

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE



1747 PENNSYLVANIA AVENUE, NW • SUITE 825 • WASHINGTON, D.C. • 20006-4604 • TEL (202) 833-4198 • FAX (202) 872-0546 • E-MAIL: SMIMET@IIPA.COM

August 21, 2000

GSP Subcommittee
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street NW, Room 518
Washington, DC 20508

Re: Request for Review of the Intellectual Property Rights Practices of Costa Rica in the 2000 Annual GSP Country Eligibility Practices Review, 65 Fed. Reg. 41514 (July 5, 2000)

To the Subcommittee:

The Trade Policy Staff Committee (TPSC) of the Office of the United States Trade Representative (USTR) published in the July 5, 2000 Federal Register a notice announcing the 2000 Annual Generalized System of Preferences (GSP) Country Eligibility Practices Review. USTR indicated that "interested parties may submit petitions to have the GSP status of any eligible beneficiary developing country reviewed with respect to any of the designation criteria listed in subsections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c))." See 65 Fed. Reg. 41515.

The International Intellectual Property Alliance (IIPA) hereby submits its request that the eligibility of Costa Rica as a GSP beneficiary developing country be reviewed, and that its GSP benefits be suspended or withdrawn, in whole or in part, if requisite improvements are not made by Costa Rica to remedy the deficiencies (outlined below) which adversely affect U.S. copyright owners. In 1999, the U.S. imported almost \$24.9 million in products from Costa Rica under the GSP program; this represented approximately 0.6% of Costa Rica's total exports to the U.S., according to U.S. government statistics.

In addition, IIPA requests that the eligibility of Costa Rica as a beneficiary developing country under the Caribbean Basin Economic Recovery Act (CBERA) be reviewed, and that its CBERA benefits be suspended or withdrawn, in whole or in part, if improvements are not made by the Dominican Republic to remedy the deficiencies (outlined below) which adversely affect U.S. copyright owners. Also in 1999, Costa Rica exported goods valued at \$683.0 million to the U.S. which received preferential duty-free treatment under CBERA, which represented about 17.3% of total exports to the United States.

Petitioner and its Interest: The International Intellectual Property Alliance

IIPA is a coalition of seven trade associations that collectively represent the U.S. copyright-based industries -- the motion picture, music and recording, business and entertainment software, and book publishing industries. IIPA's 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 member associations represent over 1,450 U.S. companies producing and distributing works protected by copyright laws throughout the world -- all types of computer software including business software and entertainment software (such as videogame CDs and cartridges, personal computer CDs and multimedia products); motion pictures, television programs, home videocassettes and DVDs; music, records, CDs and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media).

These U.S. copyright-based companies are the leading edge of the world's high technology, entertainment, and publishing industries. According to Copyright Industries in the U.S. Economy: The 1999 Report, prepared for IIPA by Economists, Inc., the core copyright industries accounted for \$348.4 billion in value added to the U.S. economy, or approximately 4.3% of the Gross Domestic Product (GDP) in 1997 (the last year for which complete data is available). In 1997, the total copyright industries accounted for \$529.3 billion in value added, or approximately 6.53% of GDP. The "total" copyright industries include the "core" industries plus those that, under conservative assumptions, distribute such products or other products that depend wholly or principally on copyrighted materials. The "core" copyright industries are those which create copyrighted materials as their primary product. The U.S. copyright industries are also among the nation's most dynamic and fast-growing economic sectors. The core copyright industries' share of the GDP grew more than twice as fast as the remainder of the U.S. economy between 1977 and 1997 (6.3% vs. 2.7%). Employment in the core copyright industries grew three times the rate of national employment growth between 1977 and 1997 (4.8% vs. 1.6%). More than 6.9 million workers were employed by the total copyright industries, about 5.3% of the total U.S. work force, in 1997. The core copyright industries generated an estimated \$66.85 billion in foreign sales and exports in 1997, an 11.1% gain over 1996 and larger than the foreign sales and exports of the food, tobacco, apparel, textile, and aircraft industries combined. Preliminary estimates for foreign sales and exports for 1998 are \$71.0 billion. For more detailed information on the IIPA and its members, visit www.iipa.com.

The U.S. creative industries represent one of the few sectors of the U.S. economy that regularly contributes to a positive balance of trade. It is essential to the continued growth and future competitiveness of these industries that our trading partners provide free and open markets and high levels of protection to the copyrights on which this trade depends. Inexpensive and accessible reproduction technologies make it possible for U.S. copyrighted works to be pirated -- stolen -- in other countries, and including specifically for the purposes of this petition, Costa Rica. However, the copyright industries represented in IIPA lose an estimated \$20-22 billion annually due to piracy outside the United States. These staggering losses, if not halted, could reverse this path of growth in these sectors, threaten the high wage employment that these industries bring to the U.S. economy, and damage U.S. competitiveness. To improve copyright laws and enforcement abroad, the U.S. copyright-based industries joined with the Administration and Congress to fashion new

legislation and negotiating tools. IIPA and its members have supported various trade tools with IPR provisions over the years, including the GSP Program, Special 301, Section 301, the Caribbean Basin Economic Recovery Act, the Andean Trade Preferences Act and the U.S.-Caribbean Trade Partnership Act.

Action Requested by Petitioner

Pursuant to the Trade Act of 1974, as amended (19 U.S.C. 2461 *et seq.*), IIPA, on behalf of its seven trade association members, hereby petitions the President to review the eligibility of Costa Rica as a GSP and CBERA beneficiary developing country, and if requisite improvements are not made by Costa Rica, then IIPA requests the President to suspend or withdraw GSP and/or CBERA benefits of Costa Rica, in whole or in part, for its failure to provide adequate and effective copyright protection for U.S. copyright owners.

IIPA also believes that it would be inconsistent for the U.S. Government to grant new, additional benefits to Costa Rica under the U.S.-Caribbean Basin Trade Partnership Act (CBTPA) while conducting an investigation under GSP and CBI for Costa Rica's failure to afford adequate and effective IPR protection to U.S. copyrights. CBTPA eligibility to Costa Rica should not be granted at this time.

Legal Authority for this Petition and Discussion of the IPR Criteria in the GSP and CBERA Statutes

A full discussion of the legal authority for this petition, and the specific IPR provisions and legislative history of both the GSP and the CBI programs is found in Appendix A. To summarize, in the GSP Renewal Act of 1984, Congress specified conditions that GSP beneficiary countries must meet in order to gain and maintain their preferential trading status. In particular, one of these express conditions (which Congress also delineated as one "purpose" of the GSP Program) was to encourage developing countries "to provide effective means under which foreign nationals may secure, exercise, and enforce exclusive intellectual property rights."¹ The legislation required the President to apply mandatory and discretionary criteria with respect to IPR protection as a condition to a country achieving "beneficiary" status under the GSP Program. When the GSP Program was reauthorized in August 1996, the language of the IPR discretionary criterion for GSP eligibility in Section 502(c)(5) was simplified slightly and now requires the President to "take into account the extent to which such country is providing adequate and effective protection of intellectual property rights."² The Caribbean Basin Economic Recovery Act (CBERA),³ enacted in 1983, represented the first time Congress explicitly linked trade benefits to intellectual property protection by beneficiary countries. Under the CBI program, countries can only receive trade preferences if they satisfy statutory criteria, which includes intellectual property rights (IPR) standards.

Costa Rica Fails to Provide "Adequate and Effective Protection" of U.S. Copyrights

¹ See Section 501(b)(9)(B) of the GSP Renewal Act of 1984.

² GSP Renewal Act of 1996, Title I, Subtitle J, of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (codified at 19 U.S.C. 2462(c)(5)).

³ See Section 212 of the Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67 (codified at 19 U.S.C. 2702) (also known as CBERA, or the Caribbean Basin Initiative (CBI)).

To the best of petitioner's knowledge, much of the information herein describing the deficiencies in the Costa Rica's legal and enforcement regime has been presented previously to members of various U.S. governmental interagency groups, including the Special 301 interagency group, several members of the GSP Subcommittee, as well as the Trade Policy Staff Committee, in the context of USTR's Annual Special 301 Review. On February 18, 2000, IIPA presented its annual Special 301 submission to Assistant USTR for Services, Investment and Intellectual Property Joseph Papovich; this submission was widely distributed among the interagency for its internal consideration in the 2000 Special 301 Annual Review. IIPA's entire report is available on our website.

In fact, USTR continues to highlight enforcement issues in Costa Rica. In her May 1, 2000 Special 301 announcements, Ambassador Charlene Barshefsky highlighted the following on Costa Rica enforcement difficulties:

... However, a number of problems remain on the enforcement side, particularly with respect to criminal prosecutions, as evidenced by continued high levels of piracy. The U.S. looks to the Government of Costa Rica to build on its recent progress by taking adequate and effective enforcement actions.⁴

1. Inadequate levels of sanctions for criminal copyright infringement fail to deter piracy. Legislation to improve these penalties and procedures is needed in order to provide "adequate and effective" copyright protection.

In late 1999, Costa Rica passed a series of intellectual property laws, including amendments to the Copyright Law of 1982, in order to comply with its WTO TRIPS obligations, which entered into effect on January 1, 2000. Also in December 1999, the Costa Rican Congress ratified both the WIPO Performances and Phonograms Treaty and the WIPO Copyright Treaty in December 1999. IIPA congratulates Costa Rica on depositing both its instruments of ratification with WIPO on May 23, 2000.

Before the copyright amendments were passed in late 1999, certain civil and criminal sanctions and some procedural provisions were removed and were inserted into another bill (Number 13.642) known as the *Ley de Observancia*, which is now being considered by the Legislative Assembly.

Copyright Law Amendments of 2000

The 1982 Copyright Law was amended on December 31, 1999, and was published in Law No. 7979 of January 31, 2000. Several positive improvements to the copyright law were made, including: revising the right of reproduction; extending the basic term of protection for works to life of the author plus 70 years, and for audiovisual works to 70 years after first exhibition and for sound recordings to 70 years after fixation; recognizing the rightholder's exclusive right to make a work or recording available to the public, which is critical to protecting copyrighted materials distributed over the Internet. The copyright law stills fails to protect against parallel importation. Costa Rica's decision to deprive copyright owners of control over parallel importation leaves its borders open to importation of illegitimate copies.

⁴ Press Release 00-30, Office of the United States Trade Representative, "USTR Releases Super 301, Special 301 and Title VII Reports," May 1, 2000.

However, the administrative procedures for border measures and all civil sanctions and criminal penalties were dropped from the 1999 copyright amendments and are now pending in the *Ley de Observancia* bill (below). The civil and criminal procedures are governed by the Civil Procedural Code and the Criminal Procedural Code, respectively.

Ley de Observancia

This bill, "Proyecto de Ley No. 13642, *Ley de Procedimientos de Observancia de los Derechos de Propiedad Intelectual*" (known as the *Ley de Observancia*), represents an attempt to improve procedures and penalties for copyright infringement in Costa Rica. The copyright industries in Costa Rica worked diligently to craft a satisfactory bill which would provide both the government and rightsholders with the ability to take specific actions to fight copyright infringements. As originally drafted in January 2000, this bill would combine all penalty provisions for violations of intellectual property rights, including patent, trademark, copyright and the like, into a single new law.

With respect to copyright interests, this bill contains the following elements:

- Provides for precautionary measures, such as the confiscation and destruction of suspected infringing products and equipment (the precautionary measure provisions authorize prosecutors to confiscate suspected infringing products and equipment, but their destruction must be ordered by the judge as part of the judgment).
- Permits the suspension of suspect shipments entering through customs.
- Provides criminal penalties for all intellectual property infringements, and specifically establishes that copyright infringement cases will be considered "public" actions.
- With respect to copyright infringements, the sanction for infringing acts will be 1 to 3 years in jail. For infringing acts which were undertaken for direct or indirect commercial purposes and without the authorization of the rightholders, the penalty will be 1 to 4 years in prison. Acts also included in this list involve violations of the exclusive economic rights as well as certain acts which interfere with technological protection measures and rights management information. These latter two are key provisions which are included in the two WIPO Treaties to which Costa Rica recently adhered.

Sadly, there has been tremendous resistance in the Costa Rican Congress to increasing the sanctions above the current 1-3 years' imprisonment for violations of economic rights in copyright. Costa Rica currently imposes only prison sentences, not fines, but detention of defendants is only permitted where a violation is punishable by three or more years' imprisonment. Because of the interaction of these low sanctions with the new Criminal Procedure Code provisions discussed below, and given the new but misguided emphasis on concluding cases rapidly, the practical effect of maintaining low sanctions is that many cases will be dismissed one and one-half year after filing (for copyright infringement), with little or no substantive progress having been made and little or no inconvenience to the infringer.

The *Ley de Observancia* was referred by the Plenario Legislativo to the Comisión Especial de Propiedad Intelectual ("Intellectual Property Special Committee") in August 1999. In front of the

press, this Committee supported the protection of intellectual property rights, but during the Committee meetings, they proposed a reduction in the civil sanctions and criminal penalties, and increased requirements to obtain injunction relief. For example, this Committee proposed maximum criminal penalties of between 2- and 3-year jail terms for intellectual property infringements, no civil sanctions or criminal penalties when the illegal use is for non-profit purposes, restrictions on the type of products that can be seized by the courts, and the removal of other important provisions in the bill.

This situation caused the intellectual property associations of Costa Rica (including Asociación de Autores y Compositores Musicales, Cámara del Libro, Asociación Productores Fonográficos, MPA, Asociación para la Protección de Programas Informáticos, Productores Audiovisuales, and Asociación de Inventores) to unite in defending the provisions of the *Ley de Observancia* under attack and to share their concerns about the bill with the Committee and the Deputies. This group of intellectual property associations was successful in persuading the Committee to (i) raise the maximum penalty for illegal use of copyright works for profit from three to four years of imprisonment; (ii) remove from the bill the "commercial scale" requirement to consider illegal use of copyright works a crime (thus preserving the original language of the 1982 Copyright Law); and (iii) include a provision that requires prosecutors to confiscate infringing equipment and materials found during the judicial inspections.

Once the bill was returned to the Plenario Legislativo by the Committee, and after the bill was preliminarily approved by the Plenario Legislativo, ten Deputies, including the President of the Intellectual Property Committee, requested the opinion of the Constitutional Chamber of the Supreme Court of Costa Rica about the constitutionality of some provisions in the bill. The Constitutional Chamber declared that the proposed criminal sanctions in the bill are unconstitutional because there is no private or public interest involved (*bien jurídicamente protegido*), and because the description of the crimes was not accurate. The Court's reasoning is incorrect because (i) the bill uses the same language found in the 1982 Copyright Law, which was ratified by the same Court, and (ii) because the Court ignored that the interests protected by the bill are intellectual property rights, which are protected by the National Constitution. This constitutional review process has entailed substantial delays.

For the record, in addition to declaring the criminal penalties section unconstitutional, the Court also declared the following provisions unconstitutional:

- a) The creation of an Administrative Court to review trademark and copyright registration decisions;
- b) The provisions relating to the competent authority to apply border controls;
- c) The amendments to the law that regulate financial aspects of the Governmental press.

The text to be considered by the Assembly is the same as the text in the preliminary bill approved by the Plenario Legislativo, but with the changes as a result of the declaration of unconstitutionality by the Supreme Court. The Assembly must remove the provisions declared to be unconstitutional. If new provisions are approved, they must meet the Supreme Court's criteria. In addition, the Assembly can make additional changes to the bill.

During the month of August 2000, the Legislative Assembly will only consider those bills selected by the President of Costa Rica. Though the *Ley de Observancia* bill has already been sent to the Assembly by the President, the Assembly will have to consider the Supreme Court's declaration of unconstitutionality of the criminal sanctions section. Unfortunately, it is possible that

some Costa Rican legislators will try to obtain approval in August of this bill but with lower penalties than those proposed in the original bill of *Ley de Observancia*. It is critical that the criminal sanctions section of the bill be approved in its original form.

2. Criminal investigations in copyright infringement cases are very slow and fail to impart any deterrence.

Poor and dilatory investigation of complaints and the sluggish progress of cases through the courts remain the primary problems in tackling copyright infringement in Costa Rica. There is a serious concern by all copyright industries regarding the interpretation and application of the procedural and criminal provisions, and the delays in the criminal cases caused by a group of prosecutors of the central area of San Jose and Tres Ríos.

The OIJ (*Organismo de Investigación Judicial* or the Judicial Investigation Office), charged with preliminary investigation of all cases in Costa Rica involving computers, was hampered throughout 1999 by woefully understaffed personnel. The scarcity of OIJ investigators slowed down prosecutors' ability to obtain search warrants to conduct raids on pirate resellers or end users. (The warrants must be founded on the investigative reports filed by OIJ). Although the General Criminal Unit of the OIJ has made efforts to conduct the investigations properly, it simply does not have adequate resources, and cases have been delayed. The unit only has four informatics investigators and has jurisdiction over the whole country. In 1999, the Informatics Investigators Unit had two investigators, and in January 2000, two new investigators were appointed. Unfortunately, this increase in staff did not help reduce the delays because this Unit has jurisdiction in all informatics matters in the country, not only software piracy.

Other problems are a lack of resources, such as appropriate computers, transportation, etc. The Director of OIJ declared that the informática (technological) department of the OIJ will have only an annual budget of 30 million Colones (about US\$98,000). This budget limitation suggests that effective enforcement efforts will be hampered.

3. Unwarranted delays by Costa Rican prosecutors undermine any chance for effective enforcement.

Even when OIJ reports are submitted, prosecutors have responded very slowly in scheduling raids and seeking indictments. Of the five raids brought by BSA member companies in 1999, three in fact were a single event, where investigation of the principal defendant yielded evidence that two of its subsidiaries were also using pirate software and BSA was able to prevail on the prosecutors to act upon such new evidence.

Another problem is that the General Prosecutor's Office has not agreed to appoint a prosecutor to specialize in intellectual property crimes because of the lack of resources. The prosecutors are empowered by law to oversee and control OIJ investigations, but the General Prosecutor's Office has not implemented any policies to coordinate the activities of the prosecutors and the OIJ. Many conflicts between the prosecutors and the OIJ have occurred, causing further delays to the BSA criminal cases.

Prosecutors argue that the cause of the delays in judicial proceedings is the huge number of cases assigned to them, but we believe this is not the only reason. In a software piracy case brought by the BSA against Duarco S.A. (Exp. 99-12908-042-PE C/.Empresa Duarco S.A. en D/Carlos Corrales Solano, *Infracción Ley de Derechos de Autor*), the criminal complaint was submitted on June 10, 1999, and although no inspection of the company was conducted, without any precise investigation, the prosecutor decided to reject the complaint. This decision was appealed and the court decided that the prosecutor should continue the process. Unfortunately, these kinds of problems cause enormous delays in BSA cases. In another criminal case filed by the BSA against a company on June 11, 1999, the prosecutor of Tres Ríos has not yet conducted the raid.

Due to the above problems, since June 1999, all BSA criminal cases initiated in San Jose and Tres Ríos have been delayed, and no inspections have been conducted since this date.

4. In addition, a statutory time limit to dispose of cases, as required by the Criminal Procedures Code, seems to provide incentive to delay copyright cases so that they end up being dismissed.

Delays in prosecuting cases in progress remains an obstacle to effective enforcement of rights. Article 33 of the Criminal Procedural Code provides that there must be a final decision by a Court before the expiration of half of the maximum penalty period for the relevant crime, measured from the date the defendant is charged with the crime. If there is no such decision during this period, the case will be dismissed.

In the case of copyright infringement, this requirement would provide a maximum period of 1½ years to dispose of a case or have it dismissed. While seemingly intended to eliminate judicial backlog, this requirement creates a great risk that defendants will take advantage of prosecutorial delays and pretrial maneuvering to wait out the clock and seek dismissal of infringement cases after only a year and a half. This short time period creates great uncertainty as whether copyright cases will ever be heard.

If this "rocket docket" approach is maintained, it should be balanced by increasing penalties for copyright infringement to create effective deterrents to piracy, in the range of 4 or 5 years as a maximum sentence. Not only would this change permit cases a reasonable time to go forward given the slow realities of the Costa Rican court system (affording perhaps 2 or 2½ years to dispose of a case rather than the 1½ year now available), it would also allow for detention of defendants for the first time. Currently, detention is not available where the maximum sanction is 3 years imprisonment or less; raising the maximum penalty to 4 or 5 years would permit detention, thus providing an important tool to deterring infringing behavior. However, given the controversy regarding criminal penalties in the *Ley de Observancia*, it seems remote that the jail terms for copyright infringement will be extended beyond 3 years.

5. Prosecutors and judges are applying the incorrect standards in cases involving requests for search warrants.

BSA reports that prosecutors impose capricious requirements for search warrants, thereby erecting additional and unforeseen barriers to carrying out a raid and initiating a case. Among judges, confusion about the interpretation of a 1998 Criminal Procedure Code requirement about

the gathering of evidence has meant that some judges impose illogical requirements before ordering a search warrant. For example, in a January 2000 case of suspected piracy of software by an end-user, a prosecutor required a certified, notarized statement of the exact number of suspected computers and the number and type of pirate software found on such machines to support a suspicion of criminal copyright infringement. This requirement created an impossible bar to action, asking for precisely the kind of evidence that would be obtained with exactitude as a result of a raid and inventory of the premises, but would not be available prior to it.

6. Because of inadequate and ineffective copyright protection and enforcement in Costa Rica, U.S. copyright owners suffer economic harm.

The estimated losses due to the piracy of U.S. copyrighted products in Costa Rica for 1999 were at least \$14.4 million (see chart, below).

Pirate resellers of business application software continue to do business openly in San José and other areas of Costa Rica. In addition, unauthorized software continues to be used extensively by large and prestigious end users throughout Costa Rica, including businesses, municipalities, universities, laboratories and other entities. Government ministries have not yet fully inventoried their own installed software base to assess and remedy the improperly licensed software in use throughout the country under government auspices. This situation remains the same in 2000.

With respect to the motion picture industry, the main piracy problem in Costa Rica continues to be video piracy in video rental clubs, where small rental outlets conduct back-to-back copying from legitimate tapes for copy depth. The existence of illegal laboratories in the market has decreased significantly since raids upon the Sempero network began, and since his arrest in April 1997. Although Sempero's network and his protégés had been targeted, other persons who are currently under investigation continue to compete in this illegal market. The level of video piracy has risen to 95% in 1999. A related problem arises from the frequent travel of Costa Ricans to Venezuela, Miami, and Mexico, which permits the entry of a large number of VHS cassettes and laser discs released in the U.S. but not yet available in Costa Rica. These serve as masters for the duplication and sale of pirate product. Frequently the same masters are used for public performances in hotels and wine bars, and affect legitimate exhibitions in the theatrical window. In the University of Costa Rica, professors teach a course of "Cinema Appreciation" by obtaining illegal copies from rental video stores and charging fees of US\$2.00 per head in a 250- capacity theater. Because this is a case of illegal public exhibition, local counsel submitted a legal action against the professors who run the "Cinema Appreciation" course.

Signal theft is also a continuing problem in Costa Rica, as hotels and apartments downlink U.S. satellite signals and sell them to local residents. A proliferation of residential satellite dishes also contributes to the problem. DirecTV is becoming an option for residential areas, and judges, unfamiliar with technology, are taking heed of the piracy problems and beginning to formulate jurisprudence.

Piracy of sound recordings, especially in audiocassette format, is widespread in Costa Rica. In addition to domestic piracy, Nicaragua and Mexico are reported to be sources of imported pirate product. Estimated losses for the music and sound recording industries in Costa Rica were \$3.0 million in 1999. The estimated level of piracy last year was placed at 40%. The industry believes that the drop in piracy levels between 1998 and 1999 may be attributed to an increase in legitimate sales, especially of compact discs (CD), in 1999. The loss estimated have remained constant because the level of audiocassette piracy continues to remain high, and this impacts negatively on

legitimate sales. Currently the Costa Rican recording market has not been blanketed with pirate CDs, a phenomenon which has adversely affected several other markets in Latin America. In terms of criminal enforcement, the recording industry reports that it is becoming more and more difficult to enforce cases. More recent police raiding activities are fewer than experienced previously.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1998 - 1999

INDUSTRY	1999		1998	
	Loss	Level	Loss	Level
Computer Programs: Business Applications ⁵	9.4	71%	6.8	72%
Motion Pictures	2.0	95%	3.0	90%
Sound Recordings / Musical Compositions	3.0	40%	3.0	90%
Computer Programs: Entertainment Software	NA	NA	NA	NA
Books	NA	NA	NA	NA
TOTALS	14.4		12.8	

Attached as Appendix B is the methodology used by IIPA members to calculate estimated losses due to copyright piracy. This methodology was also submitted to USTR in IIPA's 2000 Special 301 submission.

Possible actions the Government of Costa Rica could take to improve the situation

As discussed above, passage of the *Ley de Observancia*, in its original format, is a necessary and critical element in improving the legal infrastructure in Costa Rica to address widespread copyright piracy. In addition, IIPA and its members have made several suggestions, both in prior Special 301 filings as well as through its members and colleagues doing business in San José, to reduce prosecutorial and judicial delays to improve the on-the-ground situation. Here are a few illustrative suggestions:

(1) Improve coordination of activities with public prosecutors and investigators. The General Prosecutor's Office of Costa Rica has not implemented any appropriate policies to coordinate the activities of the Judicial Investigation Office (OIJ) and the Public Prosecutors. Such a coordinated effort would aid in improving the efficacy of investigatory actions and follow-up.

(2) Appoint specialized IPR prosecutors. The initiative to appoint public prosecutors specialized in intellectual property crimes has been completely abandoned. This initiative was originally included as a recommendation by the "Special Commission on IP Matters" which was working on omnibus IPR reform in 1999, but was dropped from the omnibus legislative bill which passed in late December 1999. The General Prosecutor's Office of Costa Rica recommended

⁵ This list included BSA's final estimates for 1999. In IIPA's 2000 Special 301 filing, BSA indicated that its estimates were preliminary (\$9.1 million and the estimated level was not available).

rejection of this initiative, among other reasons, because of their lack of resources. Local copyright industries, including the local publishing industry and the National Museum of Costa Rica, among others, have lobbied hard for creation of this unit. The Attorney General's office is in favor of the specialized unit, which would open the door to agreements on training and technical assistance for enforcing copyright. The proposal for a new IP unit has been reintroduced to the Special Commission and should be adopted with the hope of achieving a dedicated unit of at least three prosecutors with nationwide jurisdiction, three or four trained investigators from the OIJ, and four technical experts.

(3) Create a coordinated and national plan: There is no institution, office, or national program exclusively dedicated to defending intellectual property right and coordinating intellectual property activities, with the only exception being the copyright, patent, and trademark registries. Even though the President of Costa Rica and certain Ministries have expressed support for the protection of the intellectual property rights they have not taken concrete steps. In addition, the illegal use of copyright works is very common in the public sector.

(4) Improve copyright training (legal and enforcement), at all levels: Training in copyright matters needs to be provided for all levels of enforcement, police, customs, administrative police, prosecutors and judges.

CONCLUSION

For the reasons stated in this submission, IIPA requests that the TPSC initiate a review the GSP and CBERA country eligibility of Costa Rica for its failure to provide adequate and effective copyright protection for U.S. copyright owners. If requisite improvements are not made in Costa Rica to remedy these deficiencies, then IIPA requests that the U.S. suspend its eligibility or withdraw GSP and/or CBERA benefits of Costa Rica, in whole or in part. In addition, CBTPA eligibility to Costa Rica should not be granted at this time.

Respectfully submitted,

Eric H. Smith
President
International Intellectual Property Alliance

APPENDIX A

**Statutory Basis for the Country Eligibility Practice Review
of the Intellectual Property Rights Practices of
COSTA RICA
under the Criteria of the Generalized System of Preferences,
and the Caribbean Basin Economic Recovery Act
and
Review of IIPA's Recommendation regarding Costa Rica's Ineligibility
to Participate in the U.S.-Caribbean Basin Trade Partnership Act**

GENERALIZED SYSTEM OF PREFERENCES (GSP)

The GSP Program of the United States provides unilateral, non-reciprocal, preferential duty-free entry for over 4,650 articles from approximately 140 countries and territories designated beneficiary countries and territories for the purpose of aiding their economic development through preferential market access. The GSP program was instituted on January 1, 1976, and authorized under Title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.) for a 10-year period. Since 1997, an additional 1,770 items are eligible for GSP treatment for specified least developing beneficiary developing countries.

The GSP program has been renewed several times since its establishment. Most recently, in 1999 Congress reauthorized the GSP program through September 30, 2001.⁶ What was unique about this extension was that, for the first time in several years, Congress extended the GSP Program for more than a single year. IIPA has supported a multi-year extension of this program to support the use of the GSP program as a tool to protect the interests of U.S. copyright owners around the world.

Provisions tying intellectual property protection to trade benefits were first added to the Trade and Tariff Act of 1984 [hereinafter "TTA 1984"]. Title V of the TTA 1984, known as the GSP Renewal Act of 1984,⁷ renewed the GSP Program and specifically required the President to consider intellectual property protection in determining whether to designate a developing country as eligible for GSP benefits. While there has been a minor change in the statutory language between the GSP Renewal Act of 1984 and the GSP Renewal Act of 1996, the GSP provisions as related to IPR remain essentially the same as in 1984. The legislative history of the 1984 Renewal Act is particularly instructive on the important link between GSP benefits and strong IPR protection.

The GSP Renewal Act of 1984

In the GSP Renewal Act of 1984, Congress specified conditions that GSP beneficiary countries must meet in order to gain and maintain their preferential trading status. In particular, one

⁶ See Extension of Duty-Free Treatment under Generalized System of Preferences, Section 508 of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. No. 106-170 (codified at 19 U.S.C. 2465).

⁷ See the Generalized System of Preferences Renewal Act of 1984, Title V, Pub. L. No. 98-573 (1984) (codified at 19 U.S.C. 2461-2465).

of these express conditions (which Congress also delineated as one “purpose” of the GSP Program) was to encourage developing countries “to provide effective means under which foreign nationals may secure, exercise, and enforce exclusive intellectual property rights.”⁸

The legislation required the President to apply mandatory and discretionary criteria with respect to IPR protection as a condition to a country achieving “beneficiary” status under the GSP Program. The mandatory criterion prohibited the designation of a country from becoming a “beneficiary developing country” if, for example, “such country has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens.” See Section 503(b)(4) of the GSP Renewal Act of 1984, now codified at 19 U.S.C. 2462(b)(2)(D).

The GSP Renewal Act of 1984 added as a discretionary criterion, in determining whether to designate a developing country as eligible to receive GSP duty-free trade treatment, that

the President shall take into account ... the extent to which [each] country is providing adequate and effective means under its laws for foreign nations to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights.

Section 503(c)(5) of the GSP Renewal Act of 1984, codified at 19 U.S.C. 2462(c)(5). The Senate Finance Committee Report explained that:

To determine whether a country provides “adequate and effective means,” the President should consider the extent of statutory protection for intellectual property (including the scope and duration of such protection), the remedies available to aggrieved parties, the willingness and ability of the government to enforce intellectual property rights on behalf of foreign nationals, the ability of foreign nationals effectively to enforce their intellectual property rights on their own behalf and whether the country’s system of law imposes formalities or similar requirements that, in practice, are an obstacle to meaningful protection.

S. Rep. No.98-485, 98th Cong., 2d Sess. At 11 (1984). The Senate Report also noted:

In delegating this discretionary authority to the President, it is the intent of the Committee that the President will vigorously exercise the authority to withdraw, to suspend or to limit GSP eligibility for non-complying countries

Where valid and reasonable complaints are raised by U.S. firms concerning a beneficiary country’s market access policy or protection of intellectual property rights, for example, it is expected that such interests will be given prominent attention by the President in deciding whether to modify duty-free treatment for that country.

Id. at 12-13 (emphasis added). The House Ways and Means Committee stated that “countries wishing to reap the benefits of preferential duty-free access to the U.S. market must fulfill international responsibilities” in the intellectual property area. House Rep. No. 98-1090, 98th Cong., 2d Sess. at 12 (1984).

⁸ See Section 501(b)(9)(B) of the GSP Renewal Act of 1984.

The IPR criteria are a condition, not only for obtaining GSP benefits in the first place, but also for retaining them. The 1984 Act authorized the President to “withdraw, suspend, or limit the application of the duty-free treatment accorded under Section 501 of this title with respect to any article or any country” and requires the President, when taking any such action, to “consider the factors set forth in Sections 501 and 502(c).” TTA 1984 Section 505(a)(1); TA 1974 Section 504(a)(1), as amended; 19 U.S.C. 2464(a)(1) (emphasis added). The Act also created a system of “general reviews” to ensure that these statutory criteria are met. TTA 1984 Section 505(b); TA 1974 Section 504(c)(2)(A), as amended; 19 U.S.C. 2464(c)(2)(A); see also 15 C.F.R. 2007.3.

IIPA requests that this GSP Subcommittee follow the explicit intent of Congress, and advise the President to “vigorously exercise” his authority to withdraw, suspend or limit GSP eligibility of Costa Rica for its non-compliance with the statutory criterion on IPR in the GSP Program.

The GSP Renewal Act of 1996

When the GSP Program was reauthorized in August 1996, the language of the IPR discretionary criterion for GSP eligibility in Section 502(c)(5) was simplified slightly and now requires the President to “take into account the extent to which such country is providing adequate and effective protection of intellectual property rights.”⁹ The expired law specified (as discussed above) that each beneficiary country provide “adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights.” Otherwise, the GSP Renewal Act contains identical IPR provisions, including “mandatory” criteria denying GSP status to countries that directly or indirectly expropriate U.S. property (including intellectual property), and authorizing the President to withdraw, suspend or limit GSP privileges based on failure to meet the IPR criteria.

CARIBBEAN BASIN ECONOMIC RECOVERY ACT (CBERA or CBI)

In addition to GSP benefits, Costa Rica also receives a very significant amount of additional trade benefits under the Caribbean Basin Economic Recovery Act (CBERA).¹⁰ The enactment in 1983 of this Act was a key point in the use of U.S. trade policy to promote exports of products and services protected by copyright because, for the first time, Congress explicitly linked trade benefits to intellectual property protection by beneficiary countries. Under the CBI program, countries can only receive trade preferences if they satisfy statutory criteria; these include intellectual property rights (IPR) standards.

In submitting the Second Report on the Operation of the Caribbean Basin Economic Recovery Act to Congress in 1996, President Clinton acknowledged that intellectual property rights concerns remain in the region, and the possibility of losing CBI benefits “serves as an incentive to encourage countries to work toward enforcing adequate intellectual property rights....”¹¹

⁹ GSP Renewal Act of 1996, Title I, Subtitle J, of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (codified at 19 U.S.C. 2462(c)(5)).

¹⁰ See Section 212 of the Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67 (codified at 19 U.S.C. 2702) (also known as CBERA or the Caribbean Basin Initiative (CBI)).

¹¹ Press Release, Office of the United States Trade Representative, “President Clinton Sends Report on the Operation of the Caribbean Basin Economic Recovery Act to the Congress,” October 9, 1996.

The original CBERA criteria include two IPR criteria, two mandatory and one discretionary. Regarding the mandatory criteria, the CBERA mandates that beneficiary country status be denied if U.S. intellectual property is expropriated (19 U.S.C. 2702(b)(2)(A) and (B)), or if a government-owned entity broadcasts U.S. copyrighted material, including films or television material, belonging to United States copyright owners without their consent (19 U.S.C. 2702(b)(5)).

The existing CBERA discretionary IPR criterion of 19 U.S.C. 2702(c)(9) involves

the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights; [...]

Over the years, there has been a noticeable shift in extending more trade benefits under CBERA to those countries which are both GSP and CBERA beneficiaries.

U.S.-CARIBBEAN BASIN TRADE PARTNERSHIP ACT (CBTPA)

Costa Rica is currently under consideration for eligibility under a new U.S. trade program. Title II of the Trade and Development Act of 2000 contains provisions for enhanced trade benefits for Caribbean and Central American countries.¹² Specifically, the United States-Caribbean Basin Trade Partnership Act (CBTPA) amends the Caribbean Basin Economic Recovery Act (CBERA) to authorize the President to designate select countries in this region to be eligible for preferential tariff treatment for certain articles, including duty-free and quota-free treatment for certain textile and apparel goods.

CBTPA beneficiaries must also meet the existing CBERA discretionary IPR criterion of 19 U.S.C. 2702(c)(9) which involves (as discussed above and repeated herein):

the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights; [...]

The criterion requiring “adequate and effective” protection of intellectual property rights, including copyright protection and enforcement, is a flexible one that changes over time toward higher standards. In the CBTPA, Congress took the opportunity to spell out what it believes is covered by the “adequate and effective” criteria. Section 213(b)(5)(B)(ii) of the CBTPA (codified at 19 U.S.C. 2703(b)(5)(B)(ii) outlines the discretionary eligibility criteria which includes

the extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

The reference to “greater than” TRIPS is explained in the conference report as follows:

¹² Trade and Development Act of 2000, Pub. L. 106-200 (May 18, 2000).

With respect to intellectual property protection, it is the intention of the conferees that the President will also take into account the extent to which potential beneficiary countries are providing or taking steps to provide protection of intellectual property rights comparable to the protections provided to the United States in bilateral intellectual property agreements.¹³

Accordingly, each eligible country must re-meet all the CBERA criteria as well as the explicit TRIPS-or-greater criteria and bilateral IPR agreement standards in order to enter the CBTPA.. The CBTPA legislative history makes very clear that, at the very minimum, countries must provide protection "consistent with or greater" than the levels found in the WTO TRIPS Agreement. The CBTPA itself requires that the President must examine the extent to which all these countries provide copyright protection "consistent with or greater than the protection afforded under" TRIPS. With respect to substantive copyright law developments, the TRIPS Agreement is widely recognized as containing the minimum standards of IPR protection. The TRIPS Agreement incorporates the levels of copyright protection found in the Berne Convention (1971 Paris text), adds explicit protection for computer programs as literary works, adds a rental right, and also affords protection for performers and producers of sound recordings. Importantly, TRIPS also adds an entire section on the enforcement of substantive rights, including measures on civil remedies, administrative measures, border measures and criminal penalties. The January 1, 2000 deadline for full compliance by World Trade Organization (WTO) developing country members with all their copyright substantive and enforcement obligations under the TRIPS Agreement has arrived.

On July 17, 2000, IIPA responded to USTR's request for public comments on the eligibility of certain countries with respect to their compliance with the intellectual property rights (IPR) criteria which the President must consider when designating these Caribbean Basin countries as eligible beneficiary countries under the new CBTPA. In our submission, IIPA recommended that Costa Rica should not be designated as an eligible CBTPA country. In that submission, IIPA described the problems with legislative reform and ineffective criminal copyright enforcement efforts by Costa Rican authorities. These problems have been outlined in more detail in our submission today.

We believe it would be inconsistent for the U.S. Government to grant new, additional benefits to Costa Rica under the CBTPA program while at the same time initiating an investigation under GSP/CBI for Costa Rica's failure to afford adequate and effective IPR protection to U.S. copyrights. Therefore, CBTPA eligibility to Costa Rica should not be granted at this time.

¹³See Conference Report of the House of Representatives on the Trade and Development Act of 2000 [to accompany H.R. 434], Joint Explanatory Statement of the Committee of Conference on Subtitle B—Trade Benefits for Caribbean Basin Countries.

APPENDIX B

Methodology Used to Estimate Trade Losses due to Copyright Piracy And Levels of Piracy

Estimated trade losses due to piracy are calculated by the member associations of the International Intellectual Property Alliance (IIPA). Since it is impossible to gauge losses for every form of piracy, we believe that our members' statistics for 1999 (and prior years) actually underestimate the losses due to piracy experienced by the U.S. copyright-based industries. The methodology in this petition is identical to that which has been used by IIPA members in the IIPA's submissions to the U.S. Trade Representative in the annual Special 301 review.

TRADE LOSSES DUE TO PIRACY

In general, pirate production for export for the records and music, computer programs and book publishing industries is included in the loss figure for the country of manufacture, not the country of ultimate sale. For the motion picture industry, losses are generally counted in the country in which the sale of product occurs.

COMPUTER SOFTWARE: BUSINESS APPLICATIONS

The Business Software Alliance (BSA)'s calculation method compares two sets of data -- the *demand* for new software applications, and the legal *supply* of new software applications.

Demand: PC shipments for the major countries are estimated from proprietary and confidential data supplied by software publishers. The data is compared and combined to form a consensus estimate, which benefits from the detailed market research available to these member companies.

Two dimensions break the shipments into four groups. Splitting the PC shipments between Home and Non-Home purchasers represents the market segments of each country. The PC shipments are also compared to the change in the installed base of existing PCs. The part of PC shipments which represents growth of the installed base is called "new shipments" and is separated from the "replacement shipments" which represent new PCs that are replacing older PCs.

A scale of the installed base of PCs by country compared to the number of white-collar workers was developed. PC penetration statistics are a general measure of the level of technological acceptance within a country. The level of penetration, for a variety of reasons, varies widely from country-to-country. This level is then ranked and each country is assigned to one of five maturity classes.

The number of software applications installed per PC shipment is provided by member companies, and the following ratios for the four shipment groups are developed:

Home-New Shipments
Non-Home - New Shipments
Home - Replacement Shipments
Non-Home - Replacement Shipments

For each shipment group, ratios are developed for each of five maturity classes. U.S. historical trends are used to estimate the effects of lagged technological development by maturity class.

Piracy rates can vary among applications. Grouping the software applications into three Tiers and using specific ratios for each Tier further refined the ratios. The Tiers were General Productivity Applications, Professional Applications, and Utilities. These were chosen because they represent different target markets, different price levels, and it is believed, different piracy rates.

Software applications installed per PC shipped are researched and estimated using these dimensions:

1. Home vs. Non-Home
2. New PCs vs. Replacement PCs
3. Level of Technological Development
4. Software Application Tier

From this work, a total software applications installed estimate was calculated for each country.

Supply: Data was collected by country and by the 26 business software applications. Shipment data was limited in some instances, hence, uplift factors were used to estimate U.S. and world-wide shipments.

Piracy Estimates: The difference between software applications installed (demand) and software applications legally shipped (supply) equals the estimate of software applications pirated. The piracy rate is defined as the amount of software piracy as a percent of total software installed in each country.

Dollar Losses: The legal and pirated software revenue was calculated by using the average price per application. This is a wholesale price estimate weighted by the amount of shipments within each software application category.

To develop the wholesale dollar losses for U.S. software publishers, the wholesale dollar losses due to piracy were reduced by the ratio of the software shipped by U.S. software publishers as a percent of software shipped by all software publishers.

COMPUTER PROGRAMS: ENTERTAINMENT SOFTWARE

The calculation method of the Interactive Digital Software Association (IDSA) uses market data of dedicated platform and PC entertainment software in both compact disc and cartridge

formats, and hardware shipments along with an estimate of the level of piracy in the target country. Where possible, losses due to exports and/or online piracy are included. Export losses are attributed to the source country, where possible. Here are the basic steps involved in determining losses to entertainment software publishers:

1. For each dedicated platform, the 1998 entertainment software units are divided by hardware units. This results in the number of applications per dedicated platform.
2. For each multimedia PC, the 1998 entertainment software units are divided by hardware units. This results in the number of entertainment applications per multimedia PC.
3. The number of applications per PC or dedicated platform is estimated (this varies country-to-country). The actual number of applications per dedicated platform or PC is then subtracted, resulting in the number of illegal applications per hardware unit.
4. The number of illegal applications per hardware unit is divided by the estimated number of applications per hardware unit, resulting in the estimated percentage of illegal software units in use.
5. The illegal software units per hardware unit is multiplied by the average wholesale price (which varies country-to-country) which is multiplied by the number of legitimate hardware units. This results in the dollar amount lost to piracy.

MOTION PICTURES

Many factors affect the nature and effect of piracy in particular markets, including the level of development of various media in a particular market and the windows between release of a product into various media (theatrical, video, pay television, and free television). Piracy in one form can spill over and affect revenues in other media forms. Judgment based on in-depth knowledge of particular markets plays an important role in estimating losses country by country.

Video: Losses are estimated using one of the following methods:

1. For developed markets:
 - a. The number of stores that rent pirate videos and the number of shops and vendors that sell pirate videos are multiplied by the average number of pirate tapes rented or sold per shop or vendor each year;
 - b. The resulting total number of pirate videos sold and rented each year in the country is then multiplied by the percent of those pirate videos that would have been sold or rented legitimately and adjusted to reflect the US producers' share of the market.
2. For partially developed markets:
 - a. The number of legitimate videos sold or rented in the country each year is subtracted from the estimated total number of videos sold or rented in the country annually to estimate the number of pirate videos sold or rented annually in the country;

- b. The resulting total number of pirate videos sold and rented each year in the country is then multiplied by the percent of those pirate videos that would have been sold or rented legitimately and adjusted to reflect the US producers' share of the market.
- 3 For fully pirate markets:
- a. Either: (a) the number of blank videos sold in the country annually is multiplied by the percent of those tapes used to duplicate US motion pictures to equal the number of pirate copies of US motion pictures sold in the country each year; or, (b) the number of VCRs in the country is multiplied by an estimated number of US motion pictures on video that would be rented and sold per VCR per year;
 - b. The figure resulting from each of the foregoing calculations is an estimate of the number of legitimate sales of videos of US motion pictures that are lost each year in the market due to video piracy. These estimates are adjusted to reflect the wholesale price of legitimate videos, to equal losses due to video piracy.

TV and Cable: Losses are estimated using the following method:

1. The number of TV and cable systems that transmit U.S. motion pictures without authorization is multiplied by the average number of U.S. motion pictures transmitted without authorization by each system each year;
2. The resulting total number of illegal transmissions is multiplied by the average number of viewers per transmission;
3. The number of viewers of these illegal transmissions is allocated among those who would have gone to a theatrical exhibition or who would have rented or purchased a legitimate video. The number of legitimate transmissions of the motion picture that would have been made is also estimated;
4. These figures are multiplied by the producers' share of the theatrical exhibition price, the wholesale share of the video cost or the license fee per legitimate transmission, as appropriate, to estimate the lost revenue from the illegal transmissions.

Public Performance: Losses are estimated using the following method:

1. The number of vehicles and hotels that exhibit videos without authorization is multiplied by the average number of viewers per illegal showing and the number of showings per year;
2. The resulting total number of viewers of unauthorized public performances is allocated among those who would have gone to a theatrical exhibition or who would have rented or purchased a legitimate video. The number of legitimate TV and cable transmissions that would have been made of the motion pictures is also estimated;

3. These figures are multiplied by the producers' share of the theatrical exhibition price, the wholesale share of the video cost or the license fee per legitimate transmission, as appropriate, to estimate the lost revenue from the illegal performances.

SOUND RECORDINGS AND MUSICAL COMPOSITIONS

RIAA generally bases its estimates on local surveys of the market conditions in each country. The numbers produced by the music industry generally reflect the value of sales of pirate product rather than industry losses, and therefore undervalue the real harm to the interests of record companies, music publishers, performers, musicians, songwriters and composers.

Where RIAA has sufficient information relating to known manufacture of pirate recordings that emanate from a third country, this loss data will be included in the loss number for the country of manufacture rather than the country of sale. In certain instances where appropriate, RIAA employs economic data to project the likely import or sale of legitimate sound recordings, rather than merely reporting pirate sales. In these instances, projected unit displacement is multiplied by the wholesale price of legitimate articles in that market rather than the retail price of the pirate goods.

BOOKS

The book publishing industry relies on local representatives and consultants to determine losses. These experts base their estimates on the availability of pirate books, especially those found near educational institutions, book stores and outdoor book stalls. A limitation here is that experts can only gauge losses based on the pirated books that are sold; it is impossible to track losses for books which are pirated but not available for public purchase. The trade loss estimates are calculated at pirate prices which are generally (but not always) below the prices which would be charged for legitimate books. Also included are conservative estimates of losses due to unauthorized systematic photocopying of books.

PIRACY LEVELS

Piracy levels are also estimated by IIPA member associations and represent the share of a country's market that consists of pirate materials. Piracy levels together with losses provide a clearer picture of the piracy problem in different countries. Low levels of piracy are a good indication of the effectiveness of a country's copyright law and enforcement practices. IIPA and its member associations focus their efforts on countries where piracy is rampant due to inadequate or non-existent copyright laws and/or lack of enforcement.