

ROMANIA

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

Special 301 Recommendation:¹ IIPA recommends that Romania remain on the Watch List in 2013.

Executive Summary: Romanian authorities are active partners with the private sector in promoting anti-piracy messages, but enforcement against rampant piracy worsened in 2012. Piracy remains widespread in Romania for all forms of copyright works, and the problem has now firmly moved to the online space, where even international pirates seek safe haven from more unwelcoming terrain elsewhere in Europe. IIPA expresses its appreciation for the very active and supportive role of the U.S. Embassy in Bucharest, providing training for law enforcement, coordinating with the private sector, and emphasizing with the Romanian Government the need to prioritize IPR protection and enforcement in legislative and law enforcement efforts. The Romanian Government has put in place a specialized IP prosecutor and police team to tackle intellectual property crimes, and the newly appointed prosecutor has cooperated in U.S. Embassy and private sector trainings and conferences. As a result, two new Internet cases have been opened for criminal investigation. Reports of cooperative attitudes of police and piracy experts are appreciated, but much remains to be accomplished within the overall challenging enforcement environment in Romania. We encourage the Romanian Government to adapt the country's laws to the modern environment, to encourage a national policy of cooperation against online infringement, to ensure police officials are competent and well-equipped to conduct raids and investigations efficiently, and to give prosecutors and courts the authority and training to bring piracy cases to speedy conclusion, with deterrent sentences and penalties.

PRIORITY RECOMMENDED ACTIONS FOR ROMANIA IN 2013

- Senior levels of the Romanian Government must express a coordinated commitment to fighting copyright piracy, providing the necessary resources and authority to all enforcement authorities to take sustained and concrete actions to support that commitment, and monitoring progress over an extended period of time.
- Provide adequate resources and high-priority support for all newly appointed specialized police as well as local law enforcement for investigations and actions involving piracy on the Internet.
- Ensure that specialized IPR prosecutors operate in a transparent manner, communicate with rights holders' representatives, and provide results by swiftly initiating and indicting criminal infringement cases.
- Impose deterrent, non-suspended sentences and fines for criminal copyright convictions, and avoid dismissing cases, especially those involving high-level damages or repeat offenders.
- Permit rights holders' organizations to serve as court experts in copyright infringement cases.
- Reauthorize IPR-trained Tribunal-level prosecutors with jurisdiction over copyright criminal cases, and instruct public prosecutors' offices and courts to prioritize IPR cases, including Internet piracy cases.
- With respect to the Romanian Copyright Office (ORDA), (1) the statutory stickering (hologram) system should be abolished; (2) ORDA's track recordation system for sound recordings should be made voluntary and free of charge; (3) ORDA's tariffs should be substantially reduced; and (4) intricate and bureaucratic procedures should be simplified.
- Remove the warrant requirement for searching computers in public facilities by amending Law no. 161 of 2003 or Copyright Law no. 8 of 1996 or, alternatively, expressly provide for the principle that the premises search warrant also covers the PCs and digital media in the premises.
- Include rights holders in any legislative consultation process to amend the copyright law or other laws.

¹For more details on Romania'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>.



COPYRIGHT PIRACY IN ROMANIA

Internet Piracy: Like many countries in the region, Romania was once plagued by hard goods piracy, but in recent years has experienced a significant shift to Internet piracy. Romanian users increasingly access illegal content at home and to download and burn copyrighted materials — music, entertainment software, films and business software. Large amounts of video files are shared over the networks. The problem has so pervaded Romania's webspace that pirate Internet services in the country are now serving users both in and out of Romania.

The Motion Picture Association of America (MPAA) reports that the scope of Internet piracy of audiovisual content in Romania now reflects a significant increase in number and visibility of illicit downloading and streaming websites. Some of these websites, for example vplay.ro, are accessible only from Internet Protocol addresses originating from Romania, while other, internationally available sites have sought safe haven for hosting services from within Romania. Several high-profile pirate websites have found shelter in servers based in Romania, such as movie2k.to (Alexa.com worldwide ranking #326), rutor.org (#1,431), 1337x.org (#1,496), kinozal.tv (#1,878), tubeplus.me (#2,500), mygully.com (#5,347) and sceper.ws (#7,969). Film industry representatives report that the lack of Internet enforcement in the face of these problems has played a major role in deterring investors from developing a legal online market for audiovisual products. Even more troubling, these illegal services based in Romania are the source of audio and video camcords that have a direct impact on the legal offer online and legitimate digital markets in other countries, and serve as the foundation of a still-present illegal DVD market worldwide.

The independent segment of the film and television industry (IFTA) reports that independent producers and distributors are especially concerned with the impact of Internet piracy because of its harm to legitimate online distribution services – harming consumers and rights holders alike. Revenue from these services, which is licensed country-by-country, is critical for the independents to finance the development of new creative works worldwide. Since Internet piracy instantly exports troubled marketplaces and high piracy rates to other markets, this type of copyright infringement not only undercuts anticipated revenue from the distribution of a particular asset, it also harms the ability of independent producers to secure financing for future productions.

The Entertainment Software Association (ESA) continues to see problematic levels of peer-to-peer (P2P) piracy in Romania. In 2012, Romania once again placed tenth in the world in the number of connections by peers participating in the unauthorized file sharing of select ESA member titles on public P2P networks.

BSA | The Software Alliance (BSA) reports a modest decrease in Internet-based piracy of software in Romania in 2012, appearing most commonly via the illicit use of P2P file sharing, in particular via BitTorrent protocols. Research shows that most often individuals will download (or upload) pirated software at home, both for home use and for distribution or use in the workplace.

The level of Internet piracy in Romania in recent years has become so high that the music industry has struggled to develop new legitimate online services, while existing services face unfair competition from the massively available pirated free offer. The main segment of music Internet piracy has involved the illicit use of P2P file-sharing, yet the growing use of cyberlocker sites to distribute infringing music files is close behind. Encouragingly, the administrators of such sites typically cooperate in taking down infringing links. In 2012, the music industry reports that there were 333 websites identified with pirate content, 204 of which were closed, 96 were reported to IFPI, and 33 of which fall under the competency of Romanian authorities. There are currently 17 websites offering legitimate music content including legal streaming sites.

Enterprise End-user Software Piracy: BSA reports that the software piracy rate in Romania was 63% in 2011, representing a commercial value of unlicensed software of \$207 million.² This includes continued widespread unlicensed software use by businesses and other enterprises. Hard goods piracy was on the decline in the past year, which can be attributed to the heavy increase in Internet piracy and determined enforcement actions.

Hard Goods Piracy: The levels of optical disc piracy in Romania have declined somewhat in recent years, a trend attributable to both the increase in Internet piracy and enforcement actions against places of sale. Hard-disk loading, an activity that involves the installation of pirated software programs into PCs for delivery on purchase, has decreased somewhat thanks to software industry representatives that conduct surveillance of the PC market through sample purchases, and as a result of deterrent sanctions issued by law enforcement. Remaining hard goods piracy consists of sales in street markets and unauthorized use of pirated copies of games in Internet cafes. ESA reports that piracy in Romania is quickly migrating online as Romanians have turned to downloading pirated PC games at home.

COPYRIGHT LAW AND RELATED ISSUES

There are a variety of Romanian laws that affect the abilities of rights holders to protect their content and of the authorities (both criminal and administrative) to enforce the law.

No Legal Framework for Online Anti-piracy Investigations: In June 2012, Romania adopted a new law to implement the EU Data Protection Directive, Law no. 82 of 2012. The new law grants to authorities the ability to require ISPs to implement data retention policies, such data to be disclosed only in cases of severe criminal offenses – but copyright crimes are not within the scope of the new provision. Further amendments to the legal framework for data retention are needed to allow enforcement authorities to collect needed evidence in anti-piracy investigations, regardless of whether piracy is undertaken by a criminal organized group as defined in Romania’s organized crime laws.

Local industries have been unable to enforce their rights in copyright works against online infringement in the aftermath of a now-defunct Data Retention Law (no. 298 of 2008), which in October 2009 the Constitutional Court found unconstitutional due to the fact that “it allowed Police Officers to commit abuses.” The law was enacted to implement the EU Data Retention Directive, and required Romanian ISPs to retain their subscriber and network data for six months and to communicate it to the authorities, upon court order, in cases of crimes committed on the Internet or through other communication systems. While the Constitutional Court may have had justification to strike the 2008 law, the decision created a gap in enforcement provisions that has hindered the ability of Romanian police authorities to seek the identities of online infringers. Since the law was repealed, as a practical matter rights holders are now unable to gather the evidence needed to bring effective Internet piracy cases. Although the Copyright Law and Law on Electronic Commerce contain elements that should establish a role for ISPs in online anti-piracy actions, ISPs in Romania have not cooperated in such actions citing the need to address data retention.

Internet Cooperation: In December 2012, the Romanian Copyright Office (ORDA), with the support of WIPO and of the General Public Prosecutor’s Office and with the participation of police, rights holders, and ISPs, organized an event addressing use of copyrighted content over the Internet. Many issues were addressed in an

²BSA | 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 Romania was 63%, representing a commercial value of unlicensed software of US\$207 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>.

attempt to open honest and productive dialogue among the parties. Currently, however, there are still no plans in Romania to develop a clear framework for cooperation with Romanian ISPs to enforce copyright online, in the absence of which ISPs are reluctant to take any action. Rights holders in the film industry began working with Romanian hosting service providers in 2011, and report varied responses to notices of instances of piracy and efforts to collaborate. Some host providers responded rapidly, but most took no action in response to repeated notices. Today, MPAA reports that ISPs are wholly uncooperative to requests from members of the film industry to remove infringing content.

The Romanian Copyright Law addresses the unauthorized uploading and downloading of copyrighted works from the Internet, but is not clear as to the responsibility of ISPs specifically.³ Meanwhile, Romania's Law on Electronic Commerce (Law No. 365 of 2002) provides that an ISP should suspend Internet access of a client upon notification by the authorities that the client has engaged in an act of infringement. The ISP can suspend a client's services only through the disposition of the designated public authority (ANRCTI) or through a court order, based on a complaint of an interested party. Unfortunately, the authority (ANRCTI) cannot act in response to infringements of the copyright law, but only in cases of infringement of the E-Commerce Law, leaving copyright violations out of the purview of this ISP liability mechanism. Further, the E-Commerce Law provides for the liability of ISPs in cases where they do not take action if (a) they learn about the illegal/infringing nature of information stored, or (b) they facilitated access to such information (by search instruments and links). In the case of facilitation, such illegal/infringing nature must be confirmed by a competent public authority. However, with respect to hosted information, it is not clear on what criteria the ISPs must consider the information to be illegal or infringing, which may cause problems in practice. The law also provides for the general obligation of ISPs to alert authorities about the apparently illegal activities of their clients; should an ISP fail to do so, they are subject to administrative liability. Rights holders are concerned that this very broad and unspecific obligation is unenforceable.

Copyright Law Reform: The 1996 Romanian Copyright Law has been amended a number of times in the past decade, including in 2004, 2005, and 2006,⁴ often to bring the law into compliance with EU Directives. The overall legal structure is generally good but unfortunately Romanian law is not yet fully compliant with the WIPO Copyright Treaty (WCT), the WIPO Performances and Phonograms Treaty (WPPT), the EU Copyright and Enforcement Directives, or the WTO Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement. Some problematic provisions reported by local industry colleagues remain. Article 143, which provides protection for technological protection measures (TPMs), does not appear to prohibit acts of circumvention, but only preparatory acts of circumvention and therefore fails to implement the WIPO Treaties and the EU Copyright Directive.

In August 2010, the Ministry of Culture requested comments on draft amendments to the Copyright law, but the draft has not progressed since comments were submitted in 2010. As published in 2010, the draft contained both good and bad provisions for the copyright industries. An issue long faced by the software industry is that computer search warrants must be requested in addition to location search warrants. A search warrant can be issued only by a court after the commencement of the criminal investigation (Law No. 161 of 2003). But the criminal investigation can only be commenced if sufficient evidence exists, and in practice it is difficult to gather the evidence on a suspect's premises in the first place, which can limit the number of *ex officio* police raids dramatically because police raids depend upon input from the rights holders. The law should be amended to provide that the mere verification of the existence of software installed on computers should not require such a search warrant. Alternatively, it could be provided that the search of the computers is covered under the premises search warrant. We understand the 2010 draft amendments to the Copyright Law addressed this issue and hope it will be adequately addressed in any final amendments enacted. Unfortunately, the draft also includes decreases of penalties for some copyright crimes. A needed revision would implement Article 8.3 of the EU Copyright Directive to allow rights holders to seek injunctions before civil courts against intermediaries whose services are used by a third party to infringe copyright. In September

³See Article 1432 of the Copyright Law (a crime punishable with imprisonment from six months to three years includes the act of the person who, without the consent of the rights owner and knowing or having to know, permits, facilitates, provokes or hides an infringement of a right provided for in this Law.)

⁴For a detailed history of these amendments, see the IIPA's 2010 Report at <http://www.iipa.com/rbc/2010/2010SPEC301ROMANIA.pdf>.

2012, the draft was approved by the Senate automatically (according to Parliamentary procedures, if the Senate fails to discuss a legislative draft by a certain deadline, it is automatically deemed adopted and it moves to the Chamber of Deputies, which then must expressly discuss, adopt, change, or dismiss the bill). BSA submitted comments to the Ministry of Culture when the draft was published in 2010, and, again, with the Romanian Copyright Office in September 2012, and other copyright sectors have submitted comments, but still there is no schedule for the draft to move forward.

Also in 2009, the Romanian Copyright Office supported a legislative amendment to require resellers of software to inform customers about the legal risks of piracy at the point of sale. However, the legislative draft amending Government Ordinance no. 25 of 2006 was put forward without this provision. The concept should be retained in future efforts to increase public awareness about piracy.

ORDA, the Hologram System and Ineffective Administrative Enforcement: The music industry has for many years called for an abolition of the ORDA registration and hologram system, given its historical ineffectiveness regarding enforcement and its penchant for corruption. ORDA issues holograms for every optical disc (audio, video, software) that is released commercially. All copyright industries agree that this system produces more bureaucracy than help in anti-piracy activities and, for a variety of reasons, is a model that has proven over time and in many countries to be ineffectual. In addition, ORDA registers every sound recording and videogram that is released to a commercial circle for the purposes of issuing holograms (this requirement was introduced by the Government Ordinance No. 25/2006). As expected, the procedure is extremely complicated and time-consuming. The registration of each recording and videogram is taxed by ORDA, and the price of the holograms includes an additional 10% fee for a national cultural fund, while for example other additional fees (3% added to the sale price of DVDs or other tangible supports) are paid by the film distributors for the film fund administered by the Film Office. The copyright industries also have voiced concerns with a November 2008 decision regarding ORDA that added more provisions regarding tariffs, the use of expert reports, and the use of the “encouragement” fund for ORDA personnel. Romania should (1) abolish the statutory hologram system; (2) make the track registration system voluntary and free of charge; and (3) substantially reduce ORDA’s tariffs and allow rights holders’ organizations to act as court experts in copyright infringement and piracy cases.⁵

Government Software Legalization: In July 2010, the National Authority for Regulating and Supervising Public Procurement (ANRMAP) issued a draft amendment of the secondary legislation of public procurement (Government Ordinance no. 925 of 2006) for which the software sector submitted a proposed revision that would allow contracting authorities to ask for statements of licenses for software used by bidders for public procurement contracts, and actual documentation of licenses upon winning a bid. Previous efforts were underway to amend the Ordinance to require software distributors to inform customers about software piracy risks. However, the current legislative draft was promoted without this provision. Despite the fact that the software industry has resubmitted drafts of the proposals to ANRMAP and to the Ministry of Communications and Information Society under the most recent government change, the process of amending the Ordinance continued to be stalled in 2012. This effort should be encouraged to move forward including the software related provisions.

Criminal Code Reform Delayed: A large part of the Criminal Code reform in 2006, including the intellectual property chapter, was postponed until September 1, 2008, then until September 1, 2009, and then, again, until October 1, 2011 and now is not expected until early 2014. In a positive move, Law No. 278 of 2006 introduces criminal liability for legal entities and also provides for the general limits of criminal fines. However, there were some problems in this law. For example, the Criminal Code still does not sanction the possession of infringing materials, including the possession of the equipment used to make infringing material. Also, while the new criminal procedural code is to address computer searches in detail, it is not expected to resolve the issue that specific computers must be identified in warrants for subsequent search. There have also been proposals for a new civil procedure code that enters into force on February 15, 2013, including some civil measures in the IPR field.

⁵For further details on this long-standing problem, see the IIPA’s 2010 Report at <http://www.iipa.com/rbc/2010/2010SPEC301ROMANIA.pdf>.

COPYRIGHT ENFORCEMENT IN ROMANIA

Copyright industries report continued improvements in relationships with Romanian Police, the General Public Prosecutor's Office, and the Romanian Copyright Office in 2012, but overall enforcement authorities have not prioritized combating piracy. The appointment of a specialized prosecutor and police team dedicated to IP crimes is a needed and welcome development, which is already resulting in the opening of new Internet piracy cases. At the local level, however, there has been a decrease in attention to IP crimes. Obstacles to gathering evidence in physical raids and Internet investigations continue to prevent cases from moving forward, and those that do reach prosecutors' desks are often subject to dismissal. Law enforcement also suffers from misguided priorities in online piracy cases, taking on slow and unproductive cases against BitTorrent users rather than bringing action against the administrators of services offering unauthorized material. General political and economic stability, combined with the expiration of the mandate of the General Public Prosecutor of Romania in October 2012, have prevented decision-makers from focusing needed attention to IP enforcement.

With no new leadership yet appointed to the General Public Prosecutor's Office, the Intellectual Property Working Group that was formed in 2006 as a form of private-public partnership, has also suffered and is in need as much as ever of more engaged leadership. Some activity has taken place in the Working Group via email information exchange, but there have been no meetings in the second part of 2012. Led by the IP Department of the Public Ministry within the General Public Prosecutor's Office, this group includes all the public authorities having IPR enforcement jurisdiction along with representatives from the private sector. The main agencies responsible for criminal enforcement are the police and the prosecutors (the Public Ministry). The General Police Inspectorate—Anti-fraud Department includes a unit dedicated to intellectual property rights, and other agencies include the Border Police and the Gendarmerie. ORDA has the responsibility to provide forensic examinations/expertise reports, to store the pirate products during trial and destroy them after the trial is concluded, as directed by the court or prosecutor.

Police Enforcement: In 2012, BSA reports that its relationship with the Romanian Police has substantially improved. The police have specially appointed officers for IPR matters, and most of the raids in Romania are *ex officio*. However, in 2012 the number of raids conducted by the police continued to drop significantly, and the public prosecutors have a history of dropping cases. The superiors of the General Inspectorate of Police should retain specialized officers and ensure resources are adequate for their dedication to IPR cases. Further, amendments to the copyright law to authorize police to verify software installed on computers, as described above, could provide the needed authority for police to move forward with raids in cases of software piracy.

In 2012, BSA had about 260 new raids (185 for end-users cases, 42 for resellers/distribution and hard-disk loading cases, and 38 for Internet piracy)—altogether a dramatic decrease from the 500 raids conducted in 2009. The number of PCs searched in a given raid has also decreased, and so, as a result, have the damages assessed per case – from approximately US\$12,000 in 2009 to US\$5,000 in 2012. By the end of 2012, fifteen cases resulted in convictions (four of these were for end-user piracy, ten in resellers/distribution cases – one of which was sentenced to actual imprisonment of three years and four months, none for hard-disk loading piracy, and one Internet piracy case). This is, again, a major decrease in convictions compared to 2011 (29 convictions), 2010 (34 convictions) and 2009 (24 convictions). Law enforcement also raided some local public authorities and publicly owned entities in 2012, stepping up enforcement against government use of unauthorized software.

The entertainment software and motion picture industries report that relationships with law enforcement continue to be positive, although delays in case reporting continue due to lack of resources. As reported in 2011, both police and prosecutors would benefit greatly from better training and the necessary tools to gather evidence for the identification of online infringements. Local police initiate cases involving cross-industry pirated product, often actively seeking member company assistance in the course of investigations.

A major obstacle in software end-user piracy enforcement is the need to have both a physical location warrant and a computer search warrant issued in order to search computers to identify unlicensed software; such

warrants may be issued only by a judge and only if the criminal investigation is officially initiated. At the same time, the criminal investigation may be initiated only if sufficient evidence exists. In practice it has proved difficult to gather such evidence necessary for having the criminal investigation initiated. This issue dates back to 2005 and is still unsolved. It has been the subject of discussion for amendments to the copyright law, as described above.

A new issue in software cases has arisen, in that some courts request a strict identification of the computers and of the digital data media that are to be searched prior to the search, which in practice is impossible. For this reason, the police are forced to split raids into two procedures: first, they get the physical location search warrant to visit the site, and second, having retrieved the computer identification information, they can request the search warrant for the PCs themselves. This process is time- and resource-consuming and it can also lead to unsuccessful raids, for example when a company is searched with only a physical location search warrant and shows some proof of license, after which the police have no way to uncover underlying software installation for unlicensed upgrades or additional programs. Senior levels of law enforcement agencies have supported the possibility that the law allow for a single search warrant, valid for both the physical location and for all computers and digital data media in that location, without requiring the identification in advance of all computers and digital media to be searched.

Gathering evidence in Internet piracy cases is significantly more challenging since the Constitutional Court brought down the legal framework on data retention in 2009, as explained above. Moreover, under legislation still in force, traffic data may be obtained by order as part of a criminal investigation, but such a case may not be opened without existing evidence sufficient to prove infringement – a limitation that in practice allows Internet copyright criminals to remain active without fear of detection.

Judicial Enforcement: Romania's courts remain a bottleneck for copyright enforcement due to a longstanding problem of court officials dismissing cases referred by enforcement officials, unhelpful jurisdiction adjustments that occurred at the end of 2010, training needs for specialized prosecutors, and a need for search warrant reform and the issuance of deterrent sanctions. Public prosecutors continue with the long-problematic practice of closing cases for lack of "social harm."

Romania's local public prosecutor's offices each include one public prosecutor appointed for IP cases, among other responsibilities. However, the requirement to hand over IP cases to specialized prosecutors is not strictly followed, and inexperienced prosecutors may be called upon to handle these highly technical cases. The problem is compounded under the 2010 reorganization of court jurisdiction of copyright cases, by which the effectiveness of IP-trained prosecutors is even further diminished. A law went into effect on November 26, 2010 in Romania, providing that all initial criminal copyright cases would be heard by First Instance Courts, courts of lower instance than the courts having jurisdiction in the past. The Tribunal courts had been the beneficiary of considerable prosecutorial training from the private sector, which will now go to waste. Since the competence for these cases moved to a lower level, the assigned prosecutors changed and required new training, a task made more difficult as training resources were stretched among several assigned prosecutors per country, rather than one per county at the higher level. Moreover, the last instance court is one of the 15 Romanian Appeal courts, rather than the High Court of Cassation and Justice. All civil copyright cases continue to be heard by the Tribunal courts. The maneuver might have been intended to simplify and accelerate the movement of IP cases through the judiciary, but without the needed emphasis in the lower courts of the seriousness of copyright crimes, the past two years have showed none of the badly needed improvements in judicial enforcement for copyright crimes in Romania. Underscoring the fact that copyright crimes receive diminishing attention in Romania's courts, the National Institute for Magistrates (where future prosecutors and judges receive mandatory training) removed intellectual property law from the mandatory curriculum in 2011. Industry representatives recommend considering reinstating authority to the courts above, to consolidate training invested in experts at the Tribunal level.

As a practical matter, it is extremely difficult to address the shortcomings of the Prosecutor's Offices functioning in the courts of first instance (in Romanian "judecatorii"), through IPR training due simply to the significant number of prosecutors involved. At the national level, there are 42 Courts of Second Instance (in Romanian

“tribunale”) and 188 Courts of First Instance. Each is assigned its own Prosecutor’s Office, and the number of prosecutors engaged by the Prosecutor’s Offices functioning within each Court of First Instance is higher than the number of prosecutors engaged by the Prosecutor’s Offices functioning within each Court of Second Instance. This is a fact that hinders the collaboration between the antipiracy associations with prosecutors and Police with any specialization. Furthermore, Romania’s courts lack specialized IPR judges or panels, making it difficult to provide targeted training for judges. Prioritization of IP crimes in general needs to be instilled in the judiciary from the highest levels.

Unfortunately, cooperative efforts with law enforcement were often undermined once cases were referred to prosecutors. Because prosecutors view IP offenses as trivial, cases are all too often dismissed for “lack of social harm,” and such dismissals are almost always upheld on appeal. When cases are not dismissed, prosecutors tend not to pursue deterrent penalties, even for repeat offenders. In the rare event that an investigation results in a case brought before a court, it generally takes an average of three years for completion of the trial. In one case a sentence was not issued until five and a half years after the initial raid took place. Typical penalties issued consist of suspended imprisonment of about 21 months, a court fine of up to US\$1,000, and occasionally damages amounting to a no more than a few hundred U.S. dollars. Such nominal fines result in very little deterrence.

In 2012, local music industry representatives filed 68 criminal complaints regarding digital piracy, and a total of 97 criminal cases went forward regarding digital piracy that are currently under investigation. The music industry in 2012 requested damages amounting to 187,297 euros (US\$253,056), of which 61% pertained to digital piracy and 39% to physical piracy) but has collected a total of only 6,510 euros (US\$8,795) in damages. At the national level, 39 cases were dropped from criminal prosecution, and 11 cases (all regarding physical piracy) were resolved by the courts, most of these ruling the conviction of the defendant with criminal fine or with suspended sentences of imprisonment.

On a positive note, BSA reports the support of the General Public Prosecutor’s Office and the General Inspectorate of Police in issuing a Software Copyright Enforcement Methodology Guide, to serve as a tool for enforcement agencies in tackling software piracy.

The music and recording industry has a good rapport with the police and prosecutors, in both hard goods and Internet cases; still, some hard good cases are dropped. Civil actions are also underway in the Internet realm, although too many are closed by the prosecutors based on a perceived “lack of social harm,” among other reasons.

Enforcement Activities of ORDA: In addition to its administrative duties (explained above), ORDA has some competencies in criminal enforcement matters. Industry reports that, following a change in management of ORDA in the recent years, there has been a positive trend in the average processing time to receive piracy expertise from ORDA officials. After raids are conducted, the police send seized product to ORDA for forensic examination. ORDA examines the seized products and issues a technical report certifying which goods are pirated. Rights holders, however, are still not involved in the verification process. After ORDA finishes its examination of the products, the prosecutor decides whether to file charges and prosecute the case if he or she considers there to be sufficient evidence for conviction. In practice, only ORDA provides expert reports, and there are no independent experts in the copyright domain. The simple solution here is to follow the prevalent practice in Europe and other countries, and to transfer this forensic examination task to the copyright industries, who are true experts in their respective products.

The software industry notes that ORDA has no criminal enforcement competence with respect to software piracy, but it does supervise the activity of professionals involved in the software business, such as importers, producers, distributors, and resellers. ORDA will apply administrative sanctions in cases where registrations, administrative measures and obligations are not observed. ORDA served as an important partner with BSA in 2012, promoting legal software use among public authorities and publicly financed entities, and emphasizing the security and other risks associated with software piracy. An ORDA-BSA cooperation protocol was signed in October 2012.

IPR Trainings and Public Awareness: In 2012 BSA conducted nationwide campaigns to raise awareness of software piracy risks. It conceived and developed a methodology guide together with the General Inspectorate of Police targeted to businesses, which became the subject of two training sessions for a mixed audience of police officers, prosecutors and judges organized by the U.S. Embassy, first in March-April 2012, and second in September-October 2012, each with over 100 participants. These trainings aimed at addressing cybercrime and some related issues in software IPR. (See www.softwareculicenta.ro.) The U.S. Embassy also organized an event in June 2012, giving BSA the opportunity to present the methodology guide to regional law enforcement. Finally, BSA participated in a program organized by the Romanian Copyright Office with the support of WIPO and of the General Public Prosecutor's Office, addressing the use of copyrighted content online, with participation from police, rights holders, and ISPs. BSA signed a cooperation protocol in October 2012 through which it is addressing local authorities in a campaign expected to run until mid-2013.

In July-August 2012, the Romanian Association of Music Industry conducted an antipiracy campaign in collaboration with the U.S. Embassy, with the objective to curb piracy rates in the music business and promote the legal use of music in Romania. This educational project addressed teenagers, whose music consumption habits are easier to influence through the power of positive examples. The strategy was to address the target not by presenting the legal threats they will be exposed to when choosing to illegally download music products, but by underlining the positive outcome that results from doing it "the right way." Rights holders developed two prize competitions in connection with Universal Music artists who visited Romania in the summer of 2012: Jessie J (28th of July, Mamaia) and Lady Gaga (16th of August, Bucharest). Teenagers who legally downloaded or purchased a physical product of the artist from selected web stores were invited to provide their personal information on campaigns' website (www.getmusic.ro/rewardyouridol) and enter a drawing for a prize to either meet their favorite artists in person or win special prizes (e.g., official artist merchandise, CDs, DVDs).