

# COSTA RICA

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2013 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA again in 2013 recommends that Costa Rica be elevated to the Priority Watch List.<sup>1</sup>

**Executive Summary:** The year 2012 ultimately ended with little change in Costa Rica on the matters that have long been of concern to copyright owners, and proved to be a disappointing one in Costa Rica on several fronts. Over the course of the year, worsening attitudes among the general populace threatened to make decriminalization of copyright infringement a reality through proposed amendments to the *Ley de Observancia*. While those efforts ultimately appear to have failed, they demonstrated a pervasive lack of understanding among the Costa Rican public of the important role copyright plays for the country's own creative sector. Local software developers in Costa Rica are growing, selling, and exporting their goods, a fact that makes all the more disappointing the country's failure to tackle end-user piracy of software, for example by implementing government-wide software legalization, as required by the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

Pirated music accounts for more than half of the records sold or downloaded in Costa Rica. Meanwhile performers and record labels remain unable to collect payments from broadcasters for the performance of their works as provided in the copyright law. Contrary to commitments that the Government of Costa Rica has made in past years to sound recording producers and artists that the full range of rights provided under international treaties would be available, President Laura Chinchilla has issued decrees that foreclose important sources of revenue to the industry, forcing many to make detrimental decisions about their investments in the country. The resulting halt of payments pinches producers and artists already battered by high piracy rates and limited digital sales in the market. Government efforts to coordinate IPR enforcement policy slowed to a halt in 2012, as a unit specialized in IP within the local Prosecutor's Office expected to be launched officially in 2012 failed to materialize. Finally, major obstacles still remain in Costa Rica's court procedures that prevent effective and efficient copyright enforcement.

### **PRIORITY RECOMMENDED ACTIONS FOR COSTA RICA IN 2013**

- Withdraw support for the still-pending Bill No. 17,719, which implements reservations to international obligations that would result in denying compensation to U.S. performers and record labels, and require performance rights payments from commercial broadcasters to performing artists and record producers to resume immediately.
- Revise past government initiatives and push forward a decree to properly implement Costa Rica's remaining CAFTA-DR obligation to adopt Internet Service Provider (ISP) liability provisions, with speedier deadlines by which ISPs must forward notices to users for the unauthorized exchange of protected content over the Internet.
- Officially launch and support a new specialized IP Prosecutor's Office under the Attorney General.
- Implement in practice the software asset management practices in government agencies called for in the 2002 Decree and required by CAFTA-DR.

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<sup>1</sup>For details on Costa Rica's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2013SPEC301HISTORICALCHART.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA's 2013 global issues, see our cover letter at <http://www.iipa.com/pdf/2013SPEC301COVERLETTER.pdf>.



## **COPYRIGHT PIRACY IN COSTA RICA**

Both physical and digital piracy in Costa Rica have caused such major losses that many in the content industries have been forced to leave the market. Although iTunes began operations there in late 2011, this new source for legitimate music in Costa Rica resulted in only a modest rise in digital sales of sound recordings. In the first half of 2012, overall music sales still reflected a decrease of 21% compared to the same period in 2011. BSA | The Software Alliance (BSA) reports no change in the level of software piracy in the Costa Rica market.

**Hard goods piracy:** The sale of pirate CDs on the streets is still a significant problem for the recording industry in Costa Rica. Street vendors placed on strategic squares in downtown San Jose can offer these and pirate DVDs without the risk of police intervention. The level of physical piracy in Costa Rica has increased to approximately 95% in the past year. Much of this optical disk (OD) piracy involves local CD-R burning. Several groups are involved in the importation of blank media and equipment, but customs authorities have not been able to disclose information about the individuals and companies involved in the massive importation of blank media destined to piracy. Local experts estimate that approximately 22 million units of CD-Rs and DVD-Rs enter Costa Rica annually.

**Internet piracy:** Internet piracy, as everywhere else in the region, is a growing problem in Costa Rica. The most popular form of digital piracy takes place over peer-to-peer (P2P) networks such as the ARES network. Other sources of infringing files online include links to infringing content hosted on one-click hosting sites or “cyberlockers” posted on personal blogs and web forums. Internet piracy is particularly damaging because of its harm to the development of legitimate online distribution services. As Costa Rica continuously achieves wider access to the Internet, its attention to online enforcement will become more important. With more home and business users online, access to pirated products being sold for download or ordered in hard copy from the Internet will continue to rise.

Currently there are no discussions between the content community and ISPs regarding Internet piracy on their networks. Internet piracy is a growing problem that is completely ignored by authorities and ISPs in the country.

**End-user software piracy and lack of CAFTA implementation:** The software market in Costa Rica continues to expand, fueled by growth among local developers, but the overall percentage of pirated software remains steady in Costa Rica and, as a result, the losses for the software sector have also increased.<sup>2</sup> The software industry remains particularly concerned about the high level of unlicensed software use by legitimate businesses and government agencies. Software legalization in government agencies should be an important public policy goal, for its own sake and to set a good example for the private sector. In the case of Costa Rica, inadequate software legalization by government agencies is a CAFTA-DR obligation that has not been implemented. BSA reports that it has not seen pirated software products on the streets, but hard disk loading is becoming common, primarily in the “Gran Area Metropolitana” region in the central valley of Costa Rica, which comprises the capital and surrounding provinces.

Given the challenging financial times, there is a concern that more legitimate businesses may be tempted to use infringing software instead of purchasing legitimate product or licenses. Notably, Costa Rica produces and

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<sup>2</sup>BSA | The Software Alliance's 2012 Global Software Piracy Study, conducted with two leading independent research firms, IDC and Ipsos Public Affairs, measured the rate and commercial value of unlicensed PC software installed in 2011 in more than 100 markets. In 2011, the software piracy rate in Costa Rica was 58%, representing a commercial value of unlicensed software of US\$62 million. These statistics follow the methodology compiled in the Ninth Annual BSA and IDC Global Software Piracy Study (May 2012), <http://portal.bsa.org/globalpiracy2011/index.html>. The BSA study covers piracy of all software run on PCs, including desktops, laptops, and ultra-portables, including netbooks. It includes operating systems, systems software such as databases and security packages, business applications, and consumer applications such as games, personal finance, and reference software. It also takes into account free software, open source software, and software as a service if it is paid for. It does not cover software that runs on servers or mainframes and routine device drivers, free downloadable utilities such as screen savers, and software loaded onto tablets or smartphones. The methodology used to calculate this and other piracy numbers are described in IIPA's 2013 Special 301 submission at <http://www.iipa.com/pdf/2013spec301methodology.pdf>.

exports at least \$400 million worth of software per year, and there has recently been greater awareness by the government regarding protecting the IP industry for its overall economic health.

## **COPYRIGHT AND LEGAL ISSUES IN COSTA RICA**

**Recent reservations to two treaties and pending legislation affecting the recording industry:** The main source of concern for the music industry in Costa Rica is an Executive Decree, No. 36,014-MP-COMEX-J published in the official Gazette in 2010, that implements reservations to the two international treaties protecting neighboring rights (Article 12 of the Rome Convention and Article 15.1 of the WIPO Performances and Phonograms Treaty (WPPT)). Those reservations effectively exempt broadcasters from performance rights payments to performing artists and record producers. The Decree has the odd distinction of implementing legislation that was introduced in 2009 but was never adopted; Bill No. 17,719 is still pending at the Legislative Assembly with no progress at all. The term in which the draft must be voted will expire in 2014, but the government could simply withdraw its support of the Bill to allow performance rights payments to performing artists and record producers to resume immediately. As it stands, these payments have been halted since the issuance of the Decree in 2010.

In 2009, the four major recording companies brought actions against two important commercial FM stations in San Jose for broadcasting sound recordings without the required performance rights license, in the case of *Fonotica vs. Radio Columbia/Radio Omega*. As a result of the actions, the court granted injunctions prohibiting the stations from further performing copyrighted sound recordings without the proper licenses, but the broadcasters ignored the injunctions and Costa Rica's courts failed to enforce them. In the second half of 2012, a court of first instance reaffirmed the right of the record producers to collect payments for the commercial broadcast of their recordings, pending the calculation of damages by an expert appointed by the court. The decision was appealed by the broadcasters and, as a result, rights holders have been unable to finalize the calculation of damages, let alone receive payments for what is now years of unpaid performances. The defendants in the case continue broadcasting international sound recordings without proper licenses. The case is a clear example of the failures within the judiciary in Costa Rica to enforce the copyright law, the *Ley de Observancia* (Enforcement of IPR Law) and the most basic civil law rules in the country. The music industry's business model is transitioning from sale of hard goods to the licensing of transmissions, making the removal of existing performance rights particularly detrimental to prospects for investments made in the country in reliance on those rights. The Costa Rican Government should make every effort to ensure that performers and producers are being remunerated for the commercial exploitation of their music, and the United States should strenuously object to the introduction of practices that discriminate against U.S. interests.

**CAFTA implementation:** Costa Rica has yet to fully implement its IPR obligations under the CAFTA-DR. In 2000, Costa Rica amended its 1982 Copyright Law to comply with certain obligations under the TRIPS Agreement and the WIPO Copyright Treaty and WPPT (collectively, the WIPO Internet treaties). To implement the copyright- and enforcement-related aspects of CAFTA, Costa Rica passed amendments to two separate laws – its Copyright Law (which was included in a broader intellectual property rights reform package) and its Law on Enforcement. The Copyright Law amendments, Law No. 8686 (2008), accomplished the following: extending the term of protection for works, performances and producers of phonograms; improving definitions; amending certain provisions regarding contracts and transfers; modernizing the scope of certain exclusive rights; and updating exceptions and limitations, all aimed at comporting with the CAFTA obligations.

Now that CAFTA-DR is in force in Costa Rica, the trade benefits Costa Rica has received under various U.S. programs have been phased out. During 2009, Costa Rica had \$1.17 billion in exports to the U.S. under the CAFTA-DR. Meanwhile, two important areas among Costa Rica's free trade agreement obligations still need to be addressed.

**Internet piracy measures:** Rights holders continue to face significant impediments in their efforts to address Internet piracy in Costa Rica due to the lack of an effective legal framework for the removal of infringing content. In 2011, Costa Rica implemented CAFTA-DR provisions establishing limited liability of ISPs that take certain

actions in response to copyright infringement committed by users of their networks and services. Decree 36,880-COMEX-JP, published in the official gazette on December 16, 2011, fulfills most of the requirements of such provisions. Nevertheless, the decree sets forth overly long time periods by which ISPs are to forward notifications sent by rights holders, and in practical terms creates a serious obstacle for the enforcement of rights in the digital environment. As an example, the decree allows an ISP up to 45 days just to forward a single notification to its subscriber. In the modern market for copyrighted works, the critical time for rights holders to recoup their considerable investment can be a matter of weeks before consumer interest begins to wane. If copyright owners must compete with free unauthorized copies that can remain online for over a month, that opportunity is lost.

**Government software asset management not completed yet:** Government legalization of software is a CAFTA-DR obligation that was due upon the agreement's entry into force. The Costa Rican government commenced efforts on this issue in 2002 with a Government Software Legalization Decree. The only government agency to demonstrate progress in implementing the Decree has been the National Registry, whose Copyright Office has been receiving data for several years from other government agencies about their software inventories, and which in general has complied with its software licenses. The Government of Costa Rica could improve the overall rate of software legalization by requiring private contractors to submit proof of their software license compliance, a step that could achieve noticeable results without legislative hurdles.

**The Law on Enforcement (*Ley de Observancia*):** With amendments to the *Ley de Procedimientos de Observancia de los Derechos de Propiedad Intelectual* (Law No. 8656 of 11 August 2008 amending Law No. 8039 of 12 October 2000) that went into force in 2010 and 2011, Costa Rica's Law on Enforcement provides for a number of matters that were needed for CAFTA-DR implementation, including: *ex officio* authority for police investigations; protection and remedies against the circumvention of technological protection measures and rights management information; pre-established (or statutory) damages in civil judicial proceedings; criminal sanctions regarding encrypted program-carrying satellite signals; civil remedies including seizures, actual damages, court costs and fees, and destruction of devices and products; provisions for injunctive relief, destruction of infringing materials and equipment, and border measures; and criminal remedies for violations of neighboring rights.

Other key elements of enforcement under the *Ley de Observancia* have fallen short of deterring criminal copyright infringement in Costa Rica. The jail terms for criminal copyright piracy are currently so low (in some cases as little as two months) as to pose negligible deterrence against infringement. It has become common practice for judges to use the discretion to choose fines rather than jail terms. Where low sentences are imposed, judges commonly use their discretion under the law to suspend them. Deterrent-level sentences at a minimum of three years should be imposed in practice, making the proposed amendments in 2012 to eliminate many of the law's criminal sanctions for copyright infringement, though failed, a step in the wrong direction. Meanwhile, fines are not consistently imposed under the *Ley de Observancia*, whose Article 55 includes a complicated four-step provision, linking the amount of the damages to the level of penalty; however, nowhere does the law explain how judges will calculate damages in piracy cases.

Apart from the lack of political will by prosecutors, several legal deficiencies have contributed to the problems with poor copyright enforcement in Costa Rica through 2011. Additional issues not addressed in the CAFTA-DR implementation packages, but long highlighted by the copyright industries, include the following:

- Public officials, not only injured parties, must be able to file criminal actions for IP violations ("*acción pública de instancia pública*"), including full *ex officio* authority in copyright cases. Otherwise, rights holders must still file a complaint (*denuncia*) in order to get a criminal prosecution.
- The objectionable "insignificance principle" ("*principio de lesividad e insignificancia*") was not removed from the Criminal Procedural Code so that it would no longer apply to intellectual property infringements.
- Businesses engaged in piracy operations should be closed.

## **COPYRIGHT ENFORCEMENT IN COSTA RICA**

While some IIPA members report positive relationships with Costa Rica's enforcement authorities, key authorities have not dedicated adequate resources to the piracy problem, leaving a number of copyright enforcement deficiencies in the Costa Rican legal and enforcement system. In late 2011, sources indicated that the Attorney General had plans to launch a specialized IP unit within the Prosecutor's Office in early 2012, but those plans never materialized. Instead, resources dedicated to tackling piracy in Costa Rica are minimal, and the copyright industries continue to report a lack of focus or cooperation that has been a major obstacle at the prosecutorial level. The national police and prosecutors are responsible for the anti-piracy actions in Costa Rica, but street operations against points of sale for illegally burned CDs are rare. There are no major operations against digital jukeboxes that contain illegal music files despite complaints filed on a regular basis by industry representatives in San Jose.

In what appeared to be a positive development that was confirmed by local representatives of the recording industry, the Government of Costa Rica in 2009 published an executive decree creating an Interministerial Committee to oversee and implement the country's IPR enforcement policies. The Committee operates within the Ministry of Justice, and also includes the Ministry of Foreign Trade (COMEX), the Investigations Police, the Copyright Registry, and the Attorney General's Office. In practice, the Committee has met rarely since its creation, and nothing has come from those meetings.

In 2011, new Attorney General Jorge Echavarría made an effort to change the course set by his predecessor, meeting with public IP officials including the Copyright Register in the summer of that year. As a result, the Attorney General's Office announced that it would increase attention to IPR enforcement, provide additional resources for border enforcement, and prosecute copyright violations as organized crime. While in late 2011 IIPA's members reported that local prosecutors were conducting investigations of copyright infringements, rather than dropping the cases as they have in the past, we are not aware of further progress or significant results in 2012. The Attorney General's resolution has yet to penetrate the lack of coordination between the investigation police and the judiciary, leaving, for now, Costa Rica's growing piracy problems unaffected.

The Costa Rican judicial system, both criminal and civil, suffers from a lack of expertise and experience necessary to enforce the copyright and criminal laws. Training programs are necessary for prosecutors, judges and the police authorities. The Government has taken no other steps to improve the overall enforcement of IPR.

**Police cooperation is positive but needs more resources:** The police efforts that take place in municipalities to raid and confiscate pirate optical disks from street vendors do not go so far as to investigate the supply chain of the pirated and counterfeit merchandise, or to initiate prosecution, and historically have taken place only in response to requests from rights holders rather than at a systemic level. The existing law does not permit *ex officio* actions for intellectual property infringement, with the exception of counterfeits that affect the public health.

**The need for prosecutorial attention to copyright crimes:** Prosecutors have historically had very negative attitudes toward pursuing copyright cases and lengthy delays are major impediments to effective criminal enforcement in Costa Rica.

**Need for specialized IPR prosecutors:** The copyright industries have supported the creation of a specialized Prosecutor's Office with nationwide jurisdiction so that criminal IP cases could move forward more swiftly and with more specialized expertise. Given the significant delays and observed lack of proficiency of prosecutors and judges, the creation of this special office remains a pressing priority. While there were reports in early 2012 that such an Office would begin to work in an official capacity that year, there has since been no public launch of a specialized division. The industries hope that the Attorney General, Jorge Echavarría, will push forward legislation to allocate funds and publicly announce the creation of this office.

**No court results:** Because criminal copyright cases are not investigated by the prosecutors, they do not reach the judiciary. Judges at present do not have the expertise to handle IP cases, and would benefit greatly from training.

**APPENDIX C: CHART OF COUNTRIES' SPECIAL 301 PLACEMENT (1989-2012)  
AND IIPA 2013 SPECIAL 301 RECOMMENDATIONS**

| USTR 301 PLACEMENT<br>(as of April/May of each year) |   |                 |      |      |      |      |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
|--|---|-----------------|------|------|------|------|----------|-----------|----------|-----------|------|----------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| COUNTRY  | IIPA<br>Recommendation<br>February 2013 | 2012            | 2011 | 2010 | 2009 | 2008 | 2007     | 2006      | 2005     | 2004      | 2003 | 2002     | 2001 | 2000 | 1999 | 1998 | 1997 | 1996 | 1995 | 1994 | 1993 | 1992 | 1991 | 1990 | 1989 |
| Albania  | SM                                      |                 |      |      |      |      |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Algeria  |   | PWL             | PWL  | PWL  | PWL  | WL   |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Argentina  | PWL                                     | PWL             | PWL  | PWL  | PWL  | PWL  | PWL      | PWL       | PWL      | PWL       | PWL  | PWL      | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | WL   | PWL  | PWL  | WL   | WL   | WL   | WL   |
| Armenia  |   |                 |      |      |      |      |          |           |          |           |      | WL       | WL   | WL   |      |      |      |      |      |      |      |      |      |      |      |
| Australia  |   |                 |      |      |      |      |          |           |          |           |      |          |      |      | WL   | WL   | WL   | WL   |      | WL   | PWL  | PWL  | PWL  |      |      |
| Austria  |   |                 |      |      |      |      |          |           |          |           |      |          |      |      |      | OO   | OO   |      |      |      |      |      |      |      |      |
| Azerbaijan   |   |                 |      |      |      |      |          |           | WL       | WL        | WL   | WL       | WL   | WL   |      |      |      |      |      |      |      |      |      |      |      |
| Bahamas  |   | OL <sup>1</sup> |      |      |      |      |          | WL        | WL       | PWL       | PWL  | WL + OCR | OCR  | OCR  |      |      |      |      |      |      |      |      |      |      |      |
| Bahrain  |   |                 |      |      |      |      |          |           |          |           |      |          |      |      |      | WL   | WL   | WL   | WL   |      |      |      |      |      |      |
| Bangladesh   |   |                 |      |      |      |      |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Barbados   |   | OL <sup>1</sup> |      |      |      |      |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Belarus  | WL                                      | WL              | WL   | WL   | WL   | WL   | WL       | WL        | WL       | WL        | WL   | WL       | WL   | WL   | WL   | OO   |      |      |      |      |      |      |      |      |      |
| Belize   |   |                 |      |      |      |      | WL       | PWL       | WL       | WL        |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Bolivia  |   | WL              | WL   | WL   | WL   | WL   | WL       | WL        | WL       | WL        | WL   | WL       | WL   | WL   | WL   | OO   | WL   | OO   |      |      |      |      |      |      |      |
| Bosnia and Herzegovina                               |   |                 |      |      |      |      |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Brazil   | WL                                      | WL              | WL   | WL   | WL   | WL   | WL + OCR | PWL       | PWL      | PWL       | PWL  | PWL      | WL   | WL   | WL   |      | WL   | WL   | PWL  | OO   | PFC  | PWL  | PWL  | PWL  | PWL  |
| Brunei   |   | WL              | WL   | WL   | WL   |      |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Bulgaria   | WL                                      |                 |      |      |      |      |          | WL        | WL       | WL        |      |          |      |      |      |      | PWL  | WL   | OO   | OO   |      |      |      |      |      |
| Burma (Myanmar)                                      |   |                 |      |      |      |      |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Cambodia   |   |                 |      |      |      |      |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Canada   | WL                                      | PWL             | PWL  | PWL  | PWL  | WL   | WL       | WL + OCR  | WL + OCR | WL        | WL   | WL       | WL   | WL   | WL   | WL   | WL   | WL   | WL   | OO   |      | WL   | WL   | WL   | WL   |
| Chile  | PWL                                     | PWL             | PWL  | PWL  | PWL  | PWL  | PWL      | WL + OCR  | WL       | WL        | WL   | WL       | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   |
| China (PRC)  | PWL+306                                 | PWL+306         | PWL  | PWL  | PWL  | PWL  | PWL      | PWL + 306 | PWL      | 306 + OCR | 306  | 306      | 306  | 306  | 306  | 306  | 306  | PFC  | WL   | PFC  | WL   | WL   | PFC  | PWL  | PWL  |
| Colombia   |   | WL              | WL   | WL   | WL   | WL   | WL       | WL        | WL       | WL        | WL   | PWL      | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   |
| Costa Rica   | PWL                                     | WL              | WL   | WL   | WL   | WL   | WL       | WL        | WL       | WL        | WL   | WL + OCR | PWL  | WL   | WL   | WL   | WL   | WL   | WL   |      |      |      |      |      |      |
| Croatia  |   |                 |      |      |      |      |          | WL        | WL       | WL        | WL   |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Cyprus   |   |                 |      |      |      |      |          |           |          |           |      |          |      |      |      |      |      | OO   | OO   | OO   | WL   | WL   | WL   | WL   |      |
| Czech Republic                                       |   |                 |      | WL   | WL   | WL   | OCR      |           |          |           |      |          |      | WL   | WL   | WL   | OO   |      |      |      |      |      |      |      |      |
| Denmark  |   |                 |      |      |      |      |          |           |          |           |      |          |      | WL   | WL   | WL   | WL   |      |      |      |      |      |      |      |      |
| Dominican Republic                                   |   | WL              | WL   | WL   | WL   | WL   | WL       | WL        | WL       | WL        | WL   | PWL      | PWL  | PWL  | PWL  | PWL  | WL   | OO   |      |      |      |      |      |      |      |
| Ecuador  | WL                                      | WL              | WL   | WL   | WL   | WL   | WL       | WL        | WL       | WL        | WL   | WL       |      | WL   | WL   | PWL  | PWL  | WL   |      |      | WL   | WL   |      |      |      |
| Egypt  | WL                                      | WL              | WL   | WL   | WL   | WL   | PWL      | PWL       | PWL      | PWL       | WL   | PWL      | PWL  | PWL  | PWL  | PWL  | PWL  | WL   | WL   | WL   | PWL  | PWL  | WL   | WL   | WL   |
| El Salvador  |   |                 |      |      |      |      |          |           |          |           |      |          |      |      |      |      |      | WL   | WL   | WL   | WL   | WL   |      |      |      |
| Estonia  | SM                                      |                 |      |      |      |      |          |           |          |           |      |          |      |      |      |      | OO   |      |      |      |      |      |      |      |      |
| European Union                                       |   | OL <sup>4</sup> |      |      |      |      |          | WL        | WL + OCR | PWL       | PWL  | PWL      | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  |
| Fiji   |   |                 |      |      | OCR  |      |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Finland  |   | WL              | WL   | WL   | WL   |      |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |
| Georgia  |   |                 |      |      |      |      |          |           |          |           |      |          | OCR  |      |      |      |      |      |      |      |      |      |      |      |      |
| Germany  |   | OL <sup>3</sup> |      |      |      |      |          |           |          |           |      |          |      |      |      |      | OO   | OO   | OO   | OO   | OO   |      | WL   | WL   |      |
| Greece   | WL                                      | WL              | WL   | WL   | WL   | WL   |          |           |          |           |      | WL       | WL   | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | WL   | WL   | WL   | WL   | WL   | WL   |
| Guatemala  |   | WL              | WL   | WL   | WL   | WL   | WL       | WL        | WL       | WL        | WL   | WL       | WL   | PWL  | PWL  | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   |
| Honduras   |   |                 |      |      |      |      |          |           |          |           |      |          |      |      |      |      | WL   | WL   | OO   | OO   | OO   |      |      |      |      |
| Hong Kong  | SM                                      |                 |      |      |      |      |          |           |          |           |      |          |      |      |      | OCR  | WL   | WL   | OO   |      |      |      |      |      |      |
| Hungary  |   |                 |      |      | WL   | WL   | WL       | WL        | WL       | WL        | WL   | PWL      | PWL  | WL   | WL   | OO   | OO   |      |      |      |      | PWL  | PWL  | WL   |      |
| Iceland  |   |                 |      |      |      |      |          |           |          |           |      |          |      |      |      |      |      |      |      |      |      |      |      |      |      |

**APPENDIX C: CHART OF COUNTRIES' SPECIAL 301 PLACEMENT (1989-2012)  
AND IIPA 2013 SPECIAL 301 RECOMMENDATIONS**

| USTR 301 PLACEMENT<br>(as of April/May of each year) |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      |      |      |          |      |      |      |      |      |      |      |
|--|---|---------------------|----------|----------|-----------|-----------|-----------|-----------|-----------|----------|------|-----------|------|-----------|------|------|------|----------|------|------|------|------|------|------|------|
| COUNTRY  | IIPA<br>Recommendation<br>February 2013 | 2012                | 2011     | 2010     | 2009      | 2008      | 2007      | 2006      | 2005      | 2004     | 2003 | 2002      | 2001 | 2000      | 1999 | 1998 | 1997 | 1996     | 1995 | 1994 | 1993 | 1992 | 1991 | 1990 | 1989 |
| India  | PWL                                     | PWL                 | PWL      | PWL      | PWL       | PWL       | PWL       | PWL       | PWL       | PWL      | PWL  | PWL       | PWL  | PWL       | PWL  | PWL  | PWL  | PWL      | PWL  | PWL  | PFC  | PFC  | PFC  | PWL  | PWL  |
| Indonesia  | PWL                                     | PWL+GSP             | PWL      | PWL      | PWL       | WL        | WL        | PWL + OCR | PWL + OCR | PWL      | PWL  | PWL + OCR | PWL  | WL        | PWL  | PWL  | PWL  | PWL      | WL   | WL   | WL   | WL   | WL   | WL   | WL   |
| Ireland  |   |                     |          |          |           |           |           |           |           |          |      |           |      | WL        | WL   | WL   | WL   | OO       |      |      |      |      |      |      |      |
| Israel   | WL                                      | PWL (9/12<br>to WL) | PWL      | Pending  | PWL + OCR | PWL + OCR | PWL       | PWL       | PWL       | WL + OCR | WL   | PWL + OCR | PWL  | PWL       | PWL  | PWL  | WL   | OO       | OO   | OO   |      |      |      |      |      |
| Italy  | WL                                      | WL                  | WL + OCR | WL       | WL        | WL        | WL        | WL        | WL        | WL       | WL   | WL        | WL   | PWL + OCR | PWL  | PWL  | WL   | WL       | WL   | WL   | WL   | WL   | WL   | WL   | WL   |
| Jamaica  |   | WL                  | WL       | WL       | WL        | WL        | WL        | WL        | WL        | WL       | WL   | WL        | WL   | WL        | WL   | WL   |      |          |      |      |      |      |      |      |      |
| Japan  |   | OL <sup>3</sup>     |          |          |           |           |           |           |           |          |      |           | OCR  |           | WL   | WL   | WL   | PWL      | PWL  | PWL  | WL   | WL   | WL   | WL   | WL   |
| Jordan   |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      | WL   | WL   | WL       | OO   | OO   |      |      |      |      |      |
| Kazakhstan   | WL                                      |                     |          |          |           |           |           |           | WL        | WL       | WL   | WL        | WL   | WL        |      |      | OO   |          |      |      |      |      |      |      |      |
| Kenya  |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      |      |      |          |      |      |      |      |      |      |      |
| Kuwait   | WL                                      | WL                  | WL       | WL       | WL        | WL        | WL        | WL        | PWL       | PWL      | WL   | WL        | WL   | WL        | PWL  | PWL  | WL   | WL       | OO   |      |      |      |      |      |      |
| Kyrgyz Republic                                      |   |                     |          |          |           |           |           |           |           |          |      |           | OCR  |           |      |      |      |          |      |      |      |      |      |      |      |
| Laos   |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      |      |      |          |      |      |      |      |      |      |      |
| Latvia   |   |                     |          |          |           |           |           | WL + OCR  | WL        | WL       | WL   | WL        | WL   | WL        |      |      |      |          |      |      |      |      |      |      |      |
| Lebanon (GSP)  | WL                                      | WL                  | WL       | WL       | WL        | WL        | PWL       | PWL       | PWL       | PWL      | PWL  | PWL       | PWL  | WL        | WL   | OO   |      |          |      |      |      |      |      |      |      |
| Lithuania  |   |                     |          |          |           |           | WL        | WL        | WL        | WL       | WL   | WL        | WL   | WL        |      |      |      |          |      |      |      |      |      |      |      |
| Luxembourg   |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      |      | WL   |          |      |      |      |      |      |      |      |
| Macau  |   |                     |          |          |           |           |           |           |           |          |      |           | WL   | WL        | PWL  | PWL  |      |          |      |      |      |      |      |      |      |
| Macedonia  |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      |      |      |          |      |      |      |      |      |      |      |
| Malaysia   | SM                                      | OFF                 | WL       | WL       | WL        | WL        | WL        | WL        | WL        | WL + OCR | WL   | WL        | PWL  | PWL       | OCR  |      |      |          |      |      |      |      |      | WL   | WL   |
| Malta  | SM                                      |                     |          |          |           |           |           |           |           |          |      |           |      |           |      |      |      |          |      |      |      |      |      |      |      |
| Mexico   | WL                                      | WL                  | WL       | WL       | WL        | WL        | WL        | WL        | WL        | WL       | WL   | OCR       |      |           | WL   | OO   | OO   | OO       |      |      |      |      |      |      | PWL  |
| Moldova  | SM                                      |                     |          |          |           |           |           |           |           |          |      |           |      | WL        |      |      |      |          |      |      |      |      |      |      |      |
| Morocco  |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      |      |      |          |      |      |      |      |      |      |      |
| Netherlands  |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      | OO   |      |          |      |      |      |      |      |      |      |
| New Zealand  |   | OL <sup>3</sup>     |          |          |           |           |           |           |           |          |      | WL        | WL   |           | WL   |      |      |          |      |      |      | WL   | WL   |      |      |
| Nicaragua  |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      | OO   | OO   |          |      |      |      |      |      |      |      |
| Nigeria  |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      |      |      |          |      |      |      |      |      |      |      |
| Norway   |   | WL                  | WL       | WL       | WL        | WL        |           |           |           |          |      |           |      |           |      |      |      |          |      |      |      |      |      |      |      |
| Oman   |   |                     |          |          |           |           |           |           |           |          |      |           |      | WL        | WL   | WL   | WL   | WL       | OO   |      |      |      |      |      |      |
| Pakistan   | WL                                      | PWL                 | PWL      | PWL      | PWL       | PWL       | WL + OCR  | WL        | PWL       | PWL      | WL   | WL        | WL   | WL        | WL   | WL   | WL   | WL       | WL   | WL   | WL   | WL   | WL   | WL   | WL   |
| Palestinian Authority                                |   |                     |          |          |           |           |           |           |           |          |      |           |      | OCR       |      |      |      |          |      |      |      |      |      |      |      |
| Panama   |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      | OO   | WL   | OO       |      | OO   |      |      |      |      |      |
| Paraguay   | SM                                      | 306                 | 306      | 306      | 306       | 306       | 306       | 306       | 306       | 306      | 306  | 306       | 306  | 306       | 306  | PFC  | PWL  | WL       | OO   | OO   |      |      | WL   |      |      |
| Peru   |   | WL                  | WL       | WL       | WL        | WL        | WL        | WL        | WL        | WL       | WL   | WL        | WL   | PWL       | PWL  | WL   | WL   | WL       | WL   | WL   | WL   | WL   | WL   |      |      |
| Philippines  | SM                                      | WL                  | WL       | WL + OCR | WL + OCR  | WL + OCR  | WL        | WL        | PWL + OCR | PWL      | PWL  | PWL + OCR | PWL  | WL        | WL   | WL   | WL   | WL       | WL   | WL   | WL   | PWL  | WL   | WL   | WL   |
| Poland   |   | OL <sup>3</sup>     |          |          | WL + OCR  | WL        | WL        | WL        | WL        | WL + OCR | PWL  | WL + OCR  | WL   | PWL       | WL   | WL   | WL   | WL       | WL   | WL   | PWL  | PWL  |      |      |      |
| Portugal   |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      |      |      | OO       |      |      |      |      |      |      | WL   |
| Qatar  |   |                     |          |          |           |           |           |           |           |          |      | WL        |      | WL        | WL   | WL   | OO   | OO       | OO   |      |      |      |      |      |      |
| Romania  | WL                                      | WL                  | WL       | WL       | WL        | WL        | WL        | WL        | WL        | WL       | WL   | WL        | WL   | WL        | WL   | OO   | OO   | OO       | WL   |      |      |      |      |      |      |
| Russian Federation (GSP)                             | PWL                                     | PWL                 | PWL      | PWL      | PWL       | PWL       | PWL + OCR | PWL + GSP | PWL + OCR | PWL      | PWL  | PWL       | PWL  | PWL       | PWL  | PWL  | PWL  | WL + OCR | WL   | OO   |      |      |      |      |      |
| San Marino   |   |                     |          |          |           |           |           |           |           |          |      |           |      |           |      |      | WL   |          |      |      |      |      |      |      |      |
| Saudi Arabia   | WL                                      |                     |          |          | WL + OCR  | WL        | WL        | WL + OCR  | WL + OCR  | WL       | WL   | WL        | WL   | WL        | WL   | WL   | WL   | WL       | PWL  | PWL  | PWL  | WL   | WL   | WL   | PWL  |



**APPENDIX C: CHART OF COUNTRIES' SPECIAL 301 PLACEMENT (1989-2012)  
AND IIPA 2013 SPECIAL 301 RECOMMENDATIONS**

| USTR 301 PLACEMENT<br>(as of April/May of each year) |   |                 |      |           |      |                                |      |      |           |           |          |          |      |      |      |      |      |      |      |      |      |      |      |      |      |     |
|--|---|-----------------|------|-----------|------|--------------------------------|------|------|-----------|-----------|----------|----------|------|------|------|------|------|------|------|------|------|------|------|------|------|-----|
| COUNTRY  | IIPA<br>Recommendation<br>February 2013 | 2012            | 2011 | 2010      | 2009 | 2008                           | 2007 | 2006 | 2005      | 2004      | 2003     | 2002     | 2001 | 2000 | 1999 | 1998 | 1997 | 1996 | 1995 | 1994 | 1993 | 1992 | 1991 | 1990 | 1989 |     |
| Serbia and Montenegro                                |   |                 |      |           |      |                                |      |      |           |           |          |          |      |      |      |      |      |      |      |      |      |      | WL   | WL   | WL   |     |
| Singapore  |   |                 |      |           |      |                                |      |      |           |           |          |          |      | WL   | WL   | WL   | WL   | WL   | WL   | OO   |      |      |      |      |      |     |
| Slovak Republic                                      |   |                 |      |           |      |                                |      |      | WL        | WL        | WL       | WL       | WL   |      |      |      |      |      |      |      |      |      |      |      |      |     |
| Slovenia   |   |                 |      |           |      |                                |      |      |           |           |          |          |      | OCR  |      |      |      |      |      |      |      |      |      |      |      |     |
| South Africa   |   |                 |      |           |      |                                |      |      |           |           |          |          |      |      | WL   | WL   |      | OO   | WL   |      |      |      |      |      |      |     |
| South Korea  |   | OL <sup>3</sup> |      |           |      | WL                             | WL   | WL   | WL        | PWL       | WL + OCR | WL       | PWL  | PWL  | WL   | WL   | WL   | PWL  | PWL  | PWL  | PWL  | PWL  | WL   | WL   | PWL  |     |
| Spain  | WL                                      | OFF             | WL   | WL        | WL   | WL                             |      |      |           |           |          |          |      | WL   | WL   | OO   |      |      |      | WL   | WL   | WL   | WL   | WL   | WL   |     |
| Sri Lanka  |   |                 |      |           |      |                                |      |      |           |           |          |          |      |      |      |      |      |      |      |      |      |      |      |      |      |     |
| Sweden   |   |                 |      |           |      |                                |      |      |           |           |          |          |      |      | WL   | WL   | WL   |      |      |      |      |      |      |      |      |     |
| Switzerland  | WL                                      | OL <sup>2</sup> |      |           |      |                                |      |      |           |           |          |          |      |      |      |      |      |      |      |      |      |      |      |      |      |     |
| Taiwan   | SM                                      | OL <sup>3</sup> |      |           |      | WL (then<br>OFF due to<br>OCR) | WL   | WL   | WL        | PWL + OCR | PWL      | PWL      | PWL  | WL   | WL   |      |      |      | OO   | WL   | WL   | PWL  | PFC  | WL   | WL   | PWL |
| Tajikistan   | WL                                      | WL              | WL   | WL        | WL   | WL                             | WL   | WL   | WL        | WL        | WL       | WL       | WL   | WL   |      |      |      |      |      |      |      |      |      |      |      |     |
| Thailand   | WL+OCR                                  | PWL             | PWL  | PWL + OCR | PWL  | PWL + OCR                      | PWL  | WL   | WL        | WL        | WL       | WL + OCR | WL   | WL   | WL   | WL   | WL   | WL   | WL   | PWL  | PFC  | PFC  | PFC  | PWL  | PWL  |     |
| Trinidad & Tobago                                    |   | OL <sup>1</sup> |      |           |      |                                |      |      |           |           |          |          |      |      |      |      |      |      |      |      |      |      |      |      |      |     |
| Tunisia  |   |                 |      |           |      |                                |      |      |           |           |          |          |      |      |      | OO   |      |      |      |      |      |      |      |      |      |     |
| Turkey   | WL                                      | WL              | WL   | WL        | WL   | WL                             | PWL  | PWL  | PWL       | PWL       | WL       | WL       | WL   | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | PWL  | WL   | WL   | WL   |     |
| Turkmenistan   | WL                                      | WL              | WL   | WL        | WL   | WL                             | WL   | WL   | WL        | WL        | WL       | WL       | WL   | WL   |      |      |      |      |      |      |      |      |      |      |      |     |
| UAE  | WL                                      |                 |      |           |      |                                |      |      |           |           |          |          |      | WL   | OCR  | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   |      |     |
| Ukraine  | PFC                                     | PWL+GSP         | WL   | WL        | WL   | WL                             | PWL  | PWL  | PFC + OCR | PFC       | PFC      | PFC      | PFC  | PWL  | PWL  | WL   |      |      |      |      |      |      |      |      |      |     |
| Uruguay  |   |                 |      |           |      |                                |      |      | WL        | WL        | WL       | PWL      | PWL  | WL   | WL   | OO   | OO   |      |      |      |      |      |      |      |      |     |
| Uzbekistan (GSP)                                     | WL                                      | WL              | WL   | WL        | WL   | WL                             | WL   | WL   | WL        | WL        | WL       | WL       | WL   | WL   |      |      |      |      |      |      |      |      |      |      |      |     |
| Venezuela  |   | PWL             | PWL  | PWL       | PWL  | PWL                            | PWL  | PWL  | PWL       | WL        | WL       | WL       | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL   | WL  |
| Vietnam  | WL                                      | WL              | WL   | WL        | WL   | WL                             | WL   | WL   | WL        | WL        | WL       | WL       | WL   | WL   | WL   | WL   | WL   | OO   | OO   |      |      |      |      |      |      |     |
| Yemen  |   |                 |      |           |      |                                |      |      |           |           |          |          |      |      |      | OO   |      |      |      |      |      |      |      |      |      |     |

- PFC: Priority Foreign Country
- PWL: Priority Watch List
- WL: Watch List
- OO: Other Observations (an informal listing formerly used by USTR).
- SM: Special Mention
- OCR: Out-of-Cycle Review to be conducted by USTR
- GSP: GSP IPR review ongoing, except in Ukraine and Indonesia where GSP IPR review initiated June 2012.
- DS: Dispute Settlement
- OL: Other Listing - "Section 1. Developments in Intellectual Property Rights Protection and Enforcement"
  - <sup>1</sup> Trends in Trademark Counterfeiting and Copyright Piracy
  - <sup>2</sup> Piracy over the Internet and Digital Piracy
  - <sup>3</sup> Supporting Pharmaceutical and Medical Device Innovation through Improved Market Access
  - <sup>4</sup> WTO Dispute Settlement