

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301 REPORT

SERBIA AND MONTENEGRO

EXECUTIVE SUMMARY

Special 301 Recommendation: IIPA recommends that Serbia and Montenegro be added to the Special 301 Watch List in 2006.

Actions Which the Government of Serbia and Montenegro Should Take in 2006:

- Instruct the enforcement agencies to make combating piracy a priority and set goals to ensure active and in-depth criminal investigations, raids and prosecutions.
- Take swift actions against street piracy by investigating the production and storage operations supplying the kiosks and other retail operations selling pirated materials
- Both Serbia and Montenegro should enact strong optical media regulations to prevent illegal optical media production and distribution.
- Both should give customs and border police a clear mandate and legal competence to act *ex officio* against cross-border trade in pirated goods to stop importation and exportation of those goods, including optical media product.
- Both governments should instruct prosecutors and judges to prioritize criminal copyright prosecution.
- Both should improve judicial training on copyright matters so that courts expeditiously and effectively enforce all aspects of the copyright law.
- Direct market inspectors to enforce copyright against street vendors
- Instruct prosecutors to charge pirate street vendors as unlicensed traders under Article 243 of the Serbian Penal Code.
- Both governments should enforce, without delay, criminal copyright provisions, including by imposing deterrent prison sentences—
 - Serbia must implement its High Tech Crime Law;
 - Montenegro must pass amendments to its Criminal Code and then use the law in-practice.

SERBIA AND MONTENEGRO
Estimated Trade Losses Due to Copyright Piracy
(in millions of U.S. dollars)
and Levels of Piracy: 2004-2005¹

INDUSTRY	2005		2004	
	Loss	Level	Loss	Level
Records & Music²	12.5	80%	12.0	80%
Entertainment Software³	NA	NA	NA	NA
Business Software⁴	NA	NA	NA	NA
Motion Pictures⁵	NA	NA	NA	85%
Books	NA	NA	NA	NA
TOTALS	12.5+		12.0	

Previous IIPA reports on Serbia & Montenegro can be found at <http://www.iipa.com/countryreports.html>, including prior history on the Special 301 context as well as the Generalized System of Preferences (GSP), which this country became an eligible country in 2005, see <http://www.iipa.com/pdf/2006SPEC301HISTORICALSUMMARY.pdf>.

COPYRIGHT PIRACY

Optical media piracy: Copyright piracy in Serbia and Montenegro is not limited to distribution and retail sales. The country has at least one optical disc plant involved in large-scale pirate production (see below), not only for the local market, but also for export to other countries in the region. CD-R and DVD-R piracy have become predominant problems in this market. CD-Rs are primarily replicated locally in underground “burning” facilities. Illegal CD-R and DVD-R burning operations are supported by a large-scale importation of blank optical discs from China, Bulgaria and Hungary. Much of the illegal material is still available on cassettes (music and videocassettes) and industrially produced optical discs. The recording industry reports that smuggling of pirate optical discs into Serbia from Russia via Ukraine and Hungary, as well as from Romania and Bulgaria, is commonplace. IFPI forensic results on pirate products purchased in Serbia confirm these connections. This includes pirate VCDs and DVDs imported

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, and is available on the IIPA website at www.iipa.com/pdf/2006spec301methodology.pdf.

² 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.

³ 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.

⁴ BSA’s 2005 statistics are preliminary. They represent the U.S. publishers’ share of software piracy losses in Serbia and Montenegro, 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.

⁵ 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>.

from the Far East. The pirate discs are frequently shipped from Serbia to Montenegro, in particular for the summer period, and to other Balkan countries. 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.

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. There are now at least four known CD plants in Serbia with a total of 10 production lines. In 2005, a minimum of 4 DVD lines were installed in Serbia. All of these plants are located in Belgrade. General Disc Technology (GDT) is still subject to civil and criminal investigations (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 two other plants, one has not applied its codes (acquired in 2000) and the other continues to use it improperly. This situation undermines any possible confidence in correct application of the SID code system and illustrates the urgent need for a strong optical disc regulation.

Retail piracy widespread: During 2005, the markets in Serbia and Montenegro continued to be full of pirated copyrighted materials. 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. Some Ministers of the current Serbian government increasingly speak out against piracy, but the heritage of the recent past is still strongly felt.

The recording industry reports that despite some success in combating piracy in 2002-2003, the situation with music piracy worsened in 2005 and regressed to problems experienced in 2002. The piracy situation in Serbia and Montenegro is worse than in its neighbors, Croatia and Slovenia (but better than in Kosovo), with much music piracy reported in Belgrade, Subotisa and Novy Sad in Serbia, and Budva in Montenegro. Even the notorious Mihhailova Street in Belgrade is back in action, with pirate goods readily available. Kiosks and street traders selling illegal copyright materials can be found in large numbers in every town. The distribution 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. Internet piracy has also started to develop in Serbia, offering a multitude ways for illegal file-sharing. In 2005, 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 and Montenegro. The country could support a promising legitimate music market. The recording industry reported a piracy level of at least 80%, with losses to the U.S. music industry amounting to \$ 12.5 million in 2005.

The Motion Picture Association (MPA) reports that in 2005, audiovisual piracy remained a major problem, severely limiting the ability of legitimate companies to distribute their product. Serbia & Montenegro is attempting to create a legitimate market, but is plagued by high piracy levels. Optical disc piracy is the predominant problem. Surrounding countries suffer from the illegal export of pirate product. Overt piracy, with dozens of kiosks selling pirate CD-Rs and DVDs is decreasing, with the pirates adjusting their techniques and becoming more mobile.

Legal market players are a minority of the local audiovisual market. Many flea markets and retail stores carry pirate optical discs and videocassettes. Market and Tax inspections control only registered retail stores, letting flea markets off the hook. MPA reports there has been no improvement in administrative efforts to close down and fine kiosks and other retail operations which engage in the selling and distribution of pirated materials. With respect to internet piracy, MPA reports that the operators of one of the main Internet hard goods sites were arrested in October 2004 on a complaint of the local anti-piracy organization (APASCG). Seven suspects were arrested in Belgrade and five other suspects were arrested by local enforcement officials at the request of the Belgrade prosecutor in towns outside Belgrade. The pirates had DVD-burning facilities in their homes, and police seized computers and over 22,000 masters. One of the arrested was sentenced in 2005, receiving a suspended sentence, and sentencing is reportedly imminent on a second defendant. Television piracy continues to be an issue, and it is estimated that there are over 300 illegal stations operating throughout the country (often using DVDs (sometimes pirate) for their programming). Cable operators offer packages including the broadcasts of pirate TV stations and re-transmitted programming from neighboring countries.

The Business Software Association (BSA) reports that the primary piracy problems affecting its companies are optical disc piracy (at the retail level) and end-user piracy. Some internet piracy does exist, but it has not reached the problematic levels caused by optical disc piracy. Lowering the software piracy rate in Serbia and Montenegro could contribute positively to the local economy.⁶

According to the Entertainment Software Association (ESA), rightholders' investigations revealed, beginning in 2001, that there is also an increase in Internet piracy by illegal sites hosted in Serbia and 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.

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. The government should encourage university campuses to take an active role in promoting the use of legitimate materials by their students and lecturers.

COPYRIGHT ENFORCEMENT

Efforts to create a National Anti-Piracy Campaign: In October 2004, the Serbian Government approved an Anti Piracy Action Plan. The plan was not made public and was based on proposals made by the Anti-Piracy Commission, formed in 2002. The only result of the Plan during 2005 was a large number of criminal cases initiated *ex officio* against street vendors. The police initiated the cases, but failed to carry out more than superficial investigation into them. The burden of bringing the cases to a conclusion has fallen on the judges and the right holders. In March 2005, the enforcement agencies (police, inspectors, ministries of finance

⁶ 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](http://www.bsa.org/idcstudy/pdfs/Serbia_Montenegro.pdf), using 2004 data, found the following: a 10-point drop in Serbia-Montenegro's percent piracy rate (from 81% to 71%) could create 1,800 jobs and pump \$420 million into the economy. It could also increase local industry revenues by an estimated \$227 million and generate \$63 million in additional tax revenues. See http://www.bsa.org/idcstudy/pdfs/Serbia_Montenegro.pdf.

and internal affairs) declaring to visibly fight piracy undertook actions against OD plants, but ended up targeting legitimate businesses. Reports suggest that Montenegro might be in the process of preparing a comparable anti-piracy plan.

Criminal Enforcement: Despite the improved Criminal Code of 2005 that covers all copyright crimes, the governmental anti-piracy efforts on-the-ground in completing raids, prosecutions, and judicial sentencing did not greatly improve. Law enforcement falls within the jurisdiction of each state, and not the State Union of Serbia and Montenegro.

BSA reports that it continues to experiencing better cooperation with the enforcement authorities in Serbia. The authorities are taking *ex officio* actions in software cases, police raids are being performed, and BSA has had positive results at judicial hearings. Judges have been receptive to information on software piracy as well as receiving printed materials with instructions how to recognize pirated software and about the software licensing types. BSA reports that in 2005, there were 76 criminal proceedings on software cases initiated in 2005. BSA reports some positive results in 2005; the number of verdicts reached by the judges in which the accused was found guilty in criminal proceedings is 12, which is significant improvement compared with the results from 2004. BSA reports that, although there were convictions, deterrent level penalties were not issued. The monetary fines (the most common penalty) were *de minimus* and imprisonment sentences (rarely issued) were suspended.

MPA also reports good cooperation with enforcement officials in 2005. In Serbia, a large number of criminal cases were initiated *ex officio* against street vendors in 2005. (In contrast, the Criminal Code of Montenegro currently does not envisage *ex officio* prosecution.) The police initiated the cases, but failed to carry out more than superficial investigation into them. The burden of bringing the cases to a conclusion has fallen on the judges and the right holders. Although the police succeeded in arresting a number of significant producers of pirate goods in 2005, no prosecution has yet been initiated. Investigative efforts seem hampered by poor organization and limited resources.

The recording industry reports that the only enforcement agency that shows some interest in IPR protection is the Ministry of Internal Affairs. The industry's relationship with the ministry is good, on a normal working level, and with regular contact and exchange of information. In 2005, the ministry was fairly active, undertaking a significant number of inspections and raids, bringing criminal charges on the basis of the Serbian Criminal Code, in particular: (a) unlawful trade (Article 147), (b) unauthorized use of a company name (Article 165), and (c) unauthorized use of copyright and related rights (Article 183). Police is often taking *ex officio* actions. The recording industry is unable to report about the activities of other enforcement agencies in this field. The main bottleneck lies at the prosecutorial level and in the courts, which treat copyright cases as unimportant ones. IFPI has not received any concrete results of prosecution of copyright cases in 2005, and is unaware of successful convictions and non-suspended sentences for IPR crime.

Serbia's Ministry of Internal Affairs has reported the following anti-piracy actions in 2005: 982 inspections, 620 businesses and video/DVD clubs inspected 664 criminal charges brought; 655 people denounced; 12 convictions issued; 783 criminal offenses (presumably meaning charges). Over 226,000 copies of pirated audio and video products (which include video, music, software, publications and books on optical media products) were seized.

Border Enforcement: The Customs authorities lack the organizational capacity and operational will to tackle the distribution of pirate material across the borders of Serbia and Montenegro. The existing limited IPR capacity is in turn beset by prohibitive bureaucracy concerning the applications from right holders, which has resulted in indifference among the on-ground Customs officers vis-à-vis copyright cases. Reports suggest that there are some actions, mostly in the trademark area. Serbian Customs is implementing its new customs law.

In an attempt to improve intellectual property rights enforcement, the government formed an organizational unit for Intellectual Property Protection within the Customs Administration of the Republic of Serbia, which, due to the scope and complexity of work, was rapidly transformed into a Department, an organizational unit of a higher level. This organizational change shows the seriousness that Customs authorities bring to protection of IPR, as is the fact that intensive personnel education and professional training is planned. As the only proper organizational unit dedicated to IPR protection, however, it is faced with unsolved problems such as the modernization of its information system, problems with the storage of temporarily detained goods and difficulties in managing the destruction of confiscated products.

Trainings: BSA and IFPI report that they participated in IP educational seminars and conferences in 2005, such as the conferences organized by AmCham SCG in cooperation with BSA in both Federal Republics. IFPI also made presentations at the EU CARDS organized seminar in March 2005. MPA and its local colleagues also provided seminars in 2005. The competent state authorities should be trained continuously in order to be able to deal with IP cases efficiently.

LEGAL REFORM AND RELATED ISSUES

Copyright Act 2004: The State Union of Serbia and Montenegro (Union) has the ability to pass substantive legislation regarding intellectual property rights. In December 2004, the Union Parliament adopted its new Copyright and Related Rights Act (CRRA), which entered into effect on January 1, 2005. The local copyright industries then reported that the CRRA appeared to be generally adequate (though some provisions, such as overbroad exceptions, remain troubling) and were hopeful that it would provide a foundation for effective prosecution of piracy cases. The CRRA is a substantial improvement of the copyright system in Serbia and Montenegro, replacing the former inadequate copyright law based on the law in the Federal Republic of Yugoslavia.

Criminal Codes and other reforms:⁷ Enforcement and substantive provisions on criminal copyright sanctions are left to the Republics of Serbia and Montenegro, respectively. The Union does not have responsibility for criminal and enforcement matters, and actual enforcement can happen at the state level.

Serbia:

- The New Serbian **Criminal Code** was passed by the Parliament and will enter into force on January 1, 2006 (published in the Official Journal of the Republic of Serbia No. 85/2005 and 88/2005). Under this code, there are three criminal offences relating to copyright and related

⁷ IIPA does not have the texts of these laws and relies on the reporting of its member associations and news reports.

rights: Infringement of an author's and interpreter's moral rights, unauthorized use of copyright or related right, and unauthorized elimination or change of electronic rights information on copyright and related rights.

- Serbia has adopted a **Law on Organization and Jurisdiction of Government Authorities in the Suppression of High Technology Crime** (published in the Official Journal of the Republic of Serbia No. 61/2005) which entered into force on July 26, 2005. This law establishes the Office of the Special Prosecutor in charge of prosecuting computer crimes, including intellectual property infringements involving computer technologies. The Law also establishes the jurisdiction of the District Court in Belgrade to do these cases for the entire Serbian territory. The law also requires that the departments specialized in IP criminal offences (provided that the number of copyright copies is more than 500 or provided that the pecuniary damage amount is higher than 850.000,00 CSD (US\$11,877) should be established within the District Public Prosecutor Office in Belgrade, within the Serbian Internal Affairs Ministry and within the District Court in Belgrade. However, the Special Prosecutor has not been appointed yet; the Special Police Service and the Panel of the Judges of the Belgrade District Court have not yet been established.
- A **draft law on the Intellectual Property Regulations Enforcement** reported has been crafted by Serbian Ministry of Foreign Economic Relations, and is pending. The industries do not have any information about this bill, other than it is still in draft form.
- The **Customs Law**, effective January 1, 2004, provides for detailed regulation of border measures, and grants power to the customs authorities to act where the goods placed in the customs procedure are found to infringe intellectual property rights.
- The Serbian **Broadcasting Law** was amended, establishing a Broadcasting Agency which is required to ensure that all broadcasters comply with the regulations on copyright and neighboring rights. Illegal conduct by a broadcaster may be the basis for the imposition of prescribed sanctions by the Agency, independently of other legal remedies at the disposal of the aggrieved right holder. The recording industry welcomes the inclusion of rights compliance condition to the broadcasting licenses due to be issued by the Broadcasting Agency. The MPA hopes that broadcasting piracy will decrease substantially when the Agency starts to work. This statute has been approved by the Serbian Parliament, and a public tender has been launched; broadcasters will, explicitly, be bound to respect copyrights in their programming.
- The Serbian **Telecommunications Law** has (finally, after 3 years) entered into force. MPA reports that the Telecom Agency was established and members of the Agency Board were appointed. This Agency will issue general licenses to cable distributors of TV programs. Cable distributors will be bound to respect copyright in their program offers.

Montenegro:

- **Amendments to the Criminal Code** for Montenegro: Information on this proposed legislation is sparse, but the current law is believed to be the Criminal Code approved two years ago. Other reports suggest that a new bill is pending which include *ex officio* prosecution and deterrent penalties. Industry does not have details on such proposals.

- The Parliament of Montenegro approved, on July 21, 2005 a **Law on Enforcement** that regulates the protection of intellectual property rights, effective as of January 1, 2006. This Law provides powers for market inspectors, other inspectors and authorities to detain, confiscate and order destruction of infringing goods. It also provides for fines for economic offences (offences by legal entities and businesses found in violation of IP rights) and misdemeanors.
- Montenegro's **Regulation on Border Measures** was approved by the Government and is effective as of July 1, 2005. The Regulation provides for the power of the customs authorities to act where the goods placed in the customs procedure are found to infringe intellectual property rights.

Need for Optical Media Law: Both governments of Serbia and Montenegro should craft and issue an optical media law. The global copyright community has agreed on key elements of an effective optical disc law (these appeared in IIPA's 2005 Special 301 submission). The relatively high number of OD 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 and Montenegro. The copyright industries look forward to working with the authorities of Serbia and Montenegro to draft, implement and enforce comprehensive optical disc regulations. Reports suggest that the Serbian government is working on drafting an optical disc law.