

AZERBAIJAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: Azerbaijan has not completely fixed the deficiencies in its IPR laws or met its other enforcement commitments under the 1995 U.S.-Azerbaijan Trade Agreement (which entered into force on April 21, 1995). The U.S. Government should continue to seek Azerbaijan's full compliance with these obligations.

The Azerbaijani Copyright Law (October 23, 1996) was amended in 2008. The 1996 Copyright Law was deficient in many key areas, and was not in compliance with the Berne Convention (Azerbaijan acceded in 1999) or the Geneva Phonograms Convention (Azerbaijan acceded in 2001). Azerbaijan acceded to the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), effective April 11, 2006. IIPA understands that the 2008 amendments to the Copyright Law – not yet available in English -- were intended to implement the digital treaties. IIPA recommends that the U.S. Government should consider Azerbaijan's full compliance with its international obligations when reviewing its eligibility for General System of Preferences (GSP) trade benefits.

Legal reform deficiencies: To meet its bilateral and multilateral obligations, IIPA recommends that Azerbaijan address the following legal reforms:

- 1) Adoption of clear and explicit provisions into the Copyright Act of 1996 – or by adoption of a government decree – to provide protection for pre-existing works (pre-1999) and sound recordings (pre-2001) – required for compliance with the bilateral Trade Agreement, Berne, and the WTO TRIPs Agreement.
- 2) Adoption of provisions to provide civil *ex parte* search provisions – as required by Article 50 of the WTO/TRIPs Agreement.
- 3) Adoption of the following changes to strengthen criminal enforcement:
 - a. A “significant amount of use criteria” that is calculated on the basis of the price of legitimate product, instead of the existing “significant harm” criteria found in Article 158 of the Azerbaijan Criminal Code (2000) for copyright and neighboring rights criminal violations.
 - b. Lowering the respective amount for the threshold to commence liability under Article 158 of the Azerbaijan Criminal Code (2000) for copyright and neighboring rights criminal violations.
 - c. Similarly changing the “significant amount criteria” (as in (a), above) in the Code of Administrative Misdemeanors (Article 186-1) and eliminating any threshold for administrative violations, which is currently ten times the minimum monthly wages.
 - d. Providing for the confiscation and destruction of equipment used for the pirate production of copyright and neighboring rights materials.
- 4) Adoption into the Criminal Code and/or the Criminal Procedures Code of the proper *ex officio* authority for the police to commence criminal IPR investigations and cases.
- 5) Adoption (or the clarification, in Article 19, if it already exists) into the Customs Code of the proper *ex officio* authority for customs officials to seize material at the border and to commence criminal IPR investigations and cases.

6) Adoption of all the necessary provisions for Azerbaijan to fully implement the WCT and WPPT. It acceded to those treaties in 2006, and the 2008 Copyright Law amendments were intended to comply with the treaties, but are not yet available in English. A preliminary review of the amendments reveals that they appear to be a very good step forward towards implementation of the digital treaties.

7) Creation of an Inter-Ministerial committee consisting of police, prosecutors, and customs officials charged with IPR enforcement, to coordinate enforcement activities.

Enforcement deficiencies: In addition to not providing an “adequate and effective” legal regime, Azerbaijan has not taken the necessary steps to enforce intellectual property rights. Both the Criminal Procedure Code and the Customs Code appear to essentially limit *ex officio* authority to commence criminal copyright cases and suspend the release of suspected infringing material at the border. Civil *ex parte* searches are available under the Civil Procedure Code, although the procedure is not clearly defined. The administrative sanctions (Article 186-1) provide for fines that are multiple times the minimum monthly wages for copyright infringements, but these fines are only imposed if the infringement causes damages that equal more than ten times the minimum monthly wage.

Further, while Azerbaijani law does provide criminal penalties for IPR violations, the U.S. copyright industries are aware of no criminal penalties or administrative sanctions imposed for copyright infringement in Azerbaijan this year. Pirated copyrighted works are freely traded throughout the capital city Baku. We encourage Azerbaijan to improve its enforcement efforts by providing for *ex officio* raids and seizures, as well as civil *ex parte* searches, and to fully implement the TRIPS Agreement upon accession to the WTO. We understand that changes were made in 2008 to enhance the intergovernmental authority of the Copyright Agency and to provide it with better resources. This is a positive step.

There are no reports of any optical disc plants operating in Azerbaijan.