

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE



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October 17, 1997

Michael Koplovsky
Director of Mexican Affairs
Office of the Western Hemisphere
Office of the U.S. Trade Representative
600 17th Street NW, Room 522
Washington, DC 20506

Re: Request for Comments on the Report on the
Andean Trade Preference Act, 62 Fed. Reg.
46792 (Sept. 4, 1997)

Dear Mr. Koplovsky:

The International Intellectual Property Alliance (IIPA) takes this opportunity to respond to the Trade Policy Staff Committee's request for comments regarding the Report on the Andean Trade Preference Act (ATPA) which President Clinton must submit to Congress before the sixth anniversary of the date of enactment of the ATPA, December 4, 1997.

The ATPA requires that beneficiary countries provide "adequate and effective" copyright protection and enforcement in order to qualify for, and to remain eligible to receive, preferential duty treatment. This submission will review the status of copyright protection and enforcement in each of the four ATPA countries – Bolivia, Colombia, Ecuador and Peru.

The IIPA

The International Intellectual Property Alliance (IIPA) is a coalition of seven associations representing U.S. copyright-based industries in bilateral and multilateral efforts to open up foreign markets closed by piracy and market access barriers. Our member associations represent more



Association of American
Publishers, Inc.



Business Software
Alliance



Interactive Digital
Software Association



Motion Picture Association
of America, Inc.



National Music Publishers'
Association, Inc.



Recording Industry
Association of America, Inc.

than 1,350 U.S. companies which produce and distribute materials protected by copyright laws throughout the world, including all types of computer software including business software and entertainment software (such as videogame CDs and cartridges, personal computer CDs and multimedia products); motion pictures, television programs and home videocassettes; music, records, CDs and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media). In short, these industries represent the leading edge of the world's high technology, entertainment and publishing industries and are among the fastest growing and largest segments of the U.S. economy.¹

The ATPA and Copyright Protection

The development of the "Andean Regional Trade Initiative" began in late 1989 and was aimed at expanding economic trade, supporting economic reform and developing alternatives to the drug problems in the Andean region. As part of this initiative, a preferential tariff program for certain products was developed. The Andean Trade Preference Act² contains provisions for the protection of intellectual property rights similar to those in the Caribbean Basin Initiative³ and the Generalized System of Preferences.⁴ Bolivia and Colombia became eligible to receive ATPA preferential duty treatment on July 2, 1992, Ecuador on April 13, 1993, and Peru on August 11, 1993.

The value of ATPA preferences to beneficiary countries has increased substantially in recent years, as reflected in U.S. Department of Commerce reports. In 1994, \$683.8 million in products entering the U.S. from these four countries received ATPA preferential duty treatment. That number jumped to \$938.7 million in 1995, and \$1.27 billion in 1996. Over the years, duty-free trade benefits have been shifting from the GSP program toward the ATPA program; GSP benefits dropped 57% between 1995 and 1996.

¹ In a report released in March 1997 entitled Copyright Industries in the U.S. Economy: The 1996 Report which was prepared for IIPA by Economists Incorporated, we outlined the importance of these industries to the U.S. economy. For example: the core copyright industries accounted for 3.78% of U.S. Gross Domestic Product (GDP) or \$254.6 billion in value added in 1994 (the year for which the more recent data was available) between 1987 and 1994 the core copyright industries grew twice as fast as the rest of the U.S. economy -- 4.6% vs. 2.3%; and created new jobs in the U.S. more than twice as fast as the economy as a whole between 1987 and 1994 -- 2.85% vs. 1.25%. In 1995, the U.S. core copyright industries achieved foreign sales and exports of \$53.25 billion, surpassing every other export sector except automotive and agriculture.

² Andean Trade Preferences Act of 1990, Pub. L. No. 102-182 (codified at 19 U.S.C. § 3201 et seq.).

³ The Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, Section 212 (codified at 19 U.S.C. § 2701 et seq.) (This act is commonly referred to as the Caribbean Basin Initiative).

⁴ See the Generalized System of Preferences Renewal Act of 1984, Pub. L. No. 98-573, as amended (codified at 19 U.S.C. § 2462(c)).

<u>COUNTRY</u>	<u>ATPA 1996</u>	<u>ATPA 1995</u>	<u>GSP 1996</u>	<u>GSP 1995</u>
Bolivia	\$105,791,000	\$84,100,000	\$2,445,712	\$15,470,503
Colombia	560,546,000	499,262,000	45,536,109	75,712,596
Ecuador	218,419,000	147,859,000	17,837,174	23,125,184
Peru	385,296,000	207,569,000	64,778,469	113,907,681
TOTAL	\$1,270,054,000	\$938,789,000	\$130,597,464	\$228,215,964

Like the CBI, the ATPA contains two mandatory criteria in Section 3202(c)(5) which state that the President shall not designate a country as an ATPA beneficiary country

if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to the United States copyright owners without their express consent or such country fails to work toward the provision of adequate and effective protection of intellectual property rights.

19 U.S.C. § 3202(c)(5). In addition, in determining whether to designate a country as a beneficiary country, the President shall take into account the following discretionary criteria:

the extent to which such country provides under its law adequate and effective means for foreign national to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark and copyright rights;

the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television materials, belonging to United States copyright owners without their express consent;...

19 U.S.C. §§ 3202(d)(9) and 3202(d)(10).

The leverage provided by the prospect of the U.S. halting or limiting ATPA privileges to those beneficiary countries which refuse to stop illegal piracy or provide equitable and reasonable market access to U.S. copyrighted products and services is important to achieve the goals of this program. Under the ATPA, the President has the authority to

(A) withdraw or suspend the designation of any country as a beneficiary country, or

(B) withdraw, suspend, or limit the application of duty-free treatment under this chapter to any article of any country, if, after such designation, the President determines that as a result of changed circumstances such a country should be barred from designation as a beneficiary country.

19 U.S.C. §3202(e)..⁵ To date, such ATPA leverage has not been used in the realm of intellectual property rights.

Impact on U.S. Copyright Industries due to Piracy in ATPA Countries

Copyright piracy – the theft of copyrighted materials – remains a major problem in the Andean region. IIPA estimates that trade losses due to copyright piracy in 1996 were at least \$184 million in three ATPA eligible countries:

	(in millions \$)					
	Motion Pictures	Records & Music	Business Software	Entertainment Software	Books	Total \$
Bolivia:	2.0	15.0	3.0	3.9	5.0	28.9
Colombia:	27.0	18.0	74.3	6.8	5.0	131.1
Ecuador:	n/a	10.0	11.2	n/a	3.0	24.2
Peru:	1996 estimates not available (1995 estimated losses were \$74 million, see below)					
TOTAL:	29.0	43.0	88.5	10.7	13.0	184.2

The following summary and attachments provide an overview of the status of copyright protection and enforcement in the ATPA beneficiary countries. The attachments are three country reports on Bolivia, Colombia, and Ecuador, excerpted from IIPA's February 1997 Special 301 submission to USTR.

With regard to Ecuador: at the time of this report's submission, the Clinton Administration was still considering whether to file a WTO dispute settlement case against Ecuador for its failure to timely fulfill the obligations it made in its Accession Protocol under which it became a WTO Member on January 21, 1996. IIPA has recommended that USTR file a WTO case in order to hold Ecuador strictly accountable to its WTO obligations, specifically those contained in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). However, we note that, consistent with the WTO Agreement, Ecuador's ATPA benefits can be withdrawn or suspended without regard to the filing of a WTO case against it or a ruling adverse to Ecuador from a WTO dispute settlement panel.

As for Peru, IIPA did not file a Special 301 submission on this country in February 1997. Enforcement efforts by the Peruvian quasi-government entity known as "INDECOPI," have begun. Copyright piracy continues to be a problem in Peru (see the kinds of copyright piracy problems summarized below). There has been some recent concern that appellate review by INDECOPI tribunals has reflected a lessening of attention to IPR cases. Representatives of the copyright and patent industries, along with officials from the Federal Bureau of Investigation and

⁵ IIPA notes that the ATPA, like the CBI (but unlike the GSP program), does not by statute provide for any specific procedures for the Executive Branch to receive and act upon petitions from the public to withdraw or suspend ATPA beneficiary status or product eligibility.

the State Department, took part in a copyright enforcement seminar co-sponsored by the U.S. Embassy which was held in Lima in July 1997. Estimated losses for all industries in 1996 are not available; estimated trade losses for 1995 follow:

<u>INDUSTRY</u>	<u>EST. 1995 LOSSES</u>	<u>LEVEL OF PIRACY</u>
Motion pictures	\$ 4.0 million	95% ⁶
Records & music	\$16.0 million	83%
Business applications software	\$30.0 million	84%
Entertainment (videogame) software	\$15.0 million	76%
Book publishing	\$ 9.0 million	n/a

TOTAL Estimated Losses for 1995 \$ 74.0 million

Below is a discussion of copyright piracy and enforcement issues which fall within the ATPA IPR criteria, including that of providing “adequate and effective” protection and the extent of unauthorized broadcast of U.S. copyrighted material.

Motion Picture: Broadcast, Cable and Video Piracy

The unauthorized reception and retransmission of U.S. domestic satellite signal containing copyrighted programming is a key concern in the Andean region. Without authorization from copyright owners, cable system operators, hotel, resorts, bars and homeowners have erected satellite dishes to intercept programming intended for reception within the U.S. This signal theft also hurts the business of theatrical exhibition of motion pictures, and retards the development of a legitimated home video market. In the realm of cable television, there is a proliferation of gray market signal decoders which is seriously damaging the legitimate cable TV industry, particularly in Colombia.

Computer Software: End-user, Hard-disk loading and Retail Piracy

The five principal forms of piracy involving business software generally include counterfeiters, resellers, mail order houses, bulletin boards, and end-user piracy. The greatest threat comes from end-user piracy, where typically a corporate or institutional user copies software onto the hard disk of many more computers than the number authorized. End-user piracy occur in government, educational and business enterprises throughout the region.

The Business Software Alliance (BSA), an IIPA member, released in May 1997 a study on Latin America which was produced in concert with Price Waterhouse. This study on the packaged software industry, covering 15 Latin American and Caribbean countries,⁷ found:

⁶ Video piracy levels dropped to 60% in 1996.

⁷ The BSA study included data collected from three ATPA-eligible countries: Colombia, Ecuador and Peru. The other countries were Argentina, Brazil, Chile, Costa Rica, Guatemala, Jamaica, Mexico, Panama, Puerto Rico, Trinidad and Tobago, Uruguay and Venezuela.

-- If the level of software piracy in the region (which averaged 68% in 1996) were 15% lower, an additional 29,557 jobs and an additional \$300 million in tax revenue for the local countries could have been generated last year alone.

-- By the year 2000, if illegal copying were 15% lower than in 1996, the software industry could account for a total of 275,181 more jobs and over \$4.86 billion in tax revenue.

If these figures, which cover only part of one copyright-based industry – software – were expanded to cover the entire copyright-based sector, the costs of piracy in lost revenue and foregone jobs would be substantially larger.

Recording and Music Piracy

Recording and music piracy in this region is predominately audiocassette piracy. However, there have been major increases in CD piracy reported. In addition to ongoing efforts to conduct anti-piracy actions against distributors and producers of pirated materials, the industry has identified the need for the Andean countries to significantly improve their border control measures in order to suppress the traffic in pirate recordings within the region..

Entertainment Software Piracy

The U.S. entertainment software industry suffers from poor enforcement against piracy in the Andean countries. Many of these countries serve as major market for pirated interactive entertainment CD-ROMS and cartridges which are shipped from Paraguay by Chinese manufacturers, many of whom have Taiwan connections. In fact, pirate cartridge plants that have been evicted from Panama and then from Paraguay are now reportedly established in Colombia.

In addition to copyright concerns, IDSA and its members have also experienced difficulties regarding trademark issues in the Andean region. Decision 344 of the Andean Pact details the minimum standards for trademark registration and what level of protection such a registration affords companies in the member states. Each member state applies its own procedural regulations for implementing Decision 344. Due to delays in publication and political and economic factors, the time required to obtain registration of a trademark (if no oppositions are filed) varies widely from country to country. It may take as little as four months (in Peru), or as much as a few years (in Venezuela – an Andean country which is not an ATPA beneficiary), depending on the current situation in each country at any particular moment. IDSA will continue to work with Andean countries and the U.S. Government to achieve relief on these complex trademark issues.

Book Publishing: Unauthorized Photocopying

The primary forms of piracy afflicting the U.S. book publishing industry in the region are unauthorized photocopying and commercial piracy. Photocopy shops near universities often fill requests for illegal reproductions of entire books, as well as chapters of books.

Conclusion

We appreciate USTR's consideration of this important matter to the U.S. creative industries. We look forward to working with USTR and other agencies to increase the effectiveness of this trade policy tool to address the legislative copyright deficiencies and inadequate enforcement that characterize these ATPA-eligible countries.

Sincerely,

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Vice President and General Counsel
International Intellectual Property Alliance

Maria Strong
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International Intellectual Property Alliance

cc: Peter Allgeier
Joe Papovich
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