



November 24, 1997

Ms. Sybia Harrison
Staff Assistant to the Section 301 Committee
Office of the U.S. Trade Representative
600 17th Street, NW, Room 223
Washington, DC 20506

Re: Honduras – Docket 301-116
Public Comments regarding Protection of
Intellectual Property Rights Protection in
Honduras, 62 Fed. Reg. 60299
(Nov. 7, 1997)

Dear Ms. Harrison:

This submission responds to the public notice of the Office of the U.S. Trade Representative requesting comments regarding the initiation of a Section 301 investigation and proposed determinations and action by the U.S. Trade Representative (USTR) against the Government of Honduras for its failure to provide adequate and effective copyright protection and enforcement for U.S. copyrights.

The International Intellectual Property Alliance (IIPA) supports the proposed determination of USTR under Section 301 to partially withdraw benefits afforded Honduras under the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) programs for Honduras' failure to provide adequate and effective means under its laws for foreign nationals to secure, exercise and enforce exclusive rights in intellectual property.

The IIPA

The IIPA is a coalition of associations representing U.S. copyright-based industries in bilateral and multilateral efforts to open up foreign markets closed by copyright piracy and other market access barriers. IIPA's seven member associations are the Association of American Publishers (AAP), AFMA (formerly the American Film Marketing Association), the Business Software Alliance (BSA), the Interactive Digital Software Association (IDSA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA) and the Recording Industry Association of America (RIAA). These associations represent over 1,350 U.S. companies producing and distributing works protected by copyright laws throughout

the world – all types of computer software including business and entertainment software (such as videogame CDs and cartridges, personal computer CDs and multimedia products); motion pictures, television programs and home videocassettes; music, records, CDs and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media). The copyright-based industries are among the largest and fastest growing sectors of the U.S. economy.¹

IIPA supports USTR's proposed determinations to find that Honduras fails to meet the intellectual property rights standards of the GSP and CBI programs and that suspension of these trade benefits is appropriate.

For five years, USTR has been conducting a review under the Generalized System of Preferences (GSP) Program on whether Honduras provides “adequate and effective” copyright protection and enforcement to U.S. copyright owners. In June 1992, the Motion Picture Export Association of America (later renamed the Motion Picture Association (MPA)) filed a petition with USTR asking that Honduras’ eligibility to receive preferential trade benefits under the GSP program be reviewed because of the widespread piracy of U.S. films and television programming. USTR accepted MPA’s petition, and over the years, extended this review several times. IIPA has filed public comments in this proceeding (November 17, 1993, and February 28, 1997) as well as in the Special 301 contexts. IIPA and our members have discussed these issues with both U.S. and Honduran officials on separate occasions.

IIPA has reported on the continuing problems in Honduras, including: inadequate enforcement by Honduran authorities to combat piracy; estimated losses due to copyright piracy in Honduras experienced by U.S. industries which amounted to \$5 million in trade losses in 1996,² and; the failure to pass amending legislation to clarify and correct deficiencies in the 1993 Copyright Law. In February 1997, IIPA recommended that, because of the Honduran Government’s delays and inaction in meeting its commitments to improve copyright enforcement and raise its standards of copyright protection, USTR suspend preferential trade benefits for Honduras’ failure to meet the statutory standards for intellectual property protection under GSP and CBI. IIPA’s submissions provide a detailed overview of the piracy affecting all the copyright industries – the motion picture, recording, music, business software, book publishing and entertainment software industries.

On May 28, 1997, the Trade Policy Staff Committee (TPSC) announced its recommendation to the President that \$5 million in combined GSP and CBI trade benefits to

¹ In a study prepared for the IIPA by Economists Inc., Copyright Industries in the U.S. Economy: The 1996 Report, the core copyright industries accounted for \$254.6 billion in value added to the U.S. economy in 1994 (the latest data available), or approximately 3.78% of U.S. Gross Domestic Product (GDP). Between 1987 and 1994, the core copyright industries grew twice as fast as the rest of the economy (4.6% vs. 2.3%) and have created new jobs more than twice as fast as the economy as a whole (2.85% vs. 1.25%). In 1995, the U.S. core copyright industries achieved foreign sales and exports of \$53.25 billion, surpassing every other export sector except automotive and agriculture.

² Estimated losses in 1996 were: motion pictures -- \$1 million; sound recordings and music -- \$2.5 million; book publishing -- \$1.5 million. Estimated losses for the business and entertainment software industries were not available.

Honduras be withdrawn. After several months to review actions taken by the Honduran government, USTR announced a Section 301 investigation on November 7, proposing first to determine that Honduras fails to meet the IPR criteria in these two programs, and second, to suspend duty-free treatment of certain articles from Honduras. IIPA supports both these determinations.

Since TPSC's May announcement, the Honduran government has taken some actions to attempt to specifically address the broadcasting piracy problem, the primary subject of the GSP review and now, this investigation. On one hand, such initial efforts are encouraging news. For example, CONATEL, the Honduran broadcasting authority, has been empowered to take action against broadcasters who have failed to provide documentation that they are broadcasting programming with legitimate authorization from the copyright owners; no actions have yet been taken. In addition, the Attorney General filed a complaint on October 10 in a criminal court in San Pedro Sula against the owners of Channels 6 and 21 in San Pedro Sula and Channel 69 in Tegucigalpa. MPA is encouraged that the Honduran prosecutors are starting to bring cases against broadcasting stations well-known for transmitting U.S. filmed entertainment programming without authorization of the copyright owners. MPA representatives have provided depositions to the court in the cases involving Channels 6 and 21.

On the legislative front, the Honduran Government has not yet implemented its promises to correct and clarify deficiencies in its 1993 copyright law. Proposed amendments were drafted, and its February 1995 version of these amendments responded to many, but not all, of the issues identified by the U.S. Government and IIPA. In July 1995, U.S. Trade Representative Mickey Kantor extended this GSP review "until December 1995 to allow time for the enactment of the copyright law amendments." Two more years have passed, and IIPA understands that these amendments remain pending before the National Congress. The Honduran Government also promised to issue implementing regulations to fully implement the law and correct deficiencies in it; we understand these regulations have not yet entered into effect. IIPA remains concerned that many of the deficiencies in the law cannot be corrected merely by regulations.

Conclusion

While the Honduran government is beginning to take some specific enforcement actions, there is not yet enough evidence to show that this heightened attention to IPR protection and enforcement will continue on a regular basis. For the past five years and up to the present moment, Honduras does not provide adequate and effective copyright protection and enforcement to U.S. copyright owners. IIPA supports USTR's proposed determinations under Section 301 that Honduras has failed to provide adequate and effective copyright protection and that the partial suspension of GSP and CBI benefits to Honduras is warranted.

Respectfully submitted,

Maria Strong
Vice President
and Associate General Counsel