

CROATIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that the U.S. Government should actively monitor developments in Croatia during 2011 with respect to the issues discussed in this Special Mention report.

Executive Summary:¹ Weak enforcement of IPR crimes has been a significant problem for all copyright rights holders, with particular problems reported by the recording industry and the business software industry. The level of software piracy for last several years has remained at about the same, very high, level. According to preliminary Business Software Alliance (BSA) estimates, the software piracy rate in Croatia in 2010 was 55%, and the corresponding commercial value of unlicensed software put into the marketplace there was \$45.7 million.² Recorded music piracy has grown 10% in the past few years, with Internet piracy of sound recordings now estimated at 90%.

Priority actions to be taken in 2011: The main reasons for the poor copyright enforcement are a lack of training by enforcement authorities (police, prosecutors and judges), an ineffective administrative system for stopping basic infringing activity, and an overall weak legal apparatus.

Piracy and enforcement deficiencies: For the police, a basic problem is the absence of any incentives or motivation to commence criminal IPR cases – that is, any government pronouncements that IPR enforcement is a priority. For those few cases that do commence, there are administrative and procedural hurdles that prevent cases from coming to courts or any final disposition. In general, the criminal system – which is the backbone of IPR enforcement in most developed countries – offers little protection for U.S., foreign or Croatian rights holders. The copyright industries report that half of all IPR cases end in acquittals, with the other half resulting in a suspended sentence, with or without minimal fines, regardless of the facts or damages to rights holders at issue.

More minor cases – that is, misdemeanor cases – are more “efficient” than felony criminal cases. There are a greater number of raids undertaken against smaller distributors and the like, but the ultimate outcome is the same: most infringers have their cases dismissed due to the expiry of time (under the statute of limitations – as a result of investigative or prosecutorial delays that often last over a year); approximately 20% of offenders are found guilty and fined, with minor monetary damages.

The Croatian misdemeanor court procedures regularly proceed without the notification of or participation of rights holders, either of which would improve enforcement (and such notification is a requirement of the Law on Misdemeanors). This prevents rights holders from properly protecting their rights and property and seeking damages in alternative civil procedures or settlements, because once misdemeanor cases are dismissed, rights holders cannot

¹For more details on Croatia's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/rbc/2011/2011SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA's 2011 global issues, see our cover letter at <http://www.iipa.com/pdf/2011SPEC301COVERLETTER.pdf>.

²BSA's 2010 statistics are preliminary, representing U.S. software publishers' share of commercial value of pirated software in Croatia. They follow the methodology compiled in the Seventh Annual BSA and IDC Global Software Piracy Study (May 2010), <http://portal.bsa.org/globalpiracy2009/index.html>. These figures cover packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA's 2011 Special 301 submission at www.iipa.com/pdf/2011spec301methodology.pdf. BSA's final piracy figures will be released in mid-May, and the updated US software publishers' share of commercial value of pirated software will be available at www.iipa.com.



re-file their claims. Unfortunately, the courts often defend their inactivity by maintaining the importance of the independence and secrecy of their proceedings and justify this status by disallowing public comments or participation (i.e., by rights holders) in pending legal proceedings.

In general, the Croatian online piracy enforcement resources are sorely lacking. For instance, currently, there are only two police officers nationwide who are even working on online IPR criminal cases. In fact, the enforcement authorities report that no police officer has online IPR enforcement as a full-time job, but rather the police – generally, untrained in this area – are supposed to work on these issues in addition to their regular assignments. Most judges and prosecutors are also not trained in copyright enforcement measures in general, and certainly not on Internet piracy enforcement procedures and issues.

The copyright industries report that there were 70 fewer cases in 2010 from 2009 for Internet piracy activities, and only 2% of all IPR cases were for digital piracy. One hindrance to enforcement has been a misinterpretation of the copyright law that many otherwise infringing activities are permitted by “private copying” exceptions.

In one instance, the recording industry reported on a Russian-run pirate pay-per-download website in Croatia. Evidence was provided to authorities to commence a criminal investigation, but no action was taken by Croatian authorities, and no information provided to the rights holders even after repeated requests. The recording industry does report that some ISPs will respond to notice and takedown requests, even if the police and other enforcement agencies will not commence cases against those who do not respond. One problem in Croatia has been the absence of legal Internet services, although the music industry reports that in 2011 it will launch at least one legal downloading service.

Civil cases, when they are filed, are lengthy and expensive. Although *ex parte* preliminary proceedings are available in theory, they are only rarely utilized by enforcement authorities, further diminishing the effectiveness of IPR enforcement – especially against end-user piracy. On average, when these proceedings are used, they take twice as long (by several weeks) as similar proceedings in other Central European countries.

Overall, the Croatian legal framework is comparable to that found in other Central European countries (and is generally harmonized with the European Union directives). In fact, legal reforms, for now, are not the focus of IIPA's attention – rather, enforcement is the priority. While the overall legal framework is comparable to other countries, the civil and criminal enforcement procedures are lagging behind other Central European countries. Most troublesome is the fact that active cooperation between enforcement agencies, the district attorneys and the courts, and with rights holders, remains a significant problem, and is a key reason why enforcement and prosecutions remain weak in Croatia. The police have agreed to at least one enforcement training program in 2011 that will include rights holder participation, which is encouraging.