

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

LITHUANIA

Special 301 Recommendation: Lithuania should remain on the Watch List in 2007.

EXECUTIVE SUMMARY

Copyright owners in Lithuania continue to confront generally poor and ineffective on-the-ground enforcement, especially at the border, which is evidenced by the sustained high piracy levels. Customs, police and other enforcement agencies need to engage in cooperative enforcement, especially to deal with the challenges of the organized criminal groups engaged in piracy (and there is evidence of ties to Russian organized criminal syndicates). Internet piracy is also a serious issue in Lithuania, and the government needs to take action to halt this infringing activity.

PRIORITY ACTIONS IN 2007

Enforcement

- Take action to combat internet piracy, including shutting down websites that engage in peer-to-peer file-sharing.
- The IPR Division in the Criminal Police Investigation Bureau should be instructed to allocate substantially more time to fighting piracy and all other relevant enforcement agencies also should be instructed to increase their engagement on anti-piracy actions.
- Customs officers, in particular the Customs Criminal Service, should commence actions, including *ex officio* actions, to intercept pirate product smuggled into the country.
- The prosecutors should follow up with prompt prosecutions.
- Administrative sanctions, which are not now occurring, should be imposed (for example, withdrawing business licenses from infringing kiosks).
- Ever increasingly cumbersome and complicated procedures in criminal and administrative IPR cases should be simplified and eliminated, and the onerous evidentiary burdens in criminal cases relaxed.
- Coordinated and cooperative strategies are now virtually non-existent among enforcement authorities as well as with rightholders' organizations. This needs to change in 2007.
- The Lithuanian Government should make a political commitment to eradicate copyright piracy and instruct all authorities to make anti-piracy enforcement a priority.

Legislation

- Adopt a government order regarding the legal use of business software within state institutions to improve implementation of the 2001 decree of the Minister of Internal Affairs concerning recommendations on such uses.
- Consider adopting optical media regulations to properly license and enforce the production, distribution, import and export of optical media.

LITHUANIA
Estimated Trade Losses Due to Copyright Piracy
(in millions of U.S. dollars)
and Levels of Piracy: 2002-2006 ¹

INDUSTRY	2006		2005		2004		2003		2002	
	Loss	Level								
Business Software ²	20.0	59%	14.0	57%	11.0	58%	10.0	58%	4.6	53%
Sound Recordings & Musical Compositions ³	13.0	85%	12.0	85%	15.0	80%	13.5	85%	12.0	85%
Entertainment Software ⁴	NA	NA	1.7	88%	NA	85%	NA	90%	NA	80%
Motion Pictures ⁵	NA	NA	NA	NA	1.5	65%	NA	NA	NA	90%
Books	NA	NA								
TOTALS	33.0		27.7		27.5		23.5		16.6	

Lithuania has several trade agreements with the U.S., such as those contained in the U.S.-Lithuanian Bilateral Investment Treaty (BIT), including key national treaty obligations, which remain in force.⁶

COPYRIGHT PIRACY AND ENFORCEMENT

Piracy in Lithuania during 2006 involved growing internet piracy, continued high level of hard goods piracy (especially involving pirated optical discs) and weak enforcement at the borders. The three bodies responsible for IPR enforcement are the Special Internet Crime Investigation Unit (formerly the Economic Police), the IPR Division within the Criminal Police Investigation Bureau, and Customs.

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2007 Special 301 submission at www.iipa.com/pdf/2007spec301methodology.pdf. For information on the history of Lithuania under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

² BSA's 2006 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Lithuania, and follow the methodology compiled in the Third Annual BSA/IDC Global Software Piracy Study (May 2006), 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 2005 piracy statistics were preliminary at the time of IIPA's February 13, 2006 Special 301 filing; the 2005 data was revised and posted on the IIPA website in September 2006 (see <http://www.iipa.com/statistics.html>), and the 2005 revisions (if any) are reflected above.

³ The music industry figures represent the piracy level of international repertoire. The losses figure increased due to the increase of consumer demand and the decrease of the U.S. dollar value.

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.

⁵ MPA's trade loss estimates and piracy levels for 2006 are not yet available. However, such numbers will become available later in the year and, as for 2005, will be 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 the 2006 loss numbers and piracy levels become available, they will be posted on the IIPA website, <http://www.iipa.com>.

⁶ U.S. State Department, "U.S. Welcomes EC Decision on Bilateral Investment Treaties," September 3, 2003 at <http://www.usinfo.state.gov>. For more information on the history of Lithuania under Special 301 review, see IIPA's Appendix D (<http://www.iipa.com/pdf/2006SPEC301USTRHISTORY.pdf>) and Appendix E (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission. Also available are previous IIPA reports on Lithuania at <http://www.iipa.com/countryreports.html>.

Internet piracy: During 2006, Lithuanian websites continued to contain advertising for the sale of infringing hard goods. The numbers of such sites are increasing and the sites are operating with impunity (since 1999) because there has not been a single known prosecutorial action to shut them down. There was no progress in 2006. The police target only physical persons offering unlicensed software on the Internet. Usually, police place an order by e-mail or by telephone, and conduct a trap purchase, followed by the search of premises. These cases are called “Internet” cases only because the “lead” (e.g. advertisement on a software offer) is found on the Internet. The trend now is to move these illegal websites to servers located outside Lithuania. There are amateur websites marketing pirate products and parallel imported DVDs.

In June 2006, the government reported that approximately 17,000 unauthorized copies of music recordings, films, computer games and other intellectual property were taken out of the market in Lithuania during the first five months of 2006, down from 37,000 in the prior year. News reports indicate that the Lithuanian Criminal Police Bureau inspected 93 companies and market places in the first five months of 2006, up from 77 in the same period the prior year.⁷

Piracy at the borders: Piracy at the borders remains a significant problem for the copyright industries. Given its pivotal geographical location (especially to Russia) and weak border enforcement, Lithuania remained a major regional transshipment area for pirated material—music CDs and audiocassettes, CD-ROMs containing business software, videos, home-burned CD-Rs and DVD-Rs, DVDs, videogame cartridges and DVDs and CDs containing entertainment software. Most pirate product originates from Russia and is smuggled into Lithuania and Poland either directly or through Belarus. There is also an established transport from Lithuania to Poland. Pirate products are also shipped to other European countries using air traffic routes via Scandinavian countries. Incidents of materials (hand-carried CDs and DVDs) seized by British customs suggests that this material is being shipped throughout Europe.

Six years have passed since Lithuanian customs officials obtained the proper (*ex officio*) authority to undertake border searches and investigations. But this legal change, while welcome, still has not been used effectively by border authorities. Customs officials are unlikely to search vehicles, especially those coming from EU countries.

Optical media piracy: There is one known CD manufacturing plant in Lithuania, producing for the local market as well as neighboring Latvia and Estonia. In 2006, this plant still had two lines with an estimated capacity of 7 million discs per year (including CD-R --blank disc-- replication).

Music and recording piracy: The recording industry reports that the music piracy situation in Lithuania is still unacceptably bad. The main form of physical piracy is the sale of factory-pressed CDs at market places, such as the one near the Pergale cinema theater, which is particularly bustling on weekends. Not only local consumers, but also many foreign visitors are buying pirated music at these markets. Law enforcement, such as the IPR Division seem to be oblivious of its existence. The most common form of music piracy in Lithuania is the sale of pre-recorded CDs and CD-Rs via the Internet (web pages and targeted e-mails) which contain lists of available selections continued at the same level. Hard copies are delivered by mail directly to the customer. These same techniques are used for distributing pre-recorded CD-Rs for pirated entertainment software products, in addition to the numerous “warez” sites providing pirated videogames for download. Another form of pirate trade is the door-to-door hawking of distributors visiting public places or offices to sell pirated products. Although the overall level of piracy in Lithuania remained around 60% in 2006, the level of piracy for international repertoire was substantially higher, around 85%.

⁷ See *Baltic Business Weekly*, June 19, 2006.

The legitimate music industry in Lithuania has been struggling for years to survive. Organized criminal groups are still heavily involved in trafficking pirate CDs, with very limited enforcement undertaken by the authorities. The estimated trade losses due to recording and music piracy were \$13 million in 2006.

Entertainment software: The entertainment software industry reports that pirated products continue to enter the country from Russia, though in the last year, domestically burned products have become more readily available than replicated product. Pirated products continue to be available at flea market venues, through street vendors or via the Internet. As noted above, Internet piracy (including P2P piracy) has increased greatly, and while there continues to be a lot of advertising for burned pirated products, there has also been an enormous growth in downloading of pirated material. Piracy at Internet cafés remains problematic. Some ESA members continue to report serious problems in obtaining effective border enforcement (see discussion below).

Business software piracy: The Business Software Alliance (BSA) reports that internet piracy was a primary concern for its members last year. The problem of hard disk loading by hardware and software retailers remains a problem, causing significant losses to the local software distribution channel. On the retail side, BSA continues to report that the Gariunai flea market in Vilnius and similar markets across Lithuania remain sources of pirated materials, although police activities to address this problem have increased and there has been a drop in the open/visible sale of large quantities of software at flea markets. BSA's preliminary 2006 estimated trade losses due to business software piracy rose to \$20.0 million, up from \$14 million the prior year. The estimated piracy rate also rose from 57% to 59%. BSA believes that there is steady improvement with regard to central government use of software. Since the 2001 government software management decree, funds have been allocated by Central Government for licenses to procure legal software, although the exact extent to which this has been applied in-practice is unclear.

Audiovisual piracy: The motion picture industry (MPA) continues to report that, in 2005, Lithuania remains the least developed market for audiovisual works of the three Baltic nations. Pirate videocassettes and home-burned optical discs are duplicated locally using Russian-language masters. Pirate discs are sold in rental outlets and on street markets across Lithuania. Internet piracy (both downloading and hard goods) is increasing. TV and local cable piracy are also problems (often screening pirate copies of blockbuster films). The legitimate video industry is still trying to make inroads into this predominately pirate market, and also by reducing prices significantly to compete with the ample pirate product in video or DVD, for sale or rent.

Ineffective border enforcement: Customs officers have *ex officio* authority to inspect, intercept, and seize suspect shipments of pirated product entering the country, but they are not using that authority fully. The Customs Violation Prevention Division and the Customs Criminal Service are the two customs departments responsible for tackling with the import-export of illegal optical discs and smuggling, respectively. Customs cannot, under current law, take actions inside the country, so internal investigations are left to the Economic Police.

Some ESA member companies began recording their trademarks with Lithuanian customs authorities in 2004 (and have subsequently renewed such registrations), but unfortunately, this has not resulted in any border actions, as border enforcement continues to be extremely weak. A particularly vexing case involves a 2005 customs seizure of 1,700 counterfeit Nintendo products, and although a criminal case was brought against the importer, the case has yet to be resolved.⁸

⁸ In June 2005, Lithuanian Customs seized approximately 1,700 counterfeit Nintendo products. The defendant challenged the seizure action, arguing that she had a right to bring the products into the country for "personal use" – the entire 1,700

Continuing problems with “expert opinions”: Problems associated with required expert opinions did not diminish in 2006. First, the reliance on a government expert report is unnecessary and causes delays in trials. In 2002, the Ministries of Culture, Justice, and Interior, along with the Prosecutor’s Office, established the Division of Intellectual Property Protection under the Lithuanian Forensic Science Centre, which would provide expert opinions in copyright cases with the approximate annual budget of US\$172,300 (~461,200 Litas). The Centre acts to formalize expert reports, even though this practice is contrary to other European systems that rely on copyright industries, rather than government reports. In addition, reports continued that the police are pressing for the development of their own expertise center in order to centralize control over its cases; that possible development has some industries quite alarmed.

Second, Lithuanian courts still refuse to apply a presumption of ownership for seized copyright material (such as sound recordings), which results in a burdensome evidentiary hurdle.⁹ In order to prove that a suspect product is pirate, an “independent specialist” must reach a conclusion, which is then presented as evidence. The police have reported numerous instances where even after they conducted raids, suspects were never prosecuted because the police were required to get an expert opinion to determine proof of ownership for every single copy seized. Private citizens, even though expert in this area of the law, are barred from rendering opinions; only designated experts are allowed to serve this function, keeping those cases from moving forward.

Third, the recording industry confirms again that in 2006, it still has to provide cumbersome expert reports to pursue administrative actions. For example, every single CD seized by the police must be accounted for and inventoried; sometimes every single song on every single CD has to be accounted for and listened to. The problem, especially for the recording industry, is that seizures are mostly conducted against the last part of illegal distribution chains, where there are respectively small amounts, but a large variety of titles, making it difficult to account for all of them. Another problem is the General Prosecutor’s Office, which requires all international album titles and film titles seized to be translated into Lithuanian before a case can commence. When the authorities and industry officials complete a large seizure (for example, in the tens or hundreds of thousands of units), the burden to complete such reports is onerous and thus acts to block enforcement actions. The recording industry tries to complete its works within three months, but the judiciary still tends not to accept the opinions of the music industry in some cases. The recording industry believes that legislative reforms are necessary to establish a presumption of ownership, in order to resolve this enforcement roadblock and to expedite cases. The recording industry continues to express dismay

shipment of products. Due to the sizable amount of the products seized, the Customs authorities referred the case to the police for prosecution. A criminal case was subsequently initiated but remains suspended as the prosecutor was unable to identify what was clearly infringing product. Given the suspension, the Customs authorities had no choice but to release the shipment of pirated games. Nintendo of America, Inc. was thus left with no choice but to file a civil suit against the importer, requesting that the goods be destroyed and damages be awarded to the company. The defendant, however, has not responded to the writ, and the court will apparently not proceed until it receives confirmation that the defendant is aware of the case against her.

⁹ The BSA indicates that this issue regarding presumption of owners is not a problem for the business software industry in Lithuania, because a presumption of ownership is applied for business software works. The difficulty remains for individually created copyrighted works (as in the case of sound recordings), and in the production of evidence pertaining to the retail value of those works. This is because certain acts only “qualify” as offenses when the retail value of the work exceeds a certain amount (100 times the minimum wage). In those cases “expert” evidence is required to confirm ownership in the work and retail value. Expert statements in software cases by private experts pertaining to the nature of each pirated software copy have been accepted as sufficient evidence in criminal and administrative cases. BSA therefore believes that the law is satisfactory, although not ideal (because of the continued need of detailed expert reports, albeit by private, not public, experts).

that expert reports prepared by the software industry are accepted, while those prepared by the recording industry are not. Industry reports reflect that the previous official translation requirement has been removed, but apparently several new and burdensome formalities have been added.

COPYRIGHT LAW AND RELATED ISSUES IN LITHUANIA

Copyright law: Lithuania has enacted a number of significant copyright law reforms since adopting its 1999 copyright law (Act No. VIII-1185). Additional revisions to that law were accomplished in March in order to comply with the WTO TRIPS obligations, the WIPO Treaties, and various EU directives. At the time, the copyright industries acknowledged the positive elements in the 2003 legislation and also expressed concerns and reservations about several amendments which were (and are) inconsistent with Lithuania's bilateral and multilateral copyright obligations.¹⁰

As part of Lithuania's accession to the European Union, additional revisions to its laws were initiated in 2005. These included amendments to implement both the EU Resale Right Directive and the EU Enforcement Directive. There were also proposals to increase sanctions in the Criminal Code, and amendments to the Criminal Procedure Code and Law on Operative Actions to classify intellectual property crimes as more serious crimes and apply operative measures. IIPA's members do not have current information on those bills, though several were expected to be adopted in the spring of 2006.

Government software legalization issues: There have been three Lithuanian government orders issued (in 2001, 2003 and 2004) to compel the state institutions to buy and use only licensed software programs. Since the 2001 government software management decree, funds have been allocated by Central Government for licenses to procure legal software, although the extent to which this has been applied is unclear. BSA has been active over the past several years in training and raising awareness of software legalization in both the government and the private sector.

¹⁰ For more details about Lithuanian copyright law reform through 2003, refer to IIPA's 2006 Special 301 country report on Lithuania, available at <http://www.iipa.com/rbc/2006/2006SPEC301LITHUANIA.pdf>.