

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301

SPECIAL MENTION

PANAMA

IIPA supports the Free Trade Agreement process with Panama, which began in April 2004 and continues in early 2006. The FTA negotiations process offers a vital tool for encouraging compliance with other evolving international trends in copyright standards (such as fully implementing WIPO "Internet" Treaties' obligations and extending copyright terms of protection beyond the minimum levels guaranteed by TRIPS) as well as outlining specific enforcement provisions which will aid countries in achieving effective enforcement measures in their criminal, civil, and customs contexts. Panama currently receives preferential trade benefits under two U.S. trade programs, the Generalized System of Preferences (GSP) and the Caribbean Basin Initiative (CBI) programs.¹

Copyright Piracy: Copyright piracy in Panama, combined with inadequate enforcement, has significantly limited legitimate revenues to right holders and has become a major market access barrier for the copyright industries. The challenges faced by these and national governments to enforce copyright laws grow exponentially as the forms of piracy shift from hard goods and toward digital media and unauthorized electronic transmissions. Over the last few years, unauthorized "burning" of CDs has grown rapidly in Latin America, including Panama. The piracy of sound recordings and music in Panama remains high. While audiocassette piracy had been the preferred business of pirates for years, music CD piracy is clearly now the preferred format of choice. As a result, very few companies remain operating in the country. Hit albums that a few years ago sold in the thousands today sell a few hundred copies. Although no official figures exist for the level of music piracy, the industry safely estimates that it exceeds 50 percent of the total market.

Business software piracy takes various forms, including counterfeiting, illegal reproduction and/or distribution by resellers, mail order houses, bulletin boards, other Internet-based distribution and corporate end-user piracy.² Panama's Ministry of Education has been leading the initiative among various Panamanian agencies to implement Decree 273 of 2000

¹ During the first 11 months of 2005, Panama imported the following under these three trade programs: \$15.9 million worth of Panamanian goods (or 5.3% of Panama's total exports to the U.S. for this period) entered the U.S. under the duty-free GSP code, representing a 164.5% increase from the same period in the previous year; \$35 million worth of Panamanian goods (or 11.8% of Panama's total exports for this period) entered under the CBI, representing a 33% increase over the same period in the previous year; and \$287,000 worth of Panamanian goods (or 0.1% of Panama's total exports to the U.S. for this period) entered the U.S. under the CBTPA.

² 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 Panama's piracy rate (from 70% to 60%) could create new jobs and pump \$31 million into the economy. It could also increase local industry revenues by more than \$21 million and generate \$2 million in additional tax revenues. See <http://www.bsa.org/idcstudy/pdfs/Panama.pdf>.

which regulates the use of computer programs by public agencies. The U.S. entertainment software industry reports that piracy and counterfeiting affects videogames on all platforms, including cartridges, personal computer CD-ROMs, and game consoles, especially those entering Panama from Southeast Asia. This transnational form of piracy points to the enhanced need for continued cooperation among governments in tracking infringing materials across borders. As optical disc piracy grows in the region, the motion picture industry is concerned about the possibility that Panama will become a transshipment point for optical disc piracy or pirate circumvention or other technology as the market for such pirate product grows. The major forms of piracy afflicting the U.S. book publishing industry involves commercial photocopying piracy, especially as photocopying shops near universities fill requests for illegal reproductions of entire textbooks.

Border Enforcement: Cooperation with Panamanian customs has been improving over the years, but more work is needed. To that end, in March 2005, Panama's General Directorate of Customs signed a cooperation agreement with the recording industry, IFPI-Latin America, to help stop the movement of piratical goods into Latin America. Panama serves as a transshipment point for blank CD-Rs into the region; estimates place this at 40 million units/year. This agreement provides for the exchange of statistical data and information, training by IFPI experts and the creation by Customs of a specialized IP unit. The Industrial Property Law (Law No. 35 of May 10, 1996), which entered into effect on November 19, 1996, allows Customs and CFZ officials to impose administrative sanctions and seize pirated and counterfeited products. Public prosecutors can act *ex officio* against infringements of copyright as well as industrial property. Unfortunately, the recording industry is not aware of any actions taken by Customs in 2005,

U.S. Criminal Enforcement: Panama has established a variety of specialized IPR entities over the years, including: IP departments in the Colon Free Zone and at the Customhouse General Offices; specialized IPR groups at the local police level; and most recently (starting in December 2003), the Judicial Technical Police. The Specialized Superior Office on IP Infringements began its operations in January 2003. The Third Superior Court handles all IPR cases. The Interinstitutional Commission on Intellectual Property continues its coordination and policy oversight efforts. A National Intellectual Property Prosecutor was named years ago, and this office has a permanent budget and staff and with national jurisdiction. Cooperation between the copyright industries and Panamanian police and prosecutors has generally remained good. Since the implementation of the new Industrial Property Law in November 10, 1996, copyright actions may now be taken *ex officio*, which has greatly aided anti-piracy enforcement efforts in Panama. The Office of the Tenth District Public Prosecutor has been particularly vigilant in pursuing cases over the years, and we acknowledge its assistance. With some exceptions, however, much of the investigatory burden continues to be shouldered by private industry.

The recording industry has been informed that about 50 raids occurred in 2005, with seizures amounting to approximately 41,000 copies. Despite the best efforts of the National Intellectual Property Prosecutor, his team and the technical judicial police, this level of enforcement is not sufficient to curb music piracy. To improve the level of street enforcement and conduct in-depth investigations will require allocation of additional resources to the teams in charge of conducting the anti-piracy campaign.

An entertainment company reports that situation concerning outstanding criminal cases is extremely frustrating. Some of these cases date back to 2001, but have yet to be resolved. Oftentimes, the hearings are postponed, rescheduled or suspended – in many instances, the defendant simply does not appear. Meanwhile, the company continues to pay storage fees and

legal costs related to the case. The courts should be encouraged to expedite the resolution of IPR cases, as perennially pending cases do not serve as a deterrent to infringers.

Copyright Law and Related Laws: Panama's Law on Copyright and Related Rights entered into effect on January 1, 1995 (Law No. 15 of August 8, 1994). This law represented a significant improvement over the prior law and enabled Panama to adhere to the Berne Convention (effective June 8, 1996). In general, this 1994 copyright law was a relatively progressive one in the region a decade ago, even though there were some immediate challenges launched against this law. The 1994 Copyright Law required the filing of a complaint by rightholders in order to initiate actions; however, this problem was alleviated by the passage of the Industrial Property Law in 1996, and copyright actions may now be taken *ex officio*. Panama was one of the first countries in the hemisphere to join the two WIPO Internet treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Given the higher standards contemplated in an FTA IPR chapter with the U.S., Panama's copyright law will require some modification.

Various amendments to the copyright law have been proposed over the years (e.g., 1996, 1998 and 2002), but many have not been adopted (the 2002 exercise was aimed primarily at implementing the provisions of the WIPO treaties into Panamanian law, extending the term of protection, improving enforcement mechanisms and strengthening penalties). This project is still lingering in the Ministry of Education and has not been presented to the Panama's legislative body for evaluation and processing. Passage of these reforms is a crucial matter to protect intellectual property in a digital environment and give enforcement and prosecution teams the necessary tools to carry out an effective anti-piracy campaign. Legal reform to the penal codes and Industrial Property Codes (Law No. 1 of January 5, 2004) appears to have been accomplished to minimize prior confusion and clarify that criminal sanctions, including aggravated penalties, is available for both copyright and industrial property infringements. Under the Copyright Law, the level of administrative fines (from \$1,000 to \$20,000) and as imposed have been inadequate to deter pirates from engaging in commercial piracy. The level of penalties for piracy should track the higher levels available for trademark counterfeiting.

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