

ESTONIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2013 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that the U.S. Government actively monitor developments in Estonia during 2013 with respect to the issues discussed in this Special Mention report.

Executive Summary: Several copyright industries, including in particular, the software industry, note significant enforcement problems in Estonia. According to BSA | The Software Alliance (BSA), the software piracy rate in Estonia has remained steady at about 50% for the past three years; it was 48% in 2011.² In short, IPR enforcement is not a priority of the Government of Estonia. There has been little public education on IPR protection or on the risks of liability for piracy, including unlicensed software use by enterprises. The Ministry of Justice has initiated a general decriminalization reform effort, including for offenses related to copyright infringement. There are also efforts underway to prepare a new Copyright Act, and to codify other IPR laws.

Almost 10 years ago (2004) a Memorandum of Understanding between the local anti-piracy organization (EOCP) and Estonian Internet Service Providers (ISPs) was agreed to to enable the removal of infringing materials. BSA continues to report that Internet piracy and enterprise end-user piracy remain prevalent forms of piracy harming software sales, and enforcement against them is weak, especially criminal enforcement.

There are three reasons for weak (criminal) enforcement in Estonia: (1) it is a low priority of the government; (2) a lack of resources; and (3) a lack of proper training of and competency by law enforcement authorities.

Unchanged from prior years, the Government of Estonia, and in particular, police and prosecutors, make IPR enforcement a low priority. There are virtually no *ex officio* actions commenced by the law enforcement authorities, and the cases commenced by rights holders are routinely dismissed. Those criminal proceedings that do move forward get dismissed (no “public interest”), even those with substantial monetary damages to rights holders. No more than one or two criminal cases per year go to the courts (thus the expertise of judges and prosecutors is very limited). These dismissals of criminal cases also impose added costs to rights holders who have to pay a fee in their civil cases when corresponding criminal cases are dismissed.

The police lack the resources to properly investigate and prosecute piracy. Only a few years ago, there were four or five people in specialized IP units in each of the four police prefectures in Estonia. In 2012, that number was reduced to one police officer, who also had other (non-IPR) duties as well. As a result, investigations of IPR crimes can take years, with many cases ending due to the expiration of legal timelines. This is true even for cases where the collection of evidence is not complicated. Additionally, the police do not routinely seize illegal materials, allowing infringers to continue their activities unabated.

¹For more details on Estonia'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>.

²BSA | 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 Estonia was 48%, representing a commercial value of unlicensed software of US\$25 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 notebooks. 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>.



Last, there is a lack of progress on copyright cases due to unfamiliarity on the part of law enforcement authorities, even though anti-piracy organizations have offered many training programs (in fact, some of the police training facilities do not offer IPR enforcement training as a part of their regular programs).

Civil IPR enforcement is also weak due to a number of procedural and statutory hurdles. Civil procedures are complicated, costly, and often entail unreasonable time limits and unwarranted delays (Code of Civil Procedure, 2006). The burden of proof for rights holders is very high, and there are no punitive or preventative damages in the Estonian IPR laws. As a result, infringers are usually only obligated to pay what a licensing fee would have been for the use of a work, providing little disincentive to infringement.