

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2005 SPECIAL 301

SPECIAL MENTION

CYPRUS

Piracy in the audiovisual sector: Cyprus suffers from a high level of pre-theatrical release piracy, with many pirate optical discs (VCDs, DVDs, and DVD-Rs) openly and widely available at kiosks, video clubs, and souvenir shops. Pirate discs are copied from parallel imported DVDs (also openly sold in video shops) or from pirate VCDs and DVDs imported from the Far East. There are about 150 souvenir shops where mostly tourists purchase pirate copies, 125 video clubs where pirate rentals and sales are taking place, and 250 kiosks working on a 24-hour basis which sell pirate products mostly to local residents. Many video clubs continue to obtain pirate copies of the latest titles, including titles that may not be legally rented or sold under the so-called "Windows" legislation (which protects a limited number of titles in theatrical release against video piracy from parallel imports). The retail shops supply the various markets, with a destructive effect on legitimate optical disc/cassette sales, and are creating a decline in box office admissions. In addition, pirate discs sold to tourists, who number around three million annually, are indirectly exported to their home countries (e.g., the UK, Scandinavian countries, Germany and Russia).

Record and music piracy: Counterfeit CD sound recordings are also sold openly in the many hundreds of small shops and kiosks around the island, which service the year-round tourist market. In addition, the recording industry has discovered that the small shops, sometimes found inside hotels, again aimed at meeting the needs of the resident tourists, are often found to be selling counterfeit discs. Each of these sell roughly 500 discs. In nearly all instances, the counterfeit discs are very poor quality CD-R home copies, with photocopied artwork, and presented in plastic sleeves. There is little or no evidence that the importation of discs from outside the island is a large problem in Cyprus. The recording industry has not yet encountered any pre-release CD-R discs in Cyprus.

Piracy in the entertainment software sector: The entertainment software industry reports that piracy of entertainment software products is growing worse, as pirated video games remain readily available at kiosks, shops catering to tourists, and in video rental outlets. Internet café piracy is a problem, as none of the 18 cafés on the island use licensed entertainment software. Modified or chipped video game consoles (i.e., with a circumvention device or mod-chip installed in the machine) are also prevalent in the market. The availability of pirated games for download from the Internet is damaging (and will continue to harm) the small PC games market that the industry has been able to develop in the country.

Enforcement and legislation: It appears that the Cypriot authorities have finally begun to respond to repeated requests to take action against the rampant piracy on the island. The first raids took place on December 29, 2004 when police and customs officers raided 17 shops in Limassol, seizing over 42,000 pirate DVDs, VCDs, videocassettes, music CDs, PlayStation® games, and two cars that were full of discs. Three shops were completely emptied of product. On January 5 2005, the Police and CYFACT raided ten kiosks and two shops in and around Nicosia and seized 1,561 DVDs, 12,666 CDs, 808 PlayStation games and 28 CD burners. On

January 9, 2005 police and CYFACT raided an Indian-owned shop in Nicosia and seized around 4,300 DVDs and CDs, two CD burners and a DVD burner. On January 16, 2005 the police searched a shop and house in Larnaca and confiscated around 24,000 DVDs and CDs. Finally, on January 18, the Paphos Police searched four shops and seized 1,393 discs and 75 videocassettes. The recent raids follow a CYFACT seminar on December 16 for prosecutors, police officers, customs officers and Ministry of Commerce officials, and appear to indicate a change in attitude by the local authorities to the rampant pirate trade on the island. Despite the recent adoption of increased penalties for copyright offenses, and the creation of a small Anti-Piracy Squad at Police Headquarters, the local industry has been extremely frustrated at the almost total absence of police enforcement activity. While the recent raids are a very welcome breakthrough, they will have to be followed by the imposition of deterrent penalties and by a regular and consistent police response to the hundreds of complaints filed annually by CYFACT if the unacceptably high level of piracy on the island is to be reduced.

One entertainment software company reports that it has had some success with the customs authorities. In 2004, actions by customs authorities resulted in the seizures of cartridge-based video game products entering the country, thus somewhat reducing the levels of piracy for this platform. However, counterfeit video game cartridges continue to be widely available in the market, and it is hoped that the early efforts of the customs authorities will be sustained.

Finally, it appears that the Cyprus Copyright Law is applied by the judiciary in a way which raises difficult barriers to the enforcement of phonogram producers' rights. Piracy rates continue to increase in Cyprus, yet cumbersome burden-of-proof rules as to copyright ownership makes the initiation of legal proceedings against infringers very difficult. The Cyprus Copyright Law is currently interpreted in a way that requires rights owners to prove their ownership in each song fixed on a particular CD and does not provide for appropriate presumptions of ownership in favor of phonogram producers, nor does it allow sample testing of infringing goods. Thus, defendants are able to alternatively avoid suit altogether, limit their liability, or, at the very least, delay the legal proceedings against them. As required by the EU Enforcement Directive (adopted in May 2004), and in order to combat sound recording piracy, the recording industry urges the government of Cyprus to amend its laws to ease the burden of proving ownership, and to allow testing of samples of infringing goods.