

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2002 SPECIAL 301 REPORT

CZECH REPUBLIC

EXECUTIVE SUMMARY

The Czech Republic should be added to the Special 301 Watch List this year.

Progress in reforming the legal system occurred in the Czech Republic during 2001. This followed upon the positive steps that had been taken in 2000 with the enactment of the new copyright law. Amendments were enacted into the code of criminal procedure during 2001 that are intended to speed up criminal proceedings, which have historically been very slow. Whether the recent changes in the law will be implemented in practice as intended will be one of the factors determining how well the Czech Republic deals with piracy during 2002. The implementation of recent changes to the laws were negatively affected during 2001 because of the lack of training for public prosecutors, judges and other legal professionals regarding the copyright laws, recent changes to the copyright laws, and procedural matters bearing on copyright enforcement. Such training is needed to make the process of enforcement more efficient, and to reduce the backlog of cases that hampers effective copyright enforcement. Another area indicating continuing legal reform was the Czech's Cabinet's agreement to have the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT) ratified.

There was some improvement in 2001 in the enforcement situation in the Czech Republic. Although criminal sentences were routinely converted into suspended sentences as in previous years, such suspended sentences were of a slightly more deterrent character in 2001. In fact, there was at least one criminal case in 2001 that resulted in a criminal sentence that was not later converted into a suspended sentence. Increased use of criminal sentences that are not later routinely converted into suspended sentences would contribute to improving the enforcement situation in the Czech Republic.

Nonetheless, serious concerns remain regarding enforcement. For example, ineffective border enforcement means that the Czech Republic continues to be a source of, or a transshipment point for, pirate materials.

To correct remaining problems, the Czech Republic must: adopt optical media regulations; improve implementation of the new copyright law and civil code provisions; and continue to take significant and deterrent enforcement activity by police, prosecutors, and in the courts.

The Czech Republic's failure to provide protection for pre-existing sound recordings until December 2000 (even though obligated to do so since 1996 under the TRIPS Agreement) resulted in a huge production of back-catalog repertoire that was exported for years into other countries in the region. Now that the Czech Republic correctly protects this material (reaching back at least 50 years), it must enforce its law and stop any further production or distribution of this back-catalog

material, something it pledged to do in an exchange of letters with the United States government in 2000.

Additionally, the changes to the Czech Code of Civil Procedure that allow for civil *ex parte* searches must be implemented in practice to guarantee the preservation of evidence in software piracy cases. The enforcement situation in the Czech Republic must be improved by continued and increasing activity by the police, prosecutors and the courts. The civil and criminal penalties for piracy must continue to be utilized in order for the improvements in deterrence in 2001 to continue into 2002 and beyond. For all the above reasons, the Czech Republic should be added to the Watch List this year.

CZECH REPUBLIC: ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1996 - 2001

INDUSTRY	2001		2000		1999		1998		1997		1996	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	8.0	10%	8.0	18%	10.0	30%	8.0	35%	10.0	35%	10.0	35%
Sound Recordings / Musical Compositions ¹	8.4	48%	3.4	35%	60.0	8%	62.0	6%	62.5	6%	47.5	6%
Business Software Applications ²	NA	NA	36.2	43%	30.2	42%	39.5	49%	39.7	52%	56.7	61%
Entertainment Software	54.8	90%	45.0	81%	12.0	NA	NA	NA	NA	NA	NA	NA
Books	3.0	NA	4.5	NA	4.5	NA	4.0	NA	4.5	NA	4.5	NA
TOTALS	74.2		97.1		116.7		113.5		116.7		118.7	

¹ The recording industry reevaluated its methodology for the Czech market in 2000 and 2001, taking into account changes based on methodological approaches, new research and market knowledge, including information pertaining to disc capacity, seizures, the activities of pirate organizations and exports. Because there is no present evidence of significant volumes of pirate music product being exported from Czech Republic, the industry's original 2000 estimate of \$35.0 million at 20% has been revised, and the new information is reflected above.

² In IIPA's February 2001 Special 301 filing, BSA's 2000 estimates of \$19.2 million at 39% were identified as preliminary. BSA finalized its 2000 numbers in mid-2001, and those revised figures are reflected above.

COPYRIGHT LAW AND RELATED ISSUES

The Czech Republic currently has both bilateral³ and multilateral obligations to provide effective copyright protection and enforcement, as discussed in further detail below.

Optical Media Regulations and Additional Digital Copyright Law Amendments Are Needed.

The new Czech copyright law amendments that went into force on December 1, 2000 corrected the most severe legal shortcoming by providing a guarantee of protection for pre-existing sound recordings (and works). Further, the Code of Civil Procedure was amended to demonstrate with greater clarity that *ex parte* searches consistent with TRIPS are possible under Czech law. In fact, the Czech government insists its law is now fully compatible with TRIPS and the European Union Directives (for example, adding a definition of “computer programs”). The 2000 amendments increased civil and criminal penalties for copyright and neighboring rights infringements (Amendments to the Penal Code, articles 109 and 152). Also, provisions were adopted in 2000 to comply, in part, with the new WIPO treaties, that is, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT). Additionally, the cabinet of the Czech Republic agreed to accede to both the WIPO Copyright Treaty and the WIPO Performances and Phonogram Treaty, and formal ratification occurred in the second half of 2001. Before the 2000 amendments were adopted, the Czech Republic had last amended its copyright law in 1996, adding important protections with regard to computer software, in compliance with the European Union Software Directive.

Even with these commendable changes, IIPA believes that the Czech Republic must address three additional areas of legal reform for a modern and effective copyright regime. These legislative concerns are the lack of: (1) optical media regulations; (2) encrypted satellite signal protection; and (3) provisions fully complying with the WIPO digital treaties to stop Internet piracy.

Also, the newly adopted provisions on the collective administration of the rental right (that is, rental levies applied to video shops) found in Article 96 should be implemented in such a way as not to interfere with rights that may have been cleared at the production source. In these cases the administration of the new provisions is not necessary, and will in fact negatively impact the market. Moreover, any such collection should recognize the principle that there is no legal basis for the collection of remuneration for nationals of another country for rights not accorded to those nationals. Collection in such circumstances is inappropriate and without legal authority.

³ For details on the Czech Republic’s bilateral experience under Special 301, please see appendices D and E of this 2002 Special 301 submission. The Czech Republic currently participates in the U.S. Generalized System of Preferences (GSP) program, which offers duty-free imports of certain products into the U.S. from developing countries. In 2000, \$280.4 million of Czech goods entered the United States under the duty-free GSP code, accounting for 26.2% of its total imports to the U.S. For the first 11 months of 2001, \$330 million of Czech goods entered the U.S. under the duty-free GSP code, representing a 29.9% increase over the same time period last year.

Certain aspects of the April 2000 amendments concerning the circumvention of technological protection measures should be modified at the earliest possible opportunity. Technological protection measures are the tools that rightholders use to manage and control access to and copying of their works in the digital environment. Proper and full implementation should include a prohibition on the manufacture, importation, sale, distribution, or other trafficking in devices or services that are aimed at circumventing technological protection measures, as well as outlawing acts of circumvention.

In particular, the provision added in April 2000 relating to the requirement to prove “economic gain” as an element of demonstrating a violation of the anti-circumvention provisions (Article 43) must be deleted. This is because experience has demonstrated, unfortunately, that there are countless parties who would devise and publish ways to circumvent technological measures employed to protect copyrighted materials without seeking any economic gain, and the existence, or absence, of economic gain is irrelevant to the interests of copyright holders whose works may be exposed. Unless this provision is revised, Internet piracy activities resulting in millions of dollars of losses that are not for such economic gain may go unpunished, and the Czech Republic will not be in compliance with Article 11 of the WCT and Article 18 of the WPPT. We note that the Czech cabinet had already agreed to accede to the WCT and WPPT, and are hopeful that the “economic gain” element of Article 43 will be accordingly deleted. There is another suggested change to Article 43. The technology applied and the means of their defeat change constantly. Therefore, the list of prohibited activities should include an opening clause such as “or otherwise traffics” or “or otherwise makes available” to be inserted between the terms “disseminates” and “utilizes” in Article 43.

Further, in Article 43, “technical devices” should be interpreted broadly, consistent with the WIPO treaties (Article 11 of WCT and Article 18 of the WPPT). That is, all technical devices should be protected against circumvention so long as they “restrict acts, in respect of their works, which are not authorized by the authors [or rightholders] concerned or permitted by law.” For example, the technological protection provisions should not be interpreted as being tied to an “infringement of copyright” thus requiring proof of such infringement; to do this could significantly diminish the effectiveness of these provisions.

In addition, rightholders need to be able to protect so-called “copyright management information” that is attached to or accompanies a work or sound recording, including protection against the alteration, removal or falsification of this information. The 2000 amendments did add rights management information provisions (Article 44). However, the definition of rights management information does not cover information about the author or any other rightholder as prescribed in Article 12.2 of the WCT and Article 19.2 of the WPPT. Nonetheless, although Article 44 does not explicitly mention that rights management information includes information on the author or other rightholder, it is believed such as interpretation would be taken by a Czech court given the language in the provision.

In 2000, Internet piracy emerged as an issue in the Czech Republic. A local terrestrial television signal containing Motion Picture Association (MPA) member company television programs and motion pictures was temporarily streamed over the Internet to computer screens all over the world via an Internet Website which purported to be the station’s official Website. While the transmissions were of a sporadic and indiscriminate nature, they nevertheless constituted blatant copyright and trademark infringements and a breach of territorial limitations of licenses granted by the MPA’s member companies to the station. An amicable settlement was ultimately

reached among the TV station, the MPA, and the Czech Anti-Piracy Union (CPU), and the station now limits its Internet transmissions to its own indigenous programming.

In 2001, MPA's local anti-piracy organization successfully prosecuted four defendants offering pirate hard goods over the Internet.

In addition to the copyright law amendments, penal code amendments were adopted in 2000 that increased the maximum possible penalties for copyright infringements to five years of imprisonment and a fine of 5 million Crowns (US\$125,000).

The penal code and the code of criminal procedure were significantly amended in 2001 to simplify the structure of the law and render the criminal process more efficient. As a result of these changes, the speed of resolution of criminal proceedings should increase during 2002, when these changes first become effective, assuming the changes are implemented in practice. We are hopeful that once these changes are implemented, the backlog in cases that seriously hampers effective copyright enforcement may be reduced.

In 2000, amendments were also adopted to the Copyright Protection Act, effective September 1, 2000, giving the Czech Trade Inspection Bureau authority to fight copyright and trademark infringements (and providing fines for violators of up to 2 million Crowns (US\$50,000). In 1999, important amendments (Act No. 191/1999 Coll.) were made that granted customs officials broader *ex officio* authority to seize suspected infringing copies of intellectual property, including copyrighted material, and providing heavy fines of up to 20 million Crowns (U.S.\$ 500,000) for importing or exporting pirate product. Nonetheless, the BSA reports that there have been no cases in 2001 involving the import or export of software.

After two years in place, the law has not resulted in any expected improvement to the already weak customs enforcement regime because, among other things, the law imposes onerous burdens on rightholders (paperwork and a duty to provide a bond for counterclaims that can take years to resolve).

In addition to the changes noted, provisions are needed to protect encrypted signals. The amended broadcast law that went into effect on January 1, 1996 did not provide such protection. These provisions are necessary because of the threats posed to television markets by pirate smart cards and decoders; the law needs to prohibit the production, distribution, possession and use of unauthorized decoding devices. The Czech government has indicated for the past several years that the appropriate provisions would be added either to the media or the telecommunications law, but that has not transpired. The provisions must also fully protect conditional access (as provided for in Article 43 with the suggested revisions noted earlier) and new digital technologies, as well as address the significant collective (community) antenna problem that exists in many Czech cities. The telecommunication laws must provide that broadcast and cable licenses will only be granted and maintained subject to compliance with these and other copyright provisions.

For years, Czech officials have contended that the Code of Civil Procedure (Act No. 99/1963) permitted a rightholder to obtain a civil *ex parte* search order. The software industry, in testing these provisions, has had a very mixed experience. In one instance, the procedure required a Czech court to take two months to determine the viability of an application, and the industry was confronted with extremely onerous documentary requirements before a court would consider granting an application. During 2000, amendments to the Code of Civil Procedure were finally

adopted to make *ex parte* search applications less difficult to obtain, and to comply with the TRIPS (Article 50) obligations. Under the revised law, rightholders implicitly are permitted to cause a search for securing evidence without the presence of an adverse party. The ministry responsible for the final text has assured the software industry that the law, as amended, allows civil *ex parte* searches. These amendments became effective at the beginning of 2001. However, the BSA reports that no lower court has yet granted an *ex parte* search application. The continued absence of civil *ex parte* searches despite the changes in law is a factor negatively affecting copyright enforcement in the Czech Republic.

Last, there were additional problems with the copyright law amendments adopted in 2000. The law contains many problematic restrictions on the ability of audiovisual producers to efficiently exploit and distribute works in the Czech Republic. Also, the law fails to differentiate between analog and digital private copying; the private copying exception should not have extended to digital copying of works or sound recordings. Nor should any private copying exception (or any other exemption) interfere with the ability of rightholders to protect their works and sound recordings using technological protection measures.

Ratification of the Two WIPO Treaties

The Cabinet of the Czech Republic agreed, on January 10, 2001, to accede to both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT). The Czech Parliament must now quickly approve such accession so that the Czech Republic can soon become a party to both treaties, and the Parliament must fully implement the treaties through the appropriate laws and amendments detailed above. Moreover, existing provisions in Czech law must be made consistent with provisions of the WCT and WPPT.

COPYRIGHT PIRACY

The Rise of Optical Media Piracy in the Czech Republic; Production and Distribution in the Czech Republic and Regionally

The Czech Republic is a country where illegal optical media production remains a concern. Steps must be taken to regulate optical disc plants, and to improve border enforcement to contain the problem.

A serious problem in the Czech Republic is the overproduction of optical media (music CDs and CD-Rs, that is, recordable CDs). The manufacturing capacity of the CD plants in the Czech Republic outstrips domestic demand. As a result, the entertainment software industry suffers from the production of compilations of videogames on CD-ROMs. The copyright industries have reported that unauthorized product manufactured in the Czech Republic is being exported to other countries including the EU, Poland, and elsewhere in Eastern Europe, upsetting markets in the entire region.

The Czech Republic must set up plant monitoring procedures, like those established in Bulgaria in 1998, to regulate the production, distribution, and export of optical media. Such regulations would include provisions to close plants that are caught illegally producing copyrighted

material, to seize infringing product and machinery, and to monitor the importation of raw materials (optical-grade polycarbonate) used in the production of CDs, DVDs and CD-ROMs (and other optical disc media). Also, all of the plants must be required to adopt source identification (SID) codes, so that the source of illegally produced CDs can be traced and any necessary actions taken against infringing manufacturers. The willingness of the plants to participate in these procedures is important, as is the government's willingness to enforcement such regulations.⁴

ENFORCEMENT

Enforcement in the Czech Republic has been a source of frustration for many years, in large part because the legal regime is very good, but often unused. The copyright industries have made concerted efforts through their anti-piracy groups to develop better cooperation with the police, with some success. However, beyond raids and seizures, cases often languish, and there is an especially large backlog of cases that has not been addressed. Border enforcement also is a major shortcoming. In sum, the Czech Republic's enforcement regime, unlike its legal regime, remains incompatible with its TRIPS enforcement obligations due to: the failure to impose deterrent criminal penalties in commercial piracy cases; lengthy delays in bringing and completing both criminal and civil infringement cases; the lack of availability of deterrent civil damages; and ineffective border measures. However, the BSA reports that the enforcement situation improved somewhat in 2001 with increased cooperation by the police and the improved attitude vis-à-vis rightholders of most public prosecutors, and the courts. The BSA reports relatively severe criminal judgments against software pirates in 2001 (although criminal sentences were routinely converted to suspended sentences as in previous years) and reports that the police were generally prepared to address software piracy issues that developed during 2001. On the other hand, the BSA reports that some longstanding problems in enforcement continued in 2001, including long delays in the preparation of expert opinions; long delays in preparations of undertaking a raid; and the widely varying attitudes of public prosecutors towards rightsholders, and piracy across different regions of the country (the latter caused to some extent by the widely varying knowledge and skill of these public prosecutors in connection with issues of intellectual property law.)

The growth of optical media material, produced and distributed in the Czech Republic and in the region, coupled with the failure of the judicial system, is the most serious threat to the health of the copyright industries in an otherwise healthy market. Although improvements were noted in

⁴ As an historical example, in 1998, the largest plant (GZ Lodenice) did agree to cooperate with International Federation of the Phonographic Industry (IFPI) and adopt SID codes; however, the other then extant plants (CDC Celakovice, Eximpo Praha, and Fermata CD) did not reach such agreements. IFPI filed criminal complaints against CDC Celakovice in 1998, and the IFPI and the Business Software Alliance (BSA) began an investigation into the activities of a second plant suspected of being involved in large-scale piracy. In October 1998, the police investigation department officially charged the plant manager of CDC with copyright law violations. However, that police investigation department decided it was going to refuse to prosecute the manager and dropped the case entirely; the industries appealed to the district state attorney, who refused to intervene. This example shows a very serious lack of enforcement commitment by the police department; the Czech government and the proper enforcement authorities must reconsider this decision.

2001, the failure of the judiciary to properly apply deterrent penalties in the past has allowed piracy to remain widespread in this country and regionally, especially harming the market for business application computer programs and for video and audiovisual public performances. For a number of years, the U.S. government has pressed the Czech government to work with industry representatives to address the optical media production problem and the case backlog problem. Hopefully, these issues will be addressed in 2002.

One way for the Czech government to address wide-scale problems was the establishment (in 1996) of an inter-ministerial task force, chaired by the Ministry of Industry and Trade. The copyright industries' experience to date has been that the task force has not devoted sufficient attention to implementation of existing laws to realize significant and deterrent action against commercial pirates. IIPA reiterates its longstanding request for a Czech government directive to get the task force to operate effectively. IIPA suggests that such a directive, to implement proper enforcement, would require regular meetings and reporting on cases by the task force, as well as an opening up of task force proceedings to the private sector. By all accounts, the task force remains ineffective.

Although there has been better cooperation on criminal raids by the police and an adequate legal framework has been implemented, lengthy delays in moving cases and incomplete investigations hamper effective enforcement.

It is true in the Czech Republic (and every other country with commercial piracy) that sophisticated piracy operations can only be broken by strong deterrent criminal prosecution. The Czech Republic continues to provide good police cooperation, an adequate legal framework and continued interest of courts in matters affecting intellectual property rights; however, law enforcement authorities are unwilling to pursue actions quickly to their conclusion. The problem is twofold: (1) a backlog of cases; and (2) the varying attitude towards intellectual property rights and knowledge of the subject matter of prosecutors and other legal professionals from region to region in the country.

The recent amendments to the code of criminal procedure may partially alleviate the backlog problem in Czech enforcement, if implemented properly. According to these amendments, police investigations must be commenced within either a two- or three- month window, depending on the alleged crime. Further the entire investigation must be completed within a period of six months. However, there is a possibility of extension of these deadlines.

The amendments also provide that a party may submit its own expert opinion in lieu of an official expert opinion, provided the party's expert opinion complies with certain formal requirements set out by law.

These amendments address, to a certain extent, IIPA's recommendations in previous years for an Interior Ministry directive instructing criminal police and prosecutors to act on *prima facie* cases of piracy within 30 days of receiving a criminal complaint, and for criminal charges to be announced and presented to the public prosecutor for prosecution within less than 60 days after the occurrence of a raid. The IIPA continues to recommend a directive to transfer *prima facie* cases of piracy to state prosecutors immediately upon the announcement of criminal charges, and for a special group of criminal police investigators to be dedicated to the preparation and investigation of copyright cases. Further, it is recommended that the Czech Republic improve the investigation

process by amending its law to permit tax inspectors to share information on illegal uses discovered in the course of audits with police and affected copyright holders.

In 2001, some industries, notably the motion picture industry and the business software industry, reported continually improving cooperation with prosecutors and judges in moving current cases forward. But the backlog remains and, more significantly, copyright holders face problems and certain obstacles in cases involving large companies suspected of piracy. The BSA reports that although small companies and medium sized companies are investigated by the police regularly, there has been a noticeable lack of investigations of large companies for piracy. Similarly, IFPI reports that small routine criminal cases are being taken to and adjudicated correctly by the Czech courts; however, they report that significant cases against large-scale pirates have not been moving. For example, the most important case for the recording industry against the CDC optical media plant manager was dropped, setting a terrible precedent regarding deterrent prosecutions.

The Business Software Alliance (BSA) reports that the overall speed of criminal and civil enforcement has improved, but still remains a problem. In the past, the average length of time for a decision before a criminal court of first instance has been between one to three years, with a second-level decision taking an additional year. Separate civil proceedings take an equal length of time. However, there have been encouraging developments in the number of formal criminal accusations filed by prosecutors: In 2001, 23 criminal accusations were filed against end-users and against suspected resellers. Police and prosecutors are thus becoming more proactive by conducting raids on and filing criminal accusations against both reseller and end-user infringers, according to the BSA. Unfortunately, the BSA reports that despite this level of activity, during 2001, movement by the police and public prosecutors against suspected infringers was often delayed, because of the relatively long period of time required by the police for preparing for a raid, and the delay caused by waits for official expert opinions, a necessary precursor to the issuance of a criminal accusation against a suspected pirate under Czech law. The BSA hopes that the new amendments to the code of civil procedure allowing a party to submit its own expert opinion to substitute for the official expert opinion will be implemented regularly during 2002 and will result in a more efficient procedure.

The Motion Picture Association (MPA) reports an improvement in the speed with which routine criminal cases were handled by the courts. The procedure regarding case filings has changed. This change is expected to expedite the process.

The BSA has observed that following the preparation of expert reports Czech prosecutors are now filing a growing number of accusations. This is a very encouraging development. Prosecutors in Prague and Ostrava have been particularly diligent. This, in turn, has led to a number of criminal judgments for software infringement. The BSA was aware of at least 18 criminal judgments for software infringement in 2001, giving a total of 28 criminal judgments until now of which the BSA has become aware. The most severe criminal judgments to date were (1) the sentencing of an individual to five years' imprisonment (not suspended); the defendant in that case had used pirated software and had committed insurance and other fraud with the help of this software, and (2) the sentencing of an individual to 18 months' imprisonment (suspended) with 2.5 years of probation; the defendant in this case had used pirated software and had distributed music CDs using the pirated software.

With respect to civil enforcement, the Czech government has (as noted already) clarified that *ex parte* searches are available to right holders. The relevant provisions of the civil code became effective January 1, 2001. However, no court has yet granted an application for an *ex parte* search order.

There were continuing signs that the government was committed to the use of only licensed software in its offices. The Czech government, with the support and cooperation of the BSA, issued a resolution on the legal use of software in government offices. The resolution is comprehensive and contains practical and detailed rules regarding the use of the software by the government, rules regarding the training of government employees, and rules on implementation of the resolution, including deadlines for full compliance with the resolution. This resolution, which is effective January 1, 2002, is one of the most comprehensive in Europe. The BSA commends the government for its efforts in issuing the resolution and hopes for its speedy implementation.

As in past years, the Interactive Digital Software Association (IDSA) reported wide-scale piracy in the Czech Republic of entertainment software (including videogame CDs and cartridges, personal computer CDs, and multimedia products). IDSA reports good police cooperation in raids against retail pirates, but, as with other industries, enforcement is not effective, especially border enforcement, which is almost nonexistent. The flow of pirate products from Russia and the Ukraine into the Czech Republic continues unabated.

The major problem confronting IDSA members is the manufacturing and replication operations, including syndicates producing so-called "gold" recordable disks in the Czech Republic, and prerecorded silver discs that are imported from Russia and the Ukraine. The disc-producing factory formerly located in Bulgaria appears to have moved to Russia, which is now a major supplier of illegal material for the Czech Republic. For 2001, estimated trade losses due to videogame piracy in the Czech Republic are \$54.8 million, with a 90% piracy level. As was previously reported in last year's Special 301 Filing, Internet piracy is still of great concern. For 2001, the Internet piracy level was at 10%, and continues to grow.

The International Federation of the Phonographic Industry (IFPI) reports that for the recording industry the principal enforcement complaint is the inability or unwillingness of police investigators (not the criminal police) and state attorneys (the prosecutors) to thoroughly investigate in-depth major criminal cases brought to them by the criminal police. Thus, the evidence presented to the courts is incomplete and ignores important details, such as the channels of the supply and distribution of illegal material. This information, which could shut down piratical operations, is therefore not brought to light in criminal cases.

The IFPI continues to report large-scale seizure of illegal material, almost all of it in the form of CDs (about 20% of this total is now recordable CDs). For example, in one case in July 2000, over 27 million Crowns' worth (U.S.\$ 723,220) of material was seized, but there has been no disposition of the defendants in that case. In the past year, there were other successes for the recording industry. For example, four organized groups of pirates were broken up and their members brought to court; there has been no final adjudication of these cases, either. As in 1999, the recording industry also reports that there are now three major markets selling CDs and CD-Rs of German repertoire operating just over the German border.

Since the 1996 copyright act amendments passed, the once-problematic CD rental problem diminished as the number of rental shops declined significantly; however, that problem was

replaced by the more serious CD and CD-R production problem, and by the problem of recordings made from infringing music Websites. Another problem lingers. As of December 1, 2000, the copyright law fixed the problem of the protection for preexisting sound recordings; however, the law permitted a two-year sell-off period of back-catalog inventory. This means that this back-catalog repertoire will linger as a problem for a number of years and continue to be a hindrance to effective enforcement until the material is finally removed from the marketplace.

Estimated piracy levels and trade losses due to sound recording piracy have risen over the past year, up to a 48% piracy level and \$8.4 million in losses in 2001. The jump is the result of CD-R materials being produced for the public on a commercial basis and flooding the marketplace. Several owners of establishments offering this material have been charged under the criminal law, but none of these cases has reached the courts to date.

For the motion picture industry, traditional video piracy, involving high-quality copies of video release titles, continues to be a major, if somewhat reduced, piracy problem. Although the enforcement efforts by the local anti-piracy organization, CPU, and the police have progressively improved the situation over the last couple of years, flea markets in the Czech-German border region, particularly those run by ethnic Vietnamese gangs, offer pirate cassettes to German tourists. Some "casual" counterfeit copying also takes place in otherwise legitimate rental outlets. While the video piracy problem in the retail sector has been greatly reduced in major cities, like Prague and Brno, it has nonetheless given way to other forms of piracy, particularly illegal public performances (in buses, restaurants and clubs), pirate optical disks and mail order operations.

Cable and television piracy is also a problem. Although the number of active cable operators has decreased in the last few years as the market has consolidated, many cable television stations continue to retransmit a large number of foreign (especially German) satellite and terrestrial broadcast signals. Legal ambiguities in Czech legislation complicate the situation. The government has little will to address this problem, and the Czech Broadcasting Council has taken a very timid stance toward fighting such piracy. As noted earlier in the report, illegal Web transmissions made a novel appearance in 2000, but the CPU and MPA managed to settle the case without resorting to the authorities. Estimated trade losses due to audiovisual piracy in the Czech Republic are \$8.0 million in 2001, with a 10% video piracy rate.

For the motion picture industry, CPU cooperation with police forces remained good in most cases, although it proved difficult to secure cooperation with certain police departments, especially in western Bohemia. In 2001, the CPU, police and customs conducted 448 investigations, 137 raids, and seized approximately 10,337 pirate videocassettes, 533 pirate CD-ROMs and numerous counterfeit sleeves. The CPU's cooperation with prosecutors and judges also improved in recent years. The slow judicial process is partly due to a new police procedure which changed the filing requirements for criminal cases. This change meant that new officers needed to be trained as to the proper method and techniques for filing copyright cases. (This is also true for every other type of criminal activity.) However, the prosecution rate is improving, in that CPU has also begun to use administrative actions. Sixty-two new criminal cases were launched in 2001, and 93 administrative actions.

The book publishing industry report that unauthorized copying and piratical translations into English of college textbooks, as well as scientific, technical and medical publications, is a problem in the Czech Republic. Estimated trade losses due to book piracy dropped to \$3.0 million in 2001.

In sum, as in years past the enforcement situation for all IIPA members could best be characterized as one of overall good cooperation with the police against small-scale retailers, with such cooperation varying widely from region to region in the country. And, as in years past, the most consistent enforcement deficiency was the failure to move cases toward satisfactory conclusion, especially to address the growing backlog of cases, combined with the inability or unwillingness of the judicial system to properly and effectively prosecute large-scale piratical operations.

**ENFORCEMENT CHARTS
TAKEN BY THE COPYRIGHT INDUSTRIES
IN THE CZECH REPUBLIC
(2000 and 2001)**

CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS		
2000		
ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE
Number of Raids conducted	86	16
By Police		
By Customs		
Number of cases commenced / administrative	72 / 11	88*
Number of defendants convicted (including guilty pleas)	24 / 2	12
Acquittals and Dismissals	4 / 17	3
Number of Cases Pending	82 / 7	52
Total number of cases resulting in jail time		11
Suspended Prison Terms		11
Maximum 6 months		4
Over 6 months		6
Over 1 year		1
Total Suspended Prison Terms		104 months
Prison Terms Served (not suspended)		0
Maximum 6 months		0
Over 6 months		0
Over 1 year		0
Total Prison Terms Served (not suspended)		0
Number of cases resulting in criminal fines		1
Up to \$1,000		1
\$1,000 to \$5,000		0
Over \$5,000		0
Total amount of fines levied		\$750

* This figure includes all criminal complaints filed by the BSA and its members, as well as any other criminal complaints the BSA and its members are aware of as having been filed, in addition to cases commenced by prosecutors in the courts.

CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS 2001		
ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE
Number of Raids conducted	137	10
By Police		
By Customs		
Number of cases commenced / administrative	62 / 93	112
Number of defendants convicted (including guilty pleas)	22 / 83	18
Acquittals and Dismissals	2 / 10	12
Number of Cases Pending	108	79
Total number of cases resulting in jail time	3	14
Suspended Prison Terms	15	13
Maximum 6 months		5
Over 6 months	15	6
Over 1 year		3
Total Suspended Prison Terms		115 months
Prison Terms Served (not suspended)	3	1
Maximum 6 months		0
Over 6 months	2	0
Over 1 year	1	1
Total Prison Terms Served (not suspended)		5 years
Number of cases resulting in criminal fines	9	4
Up to \$1,000	9	1
\$1,000 to \$5,000		2
Over \$5,000		1
Total amount of fines levied		\$11,597

CIVIL COPYRIGHT ENFORCEMENT STATISTICS		
ACTIONS	BUSINESS APPLICATIONS SOFTWARE 2000	BUSINESS APPLICATIONS SOFTWARE 2001
Number of civil raids conducted	0	0
Post Search Action		
Cases Pending	3	2
Cases Dropped		
Cases Settled or Adjudicated		
Value of loss as determined by Rightholder (\$USD)		
Settlement/Judgment Amount (\$USD)	\$1,930	\$10,910