

MOLDOVA

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 Moldova during 2013 with respect to the issues discussed in this Special Mention report.

Executive Summary¹: Several copyright industries, including in particular, the software industry and the motion picture industry, note significant enforcement problems in Moldova. In short, these industries report that there is little, if any, sustained and consistent IPR enforcement activity and not enough public awareness on the basics of copyright protections and rights; and, high piracy rates have remained a constant, especially for the software industry.

In addition to the enforcement concerns, there is one major legal deficiency that needs to be addressed by the Government of Moldova in 2013, because current law violates WTO TRIPS Agreement obligations and the WIPO Performances and Phonograms Treaty (WPPT). The issue relates to a statutory license for making available right for performers and producers of sound recordings under the Moldovan Copyright Law (2010). Instead of an exclusive right of making available as required by the WPPT and an exclusive right of reproduction as required by the WTO TRIPS Agreement, Moldova now permits a statutory license (a mere right of remuneration) for the making available to the public of phonograms; in short, Article 37(1)(d) needs to be amended.

According to BSA | The Software Alliance (BSA), the software piracy rate in Moldova remains among the highest in the world (it was 90% in 2011).² One of the hindrances to effective enforcement is the lack of IPR training and experience by the police, prosecutors, and judges, responsible for dealing with copyright enforcement matters. In 2012, the number and size of raids undertaken against suspected infringers decreased for the second year in a row, and, most investigations (cases) were closed without a trial or conviction. This is due, in large measure, to the low levels of understanding and priority given to IPR enforcement in general.

In November 2010, the largest “national” torrent tracker responsible for copyright infringement in Moldova was taken “down” by the local enforcement authorities (it had a reported 270,000 users at the time). However, within a few weeks, the same service was up and running with virtually the same illegal content; while it is still available in Moldova, it is apparently no longer being hosted there. To date, no criminal investigation or case has been commenced against either the owners or operators of this illegal service for its operations in Moldova.

BSA reported that in 2012, no new criminal investigations for software piracy were commenced. BSA further reported, that of the 2011 criminal cases (seven total) commenced:

- Four cases were closed by the police at the criminal investigation stage, without any further action.

¹For more details on Moldova’s Special 301 history, see IIPA’s “History” appendix to this filing at <http://www.iipa.com/pdf/2013SPEC301HISTORICALCHART.pdf>, as well as the previous years’ reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA’s 2013 global issues, see our cover letter at <http://www.iipa.com/pdf/2013SPEC301COVERLETTER.pdf>.

² 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 Moldova was 90%, representing a commercial value of unlicensed software of US\$45 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>.



- Three cases were concluded by court decisions, with varying amounts of fines imposed.

BSA further reported that there were only two new administrative cases opened in 2012 pertaining to software piracy and of these, one resulted in a settlement (with rights holders) and a fine, and the other case is still pending in court.

PRIORITY ACTIONS TO BE TAKEN IN 2013

IIPA recommends that the Government of Moldova address the following legal reform matter in 2013:

- The interactive making available right for performers and producers of sound recordings under the current Moldavian Copyright Law (2010) is in conflict with the WTO TRIPS Agreement (right of reproduction), the WPPT and the EU directives. Instead of an exclusive right of making available as required by the international treaties (e.g., WPPT Article 14), and the right of reproduction under WTO/TRIPS (Article 14), Moldova now provides for a statutory license (a mere right of remuneration) for the making available to the public of phonograms. The Moldovan Copyright Law generally provides for an exclusive right of making available for producers (Article 34(1)(e)) and for performers (Article 33(2)(f)); however, the exclusive nature of this right is voided by Article 37(1)(d) which allows for the use of content online without permission, subject only to the payment of equitable remuneration. This voids the exclusive right in violation of the requirements of the WPPT, and the WTO TRIPS Agreement. To make matters worse, Article 48(11)(d) of the Copyright Law stipulates that the right to equitable remuneration falls under extended collective management undertaken by collecting societies. This defect has been an issue in other countries as well (e.g., Ukraine). Because it is a violation of international treaty obligations, it should be quickly addressed by the Government of Moldova.

IIPA recommends that the Government of Moldova make the following its IPR enforcement priorities in 2013:

- Raise public awareness on the importance of IP protection and rights through joint educational and public relations campaigns between the government and rights holders. This would also include organizing conferences focusing on the value of IPR in general, and on the importance of enforcement to help local and foreign rights holders establish a legitimate marketplace in Moldova. Additionally, this would include an awareness campaign on the risks of end-user piracy, led by the Agency for Intellectual Property Rights Protection.
- Increase the number of training programs for police, prosecutors, and judges on the basics of IPR protection and enforcement – including a focus on online piracy problems.
- Increase the overall number and size of raids and cases against IPR infringers.

Aside from the one major exception above (making available right), the copyright industries generally report that the Moldavian IPR legal infrastructure is sound (and, for the most part, harmonized with European Union directives). But, as noted, the largest problem in Moldova confronting these industries is the implementation of its laws, and on-the-ground enforcement which is lacking in overall numbers of raids and seizures, and criminal cases and convictions compared with other countries in the region. In short, IPR protection is no longer a priority for the Government of Moldova as it was only a few years ago (which led to the improved legal reforms); thus, significant investments made by the copyright industries in past training programs for local law enforcement officials are not proving to be fruitful. Thus, despite the good relationships between rights holders and the Anti-Fraud Police and IPR Crimes Department of the General Public Prosecutor's Office, the number and quality of raids has decreased for the past several years. The police lack sufficient resources, equipment and expertise to effectively conduct raids, and the storage and inspection of seized pirated materials remains a major concern for rights holders. In 2012, the police

forces were restructured which further reduced the number and size of raids. One positive note: the Ministry of Internal Affairs recently approved an internal reform strategy which is intended to ultimately improve IPR enforcement.

Another concern is the lengthy court proceedings; as a result, the copyright industries cannot secure effective enforcement and cannot get a strong foot-hold in a legal marketplace in Moldova. One suggested starting point for enforcement would be for the courts to issue civil injunctions in a matter of days (three days to three weeks is the average in Central Europe) against end-user and other pirates. In Moldova, this process currently takes longer than six months – just one indication of the overall weak enforcement climate in Moldova.