

TAJIKISTAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Tajikistan remain on the Watch List in 2009.

Executive Summary: In 1993, Tajikistan and the United States concluded a bilateral Trade Agreement which detailed mutual obligations to improve the protection and enforcement of intellectual property rights. That agreement entered into force on November 24, 1993. Tajikistan has never fully implemented the IPR obligations in that agreement.

In April 2008, 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 encouraged the Tajik Government to “take the necessary steps to fully implement the TRIPS Agreement as part of its ongoing efforts to join the WTO.” The U.S. Government announcement noted the many shortcomings of the Tajik IPR legal regime including, most notably, its failure to provide protection for U.S. sound recordings, its denial of protection for pre-existing works (before 2000) and sound recordings, and the absence of criminal penalties for IPR violations. The U.S. Government urged Tajikistan to work through the Trade and Investment Framework and the ongoing WTO accession negotiations to rectify these and the other noted legal and enforcement shortcomings, many of which Tajikistan obligated itself to undertake almost sixteen years ago in the Bilateral Agreement. On January 5, 2009, the Government of Tajikistan notified the WIPO of its deposit of its instruments for accession to the WIPO Copyright Treaty (WCT), effective April 5, 2009. This is positive news, but unfortunately, Tajikistan did not also deposit its instrument of accession to the other WIPO “digital” treaty, the WIPO Performances and Phonograms Treaty (WPPT). On May 19, 2008, Tajikistan joined the Rome Convention, but because it has not yet adhered to the Geneva Phonograms Convention, or the WPPT, Tajikistan does not currently provide protection for any U.S. sound recording.

Legal Reform Deficiencies: In 2000, Tajikistan adhered to the Berne Convention. However, the Tajik Copyright Law (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 authors’ 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. IIPA recommends the deletion of the onerous contract regulations, and the addition in the Copyright Law of protection for 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).

Many other amendments are necessary for the IPR regime in Tajikistan to be consistent with international obligations, including compliance with the WIPO digital treaties. IIPA recommends the following legal reforms to improve the IPR regime in Tajikistan:

- 1) Adherence to the Geneva Phonograms Convention (or, in lieu, the WPPT).
- 2) Amending the Copyright Law to provide protection for pre-existing works and sound recording 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.”
- 4) 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.



- 5) Amending the Criminal Code to set the penalties for IPR violations to deterrent levels (for example, to 500 times the minimum wage).
- 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 provision for effective enforcement against end-user pirates.
- 11) Adherence to the WIPO Performances and Phonograms Treaty (WPPT) – plus enacting all of the appropriate implementing legislation in the Copyright Law for WCT and WPPT compliance.

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. These regulations are cumbersome and an ineffective tool that IIPA recommends should be repealed.

There has not been a single criminal IPR case reported under the existing laws. Nor has there been a single case reported under the Administrative Code. The Administrative Code, last revised in 1999 (Article 158-2), provides levies, fines, and seizure of illegal copyright and neighboring rights material. 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 recommends that the Government of Tajikistan affirm this statement by meeting its obligations and amending its relevant IPR laws and engaging 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.