

The Congressional International Anti-Piracy Caucus

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2011 COUNTRY WATCH LIST

The Congressional International Anti-Piracy Caucus calls attention in 2011 to copyright piracy problems in Canada, China, Russia, Spain, and Ukraine. The lack of enforcement of intellectual property rights in these countries causes grave harm to American creators and to our economy as a whole. Canada, China, Russia, and Spain were highlighted in 2010 by the Caucus and continue to lag in efforts to combat piracy. Ukraine was added to the list in recognition of serious setbacks in its protection of American intellectual property and because of its status as a host for websites that profit from piracy. In this watch list, we detail specific steps each country must take to protect intellectual property sufficiently in the future.

The American music, film, software, gaming, and publishing industries are among America's top exporters, and millions of jobs depend on their continued international leadership. Americans must not be forced to subsidize the content that others steal. Likewise American businesses should not be forced to compete with foreign companies that cut production costs by using pirated software or scientific articles.

Addressing online piracy is an essential component of stopping the wholesale theft of American intellectual property. As we did in 2010, we call upon our international trading partners to take action against websites whose business models are premised on delivering infringing content. We also call on them to promptly put in place any legal tools and enforcement resources necessary for such actions.

We also call upon the Administration to use every resource at its disposal to press our trading partners to fulfill their obligations to protect American intellectual property rights.

CANADA

Canada's copyright law remains inadequate. It still lacks any of the crucial updates needed for enforcement in the digital era. As a result, huge amounts of Internet piracy have gone unchecked in Canada for yet another year. Canada instead continues to be a magnet for sites whose clear purpose is to facilitate and enable massive unauthorized downloading of pirated material. We

recognize that well-intentioned and repeated efforts have been made to reform Canadian copyright law, but remain disappointed in the lack of results.

Canada continues to lack an effective legal framework for Internet service provider responsibilities consistent with international best practices. It also lacks clear laws making online piracy illegal, discouraging the illicit distribution of creative content online, and supporting an innovative and legitimate digital marketplace. Canada also has failed to prohibit both circumvention of technological copyright protection measures and the trafficking of circumvention devices whose purpose is to facilitate copyright piracy. Until it does, Canada will remain a key transshipment point in the international trade of circumvention devices and Canadian sites such as www.modchip.ca will continue to operate with impunity. Finally, adequate enforcement tools continue to be lacking.

In light of these deficiencies, and as we have done in the past, we call on the Canadian government to: (1) ensure the liability under Canadian law of parties who facilitate, encourage, and profit from widespread infringement; (2) meaningfully engage ISPs in the fight against online piracy; (3) affirm that current law does not permit copying from unauthorized sources; (4) prevent the circumvention of technological protection measures, including through a prohibition on trafficking in circumvention devices; and (5) implement effective border measures (including a grant of ex officio power to seize infringing goods) to protect against the international distribution of infringing goods. Such reforms would help bring our largest trading partner into compliance with the World Intellectual Property Organization (WIPO) Internet Treaties, which Canada signed almost 15 years ago but has never implemented.

CHINA

China's Special Campaign Against IPR Infringement has resulted in several significant enforcement actions and has elevated the political and social awareness of the importance of intellectual property rights. In the last year, some of the most prominent Chinese websites also have taken steps towards relying on legitimate content rather than on pirated content. We welcome this progress, but nonetheless remain concerned by the very high level of piracy in China.

China continues to be a steady source of pirated hard good products, including books, DVDs, CDs, and software. However, China's failure to curb digital piracy presents an even larger threat to the future of American intellectual property in the Chinese market. American content of all kinds is extremely popular with Chinese consumers. Unfortunately, the online and mobile environment in China is saturated with infringing material, and the scope and variety of Chinese sources for pirated digital songs, movies, books, and software continue to grow.

Websites offering pirated music remain an enormous problem. Baidu, the leader among China's "deep-linking" sites that connect users to infringing content, facilitates Internet piracy through its dedicated music service. We highlighted Baidu among our 2010 Rogue Sites List, and we continue to believe that Baidu's facilitation of digital piracy drastically lessens the market for legitimate content in China. Approximately half of unauthorized music downloads in China take place through Baidu links. Indeed, as the United States Trade Representative reported in its

Special 301 Review of Notorious Markets in February of this year, Baidu is the most visited site in China, and ranks among the top ten most visited sites in the world. In addition, numerous popular Internet forums point users to Chinese cyberlockers, where unauthorized files are available for download or streaming. Peer-to-peer file-sharing and streaming of infringing music content also remain pervasive.

Chinese piracy of movies is equally concerning, and infringement similarly extends to the software, gaming, and publishing industries. A few examples in this area demonstrate the scope of the problem. China remains the leading source worldwide of the circumvention devices that enable gaming consoles to run pirated games. Chinese websites offering infringing games are prevalent. Unauthorized business software remains widely available through a variety of file-sharing services, linking sites, and sites selling unauthorized hardcopies. Likewise, commercial entities continue to provide infringing access to electronic copies of American scientific journal articles.

A number of Chinese laws and regulations exacerbate these piracy problems. Market access impediments, such as limitations on the establishment of foreign-invested enterprises and discriminatory and onerous censorship requirements, prevent American companies from releasing authorized versions of their works in a timely and effective manner. This renders American companies unable to respond to the immense demand for their products and creates a vacuum that pirates readily fill. Additionally, the high level of business software piracy in China forces a variety of U.S. industries to compete against Chinese firms that cut costs by not paying for software they use.

We welcome the Chinese government's most recent commitments, announced following the meetings of the United States-China Joint Commission on Commerce and Trade (JCCT) in December 2010, to establish better enforcement mechanisms against the many online piracy sites and services that operate within its borders. We also note that at the December 2010 JCCT, the summit between President Obama and President Hu in January 2011 and the recently concluded bilateral Strategic and Economic Dialogue (S&ED), China committed to take new measures to ensure that government agencies at all levels use legal software. Yet, until specific action is taken, widespread piracy will continue severely damaging American content industries.

We call upon China to: (1) quickly implement its most recent Joint Commission on Commerce and Trade (JCCT) commitment to establish liability for entities that facilitate online infringement; (2) increase actions to revoke business licenses from online services that deal in or provide access to infringing materials; (3) initiate criminal and administrative actions against entities that continue infringing operations; (4) fully implement the recent World Trade Organization decision concerning market access for audio-visual works, sound recordings, and publications; (5) expand market access for American companies and content, including by permitting the participation of foreign-invested enterprises in all aspects of production and distribution, eliminating burdensome and discriminatory censorship requirements, and lifting the ban on the sale of game consoles for the home; and (6) eliminate "indigenous innovation" policies that discriminate against foreign intellectual property.

RUSSIA

Russia has been plagued for years by intellectual property enforcement challenges. Many severe problems remain. This year, we particularly call on the Russian government to address the continuing growth of online piracy.

Online piracy is severe in Russia, and worsening. Infringing downloads by Russian Internet users have increased significantly in recent years. For example, the Russia-based social networking website vKontakte is one of the largest distributors of pirated music files in the world. Other forms of Internet piracy also abound. Peer-to-peer services permit users to share pirated files, and cyberlockers or “one-click” hosts make vast quantities of pirated content available for streaming or download. Likewise, while allofmp3.com was shut down in 2007, over 30 websites with similar pay-per-download models persist, collecting payments for pirated American content. Indeed, digital piracy has become so prevalent that it threatens to shut out legitimate content online. It must be addressed urgently.

Russia agreed to take action against online piracy when it signed the 2006 United States-Russia Intellectual Property Rights Agreement. It specifically agreed to the goal of “shutting down websites that permit illegal distribution of content protected by copyright or related rights.” We remain disappointed that Russia has not made adequate progress toward that goal and to combating other forms of piracy. We urge Russia (1) to impose penalties for online infringement, (2) to amend its Civil Code to encourage Internet service providers to cooperate with rights holders, (3) to adopt updated and uniform procedures for investigating and prosecuting copyright infringement; and (4) to undertake legal reforms to strengthen criminal and administrative penalties for copyright infringement.

SPAIN

The level of Internet piracy in Spain continues to be of serious concern. We recognize positive steps taken by Spain, as noted by the United States Trade Representative. However, the wide availability of pirated content online in Spain continues to cause substantial damage to the American content industries.

Recent changes in Spanish laws to provide procedures for removing infringing content from websites are a step in the right direction. Policymakers and law enforcement officials must sustain this attention to intellectual property rights if the outlook for legitimate online content in Spain is to improve significantly in future years. Spain still lacks the legal authorities necessary to combat peer-to-peer piracy, which remains the predominant form of piracy of multiple types of content yet escapes liability under Spanish law. Repeat infringers continue to operate with near impunity. Meaningful enforcement also is lacking: pursuant to 2006 instructions issued by the Office of the Prosecutor General, Spanish police continue to refuse to pursue online piracy.

We call upon the Spanish government to commit to ending all forms of online piracy. We specifically urge it to: (1) address peer-to-peer infringement; (2) work to reduce use of linking sites that facilitate access to infringing content; (3) modify current legislation and reverse

government policies that hamper enforcement actions against infringers and that prevent rights holders from obtaining the information they need to take civil actions; and (4) clarify that the private copying exception does not apply to copies from unauthorized sources and widen the concept of “aim of profit” so that illegal peer-to-peer sharing can be pursued vigorously.

UKRAINE

Online piracy levels and unlicensed software use by enterprises in Ukraine have reached a level that can no longer be ignored. Listed as a Priority Foreign Country as recently as 2005 in the United States Trade Representative’s annual Special 301 Report, Ukraine has a history as a regional source of pirated hard goods. In recent years, Ukraine has increasingly become a hub for infringing online content, both through peer-to-peer networks and hosted websites. Today, pirate file-sharing sites as well as unauthorized paid download sites such as mp3shake.com operate openly and continue to proliferate in Ukraine. Other websites that give access to pirated film, games, software, and music include demonoid.me, extratorrent.com, upload.com.ua, fileshare.in.ua, torrents.net.ua, and EX.ua—the last of which was responsible for an estimated 50 percent of Ukraine’s illegal downloading in 2010.

Ukraine must expand its enforcement against online intellectual property infringement and update its laws for the digital era. We call upon it to: (1) initiate criminal prosecutions against the operators of rogue sites; (2) take down pirate websites, including those relying in bad faith on collecting society licenses; and (3) reform its copyright and telecommunications laws to address issues in the online environment, including by providing incentives for ISPs to work with rights-holders to address online theft and by establishing criminal penalties for the unauthorized camcording of films in theaters.