

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2008 SPECIAL 301 REPORT

### LITHUANIA

**Special 301 Recommendation:** IIPA recommends that Lithuania stay on the Watch List in 2008.

## **EXECUTIVE SUMMARY**

Copyright owners in Lithuania continue to suffer from high levels of physical and Internet piracy. Lithuania remains generally ineffective when it comes to on-the-ground enforcement. Customs, police and other enforcement agencies need to engage in better and more cooperative enforcement actions. Some police forces, especially in the larger cities, have been helpful in conducting *ex officio* software actions in 2007. Much more proactive investigations are needed to combat widespread Internet piracy which adversely affects all the copyright industries. In 2007 a well-known website dealing in pirated material was taken down by the authorities. However, this case has not yet been followed by a proper criminal prosecution and sentencing of the persons involved. Worse, the site still operates and links visitors to other pirate sites which are also hosted in Lithuania. Furthermore, some government agencies still do not have rules regarding legal software use. More senior leadership and organization is needed to make copyright protection and enforcement a priority in Lithuania.

## **PRIORITY ACTIONS IN 2008**

### **Enforcement**

- Substantially increase action against Internet piracy, including shutting down the websites offering illegal copyrighted materials for downloading or links to other pirate sites, as well as against large-scale uploaders of illegal files and following up with prosecutions and deterrent sentencing.
- The Economic Police and especially the Intellectual Property Rights division at the Criminal Police Bureau should get more staff personnel, get more equipment, and devote more time and efforts in fighting piracy.
- Prosecutors should be instructed to inform the right holders about their rights infringements and follow up with prompt prosecutions.
- Customs officers, in particular the Customs Criminal Service, should commence actions, including *ex officio* actions to intercept pirate product smuggled into the country and often transshipped to other EU markets.
- Coordinated and cooperative strategies among enforcement authorities as well as with right holders' organizations should be developed.
- Cumbersome and complicated procedures in criminal and administrative IPR cases should be simplified and eliminated, and the onerous evidentiary burdens in criminal cases relaxed.

### **Legislation**

- Adopt the proposed changes to Article 214(10) of Administrative Infringement Code to expand the application of administrative liability to illegal acts for non-commercial purposes.
- Review and streamline the cumbersome notice and takedown procedure for illegal content on ISPs networks as foreseen in the recently adopted Government Resolution on Provisions for Eliminating the Possibility of Access to Unlawfully Obtained, Created, Amended or Utilized Information.
- Criminal Code to provide for higher penalties for copyright crimes.
- Adopt a government order regarding the legal use of business software within state institutions to improve implementation of the 2001 government decree.
- Adopt 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: 2003-2007 <sup>1</sup>**

INDUSTRY	2007		2006		2005		2004		2003	
	Loss	Level								
Business Software <sup>2</sup>	20.0	56%	17.0	57%	14.0	57%	11.0	58%	10.0	58%
Sound Recordings & Musical Compositions <sup>3</sup>	14.0	80%	13.0	85%	12.0	85%	15.0	80%	13.5	85%
Entertainment Software <sup>4</sup>	NA	NA	NA	NA	1.7	88%	NA	85%	NA	90%
Motion Pictures <sup>5</sup>	NA	NA	NA	NA	NA	NA	1.5	65%	NA	NA
Books	NA	NA								
<b>TOTALS</b>	<b>34.0</b>		<b>30.0</b>		<b>27.7</b>		<b>27.5</b>		<b>23.5</b>	

## COPYRIGHT PIRACY AND ENFORCEMENT

Lithuania continued to be challenged by both online piracy as well as physical piracy during 2007. The three bodies responsible for IPR enforcement are the Special Internet Crime Investigation Unit, the IPR Division within the Criminal Police Investigation Bureau, and Customs.

**Internet piracy:** Internet piracy remains a major concern in Lithuania. There are approximately 1.4 million Internet users in Lithuania, almost 35% of the population (according to internetworldstats.com). The Business Software Alliance (BSA) reports that high amounts of unlicensed software is distributed to the public via FTP servers and warez sites. Lithuania law presently does not require Internet Service Providers (ISPs) to monitor illegal content on File Transfer Protocol (FTP) servers, as access to most FTP servers is not possible for non-subscribers to that FTP service. Nevertheless, based on BSA leads, law enforcement officials raided 4 FTP server providers in 2007. Unfortunately, no subsequent criminal cases have yet been initiated out of these raids, due to various reasons (such as, the server is outside the country, or it did not belong to the ISP, or the software programs (the evidence) was deleted).

On a positive note, one notorious pirate website (piratic.org) was taken down in February 2007, and the sharing of programs on that site was blocked by the administrator of a related website. Although IIPA and its members are obviously pleased that piratic.org was taken down, it should be noted that the same "piratic.org" domain is now redirecting users to another similar site which is currently in operation and which is also being hosted in Lithuania. Prosecution has not yet occurred. Both these developments indicate the need for more effective online enforcement mechanisms.

<sup>1</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2008 Special 301 submission at [www.iipa.com/pdf/2008spec301methodology.pdf](http://www.iipa.com/pdf/2008spec301methodology.pdf). For information on the history of Lithuania under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2008SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2008SPEC301HISTORICALSUMMARY.pdf>) of this submission.

<sup>2</sup> BSA's 2007 statistics are preliminary. They represent the U.S. software publishers' share of software piracy losses in Lithuania, and follow the methodology compiled in the Fourth Annual BSA and IDC Global Software Piracy Study (May 2007), available at <http://w3.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 2006 piracy statistics were preliminary at the time of IIPA's February 12, 2007 Special 301 filing and were finalized in June 2007 (see <http://www.iipa.com/statistics.html>) as reflected above.

<sup>3</sup> 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.

<sup>4</sup> 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.

<sup>5</sup> MPAA's trade losses and piracy levels for 2006 and 2007 are not available. MPAA did provide 2005 estimates for a select group of countries, using a new methodology that analyzed both physical/"hard goods" and Internet piracy. Details regarding MPAA's methodology for 2005 and prior years are found in Appendix B of this IIPA report.

**Business software piracy:** BSA reports that both Internet piracy and hard disk loading were the two primary problems facing the business software industry in 2007. There was more unlicensed software found by BSA in 2007 than in the prior year. It is clear that end user companies still use high amounts of unlicensed software. Reseller piracy of pirated and counterfeit hard goods in the street markets remains a problem as well. BSA's preliminary 2007 estimated U.S. trade losses due to business software piracy rose slightly to \$20 million, with an estimated piracy rate of 56%. BSA believes that there is steady improvement with regard to central government use of software, but more work is needed, including centralizing this function in a single government agency.

BSA reports that its working relationship with local authorities improved last year. In particular, work with the economic police of the capital city (Vilnius), and the Criminal Police Bureau was good, as these officials often initiated raids *ex officio*. There have only been very few software cases initiated by the economic police of other main cities (such as Šiauliai, Kaunas, Klaipėda). The level of familiarity and expertise on software and IP investigations at the local city or regional police is very low.

The primary enforcement problem BSA faced was that the police very seldom organized test purchases in hard disk loading cases and do not effectively work Internet piracy cases. Furthermore, the investigation of criminal copyright cases are taking a very long time (from 1 to 1.5 years). IPR crimes are still not considered as serious crimes. Police officers or prosecutors who are in charge of IPR cases have to investigate non-IPR cases as well. In 2007, BSA worked to initiate 10 criminal cases, 10 administrative cases and six civil cases. In terms of results, there were two criminal judgments, six administrative judgments and three civil decisions on business software in 2007.

**Music and recording piracy:** The recording industry reports that there were no major changes in the piracy landscape compared to the previous year. 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. The main form of physical piracy is the sale of factory-pressed CDs predominantly originating in Russia, and CD-Rs at open air market places. These markets burst with a combination of legitimate local releases and pirate international music, including many pre-releases. Pre-release piracy particularly hurts the recording industry. Another form of pirate trade is the door-to-door hawking of distributors visiting public places or offices to sell pirated products. Although the level of piracy in Lithuania for local repertoire was at a relatively low level of around 10% in 2007, the level of piracy for international repertoire was substantially higher, estimated at around 80%. The estimated trade losses due to recording and music piracy were \$14 million in 2007.

The recording industry continued to monitor the situation in Lithuania in 2007 and to address pirate imports into neighboring EU Member States coming through Lithuania. In addition, IFPI's Internet Anti Piracy Unit issued numerous cease and desist letters concerning illegal activity on Internet and the recording industry's litigation department continued its major court case against the optical disc manufacturing plant, Baltic Optical Disc. In the meantime, the local legitimate industry is struggling to survive commercially and has very few funds to invest in anti-piracy actions.

**Audiovisual piracy:** The motion picture industry (MPA) continues to report that 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).

**Optical media piracy:** There is one known CD manufacturing plant in Lithuania, producing for the local market as well as neighboring countries. This plant has opened an affiliate factory in Estonia (aimed at the Estonian and Scandinavian markets) and their joint annual manufacturing capacity is estimated at around 10-15 million discs (CDs and DVDs). In light of past events that led to recording industry litigation against this plant, which is still ongoing, and its refusal to cooperate in a transparent manner with rightholders, Lithuania should adopt optical disc regulations.

**Ineffective border enforcement:** Lithuania remains a key transshipment country for pirate materials--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--from Russia and other source countries into the EU. For example, one of the biggest markets located near Vilnius (Baltics-Gariūnai) organizes wholesale days, during which traders from Poland and Latvia come to source pirated discs for their home markets, as well as for further export to countries such as Estonia and Germany. Customs officers who have *ex officio* authority to inspect, intercept, and seize suspect shipments of pirated product entering the country are still not using that authority fully. The Customs Violation Prevention Division and the Customs Criminal Service are the two customs departments responsible for tackling 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. However, illegal discs both enter and leave the country in large quantities without any meaningful intervention from the Lithuanian Customs.

**Continuing evidential problems:** Problems associated with required expert opinions did not diminish in 2007. The reliance on government experts is unnecessary and causes delays in trials. The recording industry confirms that cumbersome expert reports are required before administrative actions can be pursued, including detailed inventories of every single CD seized by the police. This can be very burdensome and act as a block to enforcement actions when there are large seizures or seizures of numerous different titles involved. Lithuanian courts still refuse to apply a presumption of ownership for seized copyright material (such as sound recordings), which results in an additional burdensome evidentiary hurdle.<sup>6</sup> Instead, an “independent specialist” must reach his/her conclusion, which is then presented as evidence. 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 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 to comply with the WTO TRIPS obligations, the WIPO Treaties, and various EU directives. In the past, the copyright industries acknowledged the positive elements in the 2003 legislation and also have expressed concerns and reservations about several amendments which were (and are) inconsistent with Lithuania’s bilateral and multilateral copyright obligations.<sup>7</sup> As part of Lithuania’s accession to the European Union, additional revisions to its laws were initiated in 2005, primarily 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. Below is a summary of current initiatives.

**Resolution on Eliminating Unlawful Access (2007):** Last fall, the Lithuanian Government issued a resolution entitled “Concerning Acceptance of a Report on Provisions for Eliminating the Possibility of Access to Unlawfully Obtained, Created, Amended or Utilized Information” (entry into force on September 5, 2007), rules that are aimed at implementing various EU Directives, including the E-Commerce Directive and the Information Society Directive. This Resolution provides for very specific procedures regarding notice and takedown by hosting providers of illegal hosted content. For example, upon receipt of a right holder’s

<sup>6</sup> 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).

<sup>7</sup> 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>.

notification, the ISP must within four working days inform the service user about the illegal information. If the ISP does not receive an answer from the service user within three days, the ISP must disable access to the illegal information within one working day. If the ISP cannot identify the service receiver, then it can disable access within four days from the receipt of notification. The rightholders also can notify the Information Society Development Committee about the suspect information, and this committee will then have to inform ISPs about this illegal activity or information.

While at first glance this Resolution seems to address ISP liability, it does so only in a limited way. First, it only goes to hosted content. Notice and takedown with respect to hosted content (content that is stored on an ISP's network), while important, represents only a slice of the solution to the problem of digital piracy. With respect to peer-to-peer (P2P) file-sharing, no content is hosted by a network, and there is no content that may be taken down. Second, the relevant "takedown" here is simply termination of the user account, not the kind of takedown by ISPs contemplated in the notice-and-takedown experience in other countries. For example, the recording industry believes that notice and takedown is better agreed upon between the right holders and the hosting services, and Article 14 of the EU E-Commerce Directive provides for the necessary framework for such a cooperation to work. In that industry's experience, where Article 14 of the E-Commerce Directive has been correctly implemented, notice and takedown in agreement with hosting providers generally works quite well and the hosting services normally take down the illegal content rather expeditiously. Third, if notice and takedown procedures are to be out in law, they must be expeditious as required by the E-Commerce Directive (see Article 14(1)(b)). The procedures in this Resolution are not expeditious, and if all the various steps and appeals were followed, there would still be excessive delays in trying to take down infringing content.

**Administrative Code proposed amendment:** Changes to Article 214 (10) of the Administrative Code have been proposed to establish administrative liability for the illegal reproduction, communication to the public and other illegal use of works and objects of related rights protection have been proposed and submitted to the Government. This bill has been sent to the Government for approval.

**Criminal Code proposed amendment:** Similarly, changes to the Criminal Code have been proposed and sent to the Government for approval. For example, the draft Article 192 aims to establish copyright crimes as more serious crimes, subject to higher penalties. A fine up to US\$10,000 or imprisonment up to four years would be applied for copyright infringements if the value of the illegal copies exceeds US\$12,500.

**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 the 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.

**IPR trainings:** It should be noted that in 2007 the Lithuanian Police Department started to implement the EU Twinning project LT/2004/JH/01 "Establishment of Infrastructure of the Investigation, Disclosure and Prevention of Crimes on Intellectual Property Rights and Cyber Crimes in the Police System." This program is aimed at developing training packages for the higher and lower levels IP investigators and officials from other institutions and facilitating the effective and efficient cooperation and exchange of information among Lithuanian IPR enforcement institutions and others. Three seminars for police officers were organized for regional police on IPR enforcement in Trakai and Giruliai in September 2007. Local counsel for the Business Software Alliance has made numerous presentations at various seminars for Lithuanian enforcement officials and other government officials during 2007. These include: an April 2007 IPR seminar with the General Prosecutors Office in Vilnius, the police seminars (mentioned above), and an October 2007 conference on risk management with municipalities in Telšiai.