

# ALBANIA

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2013 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that the U.S. Government actively monitor developments in Albania during 2013 with respect to the issues discussed in this Special Mention report.

**Executive Summary:** Several copyright industries, including the motion picture industry and the software industry in particular, note significant enforcement problems in Albania. According to BSA | The Software Alliance (BSA), the software piracy rate in Albania has held steady at around 75% for the past three years.<sup>1</sup>

In general, Albania's legal framework for IPR protection is sufficient. A new (and improved) Copyright Law was expected to be considered by the Parliament in 2012, but will now be considered in early 2013. The law is intended to implement key European Union directives (such as the 2004 Enforcement Directive). Drafts of the law are currently under final review by the government (Ministry of Culture and the Albanian Copyright Office), which has included input from rights holders. Passage of the law is also necessary to implement the Government of Albania's "Intellectual Property Rights Enforcement Strategy 2010-2015" which established a dedicated interagency detail (an *ad hoc* IPR Inspection Agency) for combating IPR enforcement.

There were two other recent additions to the legal framework. The first was adopted in 2009 (implementing the 2003 European Council Regulation No. 1383/2003), to provide customs officials with *ex officio* authority to suspend the release of goods or to seize goods on sufficient grounds. In addition to this authority, customs actions can also be undertaken on a rights holder's request. The second was adopted, effective July 2011, to the Law on Inspections, which allows internal market inspections (including IP inspectors) to use *ex officio* authority.

Despite these encouraging existing and expected (near-term) legal reforms, enforcement activity by government authorities made no forward progress in 2012, according to the copyright industries. BSA reports that *ex officio* inspections against software pirates by the Albanian Copyright Office (ACO) and the other enforcement agencies, have not been effective. Until 2011, ACO was the sole agency with responsibility for monitoring and enforcing the marketplace for copyright materials. Under the July 2011 amendments, authority for inspections was transferred from ACO to a new system of *ad hoc* inspectors in the Ministry of Tourism and Culture, where it was hoped that more effective enforcement would result. Unfortunately, to date, this has not occurred as the move from ACO to *ad hoc* inspectors is still in limbo. Weakened enforcement is also a result of a general lack of knowledge, experience, and training in the inspection and prosecution of copyright cases (especially software piracy cases), despite numerous rights holder training programs over the last several years. In addition, under the new legal structure, there is a bifurcated system for the issuance of fines by ACO, and the collection of fines, by the tax authorities, who have still not collected any fines imposed (now more than a year after the re-structuring). It is expected that the 2013 legal reforms will further clarify the role of the tax (and other) authorities, to improve enforcement. There is also ACO restructuring, and provisions to strengthen its authority, as a part of the new Copyright Law expected to be adopted this year.

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<sup>1</sup>BSA | The Software Alliance's 2012 Global Software Piracy Study, conducted with two leading independent research firms, IDC and Ipsos Public Affairs, measured the rate and commercial value of unlicensed PC software installed in 2011 in more than 100 markets. In 2011, the software piracy rate in Albania was 75%, representing a commercial value of unlicensed software of US\$6 million. These statistics follow the methodology compiled in the Ninth Annual BSA and IDC Global Software Piracy Study (May 2012), <http://portal.bsa.org/globalpiracy2011/index.html>. The BSA study covers piracy of all software run on PCs, including desktops, laptops, and ultra-portables, including netbooks. It includes operating systems, systems software such as databases and security packages, business applications, and consumer applications such as games, personal finance, and reference software. It also takes into account free software, open source software, and software as a service if it is paid for. It does not cover software that runs on servers or mainframes and routine device drivers, free downloadable utilities such as screen savers, and software loaded onto tablets or smartphones. The methodology used to calculate this and other piracy numbers are described in IIPA's 2013 Special 301 submission at <http://www.iipa.com/pdf/2013spec301methodology.pdf>.



The problems of inadequate enforcement persist for customs officials as well – where training, personnel, and experience is lacking (in the new department handling IPR matters). The General Customs office remains understaffed, and as a result, software piracy seizures or actions using *ex officio* authority, or upon a request filed by a rights holder, have been very weak.

In March 2012, Albania amended its Penal Code for infringements of industrial property rights, in compliance with the obligations set by the WTO TRIPS Agreement, but it made no changes relating to copyright infringements. The number of criminal proceedings commenced against unauthorized users of IPR materials increased overall (including patent and trademark matters), but there are still steps needed to effectively implement the national strategy for the enforcement of intellectual and industrial property rights (IPR), and to address copyright infringement in particular, including the need to enhance interagency cooperation. In 2011, there was only a single interagency meeting regarding the IPR implementation strategy, and only one in 2012 (there have been none scheduled for 2013, and parliamentary elections are set for June 2013).

Another recommendation for effective enforcement is the establishment of specialized IPR courts. A new law on Administrative Courts was passed last year; it was expected to bring improvements for administrative actions. But, to date, judges, prosecutors and enforcement agencies in general have lacked the requisite expertise to deal efficiently with IPR administrative remedies.

One particular problem in Albania has been television piracy. There are over 60 public and private channels in Albania and many stations continue to broadcast U.S.-owned motion pictures without a license. In some cases, the materials have been licensed to certain stations in Albania, and other stations simply take and rebroadcast them without a license. The National Council of Radio and Television (NCRT) has issued fines against some of the broadcasters, but the fines have not been a deterrent penalty. This is because only the local tax authorities have the ability to execute (collect) the fines, and they are not doing so, despite a Memorandum of Understanding between the NCRT and the tax authorities. Both the individual rights holders (the studios), and the Motion Picture Association of America (MPAA) have sent cease and desist letters to individual stations, but to no avail. The stations continue to broadcast unlicensed material, and the current enforcement regime in Albania has either been unable or unwilling to stop this activity.

In sum, passage of the new Copyright Law is the top legislative priority, and the top enforcement priority is the proper implementation of the Law on Inspections, with the creation of and effective enforcement by *ad hoc* IPR inspectors. Other priority actions include: (1) amending the current Criminal Code to give state prosecutors *ex officio* authority to prosecute copyright infringements; (2) improving the resources, training and expertise of both the ACO and the Albanian Customs IPR Department in order to enable these authorities to start effectively pursuing IPR enforcement; (3) addressing the television piracy problem; (4) creating specialized IP courts (including an Administrative Court); and (5) conducting more IPR enforcement training, to improve IPR enforcement by judges, prosecutors and enforcement agencies.