

MALTA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

The rate of software piracy in Malta is far above the average in Western Europe, and the local software industry reports mounting difficulties in enforcement. Criminal cases of software piracy are not initiated by Malta's overburdened police, preventing these cases from working their way through the court system to deterrent sentencing. Malta's legislative IPR framework is adequate, though there are a few relatively minor but crucial revisions in the civil and criminal laws that would strengthen the ability to conduct effective enforcement operations against enterprise end-user piracy. Strong governmental support and collaboration with rights holders is needed to raise awareness in the country on the importance of respecting intellectual property rights. BSA | The Software Alliance (BSA) reports the software piracy rate in Malta was 43% in 2011.¹

Enforcement: The Economic Crimes Unit (ECU) is responsible for enforcement against fraud and intellectual property crimes. However, the ECU is overburdened by its current workload and the officers not sufficiently sensitized to the economic and security risks involved in software piracy. Their failure to bring criminal cases in this field has prevented any meaningful progress in tackling this serious problem. The police force should establish a dedicated IP Unit, charged with the enforcement of the IP-related provisions in the Maltese Criminal Code. Such a unit could be set up in a manner similar to the Police Cyber Crime Unit (which has been very successful since its creation a few years ago) and the IPR Unit within the enforcement division of Maltese Customs.

Police are unable to take *ex officio* actions in cases of criminal copyright piracy in Malta, including situations where unlicensed software is loaded on the hard drive of a PC offered for sale (known as hard disk loading). As a result, police are unable to respond on their own to leads regarding copyright cases, weakening their effectiveness.

IP Awareness: BSA made several proposals to the Maltese Government in 2012 and 2013 for programs to raise awareness of the risks of using unlicensed software. While government officials have been receptive, the Government of Malta has taken no formal action to implement a much needed awareness campaign on this topic.

Legislation: The Criminal Code of Malta contains a number of deficiencies inhibiting effective enforcement of copyright for the software sector. Article 298B, addressing copyright infringement, does not clearly apply to end-user software piracy or to ordinary channel of trade cases (such as hard disk loading). There is also a need to revise and increase the existing penalties under Article 298B, to bring the penalties on par with those for other intellectual property crimes, such as criminal trademark or design infringement. BSA has made a number of proposals to the Maltese Government to address these and other deficiencies in the Criminal Code.

The Maltese Copyright Act allows rights holders to seek damages or lost profits together with additional damages in situations of flagrant copyright infringement. But there is no civil *ex parte* search procedure. This long-standing legal deficiency has made it extremely difficult to preserve evidence, without which a successful action cannot be instituted in court. This may be inconsistent with Malta's WTO TRIPS obligations requiring members to ensure their courts have the authority to order provisional measures, including *ex parte* measures where any delay would cause irreparable harm to rights holders. Similar requirements are found in the EU IPR Enforcement Directive (EU Enforcement Directive 2004/48/EC).

¹Data on software piracy rates and commercial values are taken from the 2011 BSA 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.

