

# GREECE

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

Special 301 Recommendation: IIPA recommends that Greece remain on the Watch List in 2011.

Executive Summary: The level of copyright piracy in Greece remained high in 2010 and has gone nearly unnoticed under the present Administration, which has still neglected to implement the comprehensive intellectual property rights (IPR) action plan that was proposed in February 2009. IIPA is concerned that, as the adverse economic effects of government austerity measures take hold in the country, already-high levels of piracy in Greece will increase.

The copyright industries have concerns about the effect that public-sector cuts may have on legal acquisition and use of software by government agencies. Regarding software piracy by businesses, efforts by the Authority for the Prosecution of Financial Crimes (SDOE) – formerly the tax police (YPEE) – to issue software audit letters to small- and medium-sized companies did not improve in 2010. This follows a drastic decline in its efforts over the past several years. The unauthorized photocopying of books and journals continues to occur on and near university campuses. Physical piracy of many copyrighted products remains a problem in the cities and on the streets, although the level of street piracy is declining as Internet piracy takes hold of the Greek market. Discussions between the content industry and Internet Service Providers (ISPs) have been unsuccessful and need stronger political engagement by the government. The Greek government did take important enforcement steps in 2010, including shutting down the BitTorrent tracker site Gamato.info; however, attempts to combat illegal peer-to-peer (P2P) file-sharing are frustrated by data protection laws that impede investigations and litigation against infringers. Despite good cooperation with the police on physical piracy raids, the overall enforcement system in Greece fails to tackle the endemic piracy problems. The municipal police cannot produce significant results, and the immigration service is overwhelmed, making it difficult to pursue prosecutions. Furthermore, lengthy court delays and a lack of deterrent sentences continue to frustrate rights holders. Defendants rarely receive sanctions, and those who do often receive suspended sentences. The copyright industries worked with the Greek Copyright Office to develop proposed amendments to the Copyright Law that have not moved forward since 2009. Some promising legal reforms were adopted in 2007 but are still not fully in force. High level leadership is needed to push through proper legislation and effective judicial action to address the physical and digital piracy that has plagued Greece for years.

### PRIORITY RECOMMENDED ACTIONS FOR GREECE IN 2011<sup>1</sup>

- Establish a national campaign for 2011 to involve rights holders, increase raids and prosecutions, allow cooperation from the Immigration and Municipal police in anti-piracy cases, encourage criminal non-suspended sentencing, and conduct public awareness and training.
- Initiate greater involvement by SDOE in anti-piracy actions affecting all copyright sectors, expanding on the work they are doing in the software sector.
- Take action against copy shops making illegal photocopies of books around university campuses, and coordinate campus policies to prohibit use of illegal materials on campus.
- Encourage Government ministries and agencies to legalize business software usage in public agencies.
- Direct prosecutors to bring cases more swiftly, and instruct courts to issue deterrent sentences without suspension, including imprisonment and fines as provided by the law.

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<sup>1</sup>For more details on Greece's Special 301 history, see IIPA's "History" appendix to this filing, at <http://www.iipa.com/pdf/2011SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. To read IIPA's cover letter to this Special 301 submission, go to <http://www.iipa.com/pdf/2011SPEC301COVERLETTER.pdf>.



- Direct specialized IPR courts to focus on IPR cases and expand their jurisdiction to criminal copyright cases.
- Legislate to provide Municipal Police the authority to arrest and prosecute street vendors for IPR crimes.
- Circulate the government's proposal to amend the Copyright Law, which should, at the very least, provide the same level of protection for technological protection measures (TPMs) utilized in software that is currently afforded to other classes of works.
- Consistent with the 2008 European Court of Justice (ECJ) *Telefonica* decision, amend data protection laws to allow disclosure of the identification of infringers and other necessary information for rights holders to protect their rights in court.

## COPYRIGHT PIRACY IN GREECE

Hard goods piracy remains entrenched in cities throughout the country, and presents a formidable enforcement challenge, despite many raids and good cooperation between enforcement authorities and rights holders. Scattered distribution channels are sourced mainly by small laboratories hidden in residential apartments. Meanwhile, Internet piracy experienced a set-back in 2010 following several successful and highly publicized raids and arrests. With the growth of broadband connections, Internet piracy remains a threat especially in the audiovisual and sound recording sectors. Even after the popular torrent site Gamato.info was shut down in March 2010, a small number of local illegal websites remain. Problems continue in combating end-user piracy of business software in corporate settings and unauthorized commercial photocopying on university campuses.

The Business Software Alliance (BSA) reports that end-user piracy continues to be the biggest piracy threat to its industry in Greece. The widespread use of unlicensed software and distribution of low quality pirated CDs across the country is another problem. There was a reduction of such piracy forms both in Athens and Thessaloniki, because of the rapid increase in availability of pirated material over the Internet. Slow but steady improvement in reducing the PC software piracy rate in Greece reversed in 2009 and began to creep back up. Preliminary data indicate that trend continued in 2010, with the piracy rate increasing by one percentage point to 59%.<sup>2</sup> The improvement experienced in the last decade can be attributed largely to the work of YPEE (now SDOE) in sending software audit letters to small- and medium-sized businesses. Recent increases, conversely, are likely due to the lack of action taken by SDOE in 2009 and the first half of 2010, combined with the economic crisis facing the country. Within the EU, Greece has the third highest piracy rate (behind Bulgaria and Romania). It is imperative that SDOE ramp up its efforts at least to pre-2009 levels, and to follow up audit letters with actual enforcement action where warranted, in order to press for legal software use.<sup>3</sup>

The pirate music market is gradually migrating from physical product to the Internet. The cities with the largest problems regarding music street piracy are Patra, Kalamata, Corfu, Crete and Thessaloniki, while the situation in the center of Athens has substantially improved. Clearly, there is a network of illegal immigrants operating at all levels from manufacturing to retail distribution of pirate music products, and this accounts for over 95% of the pirate physical market. Piracy of sound recordings and music in Greece represents around 70% for both international and local repertoire. To be clear, the legitimate market for physical copies of recorded music remains in disarray.

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<sup>2</sup>BSA's 2010 statistics are preliminary, representing U.S. software publishers' share of commercial value of pirated software in Greece. 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](http://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](http://www.iipa.com).

<sup>3</sup>According to a 2010 report issued by BSA-IDC, the information technology sector's contribution to the Greek economy could be even bigger if Greece's software piracy rate were to be lowered 10 percentage points over the next four years. This would create an additional 1,313 high-tech jobs, \$512 million in new economic activity, and \$157 million in new taxes by 2013, with 68% percent of those benefits expected to remain in the local economy. In addition, the study finds that the benefits are compounded by reducing software theft at a faster rate: If Greece were to reduce piracy by 10 points over the next two years instead of four, it would boost the economic activity and tax gains by 35 and 36 percent respectively. See *The Economic Benefits of Reducing Software Piracy In Greece*, released September 15, 2010, and is available online at <http://www.bsa.org/idcstudy>.

However, Internet-based piracy is rapidly growing, particularly in the form of cyber-lockers containing, and forums referring to, infringing content. This is a primary area in which industry action requires government support, not least in ensuring ISP cooperation.

The legitimate audiovisual market has shrunk considerably in Greece. More than 2,000 video stores have closed in the last two years, and thousands of jobs in the audiovisual sector have been lost. Local representatives of the Motion Picture Association (MPA) report that the Internet is the major source of illegal content for optical disc manufacturers, street vendors, and video retailers. The major problem cities are Athens, Thessaloniki, Patras, and some of the Greek islands, such as Zante, especially during the summer months.

The independent sector of the film and television industry (IFTA) reports that Internet-based and physical piracy of DVDs remains a significant export constraint for independent producers and distributors, the majority of which are small- to medium-sized businesses. Independent producers partner with local authorized distributors to finance and distribute film and television programming. These authorized distributors find it nearly impossible to compete with pirates. Producers and distributors confirm that DVD sales have been particularly impacted since pirated digital copies are offered for free online and with a similar quality viewing experience as a DVD can provide. Unable to compete with free, legitimate distributors are often cannot to commit to distribution agreements or offer drastically reduced license fees which are inadequate to assist in financing of independent productions. Piracy undermines and may permanently damage legitimate distribution networks essential to reaching consumers and leaves little confidence for investment in intellectual property.

Illegal commercial-scale photocopying of academic textbooks continues in Greece, causing significant damage to higher education textbook publishers.<sup>4</sup> Photocopy shops near university and college campuses continue to process orders for entire classes of students, and produce, quite unimpeded, cover to cover, bound unauthorized copies for distribution to students. Major universities all over Greece are affected, although unauthorized copying activity occurs more often at private colleges.

Internet piracy: As the Greek population is increasingly connected to an Internet marketplace with unfettered access to pirated material, rights holders struggle to market legitimate digital content. The scope and depth of Internet piracy in Greece began to soar in 2008 as Internet accessibility outpaced government enforcement online. There are now nearly 5 million Internet users in Greece, representing about 46% of the population (according to [www.internetworldstats.com](http://www.internetworldstats.com)). Among these, 2.15 million had broadband connections by the end of September 2010, an increase of nearly 20% over the previous year, according to EETT (the Greek National Regulating Authority for Telecommunications). Peer-to-peer (P2P) file-sharing of infringing content, and cyber-lockers containing pirated material (with relevant links offered through forums), have become very popular. Download sites are also a growing problem, and some illegal sites hosted in Russia (such as [music-bazaar.com](http://music-bazaar.com) and [legalsounds.com](http://legalsounds.com)) remain frequently visited by Greek users. These trends continue, despite the March 2010 shut-down of the BitTorrent tracker site [Gamato.info](http://Gamato.info), a facilitator of large-scale piracy of music, film, games, and books. The site was estimated to be the 13th most popular website in Greece before its closure. Mobile piracy is not a serious problem yet, as most of the mobile companies control the downloadable copyrighted works and the exchange of such works (ringtones) between the mobile users.

During 2010, ESA vendors detected 1.95 million connections by peers participating in unauthorized file sharing of select member titles on P2P networks through ISPs located in Greece, placing Greece sixteenth in overall volume of detections in the world, and sixth in detections per capita and per Internet user.<sup>5</sup> Breakdowns by ISP show

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<sup>4</sup>Reports indicate that for some books adopted by large classes, sales are less than one quarter of what they should be based on the numbers of students, due to the quick response by copyshops upon finalization of the adoption process.

<sup>5</sup>These figures do not account for downloads that occur directly from hosted content, such as infringing games found on "one-click" hosting sites, which appear to account each year for progressively greater volumes of infringing downloads.

that OTEnet S.A., FORTHnet SA, Tellas S.A. and Hellas On Line S.A. subscribers account for approximately 83% of this activity occurring in Greece.

Internet-based piracy prevents the establishment of legitimate online distribution platforms and services for consumers, which independent film producers may use to finance future productions. For independent producers who license content country-by-country, online piracy exports troubled marketplaces and high piracy rates to other markets instantly. The independent production sector is limited in its ability to shift to technology-enabled new business practices that might limit piracy. For example, worldwide same day releases (referred to as a "day-and-date" release) may prove an effective method to curb or delay piracy for the major studios, which control their own worldwide distribution, but for independents, whose national distributors release on their own schedule, this technique is impossible.

## COPYRIGHT ENFORCEMENT IN GREECE

Establishing copyright protection and enforcement as a priority for the government of Greece is imperative. The copyright industries report that their working relationships with the Greek police in 2010 continued to be good. For example, Greek police forces drew public attention to anti-piracy efforts in an important shut-down of the BitTorrent site Gamato.info in March 2010. After raids in four different cities, acting in coordination with local film and sound recording representatives, the activity led to the arrest of six individuals. However, industry relationships with the tax police (SDOE) were strained through the first half of 2010 due to SDOE's inactivity against piracy. Fortunately, matters improved during the second half of 2010, when new leadership of SDOE's directorates showed greater willingness to work with the copyright industries to combat piracy. Overall, the principal challenges for copyright enforcement in Greece remain unchanged: prosecutors must place greater priority on copyright crimes, courts need to facilitate speedier cases with deterrent sentences, and government leaders need to establish the tools for ISPs and rights holders to cooperate against Internet piracy.

**Comprehensive Action Plan on the Protection of Intellectual Property Rights:** The government of Greece needs to focus high level attention on the many copyright enforcement challenges rights holders face. Several years ago, the Ministry of Foreign Affairs led the formation of an Interministerial Steering Committee to ensure more efficient coordination of all intellectual property initiatives for the prevention of piracy and counterfeiting. Members of this "Coordination Committee for Monitoring and Coordinating IPR" include: the Ministries of Foreign Affairs, Economy and Finance, Interior, Public Administration and Decentralization, Development, Justice, Culture, Rural Development and Food, as well as the Hellenic Copyright Organization, the Hellenic Industrial Property Organization and the Municipality of Athens.

In February 2009, the Coordination Committee issued a Greek national IPR plan. This document provided a summary of piracy and counterfeiting issues, the Greek legal framework, and the work of the legal offices and enforcement agencies, among other issues. It also outlined a 7-point action plan, with the following objectives: (1) ameliorating the legal framework; (2) collecting and processing statistical data and forming a database; (3) enhancing IPR enforcement measures; (4) coordinating law enforcement authorities; (5) training; (6) raising public awareness; and (7) promoting a dialogue on intellectual property rights. Unfortunately, the Interministerial Committee took no action on the plan. In fact, the Committee has not met since the replacement of the government in October 2009, and it has not issued the required annual reports. It has also failed to respond to meeting requests by right holder organizations. The OPI (Hellenic Copyright Organization) in the past has organized or attended seminars but has not been at all effective in pressing the relevant ministries to enforce and enact effective legislation. The copyright industries urged the Committee at the time it was formed to take several important actions, which remain outstanding: to coordinate enforcement efforts at an operational level, including the effective implementation of the administrative fine regulation and the ministerial decree on street vendors; to adopt procedures for ISPs to deal effectively with repeat infringers; and to develop and fund public awareness and education efforts, all working with industry.

Significant drop in actions by the tax police on business software cases: Until 2009, BSA reported continued good cooperation and communication with YPEE and its successor organization, SDOE. For example, SDOE conducted raids and inspections and sent software audit letters and followed-up, in the appropriate cases, by (a) initiating raids against companies, (b) incorporating software audits in tax controls, and (c) imposing an administrative penalty when illegal copies of software were found. These software anti-piracy administrative efforts by SDOE all but stopped for most of 2010, and BSA's relationship with SDOE worsened. Lack of transparency has also been an issue, since SDOE does not release enforcement metrics, BSA does report that SDOE issued two waves of software audit letters to small- and medium-sized businesses in the second half of 2010, though few responded to them. SDOE should be obliged to perform specific numbers of audits per year and to publicize all the results online and in the media. BSA also urges that SDOE publish monthly statistics on the number of such raids and the resulting administrative fines imposed. BSA would like to see a more systematic follow-up of warning letters and more raids against non-responsive companies. The Greek Government should publicly commit to fight software piracy, an action that would increase public awareness regarding the risks of using illegal unlicensed software and codify the government's commitment to protect intellectual property.

New Financial and Cyber Crime Division and Special IPR department: A positive development in IPR protection during 2010 was the adoption of the new Greek Tax Law 3842/2010 (Article 88) which established the Special IP Protection Department of the Directorate of Special Cases of SDOE, specializing in the protection of IPR and combating counterfeit products. In addition, in 2011 a new Department of Cyber Crime Unit within the Ministry of Citizen Protection (former Ministry of Public Order) is slated to be established, which will be independent from SDOE and manned with officers specialized on IPR issues.

Need to implement administrative fines in software and sound recording piracy cases: Enforcement authorities have not yet implemented the innovative law amendment adopted in January 2007 that introduced administrative fines for software infringements. The national police and tax police (SDOE) have not issued Circulars to adopt the new legal framework on administrative fines nor have they mobilized their resources to inspect for software piracy. For the last several years, the only enforcement activity implemented by the government has been audit letters sent by the tax police. Proper implementation, as industry has proposed, would: (a) apply a more effective deterrent of administrative fines to be paid before legal proceedings, (b) expand the scope of the regulation to include DVDs, (c) establish authority to inspect establishments (café, restaurants, etc) where there may be illegal reproduction of phonograms for public performance, (d) include the checking of companies' software compliance in SDOE's daily controls and posting the statistics of the results and the total amounts of the imposed administrative fines online.

Suspects caught with infringing music and software simply refuse to pay fines for pirated CDs, preferring to face a full trial where judges are known to issue light penalties that are often suspended (despite the available fines of €1,000–10,000 (US\$1,335-\$13,350), depending on the quantities seized). The Ministry of Culture ignored suggestions of the recording industry and the local collecting society for music rights (AEPI) in issuing a directive on procedural details, resulting in a new law that is so vague and full of gaps that the police are reluctant to proceed on the basis of the administrative fine procedures. The only new fine legislated is regarding the use of phonograms in cafes and restaurants that are copied/stored in hard drives without permission. IFPI is pressing SDOE to initiate inspections in such enterprises.

Civil infringement actions on business software: BSA has no major issues to report regarding civil litigation during 2010. Search orders are normally granted without major difficulties and parties typically settle the cases out of court. BSA reports the following civil action results against end-users in 2010: Seven civil raids executed, 53 warning letters sent, 12 follow up letters sent, one civil action heard and three settlements completed. BSA has not filed any civil lawsuits seeking damages, only applications for injunctions.

Criminal actions (raids): Although the copyright industries report good cooperation with law enforcement authorities in Greece, judicial inability to follow through with speedy prosecutions and deterrent sentences is a major obstacle to progress against piracy in Greece.

The motion picture industry reports positive anti-piracy activity on the part of Greek police, but notes that the related court procedures face expected delays. Authorities raided 70 sites in 2010, largely against video clubs and small scale laboratories and distributors of pirate DVD-Rs. In the same year, the number of seized optical discs increased from 61,199 in 2009 to 95,000. As a result of those raids, authorities confiscated 369 pieces of duplication equipment, including DVD-Recorders and hard discs, and closed down eleven sites, arresting the administrators on felony charges. Unfortunately, it is estimated that court hearings on those charges will not be scheduled for two to three years. The valuable support of the Greek Cyber-Crime Unit of Thessaloniki can be credited for the fact that the bulk of the Internet cases and arrests took place in North Greece. In another positive development in early 2010, the electronic crime squad in Athens and Thessaloniki arrested ten individuals engaged in pay television fraud across the country, on charges of violating intellectual property and subscriber television services legislation.

The recording industry reports that its work and relationship with police authorities, especially in Athens, remained very good in 2010, leading to 768 cases in 2010. Greek police and customs authorities continue to take *ex officio* actions. Criminal actions in 2010 were up 9% in comparison to 2009. There has been a slight increase in the number of raids (768 in 2010, 702 in 2009) where IFPI Greece has participated, with smaller amounts of confiscated products (453,179 discs in 2010 compared to 505,806 discs in 2009) and lower statistics in “quality” targets such as optical disc burning labs and distribution centers (290,049 discs in 36 raids in 2010, compared to 322,706 discs in 34 raids in 2009).

The authorities should take more serious note of the problem of illegal commercial-scale photocopying of academic textbooks in Greece. Efforts are needed to begin to address the large scale, commercial, unauthorized photocopying in which copy shops are engaged through effective enforcement. The police do not have jurisdiction to pursue IPR cases on university campuses (academic asylum) where Internet and hard goods piracy flourish, and this poses a difficult political and enforcement problem. Thus, it becomes incumbent upon university and college administrators to implement policies that promote the use of legitimate materials on campus, and to ensure that their faculty and students are acting accordingly. Last year, several publishers dialogued with the University administrators of some of the country’s largest educational institutions, encouraging the administrators to educate their students about appropriate use of books and journals, and noting that the use of unauthorized photocopies of textbooks on campus would not be tolerated. The enforcement problems are only exacerbated by the difficulty of gathering evidence of infringement due to the increasing “print to order” nature of the copy shops. Where an enforcement action actually progresses to a case, the delays endemic to the system inevitably derail any hoped for deterrent effect. For example, a case initiated by publishers still remains pending, four years after the 2007 raid from which the case arose. There have been numerous postponements, with the case not even being heard on the scheduled date, and given that hearings are scheduled some 7-8 months apart, whatever deterrence may have achieved by the imposition of appropriate penalties is perhaps long past.

Challenges in the courts—long delays, non-deterrent sentences: The Greek judicial system remains a major hindrance to effective IPR enforcement. Delays and non-deterrent sentences remain at the same level. The specialized IP courts in Athens and Piraeus only deal with civil and not criminal cases, and therefore are ineffectual against piracy. Greek prosecutors, especially at the local level, have largely ignored Supreme Court circulars directing them to prioritize IPR cases. Although this appears slowly to be changing in major Greek cities such as Athens, Thessaloniki, and Patras, more improvement is needed. Apart from the First Instance Court of Athens (which hears cases and renders judgments fairly quickly), when copyright cases do receive prosecutorial attention in Greece, they face inordinate delays and time consuming procedures. Courts disregard measures requiring defendants to appear for hearings, and as a result most felony defendants are not present before the Court of First Instance or the Court of Appeals. Judges vary in practice from region to region, and often lack adequate knowledge for sophisticated IPR issues.

Most copyright cases in Greek courts result in suspended sentences. Judges often defy sentencing guidelines and insist on leniency for first offenders, suspending penalties and eliminating fines. A one-year imprisonment sentence by law may be reduced to three to four months and suspended for three years, and the €3000 fine (US\$3,860) is simply stricken entirely. Meanwhile, some First Instance Courts (especially in Athens, Piraeus, and Thessaloniki) now follow the law with non-suspendable sentences or fines, but defendants may launch an appeal at which point the Appeals Court often annuls the fines. Often, no bail is set to guarantee the appearance of the defendant in the higher court and the sentences handed out in first instance are suspended. In these and in felony courts, when the case reaches hearing after two to three years' time, if the defendant cannot be located, the result is equivalent to an acquittal. The situation could be improved if the Immigration Service and the Municipal Police could be directed to assist with court appearances in anti-piracy actions.

Special IP Courts: Specialized IP civil courts have been established in Athens, Piraeus and Thessaloniki. The copyright industries will continue efforts to expand such courts to the city of Patras, to encourage their judges to be relieved of other (non-copyright) duties, and to expand the scope of these courts to criminal copyright cases.

Actions against Internet piracy: The most serious obstacle rights holders face in pursuing online infringers is the inability to work with ISPs to identify the perpetrators of illegal activity. Greek ISPs do cooperate with rights holders in cases involving websites hosting infringing material, but these cases are few. In the more prevalent file-sharing environment, ISPs refer to data protection legislation and the possibility of government sanctions to avoid cooperation. As a result, Internet investigations in Greece can go so far as identifying an infringing IP address but cannot uncover an infringer's name or physical address without a court or prosecutorial order. The relevant law for disclosure of personal data (Law 2225/1994) is very strict and limited to a specific range of crimes which, unfortunately, does not include even felony copyright infringement.

Negotiations between copyright rights holders and ISPs went forward for more than two years under the auspices of the Hellenic Copyright Office (OPI), whose aim was for ISPs to adopt voluntary measures to decrease Internet piracy. The Ministry of Justice further promised to support the inclusion of felony copyright infringement as grounds in the data protection law for disclosure of personal data. Unfortunately, the negotiations came to no result and the data protection provisions remain unchanged. All the promises by the various Ministries proved to be empty, and rights holders have found no genuine intention on the part of the State to address piracy concerns.

## COPYRIGHT LAW REFORM AND RELATED ISSUES

Greece was the first of the EU member states to complete implementation of the directives in its Copyright Law, and the copyright industries have been generally pleased with that implementation. Greece also has implemented the EU Enforcement Directive. The copyright industries have offered a variety of legislative and administrative solutions to address difficulties and gaps in measures necessary to strengthen copyright enforcement. Some of these have been implemented, and others are still under development.

Possible reform of the Copyright Act: A Legislative Committee in the Hellenic Copyright Office (OPI) under the Ministry of Culture completed work to propose further reforms to the Greek Copyright Act at the end of 2008, but those plans appear to have broken down. During that process, the copyright sectors offered various proposals that would, among other things: strengthen court-imposed fines and sentences against suspension or non-payment, establish specialized police units, and encourage ISP coordination on copyright infringement matters. However, the Committee was unable to release its work for public review before the change in government took place in 2009. It is unclear whether this effort will move forward, but any future consultation process should be open and transparent.

It is important to highlight that in implementing the WIPO Treaty requirements for technological protection measures (TPMs), Greece opted for a bifurcated approach under which TPMs used by the creators of computer programs (Articles 66(5)(a) and (c)) are afforded less protection than those utilized in other types of works (Article

66A). Unfortunately, the software provisions fall far short of the requirements mandated by the WIPO Treaties, failing to explicitly cover both copy- and access-controls or provide civil remedies. The software provisions also utilize an impermissible “sole purpose test” for assessing whether a circumvention device runs afoul of the law. To achieve compliance, Greece must afford the same level of protection for TPMs applied to software as that which is applied to other types of works.

Government software legalization: BSA reports no new developments or progress on government legalization efforts during 2010. Government should lead by example, stressing the importance of protecting intellectual property rights and legal software use within the Public Administration. By taking these positive steps and implementing policies that support legal software use, the government could raise significant awareness of the problem and help bring down the unacceptably high business software piracy rate.

Civil procedure law reform on search orders: In 2009, a problematic legislative proposal to amend the Greek Civil Procedural Law was issued which would affect the procedures for granting search orders (Bill for the Reformation of the Greek Civil Procedural Law, issued at 27 August 2009 by Special Standing Committee of Ministry of Justice). The legislative committee proposed, in case of an *ex parte* search order, to summon the other party within the next three days after the issuance of the order, a provision that would limit greatly the effectiveness of such orders. This legislation remains pending and there is no estimate as to when it might pass.

Problems with obtaining access to personal data from ISPs: As discussed in the enforcement passages above, this issue involves industries’ efforts to amend Article 4 of Law 2225/1994 so that ISPs are required to disclose the identity of users suspected of copyright infringement. A standing committee was supposed to deal with the amendment of this Data Protection Law (2225/1994), which lays down the principles applying to the disclosure of personal data of violators using telecommunication systems. The Ministry of Culture is staunchly opposed to supporting such an amendment and has referred the question to the Ministry of Justice, where rights holders have little optimism for progress. The ex-Minister of Justice had promised to reform the law to address felony copyright infringement, and the bill was forwarded by the Hellenic Copyright Office (OPI) to the Ministry of Justice, but was put on hold in late 2008. The copyright sectors are seeking reforms here similar to those reforms they are seeking in discussions with OPI on the Copyright Act.

The industries have supported amending Greek legislation to permit ISPs to reveal identities of copyright infringers consistent with the 2008 European Court of Justice (ECJ) *Promusicae vs. Telefonica* decision, including appropriate steps to facilitate the ability of rights holders to obtain the necessary information to take civil actions to protect their rights. To this end, copyright holders strongly support amending Greek legislation to clarify the obligations of ISPs to reveal identities of copyright infringers. Both the former and current chief prosecutors have issued circulars endorsing this view, and suggesting that measures should be taken so as not to turn the Internet to a criminal haven, where violators exploit legislation on personal data protection that was designed for the protection of personal rights. When Internet crimes are involved, the prosecutors believe, there can be disclosure of personal data. However, such statements from the chief prosecutor do not bear the strength of law and, while they are binding on prosecutors, may not be adopted by courts. It remains imperative that the government enact relevant legislation supporting this critical component of an effective campaign against Internet piracy. In the interim, the recording industry has filed preliminary measures against ISPs regarding specific infringing website activity, and expects a hearing in mid-2011.

Ineffective implementation against street vendors: Ministerial Decree No. K1-1178 was signed June 25, 2007 by the Minister of Public Order, and was intended to help remove street vendors from the streets by empowering the Municipal Police, the Tax Police and the regular Police to confiscate and destroy all items protected by the current intellectual property legislation when sold in the streets by street vendors. This 2007 decree, however, was never applied in practice due to the complexity of its content and the procedures necessary for its implementation. The decree itself did not mandate seizure and immediate destruction, but required boards comprised of municipal servants that would meet one or two times before they would come to a decision that would validate the

destruction. As a result, the Municipal Police would rather pass the seized items to the Police. The Municipal Police, who are unarmed and have no authority to make arrests, insist on armed police escort because they are physically attacked by street vendors. Improved efforts are needed to get the three Ministries involved (that is, Internal Affairs, Public Order and Development), to considerably speed up the implementation process. Greek Law 3731/2008 provides the general provisions of jurisdiction of the Municipal Police, but the law does not explicitly provide for the arrest and prosecution of street vendors for IP infringements. Reports also suggest that amendments have been proposed to this Decree that would simplify the procedure for the seizure and destruction of pirate products. New legislation to provide Municipal Police with authority to arrest and prosecute street vendors for IP infringements needs to be issued.

## IPR TRAINING AND PUBLIC AWARENESS

The industries believe that IPR training for judges must be organized by the Greek government. The industries consistently ask that such training be arranged, as it is a critical first step to lead to the proper application of the law which in turn will lead to effective enforcement against piracy. In recent years, the Athens School of Judges and Prosecutors introduced an intellectual property course, and OPI organized seminars among the legal departments of the IPR organizations. However, more IPR training and education for police, prosecutors, judges, and customs officials is urgently needed. With respect to trainings for SDOE, there were no relevant seminars in 2010, but BSA is planning to offer seminars on detection of illegal software to the officers of the new Special IP Protection Department of SDOE in 2011.