

COMMONWEALTH OF INDEPENDENT STATES

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

IIPA recommends that the following five Commonwealth of Independent States (CIS) countries – Belarus, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan – be placed on the Watch List for 2014. Belarus, Tajikistan, Turkmenistan and Uzbekistan were on the Watch List in 2013; Kazakhstan was not listed in 2013. IIPA recommends that Kazakhstan should be elevated to the Watch List for 2014.

All five countries are failing to comply with existing copyright treaty or bilateral and/or multilateral trade agreement obligations to provide adequate and effective protection and enforcement. In each country report we specify the details of the deficiencies, and recommend legal reforms and enforcement steps to improve the IPR regimes of each country.

Each of the five countries, of course, has its own copyright laws, treaty accessions and ratifications, and bilateral trade agreement obligations with the United States, and its own variances in other issues. IIPA, however, combines the reports of these five countries into a single report because the overwhelming majority of issues in each country are based upon similar bilateral trade agreements (negotiated and signed separately) with the United States in the mid-1990s, and because of very similar recommended legal reforms and enforcement shortcomings. The mid-1990 U.S. trade agreements with each country conferred Normal Trade Relations (then known as “Most Favored Nation”) on each country in exchange for a series of legal reforms, treaty accessions, and ratifications which have, to date, not been fully met.

The details of the recommended legal reforms, treaty accessions and ratifications, and enforcement obligations for each of the five countries – **Belarus, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan** – are set out below in the individual country reports.



BELARUS

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Belarus remain on the Watch List in 2014.

Priority actions requested to be taken in Belarus in 2014 – Key Legal Reforms: In 2011, Belarus completely revised its Copyright Law, and (according to an unofficial translation of the law) significantly improved several key provisions, including those pertaining to anti-circumvention and copyright management information. Still, there are a number of serious legal deficiencies that are preventing effective enforcement in Belarus.

Although it made many improvements, there are several serious concerns with the 2011 Copyright Law. First, Belarus (perhaps inadvertently), subjected the producers' and performers' rights of communication to a compulsory license – that is, a right of remuneration rather than an exclusive right. While rights of remuneration are acceptable for certain limited communications, such as traditional over-the-air broadcasting or performances of music in establishments, this is not the case for transmissions that are broad distributions of music to the public. The Copyright Law of Belarus incorporated a making available right within the right of communication to the public. But, as enacted, the right of remuneration operates as a compulsory license for all distributions of music to the public in violation of Belarus' obligations under the WIPO Performances and Phonograms Treaty (WPPT), as well as the right of reproduction under the WTO TRIPS Agreement. There are two additional serious concerns with the 2011 Copyright Law: (1) none of the limitations and exceptions in the law are subject to the three-step test of the Berne Convention or the WTO TRIPS Agreement, making them potentially very broad; and (2) the scope of rights for which the collective management organizations can receive state accreditations is extremely broad, and far outside of international norms. Rights holders, in particular the software industry, have provided significant resources for the training of local enforcement authorities in recent years (including in 2013), but report little noticeable improvement in either public awareness for IPR protection or enforcement activity by the authorities. There are also ongoing reports of significant procedural and administrative hurdles, including delays in government approval of right holder specific enforcement methodologies, which have impeded effective IPR enforcement operations.

The IIPA recommends the following changes to the Government of Belarus as legal reform priorities:

- Amendments to the Criminal Code to provide criminal penalties for first-time IPR violations. Currently, criminal penalties only apply to IPR violations after there has been an administrative violation and an exhaustion of administrative remedies.
- Amendments to the Criminal Code to: (a) adopt a "significant amount of use criteria" calculated on the basis of the price of legitimate product, instead of the existing too high threshold based on "large-scale damage" for IPR crimes; and, (b) lowering the actual amount of the current threshold to commence liability (in Article 158), which is now BR12.1 million (US\$1,260).
- Amendments to the Criminal Code (or Criminal Procedure Code) to permit the confiscation and destruction of manufacturing equipment used to produce pirated material.
- Amendments to the Criminal Procedure Code to provide the proper *ex officio* authority for police officials to initiate copyright criminal cases and investigations.
- Amendments to the Administrative Code to provide *ex officio* authority to administrative officials to commence investigations and cases. At present, a statement from a rights holder is required to commence an administrative

case. The administrative remedies are applicable for violations of copyright and neighboring rights, including acts of illegal retail sale and distribution.

- Amendments to the Customs Code to grant the proper *ex officio* authority to border officials to seize illegal material and to commence their own investigations and criminal cases.
- Amendments to the Civil Code to provide the proper *ex parte* search provisions for effective enforcement against end-user pirates.
- Amendments to the Copyright Law (2011) to: (a) provide an exclusive right of making available to the public for performers and producers of sound recordings (currently a right of remuneration) by amending Article 41(1); (b) subject all of the exceptions and limitations to the three-step test of Berne Article 9(2); (c) limit the scope of rights to the public performance right for state accredited collective management organizations, by amending Article 48(2); (d) clarify the protection for pre-existing works and sound recordings. Belarusian officials have insisted that this latter protection already exists. According to Article 3 of the Copyright Law, international treaties supersede the copyright and neighboring rights law, and Articles 21 (works) and 31 (neighboring rights) specify the treatment of the “public domain,” but these articles do not specify how (or what) pre-existing works and recordings are protected. Statutory clarification on this point by amendment (or decree) would avoid confusion on the part of police, prosecutors and judges tasked with enforcement of these rights.

Summary of U.S. – Belarus IPR Issues: In January and February 1993, Belarus and the United States exchanged letters to implement a bilateral Trade Agreement which detailed mutual obligations to improve the protection and enforcement of intellectual property rights. That agreement entered into force on February 16, 1993. Over 20 years later, Belarus still has not fully implemented the IPR obligations in that agreement.

On May 1, 2013, the U.S. Trade Representative (USTR) – while retaining Belarus on the Watch List – noted that the U.S. remained “concerned about Belarus’ implementation of the IPR commitments made under the United States-Belarus Trade Relations Agreement of 1993. Piracy and counterfeiting remain widespread in Belarus, and IPR enforcement efforts continue to be weak and ineffective.” In addition, the USTR urged Belarus to “enact all regulations necessary to implement the amendments to the Belarussian Criminal and Administrative Codes related to IPR that have been pending since 2011, and to implement fully the WIPO Internet Treaties.” Those regulations would finally and fully implement the 2011 amendments to the Copyright Law. The statement further urged customs officials to implement and exercise *ex officio* authority to investigate cases, seize infringing goods and prosecute IPR violations.

Belarus is a member of all of the relevant IPR treaties, including the Berne Convention (1997), the WIPO Copyright Treaty (WCT) (2002), the WPPT (2002), and the Geneva Phonograms Convention (2003). As noted, Belarus has not adopted basic Internet piracy enforcement steps, such as “notice and takedown” procedures.

IIPA continues to urge the Government of Belarus to improve its border enforcement – to prevent any optical disc plant production or equipment from Russia (or other neighboring countries) from relocating to Belarus, as well as to stop the importing and exporting of illegal optical media discs (CDs, DVDs, CD-ROMs, CD-Rs, etc.). IIPA is aware of one legal optical disc plant (opened in 2004) in Belarus (the Vigmoplast optical disc replication plant, near Minsk).

Legal Reform Deficiencies: The Copyright Law of Belarus was first adopted in 1996, with amendments in 1998 (for WIPO “Internet treaties” implementation, at least in part), and amended again in 2011. The 2011 Copyright Law repealed and replaced the 1996 law and 1998 amendments. It also revised the Civil Code, including those provisions pertaining to intellectual property (copyright). The 2011 Copyright Law also included Internet treaty implementation measures, prohibiting anti-circumvention devices and services, and protected against the removal or alteration of rights management information (Article 55.2). The remedies for anti-circumvention and rights

management information protection included injunctive relief, monetary damages, and seizure of devices. Related Criminal Code provisions (adopted in 2000) apply; these provisions (Article 201) include sanctions of up to five years imprisonment for repeat offenders of copyright and neighboring rights violations. Article 55.2 (in an unofficial translation) prohibits the manufacture, importation, sale, distribution, or other trafficking in devices or services that are aimed at circumventing technological protection measures, as well as outlawing acts of circumvention (“any action”), and it protects the “removal or alteration” of rights management information.

Enforcement: With the exception of some civil remedies in the Copyright Law itself, most of the IPR enforcement provisions in Belarus are found in the penal, administrative and civil codes (and other laws, such as the customs laws). Under Article 56 of the Copyright Law (2011), civil penalties for copyright or neighboring rights violations include injunctive relief, damages (including lost profits), seizure and impoundment of infringing copies, as well as statutory penalties of between 10 and 50,000 times the minimum wage. These remedies also apply, according to Article 56.2 to anti-circumvention and rights management information violations. Belarusian officials point to the Civil Code (1998, amended in 2011) as providing additional remedies for IPR violations.

In general, levels of piracy remain extremely high, and enforcement remains virtually nonexistent in Belarus. For example, BSA | The Software Alliance (BSA) reports that in 2011, the software piracy rate in Belarus was 87%, representing a commercial value of unlicensed software of US\$87 million.¹ IIPA continues to recommend a focus on legal reforms, as well as on enforcement, including steps against online piracy, and against hard copy piracy – running raids and seizures, commencing criminal cases against commercial pirates, and using administrative remedies to curtail street piracy.

As Belarus moves to accede to the World Trade Organization, it needs to bring its laws into full compliance with the WTO TRIPS Agreement obligations by adopting the revisions noted above and by improving on-the-ground enforcement.

There are no comprehensive enforcement statistics for 2013. In recent years, the industries reported some successful raids by the enforcement agencies, but that these raids were aimed only at small-scale retailers of illegal material. Raids against small-scale retailers have little deterrent effect on the overall piracy problem. Furthermore, the administrative fines imposed, even against these retailers, have generally been insignificant.

¹Data on software piracy rates and commercial values are taken from the BSA 2011 Global Software Piracy Study at: www.bsa.org/globalstudy. This study assesses piracy rates and the commercial value of unlicensed software installed on personal computers during 2011 in more than 100 markets. The study includes a detailed discussion of the methodology used. BSA plans to release an updated study in the second quarter of 2014.

KAZAKHSTAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Kazakhstan be placed on the Watch List in 2014.

Priority actions requested to be taken in Kazakhstan in 2014 – Key Legal Reforms: There are several legal reforms in Kazakhstan – all tied to improving enforcement – that IIPA recommends to the Government of Kazakhstan:

- **In the Civil Code:** adopt proper *ex parte* search provisions for effective enforcement against end-user pirates and clarify the rules for computing damages in civil infringement cases.
- **In the Criminal Code (or Criminal Procedure Code):** provide for the confiscation and destruction of manufacturing equipment used to produce pirated material. Currently, there are provisions permitting the destruction of goods only upon a court order.
- **In the Administrative Code:** provide *ex officio* authority for administrative officials to commence investigations and cases. The Administrative Code (Article 129), as amended in 2005, lowers the threshold for bringing cases. However, only the Ministry of Justice (Copyright Office), and not the police, can bring charges for such offenses. IIPA recommends that the existing police *ex officio* authority be broadened to include administrative violations as well.
- **In the Copyright Law:** adopt the necessary amendments to fully implement the WIPO Internet treaties (the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)). IIPA has, in the past, provided extensive comments to the Government of Kazakhstan on treaty compatible amendments – especially focused on improving enforcement against Internet piracy. As one example: “online piracy” (in contrast to physical goods piracy, which includes digital copies such as CDs, DVDs etc.) is not defined in any of the IPR laws, which, according to some local counsel, makes IPR enforcement very difficult.
- Adopt a proper regulatory scheme, including criminal penalties, for the unauthorized production and distribution of optical disc material and equipment.

Summary of U.S. – Kazakhstan IPR Issues: Kazakhstan has made several notable legal reforms over the past several years, in part to comply with its international treaty commitments and its bilateral commitments under the 1992 U.S.-Kazakhstan Trade Agreement (in force, February 18, 1993). Article 440 of the Customs Code now provides *ex officio* authority for customs officials to seize illegal material and to commence their own investigations.

However, as a result of a “moratorium” on government anti-piracy activity, at least one copyright industry reports a continuing decline over the past several years in the number of enforcement actions – such as raids by the financial police, the regular police forces, and the Ministry of Justice. In general, copyright enforcement is a low priority of prosecutors and law enforcement officials, in addition to being impeded by excessive procedural and bureaucratic delays. Several deficiencies, noted above, remain in the Kazakh legal regime, including a high burden of proof in criminal cases, and an absence of sufficient resources – which have contributed to weak criminal enforcement.

Enforcement activity needs to target the growing threat of Internet piracy, the on-going problems with hard copy (optical disc) piracy at street markets (in Almaty, Shymkent and Atyrau, in particular, and elsewhere across Kazakhstan), and, in the software industry, the common phenomena of unlicensed software use among enterprises and the prevalent sale of pre-installed pirated software on computers. Another form of counterfeiting has emerged in the past two years: the sale of fake stickers (“certificates of authenticity”) that rights holders place on some software

products. The Government of Kazakhstan should address these varying forms of piracy and counterfeiting. Reports persist that organized crime syndicates are responsible for the high piracy levels; enforcement against this problem can only be addressed with effective criminal measures. The development of a modern IPR regime in Kazakhstan will benefit local as well as foreign rights holders.

Legal reforms: Kazakhstan joined the Berne Convention (1999); the Geneva Phonograms Convention (2001); and the two WIPO Internet treaties, the WCT and the WPPT, effective in 2004. Also in 2004, the Copyright Law of 1996 was amended to provide the long-sought explicit protection for pre-existing foreign works and sound recordings. In 2005, Kazakhstan made significant improvements in its IPR enforcement regime with the adoption of a package of IPR reforms, including amendments to the Copyright Law, as well as amendments to the Criminal Code, the Criminal Procedure Code, the Civil Code, and the Administrative Code. Perhaps the key amendment in 2005 was the change to Article 184 of the Criminal Code, which repealed the previously undefined “huge damage” threshold for criminal cases and replaced it with a threshold based on the harm done or value of the works or recordings exceeding 100 times the government set monthly wage (or for more serious crimes, 500 times that amount). The 2005 amendments repealed the requirement that there be proof of “financial gain” for criminal charges to rest – a major improvement. Other positive steps were the changes made in the commercial and licensing laws to ban the sale of copyrighted material at street kiosks, requiring instead that this material be sold in retail stores. In December 2007, the Supreme Court issued a decree pertaining to the implementation of certain provisions of the existing Copyright Law.

Additional amendments to the IPR laws were made in 2011 (effective January 12, 2012), to implement the WIPO Internet treaties. One such key addition in 2012 was the adoption (Article 48) of protection for technological protection measures (TPMs), including a bar on the making, distribution or sale of devices or components that circumvent TPMs. Proposed amendments would not fully implement the Internet treaties.

Legal Reform Deficiencies: In the Civil Code, one significant deficiency is the lack of clarity about the calculation of damages in civil copyright infringement cases; this results in very low non-deterrent penalties being available for copyright infringements.

The Copyright Law (as amended in 2004) provides a flat 50-year window of pre-existing protection for foreign works and sound recordings. Thus, pre-1964 works and sound recordings remain in the public domain.

The 2003 amendments to the Customs Code added a complicated registration system for copyright rights holders seeking enforcement at the border, which further weakens the system. IIPA continues to recommend that this registration system be repealed. Kazakhstan, Russia and Belarus joined a Customs Union (in force July 2010). As part of that Customs Union, a complicated duty valuation system based (unfairly) on royalties rather than, as in most countries, on the value of the underlying carrier media (e.g., the optical discs) went into force. IIPA recommends that Kazakhstan (and the Russia/Belarus Customs Union) repeal these unfair tariff rates to allow for copyright industries to invest in the local market.

Enforcement: The Government of Kazakhstan has made strides to improve its enforcement regime, with the above noted legislative reforms. However, for the past several years, the copyright industries have experienced a decline in the number of police raids and seizures, and in prosecutorial activity as well. Thus, very few criminal cases have been initiated for IPR offenses.

IIPA understands that Article 192(4) in the Criminal Code provides police with *ex officio* authority to commence criminal copyright cases, but that it is rarely used. Article 184(2) of the Criminal Code has had limited impact because it has been applied to the manufacturing and sale of illegal copies, but has not extended to contemplated but not completed sales; additionally, many cases have been dismissed or delayed unnecessarily. IIPA knows of no criminal convictions in 2013 in the music, film or entertainment software industries. The last such notable conviction was in 2008, in a criminal case involving a distributor of pirated software (and pornography). The copyright

industries report in recent years that even though there were some additional cases brought to courts, the majority of pirates were not brought to justice due to administrative burdens, prosecutorial inexperience and delays, the low priority given to IPR offenses, and an overall ineffective judicial system.

Enforcement is undertaken by a variety of agencies, including the Copyright Agency within the Ministry of Justice (16 departments) and various enforcement agencies. These agencies have assisted with some raids in recent years, including against software pirates. A special IPR Department was created within the Finance Police (with national authority), but problems interpreting the law, in particular the threshold for criminal and administrative action, have hampered their enforcement activities. A few years ago, some of the copyright industries signed a Memorandum of Understanding with the Government of Kazakhstan on enforcement and agreed to continue training programs throughout the country. IIPA continues to encourage the government to act, especially against criminal operations, and to improve its overall enforcement with deterrent penalties.

BSA | The Software Alliance (BSA) reports that there have been, in recent years, reductions in the types of open and notorious piracy that existed a few years ago, because those who sell software or computer equipment and devices now generally understand that there are criminal, administrative and civil penalties for such activities. However, the most prevalent forms of software piracy in Kazakhstan are now enterprise end-user and Internet piracy. In 2013, there was also a sharp rise in the volume of high quality counterfeit software in the market. In addition, via the government tender process, numerous government agencies, lured by low prices, have become the victims of software piracy. This migration of piracy and counterfeiting combined with decreased levels of criminal enforcement (especially a decline in police and prosecutorial activity in the past few years) contribute to the high software piracy rate. BSA reports that in 2011 (as in 2010), the software piracy rate in Kazakhstan was 76%, representing a commercial value of unlicensed software of US\$123 million.¹ In 2013, the rate of online piracy of entertainment software exploded in Kazakhstan. According to the Entertainment Software Association (ESA), Kazakhstan ranked tenth in the world in terms of the number of connections by peers participating in the unauthorized file sharing of select ESA member titles on public peer-to-peer networks, a sizeable increase from its 28th place ranking in 2012.

Kazakhstan has, in the past, been a beneficiary of the Generalized System of Preferences (GSP) program. IIPA recommends that the U.S. Government (once the GSP program is re-authorized) carefully review Kazakhstan's eligibility for GSP benefits, since a beneficiary is required to provide "adequate and effective" protection and enforcement of IPR and there continue to be many serious shortcomings in the Kazakh IPR regime.

¹Data on software piracy rates and commercial values are taken from the BSA 2011 Global Software Piracy Study at: www.bsa.org/globalstudy. This study assesses piracy rates and the commercial value of unlicensed software installed on personal computers during 2011 in more than 100 markets. The study includes a detailed discussion of the methodology used. BSA plans to release an updated study in the second quarter of 2014.

TAJIKISTAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Tajikistan remain on the Watch List in 2014.

Priority actions requested to be taken in Tajikistan in 2014 – Key Legal Reforms: There are a number of serious legal deficiencies in Tajikistan that make the IPR regime in Tajikistan inconsistent with international obligations, including the need for full implementation of the WIPO Internet treaties. Recent positive steps have included accession to the WIPO Copyright Treaty (WCT) in 2009, the WIPO Performances and Phonograms Treaty (WPPT) in 2011, the Geneva Phonograms Convention in 2013, and most notably, the World Trade Organization (WTO), effective March 2, 2013.

IIPA recommends the following legal reforms to improve the IPR regime in Tajikistan, and to comply with these treaty obligations:

- Amending the Copyright Law to: (a) comply with the WCT and the WPPT – including basic protections for copyrighted materials on the Internet – an exclusive right of making available to the public for authors (i.e., a communication to the public right consistent with the WCT, Article 8), and for phonogram producers (i.e., consistent with the WPPT, Article 14), protection for the use of technical protection measures applied by rights holders to works and sound recordings, effective legal remedies against those who engage in acts of circumvention or distribute circumvention devices; (b) provide clear protection for pre-existing works and sound recordings for a minimum of 50 years (and preferably, 70 years); and (c) delete the onerous contract regulations.
- Amending the Civil Code to provide the proper *ex parte* search provisions for effective enforcement against end-user pirates.
- Amending the Criminal Code to cover all IPR violations of “works” and “neighboring rights.”
- Amending the Criminal Code to adopt a threshold for a criminal violation calculated on the basis of the price of legitimate product, instead of a threshold based on an undefined “large-scale damage” for IPR crimes, and set that threshold at a low actual level. The current Criminal Code (Article 156) provides for copyright and neighboring rights sanctions, but only where there is “significant harm” to the right holder.
- Amending the Criminal Code to set the penalties for IPR violations to deterrent levels (for example, to 500 times the minimum wage).
- Amending the Criminal Code (or Criminal Procedure Code) to permit the confiscation and destruction of manufacturing equipment used to produce pirated material.
- Amending the Criminal Procedure Code to provide the proper *ex officio* authority for police officials to initiate criminal copyright cases and investigations.
- Amending the Administrative Code to provide *ex officio* authority to administrative officials to commence investigations and cases.
- Amending the Customs Code to grant the proper *ex officio* authority to border officials to seize illegal material and to commence their own investigations and criminal cases.

Summary of U.S. – Tajikistan IPR Issues: In 1993, Tajikistan and the United States concluded a Bilateral Trade Agreement which detailed mutual obligations to improve the protection and enforcement of intellectual property rights. That agreement entered into force on November 24, 1993. Tajikistan has never fully implemented the IPR obligations in that agreement.

On May 1, 2013, the U.S. Trade Representative – in retaining Tajikistan on the Watch List – noted the positive step of accession to the WTO and as part of its accession, committing to “an amendment to the Customs Code to provide *ex officio* authority for border and criminal enforcement officials.” But, as the statement further noted: “Tajikistan has yet to fully implement its commitments under the 1993 United States-Tajikistan Trade Agreement. In particular, Tajikistan needs to increase prosecutions of criminal IPR infringement.”

One remaining issue, even after WTO/TRIPS, WCT and WPPT treaty accessions, is that Tajikistan has not clearly indicated its intention to provide protection for pre-existing works and sound recordings, as those agreements and treaties, as well the Berne Convention and the Bilateral Trade Agreement, require. It is hoped that the Government of Tajikistan will either clearly identify this protection (in existing law), or quickly amend its law to provide such protection for works and sound recordings.

Legal Reform Deficiencies: In 2000, Tajikistan adhered to the Berne Convention. However, the Tajik Copyright Law (in force, December 17, 1998) falls short of full compliance with the Berne Convention and other international norms, now including the WTO TRIPS Agreement. The Tajik Government has indicated it would reform its copyright law to fully comply with Berne, but it has not, to our knowledge, done so. There are many deficiencies in the Copyright Law, noted above, including: (1) the over-regulation of the terms and conditions of authors’ contracts; and (2) provisions that provide only for a right of remuneration for producers of sound recordings for the public performance, broadcasting, or communication of a phonogram to the public by cable.

The Customs Code (last revised in 1995) does provide liability for the transfer of illegal goods, including intellectual property material, through the border. A 2002 resolution (No. 185 of the Cabinet of Ministers) established border control rules for goods, including IPR works, and it implemented a customs registry for IPR works requiring a rights holder to file a statement and set of documents for border enforcement. These regulations are cumbersome and an ineffective tool that IIPA recommends should be repealed.

There has not been a single criminal IPR case reported under the existing laws. Nor has there been a single case reported under the Administrative Code. The Administrative Code, last revised in 1999 (Article 158-2), provides levies, fines, and seizure of illegal copyright and neighboring rights material. The copyright industries have no reports concerning enforcement activity in Tajikistan.

On December 10, 2002, the U.S. and Tajik Presidents signed a joint statement reaffirming the relationship between the two countries and “recognizing the importance of . . . the rule of law” as well as pledging to work together on economic and political reforms. IIPA recommends that the Government of Tajikistan affirm this statement by meeting its obligations and amending its relevant IPR laws and engaging in effective enforcement. The U.S. Government and Tajik Government signed a Trade and Investment Framework Agreement (TIFA) on June 1, 2004 to enhance trade and investment between the two countries, and have since held talks in the context of the TIFA, to further improve trade relations.

TURKMENISTAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Turkmenistan remain on the Watch List in 2014.

Priority actions requested to be taken in Turkmenistan in 2014 – Key Legal Reforms: In January 2012, in a positive step, Turkmenistan enacted its first-ever Copyright Law (in force, January 20, 2012). The enactment of the copyright law providing basic comprehensive protections for works and neighboring rights, was part of the complete revision of the Turkmenistan Civil Code, Part IV outlining basic provisions for copyright (and patent and trademarks). However, still missing from the IPR legal regime are enforcement provisions, and basic treaty accessions – to provide protections for American (and other foreign) works and recordings. As a result, the IIPA recommends the following IPR legal reforms in Turkmenistan:

- Adherence to the Berne Convention.
- Adherence to Geneva Phonograms Convention.
- Adherence to the WIPO Internet treaties – the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).
- Amendments to the law to fully comply with Berne, the WTO TRIPS Agreement and the WIPO Internet treaties (WCT/WPPT), including basic provisions to protect works in the digital era – such as the use of technical protection measures applied by rights holders to works and sound recordings. The law should also clearly protect pre-existing works and sound recordings for a minimum of 50 years (and preferably, 70 years).
- Amending the Civil Code to provide the proper *ex parte* search provisions for effective enforcement against end-user infringers.
- Amending the Criminal Code to raise the penalties for IPR violations to deterrent levels (for example, to 500 times the minimum wage).
- Amending the Criminal Code to adopt a threshold for a criminal violation calculated on the basis of the price of legitimate product, instead of a threshold based on an undefined “large-scale damage” for IPR crimes, and, to set that threshold at a low actual level. Article 153 of the current Criminal Code does provide sanctions for copyright and neighboring rights violations, but only in cases of “significant harm” — a threshold that is too vague, and likely too high in practice to provide any effective enforcement.
- Amending the Criminal Code (or the Criminal Procedure Code) to permit the confiscation and destruction of manufacturing equipment used to produce pirated material.
- Amending the Criminal Procedure Code to provide the proper *ex officio* authority for police officials to initiate copyright criminal cases and investigations.
- Amending the Administrative Code to provide *ex officio* authority to administrative officials to commence investigations and cases.
- Amending the Customs Code to grant the proper *ex officio* authority to border officials to seize illegal material and to commence their own investigations and criminal cases.

Summary of U.S. – Turkmenistan IPR Issues: In 1993, Turkmenistan and the United States concluded a Bilateral Trade Agreement which detailed mutual obligations to improve the protection and enforcement of intellectual property rights. That agreement entered into force on October 25, 1993. Over twenty years later, Turkmenistan has not adequately implemented the IPR obligations in that agreement.

On May 1, 2013, the U.S. Trade Representative – in retaining Turkmenistan on the Watch List – noted its progress in adopting a Copyright Law and by amending “its Civil Code to enhance IPR protection.” But, the statement noted: “Turkmenistan should also provide for administrative and civil procedures for IPR enforcement, as well as criminal penalties against IPR infringement, and should provide *ex officio* authority to its customs officials.” Further, the USTR noted the 1993 Trade Agreement obligations to join the Berne Convention and the Geneva Phonograms Convention.

Legal Reform Deficiencies: Until 2012, Turkmenistan did not have a comprehensive basic copyright and neighboring rights law, instead relying on the Soviet-era Civil Code (Chapter IV). The 2012 revision of that Civil Code (Chapter IV), and of a separate Copyright Law remedied this major IPR legal regime deficiency, but other key reforms, as noted, are still especially necessary for a basic digital-era IPR regime for effective enforcement.

IIPA knows of no cases to date where the Criminal Code (Article 153) was used against a copyright pirate. Turkmenistan, by failing to provide a proper legal regime, and lacking any police, prosecutorial, judicial, or border activity, is clearly not providing “adequate and effective” enforcement as required by the 1993 Bilateral Trade Agreement.

After adopting the necessary legal reforms, the Turkmen authorities must, at a minimum, commence police raids and seizures and act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions.

The U.S. Government and Turkmen Government signed a Trade and Investment Framework Agreement (TIFA) on June 1, 2004 to enhance trade and investment between the two countries, and have subsequently held talks in the context of the TIFA, to further improve trade relations.

UZBEKISTAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Uzbekistan remain on the Watch List in 2014.

Priority actions requested to be taken in Uzbekistan in 2014 – Key Legal Reforms: IIPA recommends the adoption of the following legal reforms and treaty accessions in Uzbekistan in order to provide for effective copyright protection and enforcement:

- Adherence to the Geneva Phonograms Convention.
- Adherence to the WIPO Internet treaties – the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).
- Correcting deficiencies (and some uncertainties) in the Copyright Law of 2006, including:
 - Providing protection for pre-existing works and sound recordings for a minimum of 50 years (and preferably, 70 years).
 - Adopting an exclusive right of public communication for sound recording producers for the recording, broadcasting, or communication to the public by cable (which appears to be limited to a right of remuneration in Article 51).
 - Clarifying the scope and application of the rental right for audiovisual works and computer programs (Article 21).
 - Complying with the WIPO Internet treaties (WCT and WPPT) – by improving the provisions pertaining to technical protection measures (Article 63, which currently provides for no civil or criminal remedies) and rights management information (Article 64).
 - Deleting the onerous provisions (found in Articles 38 through 42) that over-regulate the terms and conditions of authors' contracts.
- Amending the Civil Code to provide the proper *ex parte* search provisions for effective enforcement against end-user pirates.
- Amending the Criminal Code to include “neighboring rights” violations (the current code only applies to infringements of “works”).
- Amending the Criminal Code to raise the penalties for IPR violations to deterrent levels (for example, to 500 times the minimum wage).
- Amending the Criminal Code to adopt a threshold for a criminal violation calculated on the basis of the price of legitimate product, instead of a threshold based on an undefined “large-scale damage” for IPR crimes, and set that threshold at a low actual level.
- Amending the Criminal Code (or the Criminal Procedure Code) to permit the confiscation and destruction of manufacturing equipment used to produce pirated material.
- Amending the Criminal Procedure Code to provide the proper *ex officio* authority for police officials to initiate copyright criminal cases and investigations.
- Amending the Administrative Code to provide *ex officio* authority to administrative officials to commence investigations and cases.

- Amending the Customs Code to grant the proper *ex officio* authority to border officials to seize illegal material and to commence their own investigations and criminal cases.

Summary of U.S. – Uzbekistan IPR Issues: In November 1993, Uzbekistan and the United States signed a Bilateral Trade Agreement (in force, January 13, 1994). The agreement conferred Normal Trade Relations (then known as “Most Favored Nation”) status on Uzbekistan, in exchange for Uzbekistan agreeing to adopt critical IPR legal reforms, and to comply with international copyright treaty norms. Unfortunately, twenty years after the 1994 Trade Agreement, some of the most basic protections continue to be denied rights holders in Uzbekistan. For example, since Uzbekistan is still not a member of the Geneva Phonograms Convention or the WPPT, it does not provide any protection or rights for U.S. or other foreign sound recordings.

One important positive development this year: effective January 8, 2014, Uzbekistan finally withdrew its reservation to Article 18 of the Berne Convention and agreed to protect pre-existing foreign works prior to 2005.

On May 1, 2013, the U.S. Trade Representative, in announcing Uzbekistan’s retention on the Watch List, noted ongoing concerns and the need to immediately “address longstanding deficiencies” including by: joining the Geneva Phonograms Convention; removing the Article 18 Berne reservation (both obligations of the 1994 United States-Uzbekistan Trade Agreement); joining the WIPO Internet treaties; and taking “legislative action to provide adequate copyright protection for foreign sound recordings.” Further, USTR said Uzbekistan should also “increase penalties for IPR violations and ensure that its law enforcement authorities have *ex officio* authority to initiate investigations and enforcement actions” and to “allocate more resources to IPR enforcement,” including at the border.

As a result of its ongoing failures to improve its IPR regime, IIPA continues to recommend that the U.S. Government should deny Uzbekistan trade benefits and preferences, including its eligibility to participate in the Generalized System of Preferences (GSP) program (once that program is re-authorized), because Uzbekistan is not providing “adequate and effective” copyright protection and enforcement under its present IPR regime.

Legal Reform Deficiencies: The Copyright Law of Uzbekistan was overhauled in 1996 (in force, September 17, 1996), and two additional copyright law amendments were adopted in 2000. Separately, Uzbekistan adopted a Law on Computer Programs and Databases, which was amended in 2002.

In July 2006, Uzbekistan adopted a new Law on Copyright and Related Rights (in force, July 20, 2006).¹ The 2006 Copyright Law was aimed – according to the Government of Uzbekistan – at harmonizing Uzbek law with the requirements of the Berne Convention and WTO TRIPS Agreement, which the government hopes to accede to at some future date. The 2006 law added: a making available right; a right of communication to the public; provisions pertaining to technical protection measures and copyright management information; regulations pertaining to private copying and public performance royalties; and extensive provisions and regulations involving collective administration (Chapter Four of the law). The Copyright Law could have benefited from more input by copyright rights holders, and as a result, is either missing key provisions (protection for pre-existing works and sound recordings), or has several unclear or incomplete protections, such as those pertaining to technical protection measures.

In 2005, Uzbekistan adhered to the Berne Convention (effective April 19, 2005). Unfortunately, at that time, Uzbekistan made a reservation to its accession regarding Article 18 that denied protection for pre-existing works from the United States and all other Berne countries. This reservation, as noted by WIPO and other copyright experts to the Government of Uzbekistan, was in contravention to the Article 18 obligations of Berne (and the 1994 Agreement).

¹Note, IIPA bases this filing on an unofficial English translation of the 2006 Copyright Law. In 2006, Uzbekistan also adopted conforming amendments to its Civil Code on copyright and neighboring rights, as well as a decree on royalties for public performances and private copying (IIPA does not have official English translations of these laws/regulations).

By a formal notification to the WIPO on January 8, 2014, Uzbekistan finally withdrew its reservation — applicable to works (but, not sound recordings).

On November 30, 2005, IIPA testified at the GSP country practice hearing regarding Uzbekistan's legal deficiencies. After that hearing, the U.S. Government asked IIPA for a list of "steps that the Government of Uzbekistan should take with respect to protecting IPR in order to retain GSP eligibility." IIPA provided the U.S. Government with eight recommendations for improving IPR in Uzbekistan, in a written response on December 14, 2005. IIPA testified again in 2007, 2009, and 2013 at GSP hearings. Now, more than eight years later, and after four rounds of hearings, the Government of Uzbekistan has failed to adopt six of the eight recommendations (which, for the most part, track the 1994 Trade Agreement obligations). The set of recommendations is set out above – with some additional detail.

Although Uzbekistan has proposed and/or made changes in some of these areas previously, these proposed changes were not always adequate to fix the deficiencies. The 2000 Copyright Law amendments did two things: (1) added "copying of a record" to the enumerated rights of producers to fix a glaring deficiency; and (2) added a broad national treatment obligation into the law (Article 56.3), but not a clear point of attachment for all works and sound recordings — this latter problem appears (in the unofficial translation) to have been corrected by Article 4 of the 2006 law.

IIPA is unaware of any recent amendments to the Criminal Code following passage of the 2006 Copyright Act to adopt deterrent penalties for intellectual property violations. Drafts to amend the Criminal Code were circulated several years ago, but, to our knowledge, never adopted. In fact, one draft (2004) would have weakened, not strengthened, criminal penalties because: (1) no criminal penalties are applied "until one year after administrative penalties are assessed" – providing pirates with a chance to pirate without penalty the first time; and (2) the levels – set at 50 to 100 times the minimum wage – would be much too low to be deterrent penalties. If a similar draft is proposed, IIPA would recommend that the first provision be deleted, and the second provision (regarding the minimum wage), be raised considerably to at least 500 times the minimum wage, as has been done in other countries.

A draft bill several years ago to amend the Customs Code would have established a complicated registration system for IPR enforcement at the border. IIPA strongly recommends that Uzbekistan not adopt a border registration plan because it will prove counterproductive to effective enforcement at the border.

Enforcement: The U.S. Government and Uzbek Government signed a Trade and Investment Framework Agreement (TIFA) on June 1, 2004 to enhance trade and investment between the two countries. The governments have since held talks, in the context of the TIFA, to further improve trade relations.

After the Uzbek Government adopts the necessary legal reform and treaty accessions, it also needs to commence enforcement actions. Such actions should begin with police raids and seizures at a minimum, and the Uzbek Government should act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions. There have been reports of some actions against retail shops that sell pirated product, which if accurate, are a positive step.

The IIPA recommends that the U.S. Government should remove Uzbekistan from eligibility to receive GSP benefits (once the GSP program is re-authorized) because Uzbekistan is not complying with the IPR eligibility requirements for GSP benefits; namely, it is not providing "adequate and effective" copyright protection and enforcement. Further, Uzbekistan is not in compliance with its bilateral and multilateral obligations, and is woefully inadequate in its IPR regime as a potential WTO member.