

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301

SPECIAL MENTION

CYPRUS

Copyright Piracy: The motion picture industry reports that in Cyprus in 2005 it continued to suffer from a high level of pre-theatrical release piracy, with many pirate optical discs (VCDs, DVDs, and DVD-Rs) widely available at kiosks, video clubs, and souvenir shops. Optical piracy is devastating the Cypriot market, with pirate discs being “burned” (copied) from parallel imported DVDs (also openly sold in video shops) or from pirate VCDs and DVDs imported from the Far East. As has been the case over the last two years, there are about 150 souvenir shops where tourists in particular, purchase pirate copies; 125 video clubs where pirate rentals and sales are taking place; and 250 kiosks working on a 24-hour basis which sell pirate products mostly to local residents. Many video clubs continue to obtain pirate copies of the latest titles, including titles that may not be legally rented or sold under the so-called “Windows” Law (which protects a limited number of titles in theatrical release against piracy by parallel video imports). The retail shops supply the various markets, with a destructive effect on legitimate optical disc/cassette sales, and are creating resulting in a decline in box office admissions. Pirate discs sold to tourists, who number around three million annually, are exported to their home countries (e.g., the UK, Scandinavian countries, Germany and Russia). The recording industry adds that CD-R piracy is the prevalent problem for the recording industry in Cyprus, and it has taken over from the imported pressed pirate discs. The tourist-targeted market is full of burned CD-Rs with illegal music content.

In addition to retail piracy, public performance piracy is a persistent problem, especially in bars, discotheques, and restaurants located in tourist areas. About 80 pubs and discos in the main tourist areas offer free showings of the latest titles as a bonus for customers. This affects not only the Cypriot market but also the home markets of the tourists who no longer need to view the films exhibited. The negative impact is exacerbated if the titles at issue are Zone 1 (programmed for playback and distribution in North America only) and have not yet opened theatrically in Cyprus. MPA also reports that 2005 saw a resurgence in broadcast television piracy on some parts of the island. One local TV station in Limassol is reportedly transmitting unauthorized films. Finally, due to its geographic location, Cyprus has the potential to become an important transshipment point for pirate product despite increased vigilance by Customs. Pirated entertainment software products are also widely available at kiosks, with the majority of the available pirated video games for play on consoles. Enforcement is improving somewhat but much more needs to be done.

Enforcement: MPA reports that its most significant enforcement problem in Cyprus over the last few years has been the low level of police activity to enforce audiovisual piracy under the Copyright Law or the Windows Law. The creation in June 2004 of an Intellectual Property Task Force at Police Headquarters has contributed to efforts to tackle piracy, but it is understaffed and its effectiveness leaves much room for improvement. CYFACT supported the creation of the Police Task Force, and continues to report targets to the Police and provides technical expertise to examine all products seized (this is required by the police). In addition, the

consistent understaffing of the Consumer Protection Unit of the Ministry of Commerce, Industry and Tourism continues to contribute to the absence of enforcement of the Trading Standards legislation. This could be a very effective tool in the war against piracy if used and staffed properly. The absence of specialized prosecutors also adds to the ineffectiveness of the judicial system, which continues to impose low penalties with little or no deterrent effect. Although the recent strengthening of criminal penalties should make copyright offenses a more serious matter, and should act as a significant deterrent, the results remain to be seen.

The local motion picture anti-piracy organization, CYFACT, reported 276 targets to the Police in 2005, and the Police conducted 56 raids resulting in the seizure of 109,249 pirate items (an exact breakdown is unknown as the Police refuse to give the information to CYFACT, arguing that they cannot give information to private bodies). In 2005, Customs seized 2,147 pirate DVDs. As far as court actions are concerned, although CYFACT believes that a number of cases have been filed in court under the new amended Copyright Law, the Police have not given them any information on these cases. CYFACT is aware of only four court decisions in 2005 (all under the old Law).

The business software industry reports that in 2005, the police conducted four software raids. The recording industry reports that it has a good working relationship with the local enforcement authorities.

Legislation: Cyprus remains a focus of attention especially with the advent of unification with the North, currently occupied by Turkey. There is a possibility of an amalgamized law, although no dates or official notification and reference have been made; this could spell major problems for IPR bodies. There is no recognition of copyright legislation in the Northern zones of Cyprus, and much will be needed to bring this part of the country in line with Europe, if unification occurs.

There were several legislative developments in 2005, as well as remaining concerns.

- WPPT: Cyprus acceded to the WIPO Performance and Phonograms Treaty (WPPT), effective December 2, 2005 (Cyprus joined the WIPO Copyright Treaty in 2003).
- EU Copyright Directive: In April 2004, amendments to the 1993 Copyright Law were integrated into the implementation of the EU Copyright Directive (Cyprus joined the EU on May 1, 2004). Prison terms were increased from up to 2 years to up to 3 years for a first offense, and from up to 3 years to up to 4 years for a second offense. Fines were increased from C£1,500 to C£30,000 (approximately US\$3,130-\$62,655) for a first offense and from C£2,000 to C£35,000 (approximately US\$4,170-\$72,990) for a second offense. In addition to the Copyright Law amendments, the Evidence Law was also amended to allow for hearsay evidence. However, as it is difficult to prove ownership of copyrights, the Copyright Law should be further amended to reverse the burden of proof, to improve and clarify aspects of the legal protection for technological measures, reproduction rights, and to provide for notice and takedown procedures. The act of circumvention of technological protection measures needs to be clearly prohibited.

In addition, the recording industry remains concerned that the Cypriot Copyright Law is applied by the judiciary in a way which raises difficult barriers to the enforcement of phonogram producers' rights. Cumbersome burden-of-proof rules as to copyright ownership makes the initiation of legal proceedings against infringers very difficult. The Cyprus Copyright Law is being interpreted in a way that requires rights owners to prove their

ownership of each song fixed on a particular CD and does not provide for appropriate presumptions of ownership in favor of phonogram producers, nor does it allow sample testing of infringing goods. Thus, defendants are able to alternatively avoid suit altogether, limit their liability, or, at the very least, delay the legal proceedings against them. The recording industry urges the government of Cyprus to amend its laws to ease the burden of proving ownership, and to allow testing of samples of infringing goods. Cyprus should effectively implement the EU Enforcement Directive by April 29, 2006.

Trainings: During 2005, CYFACT gave or participated in six training seminars for police officers at the Police Academy on the Copyright Law, Windows Legislation and pirate product identification (in January, March, May, June, and December). On November 10, 2005, the Cyprus American Business Association (CyABA) and the U.S. Embassy in Nicosia organized a workshop and roundtable discussion on the enforcement of IP rights in Cyprus which brought together customs officers for EU member nations and several North African countries. The workshop provided a forum for the discussion of IPR issues between the various official agencies dealing with IPR (such as the Police, the Department of Customs, the Consumer Protection Division, the Office of the Attorney General and the Office of the Official Receiver and Registrar) and private sector representatives, both local and international. Representatives of the film, software, music and merchandise industries voiced their concerns on IP enforcement in a constructive and informal way. The discussion focused on practical matters such as ways of making enforcement more effective, and resulted in viable suggestions to enhance these efforts. The event emphasized the importance of better communication between the government and private sector in combating piracy. The workshop featured speakers from CYFACT, WIPO, the BSA, and the IFPI. CyABA operates under the auspices of the Cyprus Chamber of Commerce and Industry (CCI) and continues to emphasize local business support and benefits for stronger IPR protection. BSA, IFPI and MPA provided training to the IPR Office personnel. BSA also coordinated its System Builder raids with the IPR office. BSA is working with the IPR Office to give improve its visibility as well.

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