrally run sources of pirate product. The most frequently used carrier for pirated music, movies, and software is CD-R. Overt piracy, with dozens of kiosks selling pirate CD-Rs, is decreasing, as pirates are adjusting their techniques and becoming more mobile.

The motion picture industry reports that piracy remains a major problem, severely limiting the ability of legitimate companies to distribute their products. The country's attempts to create a legitimate market are plagued by piracy levels estimated at 85%. Similarly, television piracy continues to be a problem, with an estimated 300 illegal stations operating in the country, sometimes broadcasting legitimate DVDs for programming. The Ministry of Culture has drafted a new broadcasting law which has been adopted by the Assembly. Although we have not had an opportunity to review an English language version of the law, we understand it restructured the Broadcasting Council, though new members have not yet been elected. In addition, the law

would require Broadcasting Council to work in coordination with the Telecommunications Council, specifically on broadcast spectrum allocation.

The publishing industry suffers from illegal commercial-scale photocopying, primarily of academic materials such as textbooks and reference books. This activity takes place on an ad hoc basis or by commercial establishments located in and around university and school campuses. IIPA urges the government to encourage university campuses to take an active role in promoting the use of legitimate materials by their students and lecturers.

Optical Media Manufacturing Piracy

The absence of an optical disc regulatory scheme is leading to an uncontrolled increase in the number of plants and lines, completely incommensurate with a legitimate increase in demand. Indeed, Serbia & Montenegro could be on the verge of developing into a major producer of pirate CDs.

There are at least four known CD plants in Serbia: Grand Production; RTS Records (soon to have two new lines); Digital System (a new plant with three lines, including two DVD lines); and General Disc Technology. All of these plants are located in Belgrade.

General Disc Technology (GDT) is still the subject of an investigation (dating from 2002) concerning massive unauthorized production and distribution. There is no means of ensuring that the plant ceased its activities after that date. Of the four plants in Serbia, GDT is the only one without a SID code.

One other plant, which has been issued a SID code, continues to improperly use it, producing discs that do not contain appropriate codes. Of the remaining two plants, one has not applied its codes (acquired in 2000) and the other has not applied codes to all of its lines. This scenario severely undermines any possible confidence in correct application of the SID code system and illustrates the urgent need for a strong optical disc regulation.

COPYRIGHT ENFORCEMENT

Criminal/Administrative Enforcement

As mentioned above, the recently passed Copyright and Neighboring Rights Act no longer contains criminal provisions. Rather, the criminal code now covers all criminal copyright infringement, resolving one problem where a single infringing was covered by two different procedural and penalty provisions. It remains to be seen, how, in practice, these criminal provisions will be applied in the wake of the new copyright law.

Some enforcement activities were reported in 2004 and the beginning of 2005. In October 2004, seven suspects in Belgrade were arrested in connection with the operation of teodivx.com, one of the main hard goods sites in Serbia. The pirates ran DVD-burning facilities in their homes from which the police seized a sizable amount of equipment, including over 22,000 masters used to create pirate product. Serbian authorities originally arrested these pirates under a provision of the Serbian criminal code, which provided penalties of up to eight years in prison for organized piracy crimes. Unfortunately, the courts did not agree with this legal characterization and are instead, trying each pirate separately. The first of the seven

cases concluded with the suspect being found guilty of piracy, but given only a suspended sentence of five years probation. Nonetheless, reports indicate that the remaining suspects will receive prison sentences.

Furthermore, the motion picture industry reports that a raid was conducted on February 6, 2005 at Belgrade's SKC (Generala Zdanova) which netted 18,000 items and 55 arrests. Reportedly, the Market Inspectorate participated in this raid.

Besides rampant illegal optical disc manufacturing (e.g., the CD plant referred to above and the undoubted presence of a large number of underground illegal CD-R replication facilities), distribution and retail of pirated goods are widespread in Serbia & Montenegro. Retail sale of pirate materials in kiosks and by street sellers is highly visible and could easily be the target of sustained enforcement by police and trade inspectors. Unfortunately, not much has happened, despite the fact that local and foreign rightholders have regularly and increasingly urged the relevant enforcement bodies to take action.

It should be noted that the Serbian Ministry of the Interior and certain police units have taken action. However, hiding behind perceived inconsistencies in the law and suffering from a general lack of interest and experience, prosecutors in Serbia have dramatically failed to follow up on the many police raids and seizures that did take place. In fact, the police took some 600 actions against pirate activity in 2004, most of them against street vendors. However, only 10 (i.e., 1.5%) of these ended up in court. The bottleneck and backlog at the prosecutorial level is so large that the Ministry of the Interior had to instruct police to suspend raids against pirate sellers, because the judiciary could not process the resulting case files. The lack of political will from the highest levels within the national and the Union governments are to a large extent to blame for this unacceptable situation.

LEGAL REFORM AND RELATED ISSUES

Copyright Law

IIPA understands that a new Copyright and Related Rights Act (hereafter "CRR") was passed in December 2004 by the Parliament. As noted, IIPA has not had an opportunity to review it. However, local industries are reporting that the CRR is generally adequate and will provide a foundation for effective prosecution of piracy cases. In general, as reported, the new law appears to comply with Serbia & Montenegro's international obligations under the TRIPS agreement and the two WIPO Treaties, the WCT and the WPPT, both of which Serbia & Montenegro ratified through deposit in 2003.

Provisions on copyright crime are left to the national and criminal codes of the Republics of Serbia and Montenegro respectively. Reportedly (IIPA has not yet been given a draft), the government of Serbia has approved amendments to its criminal code, which contain appropriate sanctions for copyright crime. These amendments must now urgently be adopted by the Parliament of Serbia. Likewise, similar provisions should be adopted in Montenegro, where there are some concerns that the piracy levels may be greater.

The former copyright law [the 1998 Copyright Act for the Federal Republic of Yugoslavia (hereafter YCA)] failed to provide rightholders with the necessary legal framework to enjoy copyright protection in line with international standards. The following brief comments are based

on the major deficiencies of the YCA, and where possible include preliminary comments on the new CRRA in parentheses. Therefore, many of the deficiencies may have been corrected.

Protection of foreign rightsholders (YCA, Article 139): The points of attachment for protection of phonogram producers and performers under the YCA do not provide a basis for effective enforcement as regards foreign repertoire. For phonograms, protection is limited primarily to releases first produced in Serbia & Montenegro. Otherwise, protection is given as far as required under the international agreements to which Serbia & Montenegro has acceded. The law of Serbia & Montenegro should unconditionally provide full protection to foreign rightsholders. In order to achieve this, Serbia & Montenegro should, within the framework of its accession to the treaties and conventions referred to above, refrain from taking any reservations. (We understand that CRRA Articles 106 and 145 protect foreign rightsholders to the extent required by the international agreements to which Serbia & Montenegro has acceded).

The right of reproduction (YCA, Article 20): The reproduction right for authors in Article 20 is unnecessarily complicated, giving rise to uncertainty detrimental in the market place, and in particular, for new digital uses of works. The provision should be redrafted along the lines developed as an international standard: *“Authors shall enjoy the exclusive right of authorizing the direct or indirect, temporary or permanent reproduction of their works, in any manner or form.”* The same formulation should be introduced for producers of sound recordings and performers. (IIPA understands that CRRA Article 20 provides a reproduction right in line with international standards, including protection for temporary copies, as well as prohibitions on indirect copying.)

Protection of software (YCA Article 1): To provide adequate protection for software and to bring the YCA into compliance with TRIPS and the WIPO treaties, the YCA should be amended to explicitly enumerate computer programs as a category of literary works. Furthermore, the inclusion of preparatory design material in the definition of a computer program is necessary to clearly delineate the scope of protection in accordance with international treaties. (IIPA understands that the CRRA protects computer programs as literary works).

Rental and Lending rights: The YCA lacks exclusive rental and lending rights for copyright holders. The lack of this provision facilitates illegal copying and the YCA needs to be amended to provide for an exclusive right. (IIPA understands that the new law contains a rental right for works and a lending right for computer programs).

Possession of infringing copies: In order to effectively deter infringement of copyright, the YCA must be amended to criminalize possession of infringing goods for commercial purposes. The GDT case described above shows the necessity to add the possession of infringing goods for commercial purposes to the list of criminal acts of copyright infringement. For reasons of consistency and as a technical change in the course of providing protection for technological measures and rights management information, the corresponding violation of the new provisions protecting technological measures and rights management information should also be made a criminal offense.

Making available right (YCA, Article 27(6)): The two WIPO Treaties (the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) require that

authors, performers, and phonogram producers be granted an exclusive right designed to cover emerging services, particularly on the Internet. This is to be a separate right, clearly distinguished from broadcasting, and drafted as a separate exclusive right under the Yugoslavian Copyright Act: “*Authors shall enjoy the exclusive right of transmitting works by wire or wireless means to members of the public including ways in which members of the public can access the works at a time and place individually chosen.*” The same solution should be introduced for phonogram producers and performers. (IIPA understands that the new law includes a separate making available right for authors, and for neighboring rights owners, making it compliant with the WCT and WPPT).

Catalogue of economic rights for performers and phonogram producers:

Currently, the YCA does not provide the full catalogue of economic rights required for performers and phonogram producers. As a minimum standard, performers and producers have to enjoy a reproduction right, the distribution right, the rental right, a separate and fully exclusive making available right, and rights covering communication to the public and broadcasting. For phonogram producers, as a bare minimum the right of making available should be added to the list in Article 119. The making available right should not be subject to any existing or new exemptions and statutory licenses and should have the exclusive character prescribed by the 1996 WIPO treaties. (We understand that the CRRA contains provisions on these economic rights, although some concerns remain with respect to broadcasting rights).

Protection of rights management information and technological protection

measures: The protection of rights management information and technological measures is a requirement introduced by the WIPO treaties and is essential for the protection of creative content in the digital environment. The YCA provides for meaningful protection of rights management information in Article 174(2). The protection afforded in the same article to technological measures is, however, deficient, and needs to be redrafted in line with the requirements of the treaties. In particular, protection needs to be extended to cover the act of circumventing technological protection measures as well as activities relating to circumvention devices. Effective remedies have to include criminal sanctions for the violation of the provisions protecting technological protection measures and rights management information. (Article 180 of the CRRA reportedly includes protection of rights management information and technological protection measures consistent with the requirements of the WIPO treaties).

Ex officio action in criminal proceedings (YCA, Article 186): Article 186 currently makes the criminal offenses provided in the YCA subject to a private action. This fundamentally undermines the efficiency of the criminal procedures provided in the law. For criminal procedures to be efficient, it is essential that the enforcement authorities and public prosecution services be under a legal obligation to investigate and prosecute criminal copyright infringements *ex officio*. Rightholders in the private sector have neither the appropriate investigatory powers, nor are they given standing in court. The networks and information resources of public authorities and in particular those used by the public prosecution services are a necessary basis for effective enforcement.

Copyright infringement is a serious crime often conducted in an organized manner and as a means to fund other criminal activities. To create the basis for pirates to face conviction for copyright crimes, and to harmonize prosecution of copyright infringement with prosecution for other intellectual property crimes in Serbia & Montenegro (trademark, patent and industrial

design) criminal actions for copyright under Articles 182 through 185 must be subject to *ex officio* action. Article 186 should be deleted.

Damages (YCA, Article 172): Under Article 172(1) Nr 5, copyright holders and related rightsholders can claim indemnity for material damage and under Article 172(1) Nr 6, the publication of the judgment at the defendant's expenses. These provisions, however, do not meet the requirements under Article 41 and Article 45(1) and (2) of the TRIPS Agreement for several reasons—

- **No pre-established damages:** The YCA does not provide rightholders with pre-established (i.e., “statutory”) damages as an alternative to actual damages. Pre-established damages are essential for effective enforcement.
- **No aggravated damages:** The YCA does not provide specific damages where pirates are found to have been engaged in particularly egregious infringing activity, over long periods of time, or when the violation has been particularly blatant. In such cases, mere compensation for the rightholders for the direct economic injury or financial loss is not only insufficient to remedy the total harm caused but does not satisfy the requirements under the TRIPS Agreement and the WIPO treaties calling for deterrent remedies. A provision on aggravated damages should be added to the YCA in order to fulfill the requirement of deterrence. (IIPA understands that a new Article 178 introduced treble damages in cases of intentional or grossly negligent copyright infringement.)
- **No provision on the burden of costs:** The YCA does not require an infringer to pay the rightholder's expenses, which may include attorney's fees as provided under Article 45(2) of the TRIPS Agreement. Article 172(1) Nr 6 therefore needs to be amended. Covering expenses and attorney's fees is essential for effective enforcement of rights. Infringement proceedings are extremely expensive and often exceed the amount of damages awarded by the courts. Without the ability to recover their actual costs for infringement proceedings, rightholders are discouraged from enforcing their rights.

Presumption of ownership: An additional section on the presumption of ownership should be included in the YCA to effectively address widespread piracy in Serbia & Montenegro. Provisions of this kind have become the standard in many jurisdictions, recognizing that proving a chain of ownership can be an extremely time-consuming process, hindering the expedient and effective enforcement of rights. The TRIPS Agreement (by application of Article 15 of the Berne Convention) requires presumptions as to existence and ownership of copyright and related rights. As there is no justification to distinguish between author's rights and related rights, the provision should apply to both rights alike. (Articles 9 and 179 of the new law reportedly solve this deficiency.)

Provisional measures: Provisional measures are an essential tool in the effective enforcement of copyright. They allow enforcement authorities, under certain circumstances, to hold evidence while a criminal investigation and trial can proceed. The provisions in this regard in YCA Articles 173, 175-178, are not clear enough and there remains concern that they do not provide sufficient basis for immediately available and meaningful measures, including those issued in the course of *ex parte* proceedings. This concern is based on reports that provisional measures are not widely used in Serbia & Montenegro as yet. Also, to enable rightholders to

effectively use provisional measures, the deadline for filing a lawsuit after an official request for provisional measures has been filed must be extended. The current time period (15 days from the *time of filing for provisional measures, not execution thereof*) is much too short both to enable proper evaluation of the results of the provisional measures and sufficient preparation for effective enforcement. The time period should be extended from 15 days to at least 30 days *from the date the provisional measures have been executed*. (According to reports, the new law does not fully address deficiencies with respect to provisional measure in Serbia & Montenegro. CRRRA Article 182 does not provide for *ex parte* proceedings and is therefore not in compliance with TRIPS Article 50.2.)

Offenses and penalties: Copyright and related rights infringements amount to a criminal offense under the YCA. Under Article 183(1), the unauthorized exploitation of a copyrighted work or a work subject of related rights constitutes a criminal offense and can be punished with up to one year in prison. Under Article 183(2), copyright infringement for financial gain can be punished with up to three years in prison. Both penalties are below average compared to other countries and cannot be considered as deterrent within the meaning of Article 61 of the TRIPS Agreement, and should therefore be increased to at least five years.

The YCA also provides for financial penalties. Under Article 187(1) any enterprise or other legal entity may be fined up to 45,000 to 450,000 new Dinars if it exploits a copyrighted work or a work subject to related rights. Furthermore, it appears that this fine is imposed in cases of secondary infringement. According to Article 187(3) the responsible person in the enterprise or entity shall also be fined between 3,000 and 30,000 new Dinars for any of those acts. The fines are roughly equal to US\$774 to US\$7,740 for the enterprise and US\$52 to US\$516 for the responsible person. The fines inflicted on the infringer are, however, not deterrent because they are unacceptably low compared to the profit that can be gained by dealing with pirated goods. To ensure that copyright piracy does not remain a lucrative “business” in Serbia & Montenegro and to provide the deterrent remedies required under TRIPS and the WIPO Treaties, the fines need to be substantially increased. (IIPA understands that the new law is likewise deficient in this respect. According to CRRRA Article 190, the applicable fines are to be set by regulation of the member states. Until this happens, these provisions are essentially inapplicable.)

Inconsistencies Between Federal and Republic Laws

The legislature in Serbia & Montenegro should ensure that the specific laws at the republic level (Serbia and Montenegro, respectively) are entirely in line with the federal laws, such as the Copyright Act. This may not be easy to achieve. For example, there are some concerns that the former YCA and the new copyright law are not fully enforceable in the Republic of Montenegro. The judiciary and courts reportedly use existing conflicts and inconsistencies between federal and republic laws as an excuse not to act or dismiss clear-cut cases of piracy. As noted above, this problem has been ameliorated, to some extent, under the new copyright law, which does not include any criminal provisions. Thus, criminal copyright infringements are now subject only to the criminal code.

OPTICAL MEDIA REGULATION

The strategic location of Serbia & Montenegro in a region where neither copyright enforcement nor border enforcement are strong makes the country an appealing site for pirate

optical media production. The relatively high number of CD manufacturing facilities (four) and the fact that one out of four CD plants have been caught producing hundreds of thousands of pirate optical discs call for the immediate introduction of an effective optical disc plant law in Serbia & Montenegro. The joint capacity of the four CD plants in Serbia & Montenegro is conservatively estimated at over 25 million CDs per annum, which is substantially more than local legitimate demand.

The government of Serbia & Montenegro should craft and issue optical media regulations. The global copyright community has agreed that the key elements of an effective optical disc law include the following 11 points:

1. Licensing of facilities: Centralized licensing (for a fixed, renewable term, no longer than three years) of manufacturing of optical discs and “production parts” (including “stampers” and “masters”), including, among other things, the following requirements: production must take place only at the licensed premises; a license can only be granted to one who has obtained a “manufacturer’s code” (e.g., SID code) for optical discs and production parts; and the licensee must take measures to verify that customers have copyright/trademark authorization from the relevant rightholders.
2. Licensing of export/import of materials: Centralized licensing of export of optical discs, and import/export of production parts (including “stampers” and “masters”), raw materials, and manufacturing equipment (an automatic licensing regime consistent with WTO requirements).
3. Requirement to apply manufacturer’s code: Requirement to adapt manufacturing equipment or optical disc molds to correctly apply the appropriate manufacturer’s code, and to cause each optical disc and production part to be marked with manufacturer’s code; prohibitions on various fraudulent/illegal acts with respect to manufacturer’s codes (including making, possessing or adapting an optical disc mould for the purposes of forging a manufacturer’s code; altering, gouging or scouring a manufacturer’s code on or from a mould or any disc; selling a production part not marked with manufacturer’s code, etc.).
4. License record keeping requirements: Requirement to keep various records, for example, machinery and raw materials, orders received, quantity of raw materials, exemplars of each optical disc title manufactured, etc.
5. Registration requirement for commercial optical disc duplication: Requirement that commercial establishments that record copyrighted materials onto recordable optical discs for purposes of sale or other commercial dealings register with the government prior to engaging in such “commercial optical disc duplication,” including giving the names and addresses of the responsible persons, and the address of the premises at which the duplication takes place.
6. Plenary inspection authority: Possibility of inspection, without notice, at any time, to examine licensed or registered premises; prohibition on obstructing raid; possibility of forcible entry; possibility for rightholder organization to assist, etc.
7. Search and seizure authority: Plenary authority: to enter and search any place, vessel, aircraft or vehicle; seize, remove, detain or seal contraband or other evidence of a

violation of the law; forcibly enter when necessary; prohibit the removal of seal applied, etc.

8. Government record-keeping requirements: Maintenance of a register of applications filed and production licenses granted, available for public inspection; maintenance of a record of all inspection actions made publicly available, etc.
9. Criminal penalties for violations: Violation of any significant aspect of the regime is subject to criminal sanctions, including individual liability (fines and/or imprisonment).
10. Possibility of withholding, suspending, or revoking a license for prior copyright infringement, fraud in the application process, or violation of the Optical Disc Law.
11. Possibility of closure of an infringing plant.

The copyright industries look forward to working with the authorities of Serbia & Montenegro to draft, implement and enforce comprehensive optical disc regulations.

GENERALIZED SYSTEM OF PREFERENCES (GSP)

In September 2004, the U.S. Government began a review to consider Serbia & Montenegro for designation as a beneficiary developing country under the Generalized System of Preferences (GSP) trade program.⁶ While IIPA did not file any comments in this review, we note that a necessary precondition for recognition as required by U.S. law is the passage of an adequate and effective copyright law, which will also bring Serbia & Montenegro into compliance with its international obligations under the TRIPS Agreement, the WCT, and the WPPT.

⁶ See Notice and solicitation of public comment, 69 Fed. Reg. 54,825 (Sept. 10, 2004).