

## Executive Summary

### **International Intellectual Property Alliance**

#### **“Improving Copyright Protection and Enforcement in the Americas”**

Americas Business Forum IV in San José, Costa Rica, March 16-18, 1998  
Workshop on Intellectual Property Rights

The International Intellectual Property Alliance (IIPA) is a coalition of seven associations representing U.S. copyright-based industries in bilateral and multilateral efforts to open up foreign markets closed by piracy and other market access barriers. IIPA believes that several actions are essential to foster local economic growth and increased trade and investment among member states of the Free Trade Area of the Americas:

Governments should take immediate actions to enforce their current laws and regulations on copyright, crime, customs, tax, and communications, to reduce the high levels of commercial piracy, both within their countries and at their borders.

Governments should revise their laws to ensure the highest levels of copyright protection, and ratify and implement the two “digital” copyright treaties of the World Intellectual Property Organization.

Governments must incorporate copyright protection in policies to promote electronic commerce and the development of information infrastructures.

Governments should provide non-discriminatory market access for information and entertainment products and services.

Governments must ensure that customs valuation is based on the physical medium embodying the copyrighted work, and not the imputed value of the copyrighted work itself, following the international trend.

Governments should ratify and implement the Information Technology Agreement which will eliminate tariffs on many types of information technology products.

IIPA asks that the Trade Ministers in San José, and the Presidents at the Santiago Summit, direct their respective governments to take immediate actions to enforce their copyright (and other) laws in order to reduce the high levels of commercial piracy. Countries should report, on a regular basis, to the FTAA Intellectual Property Rights Working Group on progress on enforcement and reducing piracy. By the year 2000, all the FTAA countries must be in full compliance with their copyright substantive and enforcement obligations under the TRIPS Agreement.

Position Paper of the

**International Intellectual Property Alliance**  
**“Improving Copyright Protection and Enforcement in the Americas”**

Americas Business Forum IV  
Workshop on Intellectual Property Rights  
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**OBJECTIVES**

The International Intellectual Property Alliance (IIPA) believes that several actions are essential to foster local economic growth and increased trade and investment in the copyright industries among member states of the Free Trade Area of the Americas (FTAA).

- Governments should take immediate actions to enforce their current laws and regulations on copyright, crime, customs, tax, and communications, to reduce the high levels of commercial piracy, both within their countries and at their borders.
- Governments should revise their laws to ensure the highest levels of copyright protection, and ratify and implement the two “digital” copyright treaties of the World Intellectual Property Organization (WIPO).
- Governments must incorporate copyright protection in policies to promote electronic commerce and the development of information infrastructures.
- Governments should provide non-discriminatory market access for information and entertainment products and services.
- Governments must ensure that customs valuation is based on the physical medium embodying the copyrighted work, and not the imputed value of the copyrighted work itself, following the international trend.
- Governments should ratify and implement the Information Technology Agreement (ITA) which will eliminate tariffs on many types of information technology products.

**MAIN ISSUES**

IIPA and its member associations and companies believe that the FTAA offers the prospect of a

regional partnership, and a forum through which member nations can be persuaded that strong copyright protection, combined with effective enforcement, both supports local economic development and fosters foreign investment. We will continue to work in various bilateral and multilateral fora to strengthen copyright protection and enforcement in all countries in this hemisphere. The following six issues are key to advancing these goals in the Americas:

- 1. Governments should immediately undertake concrete efforts to enforce their copyright laws (including criminal laws) to reduce high levels of piracy and encourage the development of legitimate cultural, entertainment and high technology industries which depend on copyright protection.**

Every nation has an interest in nurturing the economic development of its local copyright industries. Not only will this provide income and jobs, it will encourage foreign and domestic investment in this fast-growing sector. Many countries in the Americas currently have adequate copyright laws, but they are not adequately enforced. Piracy of films, television programs, home videocassettes, music, audiocassettes, music compact discs, textbooks, tradebooks, reference and professional publications and journals, business software, and interactive entertainment software on all platforms, has several detrimental effects; it robs local creators, it stunts cultural and technological development, and it retards economic modernization. Copyright piracy is the number one trade barrier affecting the health and growth of local copyright industries in the hemisphere. Reducing piracy will not only mean increased employment in this fast growing sector but will bring much needed new tax revenue to governments in the region.

Modes and methods of piracy vary, but one feature never changes: pirates do not pay taxes. To show the impact of lost tax revenues to local economies, the Business Software Alliance (BSA), an IIPA member, and Price Waterhouse released a study in May 1997 on the packaged software industry in Latin America. This study, which covered 15 Latin American and Caribbean countries, reached two key conclusions: (1) if the level of software piracy in the region (which averaged 68% in 1996) were 15% lower, an additional 29,557 jobs and an additional \$300 million in tax revenue for the local countries could have been generated in 1996, and; (2) by 2000, if illegal copying were 15% lower than in 1996, the software industry could account for a total of 275,181 more jobs and over \$4.86 billion in tax revenue. If these figures, which covered only parts of one copyright-based industry -- business software -- were expanded to cover the entire copyright-based sector, they would show the costs of piracy in lost revenue and foregone jobs

to be substantially larger.

Copyright piracy is a trade barrier which can be lowered significantly in a relatively short period of time, in most cases, by a clear commitment from the responsible political officials and enforcement authorities to take immediate action against large-scale commercial pirates, and to impose deterrent penalties on such infringers. IIPA believes that the enforcement obligations in the Agreement on the Trade-related Aspects of Intellectual Property Rights (TRIPS) provide a comprehensive foundation for the development of civil, administrative and criminal procedures and remedies necessary for effective enforcement against copyright piracy. Specific TRIPS's obligations include critical enforcement tools like ex parte searches, injunctive relief, damages, effective border enforcement measures and deterrent criminal penalties. It is up to each government to arrange and coordinate efforts with its police, prosecutors, judges, customs officers, tax authorities, administrative agencies (such as Copyright Offices) and other authorities to ensure that its enforcement system complies with TRIPS. In general terms, TRIPS requires an enforcement system that (1) permits effective action against infringements; (2) provides expeditious remedies which constitute a deterrent; (3) is fair and equitable; (4) is not unnecessarily complicated or costly; and (5) does not entail any unreasonable time limits or unwarranted delays. This is worth repeating -- TRIPS requires that member countries must apply their criminal laws in cases of commercial piracy; it is not enough to merely have laws on the books unless those laws are used effectively.

The FTAA IPR Working Group already has acknowledged the importance of enforcement; it informed the Vice Ministers (at the meeting held in Recife, Brazil in April 1997) of its commitment to develop recommendations: (i) to promote measures to reduce piracy and counterfeiting in countries of the Hemisphere, including education and training, and (ii) to cooperate and exchange information regarding customs measures. The IPR Workshop at the Americas Business Forum III in Belo Horizonte also called for governments to take anti-piracy actions. Now is the time for all 34 governments to take concrete actions against piracy in this matter. IIPA asks that the Trade Ministers in San José, and in turn, the Presidents at the Santiago Summit, direct their respective governments to take immediate actions to enforce their copyright laws to reduce the high levels of commercial piracy, both in-country and at the borders.

- 2. High levels of copyright protection should be included in national laws, including implementation of the two WIPO copyright treaties.**

IIPA believes that the FTAA should require the highest levels of copyright protection; this would include the minimum standards of TRIPS, and go beyond to incorporate the higher levels of copyright protection found in the North American Free Trade Agreement (NAFTA). Furthermore, given the increased vulnerability of copyright materials to piracy over advanced networks, we believe all governments in the Americas should ratify and implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. These Treaties respond to the challenges of digital technology, and contain rights and obligations which will allow authors, performers, and producers the ability to better protect the products of their creativity in the information age. In addition, they contain provisions concerning technological measures of protection and electronic rights management information which are essential for the efficient exercise of rights in the digital age. These Treaties will encourage the continued growth of, and jobs in, the creative industries. Swift ratification and implementation throughout the hemisphere will put the Americas at the forefront in the growing global digital marketplace.

**3. Governments must incorporate copyright protection in policies to promote electronic commerce and to develop information infrastructures.**

The potential investment and trade opportunity for the development of a Hemispheric Information Infrastructure (HII) continues to be high; in fact, construction of the “Informatics 2000 Initiative” by the Inter-American Development Bank (IDB) is already underway. While a digital marketplace in creative works offers great promise, it also presents formidable challenges. Unless all participants in this new marketplace shoulder the responsibility of promoting the values of honesty, fairness, and respect for the property of others, electronic commerce cannot possibly succeed. A plague of piracy threatens to blight the potential of the digital marketplace. The very same technology that facilitates the legitimate distribution of an unparalleled diversity of creative products around the world also makes possible the greatest threat to the success of electronic commerce. Countless ingenious individuals around the world are working together to create the cornucopia that global digital networks can deliver to our homes, offices, and schools. But this bounty is vulnerable to thievery in electronic commerce. A global strategy that promotes responsibility and respect for the creative work of others can yield enormous benefits for the public on every continent. By contrast, if laws and public policy encourage irresponsibility, larceny and abuse, the digital marketplace will quickly empty, leaving only the thieves to traffic in a bazaar that respectable people and responsible companies would never choose to enter.

Of all the policy issues raised by the advent of global electronic commerce, none is more critical to its success than the protection of intellectual property. The value of the Internet, and other international digital networks, to its users turns directly upon the content that moves across it and the software tools that enable users to reap its benefits. Intellectual property protection is the most effective incentive for the creation and widespread distribution of valuable content, and for the development and dissemination of useful software tools. To the extent that those incentives are weakened or undercut, the spectrum of information and entertainment products and services made available over digital networks, and the functionality of the networks themselves to end users, will shrink to the lower end of the value chain, or perhaps disappear altogether.

Internet-based theft of copyrighted materials is real and growing. Today, it directly hurts the creators of books, databases, journals and music, as well as the software, videogame, and sound recording industries. If this piracy is allowed to flourish unchecked, the full promise of global electronic commerce cannot possibly be fulfilled. Combating copyright theft in order to foster the growth of electronic commerce requires a multi-faceted strategy. Technological measures to combat piracy are essential, as is public education about copyright, especially targeted to network users. But these steps are not sufficient by themselves. Strong legal protections must be adopted, and more importantly, must be vigorously enforced worldwide, if sufficient intellectual property incentives are to be preserved.

**4. Governments should provide non-discriminatory access to their markets for entertainment, information and educational goods and services.**

Governments should provide non-discriminatory access for information and entertainment services to all markets through the reduction of tariff and non-tariff barriers, and other measures which affect the free circulation of information, education and entertainment-based goods and services.

In addition, countries should have open regulatory regimes for Direct-To-Home/Direct Broadcasting Satellite services that allow programming to freely circulate within the Hemisphere. By taking advantage of

this new technology, diverse programming reflecting the cultural wealth of the region can be disseminated through this multi-channel environment.

**5. Countries should join the Information Technology Agreement to reduce tariffs on information technology products.**

FTAA countries are conspicuously absent from the long list of countries which have subscribed to the Information Technology Agreement (ITA). This agreement will eliminate tariffs on key information technology products (such as computers, computer parts, software, semi-conductors, and the like), by the year 2000. The first reduction in tariffs occurred on July 1, 1997. Work toward preparing an ITA-II has already begun.

**6. Custom valuation methods should be reformed to match international trends.**

For those copyrighted products on which tariffs continue to be imposed, it is important for governments to ensure that customs valuation is based on the physical medium embodying the copyrighted work, and not the value of the copyrighted work itself. The overwhelming international trend is toward assessing duties only over the value of the physical media.

**AGENDA FOR PROGRESS BY 2000**

Clearly, high levels of intellectual property rights protection and enforcement are critical to the growth of the cultural, entertainment and high technology industries in each country in the Hemisphere, regardless of its level of development. On January 1, 2000, all the FTAA countries must be in compliance with their copyright substantive and enforcement obligations under the TRIPS Agreement (when the transition period expires). While the FTAA process anticipates hemispheric free trade by the year 2005, the effective date for full compliance with TRIPS' copyright obligations is five years earlier. The critical task is to ensure that all FTAA countries can meet that test in 2000.

IIPA asks that the Trade Ministers in San José, and the Presidents at the Santiago Summit, direct their respective governments to take immediate actions to enforce their copyright (and other) laws in order to reduce the high levels of commercial piracy. IIPA believes such high-level declarations by the Presidents

and the Trade Ministers will contribute to results on-the-ground in fighting piracy. Countries should report, on a regular basis, to the FTAA IPR Working Group on their progress on enforcement and reducing piracy.

IIPA also recommends that the Americas Business Forum IPR Workshop reaffirm the following recommendations relating to copyright legislation and enforcement which were agreed to by this same Workshop at the Forum in Belo Horizonte in May 1997 (the numbering below tracks the points in the Belo document):

1. Countries should implement as soon as possible national laws that are consistent with TRIPS, using, if necessary, the established transition periods.
2. Governments should adopt and implement serious measures that guarantee effective fulfillment of existing legislation by the appropriate authorities.
3. The countries in the region must work together in a coordinated way to combat practices of piracy and counterfeiting.
4. Governments should adopt measures to strengthen the judicial and police system responsible for ensuring effective application of the prevailing rights, including proper training and resources oriented to enhancing the competency and specialization of authorities.
5. The FTAA should encourage the member states to adhere to the principal multilateral intellectual property rights conventions.
6. Countries should ratify the WIPO Treaties on Copyright and Performances and Phonograms and adapt their legislation on copyright to the levels of protection set out in these treaties.
7. Governments and the private sector should promote seminars and exchange of information in order to raise awareness on the importance of intellectual property rights and their use as an instrument of technological development.
8. Governments should promote a continuous and effective mechanism of communication to the private sector, including the issue of regular bulletins by the Working Groups.
9. The process of integration should include a high level of protection of copyright, regardless of the level of development of each country.
10. Intellectual property legislation in the hemisphere shall be capable of adapting to technology changes, such as those related to new means of transmission or of the medium in which objects are embodied.

11. An agreement should be sought covering border inspection and recognition procedures based upon appropriate existing agreements.

IIPA also recommends that the Forum's IPR Workshop include in its recommendations to the Trade Ministers a statement about the importance of including principles of intellectual property protection in national and regional efforts to develop information infrastructures, especially in the realm of electronic commerce.

Finally, IIPA advocates that the FTAA IPR Working Group monitor developments in other FTAA Working Groups which may affect the scope of copyright protection, including electronic commerce issues, such as the Working Groups on Services, Customs/Rules of Origin, Market Access, Competition Policy, and Government Procurement. Similarly, these Working Groups should be cognizant of the issues in their workplans which involve copyright or affect the copyright industries.

IIPA appreciates this opportunity to contribute to the Americas Business Forum, and will continue to work to support our goals of strong copyright protection, combined with effective enforcement, throughout the Americas.

**About the IIPA:**

IIPA is a coalition of seven associations representing U.S. copyright-based industries in bilateral and multilateral efforts to open up foreign markets closed by piracy and other market access barriers. IIPA's seven member associations are the Association of American Publishers (AAP), AFMA, 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).

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