

The Congressional International Anti-Piracy Caucus

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2007 COUNTRY WATCH LIST

The Congressional International Anti-Piracy Caucus will once again highlight copyright piracy problems in China and Russia for 2007. These two countries continue to stand out for their refusal to meaningfully address the piracy problems that continue to harm local and foreign creators alike. We are pleased that the U.S. has brought actions against China before the World Trade Organizations (WTO), but we regret that China failed to take the necessary steps to avoid this result. Our continuing problems with China further bolster our determination that the WTO should not admit Russia until it has demonstrated – through concrete actions – its commitment to intellectual property protection. We also take this opportunity to highlight recurring problems in Mexico, Canada, and Malaysia.

CHINA

Piracy of American copyrighted materials remained epidemic in China over the past year. Little has changed, primarily because China's enforcement system, providing little more than a slap on the wrist for intellectual property piracy, does not effectively deter violators. China has taken some steps to address business software piracy, particularly by promoting legally licensed software, but allows piracy to continue largely unchecked in other copyright industries. In particular, China has failed to meaningfully reduce the piracy of sound recordings, motion pictures, and entertainment software. Chinese optical disc plants continue to produce, distribute and export millions of infringing optical discs (CDs, DVDs, etc.) in violation of Chinese law, and China remains the leading worldwide exporter of counterfeit video game cartridges. Hundreds of Chinese Internet sites offer unauthorized downloads, streams, or links to pirated materials. As a result, U.S. copyright industries estimate that they have lost over \$2.2 billion in revenues to piracy in China in 2006.

We once again urge the Chinese government to take effective and public enforcement actions – including the imposition of criminal penalties – against factories and Internet sites pirating American products. As part of this effort, China should target Internet sites offering unauthorized downloads, storage space for infringing materials, streams, or links to pirated recordings, movies, video games, and software. The Chinese government must send a strong message to Chinese pirates that illegal production, reproduction, and distribution of copyrighted products will no longer be tolerated. We commend the WTO's initiation of cases against China as a means of motivating China to address the rampant intellectual property piracy still occurring within its borders.

While China's lax enforcement regime permits infringement, China's protectionist trade policies prevent American companies from offering legitimate copyrighted works to Chinese consumers. China has declined to liberalize trade restrictions, despite years of repeated requests by U.S. government and industry. As a result, the Chinese market remains the most closed in the world to legitimate copyright holders and a profitable safe haven for intellectual property pirates. We strongly

encourage China to take real and concrete steps this year to lift import restrictions on legitimate copyrighted goods, develop robust legal authorities to prosecute copyright violations, and initiate strong enforcement efforts to punish violators.

RUSSIA

In November 2006, Russia and the United States entered into a binding IPR Bilateral Agreement as part of Russia's efforts to accede to the WTO. According to that agreement, Russia must adopt the legal framework necessary to engage in meaningful copyright law enforcement and reduce piracy "on a priority basis." Russia's implementation of these commitments will be an essential component of its effort to successfully negotiate entry into the WTO. We urge the Russian authorities move quickly to meet these commitments.

Russia's economy remains one of the world's most lucrative markets for pirated goods. Pirated products sold in Russia in 2006 represent well over \$1 billion in lost profits for legitimate intellectual property owners. An estimated 65% to 85% of the creative works distributed in Russia – motion pictures, records and musical compositions, business and entertainment software, and books – are pirated. This rate of infringement is unacceptable for a developing country, much less a country with Russia's sophistication, resources, and growing economy.

Although Russia took isolated enforcement actions last year, raiding and inspecting several optical disc factories, Russia's prosecution rates and sentencing statistics remain woefully low for a country in which piracy remains ubiquitous. On the most important fronts, Russia failed to make significant progress: optical disc piracy remains high; plant operators and organized crime syndicates remain undeterred by spotty enforcement and weak punishments; and Internet piracy is growing, with pirates openly using Russian-based servers. For example, the website "*allofmp3.com*," continues to operate with impunity – a very visible example of Russia's indifference to the problem of piracy.

When U.S. copyright industries first brought the optical disc piracy problem to the attention of the U.S. and Russian governments in 1996, two plants were known to be in existence; in 2006 there were approximately 53. The bilateral agreement obligates the Russian Government by June 1, 2007, to address this problem with specific on-the-ground enforcement steps and legislative actions. The agreement lists optical disc piracy as a priority, and it notes that Russia has committed to address the problem "[w]ith the objective of permanently closing down operations of plants that engage in [the] production of optical discs and other optical media containing pirated and counterfeit material." We hope that this goal will soon be met, and we reiterate the sense of the U.S. Congress that the U.S. should refrain from completing Russia's WTO accession negotiations until Russia has clearly demonstrated a willingness and ability to provide the kind of copyright protection expected from a WTO partner.

CANADA

Canada remains one of the few developed countries that has failed to update its copyright law to take into account the technological changes of the past decade. Over 80 countries around the world have implemented the obligations set forth in the "World Intellectual Property Organization (WIPO) Internet Treaties," – treaties concluded over a decade ago to address what were then "new" technologies. It is critical that Canada amend its copyright law to implement obligations under the WIPO treaties, particularly the establishment of clear rights to protect online transmissions, protections for technological measures employed by rights holders to protect their works, and providing incentives to Internet service providers to offer effective assistance in combating online infringement.

Canada has not taken sufficient steps to reduce piracy. Pirated products are easily found throughout Canada, including in retail establishments in larger metropolitan areas. Canada is also a known haven for businesses importing and distributing circumvention devices, which allow for pirated entertainment software to function on video game consoles. While federal and local law enforcement authorities have marginally improved their efforts, those who manufacture, distribute, and sell pirated materials face few consequences for their illegal activities. Canada's weak penalties fail to effectively deter criminals engaged in these activities. Moreover, Canada's lax border measures appear to facilitate the importation of pirated products from Southeast Asia, China, and Russia. A coordinated national program targeting the importation of counterfeit goods at all major Canadian ports of entry is needed.

Finally, illicit camcording in Canada is growing astronomically and infringing camcorded works are increasingly being exported to foreign markets. Works camcorded in Canada have been discovered in more than 45 other countries. We strongly encourage Canada to criminalize camcording and provide penalties severe enough to deter this prevalent infringement activity.

MALAYSIA

Although Malaysia recently promulgated regulations aimed at controlling optical media production, commercial piracy continues in Malaysia in both licensed and unlicensed factories. Malaysia remains a leading source of pirated entertainment software produced for export to many major markets, including Asia, Europe, the Middle East, Africa, and Latin America. Retail piracy remains problematic, perhaps in large part due to the lack of criminal prosecutions and deterrent penalties. Moreover, Malaysia must improve its customs capabilities and border enforcement measures, as well as adopt sanctions that can be imposed on persons who use false information on documents submitted to government authorities in relation to the movement of goods across Malaysia's border. Until Malaysia improves its licensing, enforcement, and export control regimes, piracy in Malaysia will continue largely unchecked.

MEXICO

Piracy also remains rampant in Mexico. Conservative estimates indicate that copyright holders lost more than \$1 billion to Mexican copyright piracy last year. Piracy involving hard goods, optical discs, Internet piracy, street piracy, and unauthorized photocopying at universities continued at high levels. To address this problem, Mexico must ensure that enforcement agencies have adequate resources, increase public awareness of the perils of piracy, and foster better cooperation and coordination between state and municipal efforts to combat the street piracy problem. Mexico must also enhance judicial training and strengthen border enforcement if it is truly going to curb its piracy problem.

The Mexican government has taken this issue seriously, improving its performance in several key areas last year. Federal law enforcement authorities and administrative agencies, in particular, demonstrated a willingness to work with rights holders to undertake significant enforcement actions. However, performance by state governments is far less satisfactory, with only 4 of the 32 state governments exhibiting an interest in combating illegal trade and piracy. Municipal government enforcement has been even less effective, with most local governments abdicating any responsibility and permitting the widespread sale of illegal merchandise, including pirated and counterfeit goods. Mexico must focus on strengthening enforcement efforts at the state and municipal level, and on prosecuting more infringement cases at all levels.

Several bills that would strengthen measures for law enforcement authorities continue to languish – as they have for years – before Mexico’s legislature. For example, Mexico should amend the criminal code to grant *ex officio* authority to police officers to pursue copyright infringement actions, so that rights holders will not be required to file criminal complaints for every case of infringement. Mexico should also move swiftly to enact legislation prohibiting camcording in theaters, protecting the use of technological measures that prevent physical and online piracy, and eliminating the requirement that prosecutors demonstrate that criminals engaged in Internet piracy profited from their crime. We urge the legislature to address these and other proposed copyright law and criminal code amendments in 2007.

Statistics indicate that 60% of copyrighted music sales impact local artists. Sales by Mexican recording artists have declined by 26% over the last year and the music industry has reduced employment 67% since 2000, eliminating an estimated 20,000 jobs.

We encourage Mexico to allocate additional funds for the Attorney General to carry out a nationwide campaign to train judges and prosecutors in intellectual property issues. We further urge Mexico to engage state and local governments and coordinate with them to fight piracy through direct enforcement actions, canceling commercial licenses for those points of sale dedicated to pirate products, and by cleaning up the major pirate markets in downtown Mexico City, Tepito.

The Congressional International Anti-Piracy Caucus, formed in 2003 by Representatives Adam B. Schiff and Bob Goodlatte and Senators Joseph R. Biden, Jr. and Gordon Smith, is made up of over 65 members of Congress. The goal of the Caucus is to provide briefings for Congressional delegations traveling to countries with significant piracy problems; staff and member briefings and forums on international intellectual property protection and piracy; demonstrations of new technologies and products designed to improve consumers' entertainment experiences and to reduce piracy; and to work closely with the committees of jurisdiction in the House and Senate on related hearings and legislation.