

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301 REPORT

LATVIA

EXECUTIVE SUMMARY

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

Actions Which the Latvian Government Should Take in 2006:

Enforcement

- The Government of Latvia must put its anti-piracy commitment into concrete action, combating both traditional and digital piracy, and making IPR enforcement a priority among the various enforcement agencies. Success will be gauged by visible reductions in the high piracy levels.
- Commence criminal prosecutions and implement administrative actions against organized crime syndicates.
- Customs officers must strengthen their activities to intercept even more pirate product acting on their own initiative (i.e., *ex officio*) as permitted under the law.
- Impose administrative remedies like removing business licenses and issuing fines, but not as a substitute for criminal actions, as appropriate.
- Implement the new Criminal Procedure Code (effective October 2005) which relaxed and improved the evidentiary legal presumptions and eliminated the need for onerous expert reports in criminal cases involving sound recording, computer software, and audiovisual piracy.
- Implement the new Criminal Procedure Code to improve the speed of judicial proceedings (and investigations under the new shorted deadlines) in copyright cases, and have judges impose deterrent penalties.
- Further improve cooperation between customs and the police, and between the police, prosecutors and the judiciary at the working level of the new Inter-Ministerial committee. Intensive educational training for enforcement bodies including judges and prosecutors has started and needs to continue.
- Continue to take joint anti-piracy actions with Estonian and Lithuanian customs agencies (and continue the cooperation with Russian border officials as well).
- Establish a system at the border 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 (which, IIPA understands is part of a legislative package to be introduced in Parliament in April 2006).
- 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: 2001-2005¹

INDUSTRY	2005		2004		2003		2002		2001	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music	12.0	85%	12.0	85%	10.0	80%	8.0	67%	NA	NA
Business Software²	12.5	58%	10.0	58%	10.0	57%	7.4	58%	NA	59%
Motion Pictures³	NA	NA	NA	NA	NA	85%	NA	85%	1.5	NA
Entertainment Software⁴	1.3	82%	NA	80%	NA	95%	NA	NA	NA	NA
Books	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
TOTALS	25.8+		22.0		20.0		15.4		1.5	

COPYRIGHT PIRACY IN LATVIA

Weak border enforcement and transshipment: Latvia remains a transit country for pirate discs produced in Russia; this material continues to be found in the open air markets in Riga and elsewhere. The Russian-originated CDs are transported through Latvia to Lithuania, Poland, and to the other EU countries as well. The organized crime element is evident in pirate activities. For example, Lithuanian police are investigating a case involving Latvian and Belarusian citizens. There is evidence that the Latvians under investigation are part of a well-formed criminal smuggling operation.

The Latvian Government now estimates that as much as 25% of all customs seizures are part of *ex officio* investigations and searches. This is certainly an improvement. However, border controls need to further improve to prevent the unimpeded flow of pirated goods into and through Latvia. The copyright industries urge the Latvian Customs authorities to take even more *ex officio* investigations/searches. 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 (mostly Russian repertoire) arrives from Lithuania. One method of entry is via bus—Latvia “trade-tourists” frequent the largest Lithuanian

¹ 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.

² BSA's 2005 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Latvia, 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.

³ 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>.

⁴ 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.

flea market (Gariunai) and return to Latvia with this material. Most of the illegal prerecorded optical media material containing sound recordings comes from Russia. IIPA understands that this type of border enforcement has been further complicated by EU regulations permitting "personal baggage" exceptions.

CD-R piracy and Internet piracy: The recording industry reports that in 2005, piracy levels remained the same, primarily due to illegal file-sharing and other forms of Internet piracy. Although the level of physical piracy is down, the scale of Internet piracy keeps the overall piracy levels high, at 85%.

The most popular illegal file-sharing programs are DC++ and SoulSeak used widely by young people at home, and in schools and universities. The local recording industry anti-piracy group, LaMPA, has cooperated with the Economic Police to try to combat Internet piracy, but unfortunately, the police have had little success. Traditional physical piracy still prevails; both formats – pre-manufactured and imported illegal CDs and burned CD-Rs – are widely used for the distribution of illegal content with CD-R burning being particularly prevalent. Illegal copying on CD-Rs and the failure to effectively enforcement 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. At the same time, legitimate sales continue to decrease (though not sharply). The local record companies continue to lay off employees; for example, one company terminated its business, and two record companies merged, which resulted in lost jobs.

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 2005, the recording industry identified and sent 12 "cease and desist" notices to 22 infringing sites estimated to contain around 1,000 illegal files. The sites were removed from the Internet. However, several websites have been operating with impunity for over four years without any prosecutorial action to shut them down. It is critically important that the Latvian enforcement authorities begin such efforts especially since the 2004 amendments implementing the WIPO digital treaties were completed.

There has been a noticeable increase in the numbers of illegal CD-Rs, the likely source being local CD-R burning operations. The business software industry indicates, however, that almost all of the illegal software on CD-ROMs found in Latvia was made elsewhere. The entertainment software industry further 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 as well.

High levels of copyright piracy: Piracy of sound recordings and music continues to be widespread in Latvia. The local recording industry group reports that due to ineffective enforcement the estimated level of music remained the same, at 85% of the market in 2005. The biggest distribution points are bazaars in Riga, which have up to 60 sales points for pirated audio and video products. The largest pirate market, "Latgalite" — is still in operation. The ongoing piratical activities at that market are common knowledge, and despite various raids jointly organized with the police and the local industry group (including videos and news reports that have aired), the illegal activities quickly resume a couple of days after each raid. The sellers of pirate content openly standing in front of the market gates and provide customers with music, videos, games and programs. The prices of pirated music CDs rose slightly last year, to approximately US\$5 for international repertoire and US\$6 for local repertoire (most pirated local

repertoire is CD-R). One particularly disturbing form of piracy is the much more difficult to detect “hand-to-hand” piracy, i.e., sales of pirated sound recordings offered in a catalogue but sold in person. In general, the recording industry reports that the police have not taken adequate steps to combat the open markets; there are few seizures or raids, much less prosecutions to report. Estimated piracy losses to the recording and music industry remained at \$12 million in 2005.

The Business Software Alliance (BSA) reports that in 2005, the problems of end-user and re-seller piracy continue to affect the software industry in Latvia, although the increasing problem of Internet piracy (particularly file transfer protocol/FTP server) piracy is growing in “popularity.” There is still a retail piracy problem whereby many of the hard goods come from Latvia’s neighbors. Poor border enforcement and the lack of effective cooperation between neighboring countries (especially Estonia and Lithuania) are problems that need the most attention. The principal problem is not one associated with legal deficiencies as such, but rather on the ground enforcement activities. In April 2005, the BSA and the Latvia State Revenue Service signed a protocol on cooperation, which includes training sessions and BSA experts’ participation in inspections and cooperation to ensure software legalization within companies. Lowering the business software piracy levels in Latvia could contribute significantly to the local economy.⁵ BSA did contribute to a number of training sessions conducted under the auspices of the State Revenue Service in 2005.

The Motion Picture Association (MPA) reports that the video piracy rate in Latvia remains very high. Corruption and organized criminal activity are major problems. Although piracy reportedly 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 exists as well. Pirate sites marketing hard goods are 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 (where they are manufactured) and are distributed by the same organized criminal syndicates operating in the region, with the pirated products often bearing the “marks” of the syndicate that manufactured the pirated game. Internet café piracy continues to be a problem as well, with only a few of the cafés using licensed products. Pirated products remain readily available at retail establishments and particularly at flea market venues. The Entertainment Software Association (ESA) estimates that the value of pirated videogame product in the Latvian marketplace was \$1.3 million in 2005, with an 82% piracy rate. Action must likewise be taken against organized criminal syndicates involved in piracy, using special anti-organized crime statutes if available. Law enforcement efforts against entertainment software piracy continue to be weak due to a lack of resources and a lack of training.

⁵ 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 Software Piracy to Accelerate Global IT Benefits, using 2004 data, found the following: a 10-point drop in the Latvian piracy rate (from 58% to 48%) could add \$87 million to the Latvian economy, increase local industry revenues by \$54 million, generate an additional \$11 million in tax revenues, and directly create 500 high-wage technology jobs. See <http://www.bsa.org/idcstudy/pdfs/Latvia.pdf>.

COPYRIGHT ENFORCEMENT IN LATVIA

Overview: Reports indicate some progress in 2005 in terms of state enforcement bodies becoming more engaged in intellectual property rights protection. Many of the necessary legal reforms are in place, but on-the-ground enforcement needs improvement.

- In January 2005, the Ministry of Interior established a dedicated IPR enforcement division within the Economic Police, specifically tasked with detecting and preventing violations of intellectual property rights. There are 22 staffers in this unit, and under its supervision, there are units in each region of Latvia. The industries report that, although this unit has been engaged in valuable enforcement work in the greater Riga area during 2005, nationwide enforcement problems remain and the work of this unit needs to be replicated throughout Latvia. Such actions appear to be taken with the assistance of individual companies (several of the IIPA members – such as MPA and ESA -- do not have anti-piracy operations in Latvia). Reports indicate that this unit is focusing mostly on software cases, as there is local industry support in Latvia. The recording industry and the business software industry have anti-piracy operations in place in Latvia.
- Specialized officials dealing with IPR are also assigned in each of the five regional offices of the State Revenue Service. Industry is only aware of one IPR specialist in Customs, although the Government of Latvia reported in January 2006 that there are now 11 dedicated IPR Customs officials, including 4 “floating” specialists dedicated to “hot spots” such as the Eastern border, ports and airports. The Government of Latvia also reported that a total of 230 new customs officers were trained in 2005, and that IPR enforcement is now a standard part of their training. The Government further reported that 3 prosecutors in the General Prosecutors Office are IPR specialists, and there is consideration of creating a specialized unit, which IIPA encourages. All of these reports are positive developments that IIPA hopes will improve on-the-ground enforcement at the border and in the courts.
- In November 2004, a consultative council on IPR enforcement (the “Council”) was established in the Ministry of Interior and became operational in early 2005. It is led by the Prime Minister. The Council includes IPR rightholder groups (copyright and industrial property), as well as government officials from Latvian agencies, including the Ministry of Interior, Ministry of Justice, Ministry of Culture, State Revenue Service, Customs and Economic Police, along with the Ministry of Foreign Affairs. Officially the Inter-Ministerial Council is required to meet twice a year, but IIPA understands that the real enforcement work will be and is being undertaken at a lower operational level. IIPA encourages this group to work regularly, effectively, and in cooperation with right holders.

Weak border enforcement: As already noted IIPA strongly encourages improvements in Latvian border enforcement. If, as the Government of Latvia reports, Customs officials are using their *ex officio* authority in 25% of cases, then even more action is needed to prevent shipments into (and through) the country. There also needs to be better communications between police and customs officials. 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.⁶ In 2002, the Latvian government allocated 20 new customs regional officials and two additional persons to the Customs Head Office solely for IPR protection. Also, IIPA understands that there is a special criminal customs unit that investigates organized crime syndicates – this unit must be fully funded and take more effective steps to stop these syndicate operations, in particular focusing on CD-R and other optical disc piracy production and distribution operations.

Customs officials are now conducting cooperative programs with their Estonian and Lithuanian peers; much more cooperation, and especially actions targeted against crime syndicates is needed (and especially focused on the eastern border with Russia). There should be no excuse for customs officials to permit spindles of optical media found in personal baggage to pass through inspections; discs on spindles are smuggled goods/contraband, and should not be considered a non-commercial importation subject to the EU regulations permitting a personal luggage exception.

Police raids and tax authority investigations: Latvian government sources report that from January to July 2005, there were 36 criminal cases initiated and 98 administrative actions. More than 20% of all seizures of counterfeit and pirated goods were made by Customs, and those were goods designated in transit. IIPA notes, however, that these statistics do not detail the types of cases initiated; they could be trademark counterfeiting cases as well as copyright cases. The Economic Police report that they are running three to five raids a week.

The Business Software Alliance (BSA) reports some cooperation, albeit on a limited number of cases, from the Economic and Finance Police; mostly, these actions have focused on end-user raids. BSA also reports that the Latvian State Revenue Service (SRS) has adopted new policies with regard to its investigation of potential economic and tax violations associated with the use of illegal software. The SRS, when it conducts its financial inspections (usually unannounced), will also check to ensure that no software violations (which in turn lead to tax and economic reporting violations) are in evidence. The Latvian Government says that from April 2005 to the end of 2005, 64 inspections of business software were made and the State Revenue Service did find illegal software in some commercial businesses and retail outlets. The SRS is an agency with a broad range of economic and financial crime enforcement responsibilities.

Prosecutions and the Courts: On a positive note, BSA reports that in 2005, prosecutors of software piracy cases did make these cases a priority; however, the penalties for infractions were generally low. The weakest enforcement point now tends to be the courts and the judiciary, where there is little interest in IPR crimes and their significance, which in turn leads to a generally dismissive attitude with regard to protecting copyrights. The local recording industry reports only one positive development in a court case against music piracy in 2005, in a case in the Valmieras district.

The problems of prosecutorial delays—anywhere from 18 months to two years just to begin a trial—persist. 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 rights holders. It is hoped that the new Criminal Procedure Code (October 2005) with fixed investigative and prosecutorial

⁶ 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.

timetables ranging from 6 months to 18 months (depending on the severity of the crime) will alleviate this problem.

No civil *ex parte* search provision: No improvement in 2005 was achieved in correcting a glaring deficiency of the 2000 copyright law – the omission of a TRIPS-required civil *ex parte* search remedy. 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. It is understood that this provision will be corrected in the package of legislative reforms which the Government of Latvia will present to the Parliament in April 2006 (as part of its implementation of the EU directives). BSA remains concerned with the slow progress on this critical legislative reform.

Inadequate administrative penalties: Copyright infringement cases in Latvia often are pursued as administrative offenses, which can take a short amount of time (anywhere from two to four months). Businesses, especially illegal kiosks and stores that sell pirated material must be properly fined and/or their business licenses revoked. However, deterrent penalties are not being applied in practice. Instead, convicted pirates are fined only 50-100 Lats (US\$92 to US\$183) and, in the case of repeat infringers, a maximum of 250 Lats (US\$458), which is too little to act as a deterrent.

Judicial obstacles and delays: There was no significant improvement in the resolution of copyright cases in the Latvian judiciary during 2005. As noted, a major obstacle has been the slow and burdensome proceedings in IPR cases due to a lack of experience and knowledge (with some IPR procedural rules still apparently based on the former Soviet Union procedural codes). The new Criminal Procedure Code is meant to fix these procedural provisions---IIPA is optimistic that it will and will carefully monitor this situation in 2006.

COPYRIGHT AND RELATED REFORM IN LATVIA

The Copyright Law of 2000 and the 2004 amendments: The 2000 copyright law as amended in 2004 still contain several key deficiencies, most importantly the absence of TRIPS-mandated civil *ex parte* search procedures, and the elimination of a WPPT-compliant definition of “broadcasting.”⁷

Criminal Code: 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, a judge can apply a penalty

⁷ These copyright law deficiencies include, for example: (1) no exclusive rights for phonogram producers, which are provided to other rights holders 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; (2) the 2004 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; (2) Article 63(5) makes the rental right for phonogram and film producers subject to mandatory collective management (diminishing the exclusive rights of producers); (4) no civil *ex parte* search procedure, a TRIPS-required tool, which is especially critical to enforcement in business software actions; (5) low administrative penalties that do not deter piracy; and (6) 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)].

up to, for example, 200 minimal monthly salaries, which is about 16,000 Lats (~US\$30,500). Unfortunately, courts are not, to date, imposing deterrent penalties.

Criminal Procedure Code: As noted, on October 1, 2005, new amendments to the Criminal Procedure Code Law entered into effect. The new law introduces important improvements such as establishing a legal presumption of ownership; this eliminates the need for "expert reports." (We do not have the text and cannot comment on the actual provisions at this time.) It is now up to the prosecutors and judges to properly process copyright cases, as the current court practice has been inadequate to address the problems in Latvia.

Administrative Offenses Code: In 2003 amendments to the Administrative Offenses Code were enacted (effective July 24, 2003). 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.

Civil Code: There are no known pending amendments regarding civil penalties (although we understand the *ex parte* provisions will be revised, hopefully in 2006). The Copyright Law includes the measures right holders can take in civil proceedings in Article 69. The Civil Code (Articles 1770-1792) does not provide necessary sanctions for copyright infringements.

EU Enforcement Directive: The Latvian Government is currently working toward implementing the EU Enforcement Directive, although progress is slow. Latvian government sources indicated that in its work to draft implementation of this Directive, the Ministry of Justice, consulting with the Economic Police, is developing a legislative proposal to improve IPR enforcement, including *ex parte* searches as well as customs inspections.

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. The government should take all the necessary steps to regularize and legalize its use of business software applications in order to set an example for the private sector.