

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2007 SPECIAL 301 REPORT

### UZBEKISTAN

#### Special 301 Recommendation and Summary

IIPA recommends that Uzbekistan remain on the Watch List in 2007 for failing to adopt the necessary IPR legal reforms it obligated itself to adopt well over ten years ago. IIPA further recommends that Uzbekistan lose its eligibility to participate in the General System of Preferences (GSP) program because Uzbekistan is not providing the statutorily mandated “adequate and effective” copyright protection and enforcement under its present IPR regime.

In April 2006, the U.S. Trade Representative, in announcing Uzbekistan’s retention on the Watch List noted “the lack of significant progress on IPR issues” and the failure of Uzbekistan to “move forward with several IPR-related amendments that had been contemplated.” These legal and enforcement reforms, as the U.S. Government noted, are necessary to comply with the 1994 U.S.-Uzbekistan Trade Agreement. In fact, Uzbekistan is still not a member of the Geneva Phonograms Convention and thus does not provide any protection or rights for U.S. or other foreign sound recordings; further, it does not protect preexisting foreign works (pre-2005). The USTR noted that “IPR enforcement in Uzbekistan remains weak.”

#### Legal Reform Deficiencies

In November 1993, Uzbekistan and the United States signed a bilateral Trade Agreement (in force, January 13, 1994) which detailed mutual obligations to improve the protection and enforcement of intellectual property rights. The Copyright Law of Uzbekistan was overhauled in 1996 (in force, September 17, 1996), and two additional amendments were adopted in 2000. However, with the exception of the two relatively minor changes in 2000, there have not been the thorough revisions to the Copyright Act or to the relevant enforcement laws that Uzbekistan obligated itself to undertake in the bilateral agreement well over ten years ago, and in GSP hearings before the U.S. Government in 2000 (pledging at that time to complete all of its obligations by the end of 2003).

The 2000 Copyright Law amendments, while valuable, did not fix the major deficiencies. In January 2004, new amendments were prepared, and the IIPA and Uzbek government held constructive discussions about needed legal reforms and treaty accessions. Unfortunately, the 2004 drafts were missing key provisions, including the necessary protection for pre-existing works and sound recordings. In any case, the 2004 amendments were never adopted.

In 2005, Uzbekistan finally adhered to the Berne Convention (effective April 19, 2005). Unfortunately, Uzbekistan made a reservation to its accession regarding Article 18 that denies protection for pre-existing works from the United States and all other Berne countries. This reservation, as noted by WIPO and other copyright experts to the Government of Uzbekistan, is in contravention to the Article 18 obligations of Berne. Uzbekistan must withdraw its reservation immediately and provide clear protection for pre-existing works (and separately, for sound recordings as well).

There are many legal reforms that Uzbekistan 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 include “neighboring rights” violations (the current code only applies to infringements of “works”).
- 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.
- 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.

There are deficiencies in the Copyright Law that need to be corrected as well. The corrections include: (1) adding 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); the current law provides only a right of remuneration for the public communication of the recording, broadcasting, or communication to the public by cable; and (2) deleting the onerous provisions that over-regulate the terms and conditions of author’s contracts.

The 2000 Copyright Law amendments did two things: (1) added “copying of a record” to the enumerated rights of producers to fix a glaring deficiency; and (2) added a broad national treatment obligation into the law (Article 56.3), but not a clear point of attachment for all works and sound recordings.

Uzbekistan did not amend its Criminal Code following passage of the 1996 Copyright Act to adopt deterrent penalties for intellectual property violations. Drafts to amend the Criminal Code were circulated in 2004, but never adopted. In fact, the 2004 draft would have weakened, not strengthened, criminal penalties because: (1) no criminal penalties applied “until one year after administrative penalties are assessed” — providing pirates with a chance to pirate without penalty the first time, and (2) the levels — set at 50 to 100 times the minimum wage — were much too low to be deterrent penalties as needed. If a similar draft is proposed, the first

provision must be deleted; and the second provision (regarding the minimum wage) must be raised considerably to at least 500 times the minimum wage, as has been done in other countries.

Another 2004 draft to amend the Customs Code would have established a complicated registration system for IPR enforcement at the border. IIPA strongly recommends that Uzbekistan not adopt a border registration plan because it will prove counterproductive to effective enforcement at the border.

A 2001 resolution (No. 285 of the Cabinet of Ministers) established a licensing system for the production, reproduction and sale of records, cassettes and CDs, according to which only licensed entities could carry out such activities. Industry experience shows that such licensing systems are not effective against the pirate production enterprises, which are common in this region. IIPA recommends that this plan be repealed.

The U.S. Government and Uzbek Government signed a Trade and Investment Framework Agreement (TIFA) on June 1, 2004 to enhance trade and investment between the two countries. In 2005, Uzbekistan benefited from \$11.4 million worth of GSP benefits, although in 2006, that number decreased to \$1.7 million (in the first 11 months). Thus, even as the U.S. Government is promising to enhance trade and investment with Uzbekistan and providing GSP benefits and other aid, the Uzbek copyright regime is, at present, among the weakest of all of the countries in the C.I.S. Uzbekistan is not in compliance with its bilateral and multilateral obligations, and is woefully inadequate in its IPR regime as a potential WTO member.

After the Uzbek Government adopts the necessary legal reforms, including accession to the relevant treaties to protect foreign works and sound recordings, it must then commence police raids and seizures at a minimum, and must act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions.

According to the recording industry (International Federation of the Phonographic Industry, IFPI), the level of music piracy is estimated at 95%. Trade losses for 2005, the last year they were estimated, exceeded \$30 million.

The recording industry reports that illegal musical cassettes are produced mainly in Uzbekistan, but that illegal CDs are produced in neighboring countries, particularly Russia, and are entering Uzbekistan as a result of poor border enforcement (on both sides of the border). The IFPI reports there are no known optical media plants in Uzbekistan, although the opportunity is there for the startup of pirate CD operations due to the poor enforcement regime.