

# GREECE

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

**Special 301 Recommendation:** IIPA recommends that Greece remain on the Watch List in 2014.<sup>1</sup>

**Executive Summary:** While it is not surprising that Greece's IPR enforcement regime suffers from resource challenges that result in court delays, postponements of hearings, and a lack of deterrent sentences, a more strategic approach could ameliorate these problems, and there are some positive developments in this regard. Rights holders report excellent cooperation with the Tax Police (SDOE) in addressing enterprise end-user software piracy, though there are concerns that a major restructuring of SDOE now underway could jeopardize these efforts. Greek police forces are a bright spot in efforts to enforce against infringement, but these authorities lack needed resources in difficult economic times. Prosecutors should place greater priority on copyright crimes, courts need to facilitate speedier cases and issue deterrent sentences, and government leaders need to establish the tools for ISPs and rights holders to cooperate against Internet piracy. Furthermore, many attempts to combat illegal file-sharing continue to be frustrated by data protection laws that impede investigations and enforcement actions. IIPA urges the U.S. Government to engage with the Government of Greece to encourage that it resume and strengthen the efforts of the Coordination Committee for Monitoring and Coordinating IPR and reinstate and implement a Greek national IPR enforcement strategy, efforts that have been abandoned since 2009.

### PRIORITY ACTIONS REQUESTED IN 2014

- Greece should coordinate at the highest levels a national enforcement campaign with clearly-defined goals to:
  - (1) Involve rights holders and online intermediaries in the introduction of clear incentives for cooperation in anti-piracy measures, for both hosted and non-hosted content,
  - (2) Address widespread end-user software piracy both within government ministries and in Greek enterprises, through support for continued actions of the SDOE, which should also include training expert personnel, conducting compliance audits, and issuing monthly public communications that disclose infringement,
  - (3) Recommend updated legal standards within the data protection laws, consistent with the 2008 European Court of Justice (ECJ) *Telefonica* decision, to allow disclosure of information necessary for rights holders to protect their rights against infringement in court, and
  - (4) Set targets for speedier criminal cases and instruct judges to issue deterrent, non-suspended sentences.

### COPYRIGHT PIRACY IN GREECE

Piracy rates in Greece have not worsened over the past year, but they also have not improved. Hard goods piracy, online piracy, and enterprise end-user software piracy remain at steady but unacceptably high levels.

**Online piracy:** Each of the copyright sectors – books, film, music, software, and videogames – faces the challenge of Internet piracy in Greece that severely damages their legitimate markets. The number of Greek web sites offering pirate works has remained between 70 and 75 for the last five years. Social networking and blogspot

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<sup>1</sup>For more details on Greece's Special 301 history, see previous years' reports at <http://www.iipa.com/countryreports.html>. For the history of Greece's Special 301 placement, see <http://www.iipa.com/pdf/2014SPEC301HISTORICALCHART.pdf>. For a discussion of IIPA's 2014 Key Initiatives and Challenges, see IIPA, *2014 Special 301 Submission*, at <http://www.iipa.com/pdf/2014SPEC301COVERLETTER.pdf>.



sites have emerged in the place of other illegal web sites offering links to infringing content via streaming. Peer-to-peer (P2P) file-sharing of infringing content and cyber-lockers containing pirated material (with relevant links offered through various online forums) continue to be very popular, though. In 2013, Greece ranked 25<sup>th</sup> in the world in terms of the number of connections by peers participating in the unauthorized file sharing of select Entertainment Software Association (ESA) member titles on public P2P networks. As a result of all of the foregoing, the legitimate Greek markets for music, movies, and videogames are stymied.

For the recording industry, piracy has almost entirely migrated to the Internet. Piracy of sound recordings and music in Greece is still very high for both international and local repertoire. Of particularly serious concern is the site Music Bazaar, which offers music for download under targeted categories such as Greek, Latin, Italian, and Turkish. The site is hosted from Russia, but the majority of the visitors to the site are from Greece, Lithuania and Germany. The site escaped a May 2012 court order for Greek ISPs to block the site, by moving to a new IP address.

Rights holders in the film industry are aware of 15 web sites that engage in illegal subtitling, allowing Greek Internet users to look to foreign online sources for pirated movies. Even theatrical exhibition and video on demand suffer in Greece. Internet piracy has particularly damaged the independent film sector, which has less flexibility to shift to technology-enabled new business practices that might limit piracy such as worldwide same day releases. For independents, whose national distributors release on their own schedule, this technique is impossible.

**Street piracy:** Hard goods piracy is visible on the streets of all of Greece's large cities and tourist areas, by vendors selling mostly DVDs of recently released films and occasionally circumvention devices for use with videogame consoles.

**Enterprise end-user software piracy:** BSA | The Software Alliance (BSA) reports that the software piracy rate in Greece is now above 60% and has risen over the past few years.<sup>2</sup> The high commercial value of software piracy in Greece (estimated at US\$343 million in 2011) translates to fewer job opportunities and decreased revenues for local IT businesses, which have faced huge financial problems in recent years. In areas of Greece where Internet access is improving, such as Athens and Thessaloniki, hard goods piracy of software products is giving way to Internet downloads of illegal products. In other areas, unlicensed software continues to be distributed on low-quality pirated CDs.

## **COPYRIGHT ENFORCEMENT IN GREECE**

Improved enforcement conditions are within Greece's means if it generates a national IPR enforcement plan and redirects key resources toward targeted goals. The "Coordination Committee for Monitoring and Coordinating IPR," which has not been active since it last issued a national IPR plan in early 2009, must be reconvened to establish new objectives in the key areas of: incentives for online cooperation in anti-piracy measures; efforts to reduce widespread enterprise end-user software piracy; improved legal standards to allow disclosure of information crucial to copyright infringement cases; and faster and more effective criminal copyright cases in Greece's courts. The software industry reports very positive outcomes from the actions of the Authority for the Prosecution of Financial Crimes (SDOE, or Tax Police) in addressing end-user piracy of commercial software. Unfortunately, in the absence of a comprehensive mechanism for cooperation among rights holders and ISPs to combat online piracy, copyright holders can only work through the courts to seek remedies against known infringing websites in Greece. The enforcement tools available to rights holders are arduous and often inefficient – and therefore insufficient to effectively address the piracy problem.

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<sup>2</sup>Data on software piracy rates and commercial values are taken from the 2011 BSA Global Software Piracy Study at [www.bsa.org/globalstudy](http://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.

**Cooperation against Internet piracy:** As file-sharing of pirated works becomes increasingly common in Greece, the difficulties rights holders face in working with ISPs to identify infringing users in the file-sharing environment have created a major obstacle to online enforcement, despite the efforts of copyright holders and the Hellenic Copyright Organization (OPI). Greek ISPs do cooperate with rights holders in the rare cases involving websites within the .gr domain that host infringing material. In the more prevalent contexts of P2P file-sharing and material hosted in cyber-lockers and forums outside the .gr domain (but operated by local nationals with local IP addresses), ISPs refuse to take action against infringing activity. Instead, they cite to provisions of the data protection law regarding disclosure of personal data (Law 2225/1994), which is limited to a specific range of crimes that do not include even felony copyright infringement. As a result, Internet investigations in Greece can identify an infringing IP address but cannot uncover an infringer's name or physical address without a court or prosecutorial order, which is a rather lengthy procedure.

Negotiations between rights holders and ISPs started more than three years ago under the auspices of OPI, whose aim is for ISPs to adopt voluntary measures to decrease Internet piracy. In March 2013, through work with OPI, two major ISPs and several copyright protection societies signed a Memorandum of Understanding regarding public awareness efforts. Unfortunately, in the absence of the government signaling the political will to bring about legislative change, no further progress has resulted. In addition, there has been no change to data protection provisions that prevent the disclosure of digital piracy information for use in court, notwithstanding the fact that the Ministry of Justice had promised to support the inclusion of felony copyright infringement as grounds for disclosure of personal data in the data protection law.

**Civil enforcement actions:** Even for cases that do not need to overcome the evidentiary hurdles that rights holders face in bringing online infringers to court, in the past copyright plaintiffs have faced court delays and the postponements of hearings due to the extremely high number of pending cases. Encouragingly, the software industry reports that amendments to the Code of Civil Procedure appear to have ameliorated the time needed for cases to be brought before the court and for the issuance of court decisions. Greek law 4055/2012 provides that a hearing on any interim measure must occur within 30 days starting from the filing date, and the court decision is to be issued 60 days after the trial. Further, rights holders report that *ex parte* search orders and preliminary injunctions in software piracy cases are normally granted without major difficulties and parties typically settle the cases out of court. The Special IP departments within the Civil Courts of First Instance of Athens, Thessaloniki, Piraeus, and within the Court of Appeals of Athens are valuable tools for efficient and quality final judgments, and rights holders hope to see this program extended to other Greek cities. Amendments have also extended county courts' jurisdiction over copyright cases by increasing the limits on the amounts in dispute. None of these positive developments, however, have changed the fate of Internet piracy cases in Greece, which rarely reach trial due to the lack of access to data identifying infringers.

**Criminal enforcement:** Criminal copyright enforcement actions in Greece are generally initiated by either the Greek police or, as is typically the case in enterprise end-user software piracy cases, by the SDOE. Rights holders report good relationships with both of these enforcement bodies, but court delays, postponements of hearings, and a failure by the courts to issue deterrent sentences as provided by the law, prevent effective enforcement in many cases.

**Anti-piracy raids and audits.** In February 2011, in accordance with Article 4© of Presidential Decree 9/2011, a new IPR Department was established within the Cybercrime Unit of the Greek Financial Police (part of the Greek Police and independent from the Ministry of Finance), authorized to conduct raids against Internet software piracy. Some of the copyright sectors report the need to present their own evidence or investigation results before the IPR Department of the Greek Police will initiate raids, but the audiovisual sector reports some progress with this division, including cases regarding pay TV signal theft and three cases against the administrators of bogspot sites charged with offering links to infringing streaming content. The software sector notes that this Police division works cooperatively with their representatives. In 2013, the number of *ex officio* raids conducted in relation to software piracy cases significantly increased, including cases involving website operators dealing in a variety of pirate material. Still, trained personnel and increased raids are needed. Rights holders report that although administrative

finances are available, the Greek Police do not impose them. What cases the police have initiated have not been brought to effective prosecution.

The software industry reports positive outcomes from the work of the SDOE against enterprise end-user software piracy. The SDOE Directorate of Planning and Coordination of Audits initiated a legalization campaign in September 2012, sending 1,400 audit letters to Greek companies requesting: a) a software inventory list, b) a copy of software invoices and c) software licenses. The letters resulted in a wave of legalizations in 2013 valued at more than US\$1 million. Companies that did not reply to audit letters become possible suspects for raids. In 2013, SDOE raids resulted in collections of fines in 90% of the cases and an increase in fines collected from €60,000 (US\$81,000) in 2012 to €70,000 (US\$95,000) over the past year. Of the raids that were conducted in 2013, only two cases came to prosecution in criminal court, for nonpayment of fines. The SDOE should continue to issue follow-up warnings and conduct raids, when appropriate, on non-responsive companies, publishing reports of administrative fines imposed. Building on this good work, the SDOE should conduct more raids, and more importantly, expand the scope of enterprises targeted in such raids. Unfortunately, the SDOE generally avoid targets involving more than 50 illegal software products (*i.e.*, larger enterprises), apparently to avoid triggering the threshold for criminal liability that would require initiating complicated and time consuming criminal investigations and prosecutions. In January 2014, SDOE began to undertake administrative enforcement with respect to establishments such as cafés and restaurants where there may be illegal reproduction of phonograms for public performance, and it is hoped that these actions will continue and expand.

The SDOE and its offices across Greece are currently undergoing a major restructuring that could result in the reformation of some IPR programs. It is critical that the SDOE IP Departments continue to operate across the country, as it is currently the only competent authority with any success in reducing software piracy in the country. These departments must be given the resources and training to build on their existing work, and to continue monthly reports with regular targets for software legalization. A new wave of audit letters was planned for 2013, but is currently suspended due to SDOE's reorganization, and should be resumed as soon as possible. Lastly, it is crucial that SDOE is manned with trained officers. Otherwise stakeholders will continue to bear the costs of providing IT experts in order for SDOE to conduct administrative raids.

**Challenges in the criminal courts:** As in the past, court delays, postponements of hearings, and lack of deterrent sentences are the main obstacles to effective enforcement against hard goods piracy in Greece. Internet cases are very difficult to litigate even in criminal cases, despite opinions issued on behalf of the Attorney General that data needed to determine the identity of online copyright infringers may be disclosed. The specialized IP courts in Athens and Piraeus only deal with civil and not criminal cases, and therefore are ineffectual against criminal commercial-scale piracy. Greek prosecutors, especially at the local level, have largely ignored Supreme Court circulars directing them to prioritize IPR cases. Although this slowly appears to be changing in major Greek cities such as Athens, Thessaloniki, and Patras, more improvement is needed. Apart from the First Instance Court of Athens (which hears cases and renders judgments fairly quickly), when copyright cases do receive prosecutorial attention in Greece, they face inordinate delays and time-consuming procedures. Judges vary in practice from region to region, and often lack adequate knowledge for sophisticated IPR issues. Short hearing dates need to be set, and non-suspended prison sentences as well as monetary penalties must be imposed, to preserve the deterrent effect of sentences.

**Government software legalization:** BSA reports no new developments or progress in 2013 on ensuring that government agencies use only legal software. Governments should lead by example, stressing the importance of protecting intellectual property rights and legal software use within the Public Administration. By taking these positive steps and implementing policies that support legal software use, the Greek Government could raise significant awareness of the problem and help bring down the unacceptably high software piracy rate.

## **COPYRIGHT LAW REFORM AND RELATED ISSUES**

IIPA members have identified a priority area of the Greek Copyright Act that requires updating to bring Greece into full compliance with its international obligations and to provide modern copyright enforcement tools:

***Establish the legal foundations needed to facilitate ISP coordination on copyright infringement matters regarding both hosted and non-hosted content, and provide for an enforceable right of information.***

The lack of ISP cooperation remains an issue for rights holders, and no progress has been obtained in the course of 2013. While the courts have issued orders under the implementation of Article 8.3 of the EU Copyright Directive, these court orders were ultimately ineffective because they did not cover subsequent IP addresses. Therefore, the illegal downloading site *music-bazaar* remains a concern in spite of an order to ISPs to block the site. It is crucial for the government to assist rights holders in coming to agreement with ISPs on meaningful cooperation, particularly with respect to: (1) injunctive relief under Article 8.3 of the EU Copyright Directive to address hosted and non-hosted content, (2) notice and take down for hosted content; and (3) measures in respect of repeat infringers. In addition, there has been no progress in the past year to amend Article 4 of the Data Protection Law (Law 2225/1994) to require ISPs to disclose the identity of users suspected of copyright infringement. The Attorney General has issued circulars that, at a minimum, would permit law enforcement to work with ISPs to obtain identification information for criminal enforcement, but ISPs have not complied. A legal structure by which ISPs may reveal the identities of copyright infringers, consistent with the 2008 ECJ *Promusicae vs. Telefonica* decision, is a critical component of an effective mechanism to address Internet piracy regarding hosted and non-hosted content. Such a provision should include appropriate steps to facilitate the ability of rights holders to obtain the necessary information to take civil actions to protect their rights.