

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE



1747 PENNSYLVANIA AVENUE, NW • SUITE 825 • WASHINGTON, DC • 20006-4637 • TEL (202) 833-4198 • FAX (202) 872-0546 • WWW.IIPA.COM • EMAIL: INFO@IIPA.COM

October 1, 2003

Via electronic submission: fr0090@ustr.gov

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
1724 F Street, NW
Washington, DC 20508

Re: Dominican Republic FTA: Notice of
Intent to Testify and Written Testimony for
Public Hearing Concerning the Proposed U.S.-
Dominican Republic Free Trade Negotiations, 68
Fed. Reg. 51823 (Aug. 28, 2003)

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) hereby submits this Notice of Intent to Testify at the October 8, 2003 public hearing on the proposed U.S.-Dominican Republic Free Trade Agreement.

The IIPA witness will be: Maria Strong, Vice President and General Counsel, International Intellectual Property Alliance, 1747 Pennsylvania Avenue, NW, Suite 825, Washington, DC 20006, Tel: (202) 833-4198; Fax: (202) 872-0546; Email: mstrong@iipa.com.

IIPA's testimony will focus on copyright piracy and ineffective enforcement in the Dominican Republic, including a description of the copyright issues which the GSP Subcommittee is currently investigating in its review of the Dominican Republic's IPR practices.

Thank you.

Respectfully submitted,

Maria Strong
Vice President and General Counsel
International Intellectual Property Alliance



**Testimony of the
INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE
on the Free Trade Agreement with the Dominican Republic
Before the Trade Policy Staff Committee
Submitted on October 1, 2003
Hearing Scheduled for October 8, 2003**

My name is Maria Strong, and I am Vice President and General Counsel of the International Intellectual Property Alliance, (IIPA). I am pleased to have this opportunity to share with you the perspectives of the U.S. copyright industries on the piracy and enforcement situation in the Dominican Republic, and how that situation relates to the Dominican Republic's current bilateral obligations as well as any future obligations under a U.S.-Dominican Republic Free Trade Agreement.

About the IIPA

The IIPA is a coalition of six trade associations¹ representing the copyright industries, which now contribute well over 5% to the total U.S. economy.² IIPA's members produce the nation's books, recorded music, films, videos and TV programming, and computer software for business and entertainment uses. Since 1984, this diverse range of industries has worked together, individually and under the IIPA umbrella, to strengthen the copyright laws and enforcement regimes in over 100 countries around the world.

No FTA Until Copyright Problems Solved

With the announcement of the Dominican Republic's FTA negotiations, IIPA and its members understand that the government of the Dominican Republic has a renewed sense of urgency to resolve the longstanding problems of widespread copyright piracy and ineffective enforcement. However, IIPA believes that until the government of the Dominican Republic acts swiftly and effectively to significantly reduce the piracy levels, including halting broadcast piracy and significantly improving its prosecutorial and judicial results in criminal copyright cases, the reward of extending the Dominican Republic with additional trade concessions – such as this FTA, or docking to the CA-FTA, as it might be called – should be withheld.

Failure to Afford Adequate and Effective Copyright Protection and Enforcement

¹ IIPA's members represent over 1,300 U.S. companies.

² *Copyright Industries in the U.S. Economy: the 2002 Report* (2002) was prepared for the IIPA by Economists, Inc., and is available at http://www.iipa.com/copyright_us_economy.html.

Criminal and administrative copyright enforcement efforts by Dominican Republic authorities to-date have failed to deter piracy and protect U.S. copyright owners. There are several U.S. trade laws and leverage points which require the Dominican Republic to provide adequate and effective copyright protection and enforcement.

First, there are the trade programs with IPR obligations – specifically, the Generalized System of Preferences and the Caribbean Basin Initiative. In 1999, the IIPA filed a petition with the U.S. government to initiate a review under both the GSP and the CBI trade programs against the Dominican Republic to its failures to provide adequate effective copyright protection for U.S. copyright owners and to provide equitable and reasonable market access under those programs. IIPA testified in 2000 and again yesterday (October 8, 2003) before the interagency’s GSP Subcommittee regarding its GSP IPR review. Given that the U.S. government itself has undertaken a trade review of the DR’s IPR practices, now is the best time – or rather, the last chance – for the Dominican Republic to tackle and solve the piracy problem in its country.

Second, U.S. Congress amended the intellectual property rights (IPR) criteria in the CBI in the U.S.-Caribbean Trade Partnership Act, heightening the levels of copyright protection and enforcement expected from our trading partners. Last week the IIPA submitted our comments to the TPSC in its annual review of the CBI and CBTPA.³ Despite its poor enforcement record, the Dominican Republic was deemed eligible to reap the benefits of enhanced trade preferences available in the CBTPA.

Third, Congress has identified principal negotiating objectives for IPR under Trade Promotion Authority. The IPR chapter in the Central American FTA will contain high levels of both substantive copyright protection as well as enforcement measures which the Dominican Republic will have to adhere. Having laws on the books is not enough. For the copyright industries, weak, non-deterrent enforcement performance currently fails to meet the TPA objectives. The time for the government of Dominican Republic to resolve its poor copyright enforcement is long overdue.

Piracy and Ineffective Copyright Enforcement in the Dominican Republic

Let’s summarize the copyright industries’ major enforcement-related concerns in the Dominican Republic. In 2002, our industries lost an estimated about \$13.5 million due to copyright piracy,⁴ and approximately \$75 million over the last five years (1998-2002).

Broadcast piracy in the Dominican Republic remains the worst in the entire hemisphere. Truth be told, broadcast piracy has been a serious one for almost two decades, with the then-new CBI program prompting the D.R. to amend its copyright law back in 1987. My colleague, Brendan Hudson from the Motion Picture Association of America, will appear before you to testify about his industry’s experiences. In brief, the administrative authorities (including the Copyright Office--ONDA, and the

³ The IPR provisions in the Caribbean Basin Initiative (CBI), as amended by the U.S.-Caribbean Basin Trade Partnership Act (CBTPA), as well as surrounding legislative history, outline very high standards/criteria for copyright protection and enforcement. See 19 U.S.C. §§2702 *et seq.* For a more detailed discussion of the CBI’s enhanced IPR standards, see IIPA’s submission to the Trade Policy Staff Committee on its annual review on the CBI Report (filed September 30, 2003), available at http://www.iipa.com/rbi/2003_Sep30_CBERA_TPSC.pdf.

⁴ Here is the industry sector breakdown of the \$13.5 million for 2002 in the Dominican Republic: motion pictures -- \$2.0 million with 60% piracy; records and music --\$6.9 million with 65% piracy; business software -- \$3.6 million with 61% piracy; book publishing --\$1 million. See IIPA’s regional chart of piracy losses (2001-2002), posted at http://www.iipa.com/pdf/2003_June_Americas_LossUpd.pdf.

telecommunications authority--INDOTEL) have met with difficulty in taking actions against the larger television broadcast stations because of their political importance to the government. A series of inspections of broadcast stations was conducted in April and in August 2003. So far, sixteen (16) criminal complaints have been filed. The first criminal hearing against one of the larger broadcast stations was postponed until October 2003, and meanwhile, this station continues to steal U.S. programming.

The recording industry continues to experience severe enforcement roadblocks, primarily at the judicial level. So far, 70 criminal cases for copyright infringement of sound recordings brought were pending trial in August 2003. Since 1999, the RIAA has been successful in obtaining only 16 prosecutions, including prison sentences, with court fines and restitution in the amount of US\$122,000. All these adjudicated cases are on appeal, with no appellate review dates set. RIAA also had encountered problems with on-the-ground enforcement; ONDA reduced its music-related operations by 227% in 2002. As a result, RIAA has been working with ADOPROFONO, a local group of music labels brought together as a coalition, to tackle piracy in-country. This coalition has conducted actions resulting in the seizures of over 400,000 pirate CDs and audiocassettes.

The business software industry has reported some enforcement successes in the Dominican Republic, but piracy levels of its copyrighted works remain high. BSA runs a campaign involving criminal actions, administrative actions as well as civil actions. With respect to criminal/administrative actions this year, BSA reports it continues to be able to work very effectively with ONDA and the Fiscalia. Since the beginning of 2003, ONDA has been proactive in performing inspections of companies, not only in Santo Domingo but also in other cities.

Copyright Law and Regulations: Recent Schenanigans

IIPA has acknowledged that copyright legislative advances in the Dominican Republic were accomplished, due in part to the pressure of the GSP review. The Dominican Republic adopted a new copyright law in October 2000 (Law 65-00), fulfilling many years of effort to replace its inadequate 1986 copyright law.

However, much to everyone's surprise and dismay, this summer the Ministry of Culture issued, without warning, a series of resolutions to the copyright law on/about July 11, 2003 (Resolutions 4-03, 5-03, 6-03, 7-03). In particular, two of the more egregious provisions disallowed motion picture studios from determining their own method of distribution and eliminated the Copyright Office's (ONDA) ability to independently investigate, on an *ex officio* basis, copyright violations of audio-visual works (thus administratively weakening the 2000 Copyright Law itself). All the copyright industries were very concerned about the July 2003 regulations and the adverse precedent they would have to undermine enforcement actions.

Only after much bilateral engagement, the Ministry of Culture recanted and revised its July 2003 regulations in August 2003 (Resolution No. 9-03) to correct the two most glaring problems: that the motion picture studios were not considered copyright holders (thus greatly interfering with their ability to take anti-piracy actions) and that ONDA lost its *ex officio* inspection authority. Our industries are not reassured by this non-transparent regulatory action which threatened the very basic elements of copyright enforcement.

Recent Structural Actions Aimed at Addressing Enforcement Problems

Let's turn to several actions the government has taken to improve structural measures regarding enforcement. Note that all three involve very recent actions and we cannot at this time comment on their effectiveness in-practice.

First, the Congress passed a new Criminal Procedure Code in July 2002 which continues to allow ONDA and the Fiscalía to conduct *ex officio* actions; this law will enter into effect in August 2004. Both ONDA's and the Fiscalía's disposition to act on an *ex officio* basis has been good. That effort, however, is stopped by upper-level officials when it touches larger, more politically-connected violators (which has happened in broadcast piracy cases)

Second, a new specialized IPR prosecutor with nationwide authority was appointed in the summer of 2003. This prosecutor will be in charge of IPR, E-commerce and telecommunications prosecutions. Creation of a nationwide IPR prosecutor has been high on the copyright industries' wish-list for years.

Third, we understand that INDOTEL is examining possibilities under its own legislation and regulations in order to strengthen its actions against those broadcast stations and cable companies which are infringing copyrights.

Conclusion

Thank you for giving us the opportunity to share the copyright industries' experiences regarding our ongoing problems with copyright piracy and inadequate and ineffective enforcement in the Dominican Republic, and the urgency we place on resolving these problems, once and for all, before a bilateral FTA is completed with the Dominican Republic.

The bottom line is that the copyright industries are looking for tangible, sustained and deterrence enforcement against the theft of our creative products in the Dominican Republic. The U.S. government believes there is a problem and has been reviewing the situation for four years. The Dominican Republic receives a lot of preferential trade benefits while, at the same time, its ineffective enforcement measures permit our industries' creative materials to be stolen, without deterrence.

Until the government of the Dominican Republic acts swiftly and effectively to reduce the piracy levels, including halting broadcast piracy, and to improve the deterrent effect of its administrative and criminal actions (from inspection to judicial decision), the reward of extending the Dominican Republic with additional trade concessions – such as this FTA – should be withheld.