

The Congressional International Anti-Piracy Caucus

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2008 COUNTRY WATCH LIST

The Congressional International Anti-Piracy Caucus will focus on copyright piracy problems in China, Russia, and Canada for 2008. Despite some improvements, China and Russia continue to stand out for their refusal to address meaningfully the significant piracy problems within their borders. We remain pleased with the pending World Trade Organization (WTO) actions against China; however, we regret that China failed to take the necessary steps to avoid this result. Notwithstanding some recent Russian acknowledgement that it must do more to reign in piracy, our continuing problems with China only bolster our determination that the WTO should not admit Russia until it has demonstrated a stronger, more concrete commitment to intellectual property protection.

We remain deeply concerned that Canada has failed to update its copyright laws to provide for online enforcement, making it a safe haven for Internet pirates. We also take this opportunity to highlight problems in Mexico, Greece and Spain. Finally, we are pleased to note the positive steps taken by the governments of Lebanon, Malaysia, and Turkey in addressing piracy problems in certain sectors.

CHINA

The scope of the threat industries face from physical intellectual property piracy in China has not fundamentally changed in 20 years, and China's rapidly growing online and mobile piracy threatens to overtake copyright infringement of physical goods. The peak piracy levels of 20 years ago have been only minimally reduced today. This is largely the result of China's failure to criminally prosecute intellectual property violations and China's reliance on a flawed administrative enforcement system. China's system has proven inadequate to ensure compliance with China's international obligations and provides little deterrence against the ever-growing forms of copyright piracy that have long plagued American and Chinese authors, performers, and producers. The piracy problem is exacerbated by China's failure to provide meaningful market access to legitimate copyright products, which has allowed pirates to reap massive profits at legitimate copyright holders' expense.

These copyright piracy and market access problems are now quickly infecting the online marketplace, where potential benefits for American (and Chinese) creative industries are enormous. According to the Office of the United States Trade Representative and industry estimates, China's largest online MP3 search engine, named *Baidu*, is the target of infringement actions for providing illegal downloads of or streaming links to copyright-protected music files and its links are responsible for half of Internet-based copyright piracy of recordings in China. The need for effective Chinese government action in the online and mobile space is urgent. Unless China takes effective corrective action against online and mobile copyright piracy, these promising new markets will continue to rob legitimate copyright holders of the fruits of their hard labor. We support the WTO complaint, brought by the United States Trade Representative (USTR), against some of China's practices in this area.

To demonstrate its commitment to protect intellectual property rights and enforce violations, we urge China to take the following steps: initiate a significant number of meaningful criminal prosecutions for copyright violations, especially against online piracy and so-called deep-linking sites that knowingly connect users to infringing content; ensure that criminal penalties apply to all forms of commercial piracy; impose effective and deterrent administrative penalties, particularly against online, mobile, and corporate end-user copyright piracy; streamline procedures for filing civil suits and provide for enforceable judgments and adequate damages and injunctions in civil copyright infringement suits; ensure universities do not condone or sponsor piracy of books and journals; and provide real market access for all copyright materials.

RUSSIA

Russia is at a critical juncture in the development of its intellectual property rights (IPR) regime. On November 19, 2006, the Governments of Russia and the United States entered into an IPR Bilateral Agreement (“IPR Agreement”) as part of Russia’s efforts to accede to the WTO. The IPR Agreement reflects Russia’s acknowledgment of the numerous legal reforms and enforcement steps it must undertake to modernize and improve its copyright system for the benefit of Russian and foreign authors, performers, and producers. The U.S. Government has consistently reiterated its position that Russia must provide protection and enforcement of IPR, consistent with the requirements of the IPR Agreement, before the United States would support Russia’s entry into the WTO. Russia’s full compliance with the IPR Agreement’s obligations is essential, and should be considered when the United States determines whether to extend preferential duty-free entry to certain Russian imports under the General System of Preferences (GSP) program.

While Russia has made some improvements this past year, including a significant drop in the software piracy rate, a great deal remains to be done in order to achieve adequate protection in Russia and to secure compliance with the IPR Agreement, particularly with regard to optical disc and Internet piracy, and the approval of licensing societies under the new civil code. We hope that Russia will build on the progress made this past year and take immediate steps to prosecute those engaged in piracy, including the principals behind websites such as *allofmp3.com*, as well as those who knowingly issued fraudulent licenses to such sites. We are heartened by the recent public acknowledgement by the chief Russian WTO negotiator that there is work to be done to comply with the IPR Agreement, and we are pleased that the United States Trade Representative understands that securing compliance with the IPR Agreement is a prerequisite for Congressional approval of Permanent Normal Trade Relations (PNTR) status.

CANADA

We have been concerned with the piracy problem in Canada for some time. While Canada is to be commended for enacting a key law that criminalizes camcording in movie theaters, more reforms are necessary.

In 2007, it was widely anticipated that a draft copyright reform bill implementing Canada’s World Intellectual Property Organization (WIPO) Internet Treaties Obligations would be forthcoming. However, despite its own commitment to do so, the Canadian government has yet to introduce such legislation, leaving rights holders with no effective means to protect and enforce online-based piracy of their works. This legal void has made Canada an attractive location for illicit file-sharing websites, and regrettably Canada has become known as a “safe haven” for Internet pirates.

Furthermore, with the exception of the recently enacted camcording law, Canada has done virtually nothing to address any of the critical copyright law and enforcement issues that the USTR identified in its Special 301 Report. Despite calls from Canada's creative community and from the Parliament to tackle these problems, their requests have had little discernible effect on Canadian copyright policy. The time has long since passed for the Government of Canada to give sufficient priority to this important item of unfinished business. At a time when every other developed country and major U.S. trading partner have made significant progress toward modernizing copyright law to respond to the challenges of an ever-changing technological world, Canada's failure to do so stands out. The WIPO Internet Treaties were concluded over a decade ago and were designed to respond to what were then new technologies. The global community adopted certain features in the Treaties, such as safeguarding technological measures used by right holders to protect their works, in order to drive legitimate electronic trade in creative works. Canada's long delay in adopting a sufficient legal framework for preserving copyright protection in the digital age is a mystery, and we hope that it will end shortly.

The Congressional International Anti-Piracy Caucus notes that the following countries also face significant piracy problems.

SPAIN

There is a great deal of Internet piracy in Spain and it is wreaking havoc on the legitimate market. Spain is consistently ranked as having the highest percentage of Internet consumers engaged in piracy. While there has been some progress made against pirate Internet websites by Spanish law enforcement, Spain's Internet piracy problem continues and is exacerbated by both the inaction and actions of the Spanish government. First, the Government has not effectively enforced Internet Service Providers' responsibility to cooperate with rights holders and ensure that their networks are not used for infringing purposes. Second, the *de facto* decriminalization of illicit peer-to-peer file sharing through an Attorney General Circular stating that downloading is not a prosecutable crime is now impairing broader enforcement efforts against online piracy. Third, the Government has repeatedly failed to establish minimum EU-level requirements necessary to protect content owners in the online environment.

GREECE

Despite positive cooperation between the copyright industries and police, the overall enforcement system in Greece fails to tackle the endemic piracy problem, which is estimated to be among the highest in the European Union. While Internet piracy is relatively new in Greece, a data protection law makes it difficult for prosecutors to pursue investigations and litigation against suspected infringers, especially in the peer-to-peer file-sharing area. The Hellenic Copyright Office, the Ministry of Foreign Affairs, and the tax police are cooperative with the copyright industries, but there has been limited success in the fight against piracy. Stronger leadership and coordination are needed for successful implementation of a national anti-piracy action plan.

MEXICO

While the Government of Mexico is to be commended for augmenting its enforcement efforts, the sheer scope of the piracy problem in the country remains severe. Hard goods piracy and Internet piracy, often with links to organized crime, continue at high levels. More cooperation and coordination with state and municipal governments is needed to attack the problem of rampant street piracy, and universities should work to address on-campus infringement. Judicial training must be intensified and border measures strengthened.

Fortunately, the Government seems willing to take these necessary measures, recognizing that enhanced enforcement will benefit the Mexican economy broadly. An effective legislative framework is critical to Mexico's enforcement efforts. A number of legislative proposals in Mexico would strengthen law enforcement, including proposals that would provide *ex officio* authority for law enforcement and customs officials, crack down on camcording, protect technological measures, and eliminate profit requirements in online piracy cases.

The Congressional International Anti-Piracy Caucus takes note of the **improvements** that the following countries have made with respect to cooperation with rights holders, and hopes that these improvements continue.

LEBANON

Copyright piracy continues to have a significant negative effect on the legitimate market for U.S. copyright owners in Lebanon. Nevertheless, Lebanon has made commendable progress in combating piracy despite the serious political problems and instability that it faces. Specifically, the Lebanese Government's special police bureau, the Cyber Crime and Intellectual Property Rights Bureau, has acted effectively against copyright pirates. In 2007, the Bureau increased its staffing and its expertise. As a demonstration of its commitment and efforts over a period of months, the unit held a destruction ceremony in July 2007, bulldozing over 100,000 pirated CDs and DVDs. In addition, there is increased cooperation with Lebanese Customs in interdicting pirate imports and with inspectors of the Ministry of Economy and Trade. This Lebanese enforcement unit should serve as a model in a region that is plagued with piracy and ineffective governmental enforcement efforts.

MALAYSIA

There has been continued and improved cooperation between industry and local law enforcement officials in addressing Malaysia's piracy problem, including by the Ministry of Domestic Trade and Consumer Affairs. The Malaysian Government has also established a specialized IP court, which began to adjudicate IPR cases in 2007. Commercial piracy, however, continues in Malaysia in both licensed and unlicensed optical disc factories, as well as commercial burning labs. The country remains a leading source of pirated entertainment software produced for export to many major markets around the world, including Asia, Europe, the Middle East, Africa, and Latin America. Retail optical disc piracy remains problematic and is likely due to the lack of deterrent penalties. Universities are also rife with illegal photocopies of academic materials. Border enforcement measures and customs enforcement capabilities still need improvement, as sanctions are still unavailable against entities that use false information on documents submitted to government authorities in relation to the movement of goods across Malaysia's border. While Malaysia has made important gains in fighting piracy, more progress remains to be achieved.

TURKEY

There are signs in Turkey that the enforcement system is beginning to have a positive effect on the market for some products and services. Significant street raids in recent years have opened up the legitimate market for some copyright owners. In addition, increased cooperation among enforcement and judicial authorities in issuing warrants, and in the adjudication of copyright infringement cases, is beginning to yield a decrease in piracy. Law enforcement raids and seizures against pirated motion pictures increased as the motion picture industry worked with authorities in 2007 to prosecute more criminal commercial copyright pirates. In two cases involving repeat copyright infringers, the prison sentences imposed resulted in a level of deterrence not previously seen in Turkey. Finally, the Turkish Government has begun to take some meaningful action against websites involved in piracy, including blocking access to Sweden's infamous *The Pirate Bay*. Further action, however, is necessary to address book piracy in Turkey, and we hope that this will be a priority in the coming year.

The Congressional International Anti-Piracy Caucus, formed in 2003 by Senators Joseph R. Biden, Jr. and Gordon Smith, and Representatives Adam B. Schiff and Bob Goodlatte, is made up of 70 members of Congress. The goals of the Caucus are 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.