

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2006 SPECIAL 301 REPORT

### GREECE

#### **EXECUTIVE SUMMARY**

**Special 301 Recommendation:** IIPA recommends that Greece be placed on the Watch List in 2006.

#### **Actions Which the Greek Government Should Take in 2006:**

- Improve inspections and anti-piracy activities by police, and greater involvement by the tax police (YPEE) in anti-piracy actions affecting all copyright sectors. Have YPEE impose administrative fines for both sellers and buyers of pirate music and other pirated copyright products.
- Give law enforcement authorities the ability to pursue investigations on university campuses where Internet and hard goods piracy is rampant. Police apparently do not have jurisdiction to pursue IPR cases on university campuses.
- Take action against copyshops making illegal photocopies of books around university campuses, especially at the University of Pireas and Deree College, and coordinate campus policies to prohibit use of illegal materials on campus.
- Have YPEE continue its software audits when it does tax inspections. In addition, YPEE should make music and sound recordings audits when inspecting commercial enterprises like bars, restaurants, etc.
- Direct prosecutors to bring cases more swiftly and argue for deterrent penalties.
- Instruct courts to issue deterrent sentences, including imprisonment and fine as provided by the law, and not suspend sentences or fines in practice (suspensions of fines are not permitted under the law).
- Improve IPR training and education for police, prosecutors and judges.
- Adopt the amendments to the copyright law to permit administrative fines, taking note of one industry's request to be excluded from the scope of this provision. The goal should always be effective anti-piracy measures which work in-practice.
- Work toward full implementation of the EU Enforcement Directive.
- Encourage government ministries and agencies to proceed to legalize business software usage in public agencies.

GREECE Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2004-2005 <sup>1</sup>				
INDUSTRY	2005		2004	
	Loss	Level	Loss	Level
Records & Music	26.0	60%	20.0	60%
Business Software <sup>2</sup>	58.3	60%	60.0	62%
Motion Pictures <sup>3</sup>	NA	NA	10.0	15%
Entertainment Software <sup>4</sup>	NA	NA	NA	70%
Books	NA	NA	NA	NA
<b>TOTALS</b>	<b>84.3+</b>		<b>90.0</b>	

## COPYRIGHT PIRACY IN GREECE

**Record and music piracy:** Piracy of sound recordings and music in Greece is rampant, with piracy levels well over 50% for both international and local repertoire. The piracy rate for U.S. repertoire is estimated to be close to 60% of the market. During the 2004 Olympics, the police took tough measures to fight music piracy. In 2005, the number of the people involved in music piracy increased significantly, yet the average quantity seized by the law enforcement authorities dropped slightly. Similar to the situation in Spain, criminal syndicates of illegal immigrants (90% of which are estimated to be Nigerians). These criminal networks are expanding day by day because the Greek government does not strongly apply its immigration laws and has a court system that does not effectively deal with copyright offenses. Over 98% of total pirated music discs are burned CD-Rs. Instances of industrial pressed pirate CDs are rare, and those usually contain international repertoire.

**Business software piracy:** The widespread use of unlicensed software and distribution of low quality pirated CDs across the country indicate that much more work is needed to protect copyright under Greek law. The Business Software Alliance (BSA) estimates that the 2005 business software piracy rate in Greece was 60%, still well above the EU average of 35% and the highest of all countries in the enlarged EU region, including the countries in Eastern Europe. Lowering the business software piracy levels in Greece will contribute to the local economy.<sup>5</sup> Due to a lack of

<sup>1</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2006 Special 301 submission at [www.iipa.com/pdf/2006spec301methodology.pdf](http://www.iipa.com/pdf/2006spec301methodology.pdf).

<sup>2</sup> BSA's 2005 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Bolivia, and follow the methodology compiled in the Second Annual BSA/IDC Global Software Piracy Study (May 2005), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA's 2004 piracy statistics were preliminary at the time of IIPA's February 11, 2005 Special 301 filing; the 2004 data has been revised and is reflected above.

<sup>3</sup> MPAA's trade losses and piracy levels for 2005 are available for a limited number of countries and are based on a methodology that analyzes physical or "hard" goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As loss numbers and piracy levels become available for additional countries at a later time, they will be posted on the IIPA website, <http://www.iipa.com>.

<sup>4</sup> ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses." The methodology used by the ESA is further described in Appendix B of this report.

<sup>5</sup> BSA and International Data Corporation (IDC) released a new study on December 8, 2005, which illustrates global economic gains from reducing software piracy. This report, [Expanding the Frontiers of Our Digital Future: Reducing](#)

consistent enforcement activities, the level of piracy experienced by the business software industry remains at an unacceptably high level in both the private and public sectors, and even within the Public Administration. Meaningful progress can be expected only if the National Police and the Tax Police (YPEE, formerly SDOE) energize their enforcement activity. Such activity began slowly in 2006. YPEE issued a circular, requiring that auditors must include in their regular audits, special audits for unlicensed software. Furthermore, YPEE auditors were trained by BSA, in a step-by-step seminar, on how to execute these audits. BSA also activated a hotline telephone number, with a technical expert standing by to answer questions posed by tax policemen while performing software audits.

**Entertainment software piracy:** Piracy levels for entertainment software products (including video games on optical disc and cartridge-based video games) remain at high levels. Pirated cartridge-based games continue to be imported into the country from Asia, and CD-R burning has also increased. While the level of cooperation from the Greek customs authorities has generally been good, it is essential that border enforcement be further strengthened to adequately address continued importation of pirated entertainment software. Piracy on university campuses is prevalent, for both Internet and hard goods piracy, as the police apparently do not have jurisdiction to pursue cases on university campuses. This situation needs to be remedied so as to facilitate enforcement actions against those engaged in copyright infringements at universities. Furthermore, obtaining an expeditious resolution to a criminal case has long been a frustrating problem for the industry. For the entertainment software industry, where video game titles have a very short shelf life, a criminal case that takes over five years to be resolved is of little value in providing any relief or remedy to a publisher damaged by the prevalence of pirated products in the market.

**Audiovisual piracy:** The Motion Picture Association (MPA) reports that in 2005, the main piracy problem for the film industry in Greece concerns pre- or post-release titles, locally burned mainly on DVD-Rs in a vast number of small illegal duplication labs and either advertised in magazines and newspapers, via e-mail, through Internet websites or just sold through legitimate retail outlets (video retailers) or by street vendors. The Greek pirate market continues to shift from VHS cassettes to DVD-Rs. Although “burning” is the predominant problem, one case of industrial production has, however, been investigated and charges have been filed. Audiovisual piracy levels are getting worse in the northern part of the country, but decreasing in other areas. MPA has not been able to pinpoint the reasons for this difference, but it seems, at first glance, that those areas with the heaviest concentration of pirate activity are the areas heavily populated by immigrants, both legal and illegal. Downloads of films from the Internet are not significant for the time being because broadband penetration is still very low. The only legislative deficiency involving Internet piracy cases pertains to Internet Service Providers (ISPs) requiring a Court or Prosecutor’s order to disclose the names of their subscribers. However, this presents no real obstacle as the local anti-piracy organization, EPOE, can always ask the Cybercrime Division of the Greek Police to obtain the orders. There are “organized” communities such as gypsy families and families of immigrants involved in piracy, but this cannot be considered “organized crime,” in the usual sense of the term. MPA suspects that there are some imported DVDs from Russia, with either Russian subtitles or just in the Russian language. This may be connected with off shoots in Greece of Russian organized crime, but it has been impossible to collect credible information. In sum, Greece is a very fragmented market for the duplication [replication applies only to pressed discs],

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Software Piracy to Accelerate Global IT Benefits, using 2004 data, found the following: a 10-point drop in Greece’s piracy rate (from 62% to 52%) would add \$411 million to its economy, create 1,300 more jobs, and increase local industry revenues by more than \$261 million. That, in turn, would generate an additional \$130 million in tax revenue to help the Greek government pay for critical benefits and services. See <http://www.bsa.org/idcstudy/pdfs/Greece.pdf>.

distribution and sale of pirate DVD-Rs, usually by foreigners who seek political asylum and who rent small apartments or storage areas everywhere, equip them with a computer and go to work.

**Book piracy:** Illegal commercial-scale photocopying of academic textbooks has reached unprecedented levels in Greece, causing extensive damage to higher education textbook publishers. Photocopy shops near university and college campuses are routinely processing orders for entire classes of students. As a result, sales for many of the major publishers in Greece are down 20-40%. All universities and colleges suffer from these practices, but two recent cases have been reported at the University of Pireas and Deree College. Photocopy shops are making cover to cover, bound copies for distribution to students, with little or no deterrent. In fact, bulk discounts for students are common. The authorities should take notice of this issue, tackling the copyshops through effective enforcement and encouraging universities to implement policies that encourage use of legitimate materials on campus.

**Optical disc plants:** Industry reports indicate that there are 12 operating optical disc plants in Greece, with upwards of 40 production lines. This indicates a relatively high production capacity for OD product for this marketplace.

## **COPYRIGHT ENFORCEMENT IN GREECE**

Despite excellent cooperation between industry sources and police officials, numerous raids have been conducted, yet few are prosecuted effectively and swiftly. In those few cases which reach the merits, Greek judges issue non-deterrent penalties.

**Police cooperation and raids:** MPA reports that the relationship between the Greek anti-piracy organization (EPOE) and local law enforcement authorities has been excellent and is constantly improving – especially in northern Greece (a major area of pirate activity) where EPOE, with the assistance of the U.S. Consul General, has held a series of training seminars and has laid the foundation for a Task Force composed of Police officers, Customs Agents, and Tax Police personnel. As of October 2005, EPOE had conducted 775 investigations, 79 raids and brought 65 criminal actions against infringers. The Economic Crimes Divisions of the Greek Police and YPEE (the Tax Fraud Units) have increased their *ex officio* actions substantially. (Sometimes, out of sheer “overshooting,” the police have arrested video retailers and seized hundreds of what they thought were pirate DVDs, only to find out that these people were completely legitimate.) In cases of *ex officio* actions, EPOE is usually called upon to identify the confiscated DVDs or DVD-Rs, resulting in a widespread assignment of investigator teams traveling throughout Greece, by boat, airplane, car, bus, train or any other means of transport available, since the arrested person has to be taken to a prosecutor’s office for arraignment within 24 hours of the commission of the alleged offense.

The recording industry reports that in 2005, the Greek Police arrested 2,045 suspects of copyright infringement in a total of 1,953 raids. IFPI Greece’s anti-piracy team participated (either during the raid or called upon afterwards for identification of confiscated pirate music products) in 1,418 raids that took place mainly in the center and surrounding areas of Athens. In other cities and towns outside Athens, raids were carried out *ex officio* by the police. In all the cases where IFPI Greece’s team participated, law suits were filed and the majority of the cases, which had to do with street vendors, were heard at the “All-Day Court” the following day. The cases regarding duplication and wholesale distribution of pirate music products were dealt with by prosecutors and will now appear in a felony court in about 2 to 3 years.

**Few prosecutions and low penalties:** Although this is slowly changing in major Greek cities (such as Athens, Thessaloniki and Patras), Greek prosecutors, especially at the local level, are often reluctant to pursue intellectual property cases and have largely ignored Supreme Court circulars directing them to give intellectual property cases a high priority. These deficiencies in copyright enforcement have led the film industry organization (EPOE) to take advantage of the criminal “flagrant crimes procedure” which helps to reduce the court load when a case is postponed indefinitely. Unfortunately, this system can be invoked only where the defendant is taken into custody within 24 hours of the issuance of the complaint; otherwise the case is assigned to await its typical criminal court hearing, usually more than a year later.

The immediate problem is not with raids and police; rather, the key criminal enforcement problem in Greece rests primarily with the Greek courts:

- At the Misdemeanour (All-Day) Courts for low-scale offenders, judges hand out very light sentences, which are often suspended. This is in particular the case for the courts outside Athens. Sentences given by the courts of Athens and Piraeus are somewhat more severe, due to the presence of IFPI representatives as complainants and witnesses. However, when appeals are filed, no bail is set to guarantee the appearance of the defendant in the higher court and the sentences handed out in first instance are suspended. In most cases the infringers therefore do not appear at the hearing organized by the higher courts, especially as 90% of the music pirates are immigrants. In addition, the appeal courts do not impose any fines.
- At Felony Courts for large-scale offenders, the infringers are released until trial by the prosecutors without any bail and in many cases without any limitative clauses. As a result, when the case appears in front of the Felony Court after two to three years’ time, the defendant usually does not turn up. Since no measures are being taken to assure the offender’s presence at the trial and remand is out of question, it is not rare to have the same person arrested and charged with felonies more than once and then released. Especially in cases where the felon is an immigrant and cannot be easily located and arrested, this tactic is equivalent to acquittal. As a result of this court policy, the recording industry reports that several offenders have been arrested and charged 2-3 or even 5-10 times, and have returned to their music piracy business.

Penalties continue to be too low for deterrence, and the time span between offense and punishment remains entirely too long, occasionally threatening to activate the statute of limitations. On occasion, judges and prosecutors have erroneously adhered to the provisions of the Criminal Code on sentencing rather than the provisions of the 1993 Copyright Law (but less of that is reported now), a practice which regularly resulted in the imposition of non-deterrent sentences and a general feeling in the minds of pirates that they could get away with minimal sanctions. MPA reports that while there are still no deterrent sentences, at least there are more convictions and fewer acquittals.

**Civil actions:** BSA initiated six civil raids in 2005; five of these cases have reached settlements (over US\$150,000) including agreements for these entities to make the necessary legal purchases of software. YPEE (Tax Police) is not taking many raids currently, but their attitude to copyright protection is gradually improving. Once the administrative penalty law is enforced (see legal reform, below), YPEE is likely to do many more raids. YPEE has now made it compulsory for tax police officers to audit software licenses when conducting tax audits.

**Tax police and software inspections:** BSA reports significant progress in working with the Greek tax police, YPEE, in two ways. First, in October 2005, YPEE issued a Circular requiring tax inspectors to conduct software audits while doing tax inspections. BSA has been pressing for this reform for years, and believes that this should help provide a significant deterrent to companies thinking of using unlicensed software. BSA assisted with publicity to inform the local market about this tax circular. Second, the Standing Committee of Parliament has approved a bill that will enable YPEE inspectors to impose administrative, financial penalties on companies found to be using unlicensed software; the full Parliament still has to vote on this amendment (see below).

The recording industry reports that it has not experienced the high level of anti-piracy engagement by the tax police. The recording industry requests that the tax police be directed to get more involved in music anti-piracy actions. (At the present time, the YPEE cannot deal with music pirates, since pirates are mainly immigrants who do not have VAT or Social Security numbers, so YPEE does not have sufficient tax data on the person(s) to whom they are supposed to apply the fines.)

**Trainings:** The copyright industries continue to offer numerous IPR-related training sessions to Greek enforcement officials. BSA has been providing training and technical assistance to YPEE. BSA's local counsel offer training seminars to the tax police, YPEE. They also regularly meet with senior government officials and Ministers to reiterate the importance of legislative reform and copyright protection. Attendees at the most recent training included 75 YPEE civil servants, the Secretary General of the Ministry of Finance and the Special Secretary of YPEE. In addition, MPAA reports that EPOE has been holding a series of training and information seminars in northern Greece, where the law enforcement authorities seem to be more amenable to training. Also, EPOE, with the assistance of the Greek Copyright Office (OPI), is taking steps to introduce IP courses in Police Academies, while training seminars are being held whenever, wherever and as often as possible. EPOE has established a Traveling Training Team to train law enforcement personnel at their own headquarters throughout the country, but this has met with personnel shortage problems and a rather indifferent attitude by a large number of law enforcement personnel, especially in peripheral areas. Some entertainment software publishers are in the process of scheduling training for the Customs authorities in 2006.

## **COPYRIGHT LAW REFORM AND RELATED ISSUES**

**Copyright law and reform:** The copyright industries are pleased with Greece's implementation of the Copyright Directive in Greece. Greece was the first of the EC member states to complete implementation of this Directive.

The 1993 Copyright Law (Law No. 2121/93, as amended) is in the process of being amended. One amendment would give copyright infringers the option of paying an administrative fine in lieu of criminal prosecution. This proposed amendment does not have the support of all the local industries:

- The experience of the recording industry, so far, regarding the implementation of the criminal sanctions of the Copyright Law by the Greek Courts is disappointing. The administrative fine aims to guarantee that the copyright infringer will "suffer" a substantial loss of profits. Although these amendments to the copyright law have been proposed, the recording industry believes that, if they are adopted, they should be applied in practice. If adopted, it will operate as follows: street vendors caught in possession of up to 200 music CDs and up to 50 DVD-Rs will

be given the opportunity to pay an administrative fine of 25 euros for each music CD and 50 euros for each DVD-R. This amendment is still in the legislative stage, but is expected to be voted on by the Parliament soon. Unfortunately, no copies of the text are available at this stage as the Draft is undergoing additional changes and the document cannot be released. With respect to other legislative reforms, the proposed administrative fine amendment has been included in the same Draft Bill as measures to implement the Enforcement Directive and the Droit de Suite.

- The MPA did not oppose amendment of the existing law to allow small pirate distributors to escape criminal conviction on payment of an appropriately high monetary penalty (i.e., one that might be considered deterrent if applied in practice), so long as the act of pirate distribution remained a criminal offense and the option of paying such a penalty was not available to an offender who had already availed himself of that privilege on a previous occasion. The MPA's position on the proposed amendment was very firmly against de-criminalization, but that MPA would not be opposed to the imposition of deterrent monetary penalties on small first-time offenders only.<sup>6</sup> However, according to the OPI, both the first-time offender principle has apparently been removed (in an attempt to make the law operate more practically) and the issue of making the accused's antecedents (including any administrative fines) available to a later court was complicated by general administrative and legal difficulties relating to the availability in Greece of offender information. Accordingly, MPA is now lobbying to remove audio-visual product completely from this amendment, and has sent a letter in December 2005 to the Deputy Minister of Culture arguing for that change.

**Administrative remedies:** The Standing Committee of Parliament has approved the law amendment that will enable YPEE inspectors to impose administrative financial penalties on companies found to be using unlicensed software. This amendment has the strong support of the BSA. Parliament now needs to vote on the amendment in order for it to go into force. It is hoped that this will happen in early 2006, without much delay.

**Government software legalization:** The Greek government should lead by example, stressing the importance of protecting intellectual property rights and legal software use within the Public Administration. By taking these positive steps and implementing policies that support legal software use, the government could raise significant awareness of the problem and help bring down the unacceptably high business software piracy rate.

**Implementation of the EU Enforcement Directive:** The Hellenic Intellectual Property Organization has prepared the draft legislation to implement the EU Enforcement Directive. However, reports suggest that the responsible Ministers have not signed the draft text. Once they do so, the draft will be forwarded to the Parliament.

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<sup>6</sup> The local film industry was concerned that if the administrative fine was applied to video retailers, it would exacerbate the level of piracy in Greece and encourage pirate retailers to continue their copyright infringements. The MPA has therefore lobbied for (1) the exclusion of retail shops from the law; (2) the option of paying the fine to be available once only; (3) the fact of payment of the fine to be admissible before any court which subsequently deals with a later offense. Although video retailers have now been removed from the administrative fine provision, MPA is still concerned that the restriction to first time offenders cannot be guaranteed and are therefore now lobbying for the complete removal of audiovisual products from the proposed law. MPA reports that it worked to convince the OPI (Greek Copyright Office) to change the proposal to exclude retail shops, but were unable to limit the procedure to first-time offenders or to secure the third adjustment.

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