



October 15, 2007

By E-MAIL to fr0606@ustr.eop.gov

Jennifer Choe Groves
Director for Intellectual Property and Innovation
Office of the U.S. Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: **Brazil: Special 301 Out-Of-Cycle Review**
IIPA Comments on Copyright Protection and Enforcement
72 Fed. Reg. 51266 (September 6, 2007)

Dear Ms. Groves:

This submission by the International Intellectual Property Alliance (IIPA) responds to the Special 301 Committee's request for comments on regarding its Out-of-Cycle Review of Brazil's "acts, policies, and practices regarding the adequacy and effectiveness of intellectual property protection." IIPA makes no recommendation as to any change in Brazil's status under Special 301 as a result of this review.

Interest of the IIPA

The International Intellectual Property Alliance is a coalition formed in 1984 to represent the U.S. copyright-based industries in efforts to improve international protection of copyrighted materials. IIPA's seven members (see below) represent a significant segment of the U.S. copyright community, including over 1,900 companies producing and distributing: computer software including business applications software and entertainment software; theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals. Several of the IIPA member trade associations have established anti-piracy campaigns in Brazil, many of which coordinate with local Brazilian interests, in recognition of the fact that Brazil represents the first or second most important commercial market in Latin America.

Special 301 Out-of-Cycle-Review in 2007

In February 2007, IIPA submitted a comprehensive review of copyright protection in Brazil in its Special 301 submission, recommending that Brazil be lowered to the Special 301 Watch List this year.¹ IIPA's 2007 Special 301 report contained a detailed list of recommended actions for the Brazilian government to take to continue to improve and strengthen its copyright-related laws and enforcement results. On April 27, 2007, USTR placed Brazil on the Watch List, and added this Out-Of-Cycle Review.

Since the April 2007 Special 301 decision on Brazil, the copyright industry sectors have continued their work in-country to promote improved enforcement actions and legislative passage of key bills which would strengthen enforcement procedures.

In sum, while IIPA and its members can report that Brazilian authorities have conducted a significant number of raids with accompanying seizures of pirated products, there has not seen a corresponding drop in the availability of pirated goods in the Brazilian market. Piracy remains prevalent at the same hot spot locations due to the failure to prosecute and hold offending parties accountable. The recording industry does perceive an important decrease of pirate product in some key markets but, unfortunately, some of the physical piracy has been replaced by illegal online exchange of songs.

Good cooperation with copyright industries exists within the CNCP (National Council to Combat Piracy and Intellectual Property) on work plan prioritization and operational matters. IIPA and its members has also witnessed increasing cooperation between federal and state authorities, although the authorities should, in IIPA's view, encourage more states to coordinate more closely on operational matters.

Below we highlight several, illustrative areas of immediate concern. Specifically, IIPA recommends that USTR encourage Brazilian authorities to undertake: (1) enhanced enforcement, (2) improved forensic analysis, and (3) continued cooperation with the CNCP.

A. Enforcement

IIPA has recognized Brazil for making improvements in recent years, in particular as marked in the authorities' taking raids against suspected infringers. However, IIPA believes the authorities have not pursued criminal prosecutions based on those raids sufficiently vigorously to deter piracy, and specifically nor applied criminal sentences sufficient to deter piracy. Nevertheless, Brazil appears on the proper path toward achieving tangible enforcement results in the following areas:

1. Increase anti-piracy raids at well-known retail marketplaces. Although there has been a good level of enforcement activity in many parts of Sao Paulo, Rio de Janeiro and other parts of Brazil, the entertainment software industry reports that the First Police Station of DEIC (1a. DIG/DEIC) in Sao Paulo has been very inactive in addressing the traffic in pirated products in its district. Since early 2007, the 1a. DIG/DEIC has executed only one raid on a pirate hot spot. This stands in contrast with the activity levels of 1a. SIG CENTRO, the other police station in downtown Sao Paulo which has been more active in its enforcement activities. It would also be helpful if the reports following police raids provided more detailed information as to the nature of the products seized at the raids. In addition to regular raids at these marketplaces, enforcement officials should also conduct investigations into the distributors/suppliers to the retail markets.

The joint anti-piracy unit formed by film industry (MPA) and the recording industry (IFPI, through APCM) report year-to-date seizures of about 23 million units of CD-Rs and DVD-Rs as a result of carrying out 2,000 raids. In addition, 112 people were detained because of those raids. Among the notable actions were two raids this year against an infamous pirate center called Stand Center in downtown Sao Paulo.

2. Improve actions against internet piracy: First, it is important that Brazilian officials to conduct more *ex officio* actions on facilities that knowingly offer public access to unauthorized peer-to-peer file-sharing programs and in particular with respect to those locations that facilitate or enable unauthorized

transactions by providing the materials required for downloads, such as blank CD-Rs. This effort also should include more raids on Cybercafés and LAN houses (where much illegal downloading of copyrighted content takes place). The recording industry reports that it saw some limited action in the area of cybercafés. Twenty four(24) locations were raided this year mostly in Sao Paulo; many more actions need to be done to serve as a real deterrent.

Second, IIPA urges the government to support the creation of a Special Unit at the Federal Police. Federal police activities against internet piracy, such as Operation I-commerce, were successful, resulting in several arrests and positive press and public awareness messages. IIPA believes that if this kind of activity were made more regular and permanent, it would be more effective.

3. Take more enforcement actions at the Brazil-Paraguay border, both on-land and on-water. Such initiatives should include the following two areas. First, improved monitoring the entrance of blank media at the borders, including identifying the key importers. According to the official statistics available at the MDIC website, Brazil legally imported more than 500 million blank CD-Rs and 130 million blank DVD-Rs, with 70% of this product coming from either Taiwan or Hong Kong, entering through the ports of Vitoria and Santos. Furthermore, the recording industry suspects that a sizable amount of blank media is entering through the port of Victoria needs to be observed for potential contraband. The product may also be coming in undervalued as a way to reduce import duties.

Second, the authorities should devote more resources at the key border crossings. The presence of Brazilian customs authorities at the border has been helpful, even though pirates are changing delivery routes. River operations have increased in the Parana river around Ciudad del Este and Foz de Iguazu as a reaction to increased smuggling activities. However, the police are still undermanned in relation to the level of smuggling taking place. Brazil is in the process of creating a separate enforcement unit to address this problem. In addition, while Federal Revenue has prepared and distributed monthly reports on its seizures at the Paraguayan border, it would be helpful if these reports could provide more detail on seized products, such as differentiating game software from business software.

4. Continue to encourage the establishment and formation of joint state and municipal anti-piracy IPR task forces which focus on priority locations. There is a recently created Special IP Unit in Bahia. The Special Units in São Paulo and Rio are working well, despite the enormous amount of work. Some municipalities, such as São Paulo, have started an initiative to clean up some downtown areas, primarily to fight drugs but this has also helped in the anti-piracy effort. This kind of initiative should be reinforced and supported.

Also of note, on September 20, 2007, Brazilian authorities, in conjunction with various industries, including the APCM (Associação Anti-pirateria de Cinema e Musica), IFPI Latin America, MPA Latin America, and ABES (Associação Brasileira das Empresas de Software, which is co-sponsored in anti-piracy activities by the Entertainment Software Association and the Business Software Alliance), formally launched the “Pirate Free Campaign” in the city of Blumenau, in the state of Santa Catarina. This is the first such official campaign launched in Brazil under the auspices of both the state, federal and local governments. Blumenau was selected as a model city for this campaign based on its economy, the political commitment of its locally elected leaders to combat piracy and the excellent cooperation between state and federal officials in conducting IPR operations.

IIPA recommends that the Brazilian authorities conduct more model campaigns against piracy.

5. Conduct effective enforcement actions against copyshops, located both inside and outside university campuses that make illegal copies of books and related teachers' notes, and engage university administrations in efforts to encourage use of legitimate materials on campuses. In particular, the State of São Paulo University should reverse its administrative rule which allows widespread reprographic copying of portions of books by commercial, for-profit copy centers. In addition, the Catholic University of São Paulo (PUC-SP) also issued an administrative rule very similar to the administrative rule of the State of São Paulo University (which is still in force) and all efforts are welcome to pressure PUC-SP to revoke such administrative rule.

Furthermore, the publishing industry reports that the local (state and municipal) and federal governments have not taken any actions against illegal book photocopies made by copyshops. ABDR (Associação Brasileira de Direitos Reprográficos) was one of the member of the private sector of the CNCP from August 2004 to August 2007 and was managed to pass in the national program on piracy fighting, of which 3 of the 99 action involves book piracy and the means to fight it. The Ministries of Education and Justice should take specific actions to halt book piracy in Brazil.

B. Forensic work in criminal cases

To improve the efficiency of criminal copyright prosecutions, IIPA strongly recommends that the authorities improve the processes for examining suspected infringing materials. To this end, government experts examining suspected pirated materials (*peritos dos Institutos de Criminalísticas*) should rest exclusively with the local Specialized Police such as the DRCPIM in Rio de Janeiro, the Delegacia de Propriedade Imaterial do DEIC in São Paulo, and Defraudações in Brasília. The goal is for all reports to be prepared expeditiously for prosecutors after the suspected goods are seized.

An important and unprecedented example of this cooperation occurred recently on October 1, 2007 when the Police Chief of the Specialized Delegation (1a. SIG/CENTRO), Dr. Fernando Shimidt de Paula, requested an expert from the Criminalistic Institute of São Paulo to accompany an operation executed (with ABES logistic support), in downtown São Paulo, at Santa Efigênia Street. Since the expert was able to certify the illegality of the seized software CDs at the time of the seizure, it was possible for the Police Chief to order the arrest and imprisonment of those responsible for the seized product. In addition, immediate certification of the illegal activity makes it more difficult for defendants' attorneys to obtain their release from prison. During the above mentioned operation, three people were arrested in "flagrante delicto" and 11,814 pirated CDs were seized.

C. Continue to improve CNCP coordination and results, including legislation

The CNCP has proved to be a major contributor in elevating the priority of anti-piracy work among Brazilian officials and enforcement agents.

Legislatively, the CNCP (and the Brazilian executive and Congress, for that matter) should support and adopt pending legislation aimed at strengthening existing laws to provide improved enforcement, such as: increasing penalties to remove lower and alternative sanctions; extend minimal jail sanctions in the Software Law; allow criminal judges to appoint private sector experts; allow destruction of infringing products before final court decision; and facilitate forensic reviews by permitting sampling evidence.

Given that internet piracy is growing in Brazil, now is the opportune time for the CNCP to add internet piracy enforcement to its agenda. IIPA and its members suggest that this issue be added, and that

all rights holders participate in the further development of this issue under CNCP auspices. For example, over 1 billion songs are being exchanged illegally in Brazil, and this issue of widespread online piracy must be addressed.


On the administrative front, the CNCP recently renewed, on August 21, 2007, the composition of the Council, including the participation of the private sector representatives. As the leadership in the CNCP changed late last year, there was a transition period in which industry groups were concerned that there may have been a lack of direction by CNCP leadership. However, with the re-authorization of the CNCP members, the industries' concerns have been alleviated and it is expected that the CNCP will continue an aggressive anti-piracy program. In addition to the initial CNCP meeting, a second meeting took place on September 3, 2007, and another one is planned for October 19, 2007.

Conclusion

IIPA and its members appreciate the opportunity to contribute to this review. We strongly support continued bilateral engagement on copyright-related matters, and appreciate the efforts undertaken by both governments in this regard. IIPA also notes that the Brazilian government should be encouraged to address existing market access impediments (such as high tariffs and taxes) which only contribute to the piracy problem as rights holders' efforts in developing a legitimate market presence are severely hampered.

In sum, in recognition of the continuing progress made by Brazil on the copyright front, IIPA recommends that Brazil's status on the Special 301 Watch List remain unchanged.

Respectfully submitted,



Maria Strong
for the International Intellectual Property Alliance

¹ IIPA's 2007 Special 301 submission on Brazil is posted at <http://www.iipa.com/rbc/2007/2007SPEC301BRAZIL.pdf>. IIPA's comments also contained very specific suggested actions to improve enforcement and adopt pending legislation which would include enforcement efforts. For the record, IIPA continues to believe all those points remain a viable course of recommended action for Brazil, in all bilateral contexts (e.g. Special 301, the Bilateral Consultative Mechanism, etc.).