

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2007 SPECIAL 301 REPORT

### TAJIKISTAN

**Special 301 Recommendation:** IIPA recommends that Tajikistan remain on the Watch List in 2007 for failing to enact the necessary IPR legal reforms it obligated itself to adopt well over ten years ago.

In 2006, the U.S. Trade Representative, in retaining Tajikistan on the Watch List noted that Tajikistan “has not yet fulfilled its IPR obligations under the [1993] U.S.-Tajikistan Bilateral Agreement” and that it needed “to bring its IPR regime into conformity with the TRIPS Agreement as part of its ongoing efforts to join the WTO.” In fact, the Tajik IPR legal regime falls far short of Tajikistan’s obligations under the 1993 bilateral Trade Agreement (in force November 24, 1993). Specifically, Tajikistan has not joined the Geneva Phonograms Convention and does not provide any protection for foreign sound recordings, nor does it explicitly protect foreign pre-existing works (before 2000) or sound recordings. Thus, well over ten years after pledging to do so, Tajikistan does not even provide the basic rights or protection for U.S. or other foreign works or sound recordings.

#### Legal Reform Deficiencies

In 2000, Tajikistan adhered to the Berne Convention. However, the Tajik Copyright Law last amended in 1998 (in force, December 17, 1998) falls short of full compliance with the Berne Convention and other international norms. There are many deficiencies in the Copyright Law including: (1) the over-regulation of the terms and conditions of author’s contracts; and (2) provisions that provide only for a right of remuneration for producers of sound recordings for the public performance, broadcasting, or communication of a phonogram to the public by cable. In lieu, the law should be amended to: (1) delete the onerous contract regulations; and (2) add protection for the use of copyrighted materials on the Internet by adopting an exclusive right of making available to the public for authors (i.e., a communication to the public right consistent with the WCT, Article 8), and for phonogram producers (i.e., consistent with the WPPT, Article 14). In short, the Copyright Law needs to be revised to be consistent with all international obligations, including compliance with the WIPO digital treaties.

There are many legal reforms that Tajikistan must undertake including:

- 1) Adherence to the Geneva Phonograms Convention.
- 2) Amending the Copyright Law to provide protection for pre-existing works and sound recordings for a minimum of 50 years (and preferably, 70 years).
- 3) Amending the Criminal Code to cover all IPR violations of “works” and “neighboring rights.” The current code does not provide this essential remedy for IPR protection.
- 4) Amending the Criminal Code to raise the penalties for IPR violations to deterrent levels (for example, to 500 times the minimum wage).
- 5) Amending the Criminal Code to adopt a threshold for a criminal violation calculated on the basis of the price of legitimate product, instead of a threshold based on an undefined “large-scale damage” for IPR crimes; and set that threshold at a low actual level. The current

Criminal Code (Article 156) provides for copyright and neighboring rights sanctions, but only where there is “significant harm” to the rightholder.

6) Amending the Criminal Code (or Criminal Procedure Code) to permit the confiscation and destruction of manufacturing equipment used to produce pirated material.

7) Amending the Criminal Procedures Code to provide the proper *ex officio* authority for police officials to initiate copyright criminal cases and investigations.

8) Amending the Administrative Code to provide *ex officio* authority to administrative authorities to commence investigations and cases.

9) Amending the Customs Code to grant the proper *ex officio* authority to border officials to seize illegal material and to commence their own investigations and criminal cases.

10) Amending the Civil Code to provide the proper *ex parte* search provisions for effective enforcement against end-user pirates.

11) Adherence to the WIPO digital treaties: the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), plus enacting all of the appropriate implementing legislation in the Copyright Law.

The Customs Code (last revised in 1995) does provide liability for the transfer of illegal goods, including intellectual property material, through the border. A 2002 resolution (No. 185 of the Cabinet of Ministers) established border control rules for goods, including IPR works, and it implemented a customs registry for IPR works requiring a rightholder to file a statement and set of documents for border enforcement; this is a cumbersome and ineffective tool that should be repealed.

There has not been a single criminal IPR case reported under existing law. Nor has there been a single case reported under the administrative code; this code, revised in 1999 (Article 158-2), provides levies, fines, and seizure of illegal copyright and neighboring rights material. In short, the copyright industries have no reports concerning enforcement activity in Tajikistan.

On December 10, 2002, the U.S. and Tajik Presidents signed a joint statement reaffirming the relationship between the two countries and “recognizing the importance of . . . the rule of law” as well as pledging to work together on economic and political reforms. IIPA observes that the Government of Tajikistan should, in this spirit of cooperation, and as required by its now well over ten-year obligations under the bilateral Trade Agreement, amend the relevant IPR laws and engage in effective enforcement. The U.S. Government and Tajik Government signed a Trade and Investment Framework Agreement (TIFA) on June 1, 2004 to enhance trade and investment between the two countries.

According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are currently no known optical media plants in Tajikistan. In 2005, the last year during which piracy levels were calculated, it was estimated the music piracy was well above 80%.