



April 2, 2009

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2008 GSP Annual Review – Case: 009-CP-08, Uzbekistan
Notice of Intent to Testify at the GSP Public Hearing and Pre-Hearing Brief

To the GSP Subcommittee:

In accordance with the Federal Register Notice of March 16, 2009, the International Intellectual Property Alliance (“IIPA”) hereby submits this request to appear (i.e., “Notice of Intent to Testify”) at the April 24, 2009 public hearing on the GSP country practices review of Uzbekistan. IIPA was the original petitioner of the GSP review of Uzbekistan’s intellectual property rights practices in the 1999 GSP Annual Review. Attached to this letter is IIPA’s Pre-Hearing Brief.

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Thank you.

Sincerely,
/s/
Eric J. Schwartz
On behalf of IIPA

2008 GSP Annual Review
Case 009-CP-08, Uzbekistan

Pre-Hearing Brief
of the International Intellectual Property Alliance in the GSP Review
of the Intellectual Property Rights Practices of Uzbekistan

April 2, 2009

The International Intellectual Property Alliance (“IIPA”) appreciates the opportunity to provide the GSP Subcommittee with a summary of the copyright protection and enforcement deficiencies in Uzbekistan in accordance with the Federal Register notice regarding the Generalized System of Preferences Country Practice Petition of Uzbekistan. See Generalized System of Preferences (GSP): Notice Regarding the Review of Country Practice Petitions for the 2008 Annual Review, 74 Fed. Reg. 11,141 (Mar. 16, 2009).

In short, the government of Uzbekistan does not fully comply with the intellectual property rights (“IPR”) eligibility requirements for GSP benefits. For example, Uzbekistan is not a member of any neighboring rights treaty (such as, the Geneva Phonograms Convention), and thus does not provide any protection or rights for U.S. or other foreign sound recordings; further, it does not protect works (books, films, software, musical compositions, etc.) created before April 2005. Thus, in our view, the GSP Subcommittee should terminate this investigation with a finding that Uzbekistan is not complying with the IPR eligibility requirements for GSP benefits and should immediately remove Uzbekistan’s eligibility to participate until such time as it has achieved “adequate and effective” copyright protection and enforcement as contemplated by the GSP statute.

In November 1993, Uzbekistan and the United States signed a bilateral trade agreement detailing mutual obligations to improve the protection and enforcement of intellectual property rights; that agreement entered into force on January 13, 1994. The Copyright Law of Uzbekistan was overhauled in 1996 (in force, September 17, 1996), and two additional copyright law amendments were adopted in 2000. Separately, Uzbekistan adopted a Law on Computer Programs and Databases, which was amended in 2002. In July 2006, Uzbekistan adopted a new Law on Copyright and Related Rights (in force, July 20, 2006).¹ The 2006 Copyright Law was aimed, according to the Government of Uzbekistan, at harmonizing Uzbek law with the Berne Convention and with WTO/TRIPs requirements, which the government hopes to accede to at some future date. The 2006 law added: a making available right; a right of communication to the

¹ Note, IIPA has and bases this filing on an unofficial English translation of the 2006 copyright law. In 2006, Uzbekistan also adopted conforming amendments to its Civil Code on copyright and neighboring rights, as well as a decree on royalties for public performances and private copying (IIPA does not have English translations of these laws/regulations).

public; provisions pertaining to technological protection measures and copyright management information; regulations pertaining to private copying and public performance royalties; and, extensive provisions and regulations involving collective administration (chapter 4 of the law). Unfortunately, the copyright law could have benefited from more input by copyright rightholders, and as a result, is either missing key provisions (protection for pre-existing works and sound recordings), or has several unclear or incomplete protections (technological protection measures).

In 2005, Uzbekistan (finally) acceded to the Berne Convention, effective April 19, 2005. Even that accession, however, was made with reservations regarding Article 18 of Berne which international copyright officials agree is inconsistent with the obligations of the Berne Convention to provide protection for pre-existing works.

On November 30, 2005, IIPA testified at the GSP country practice hearing regarding Uzbekistan's legal deficiencies. After that hearing, the U.S. Government ("USG") asked IIPA for a list of "steps that the Government of Uzbekistan should take with respect to protecting IPR in order to retain GSP eligibility." IIPA provided the USG with eight recommendations for improving IPR in Uzbekistan, in a written response on December 14, 2005. Those steps – then and now – are:

- 1) Notifying the WIPO regarding the Berne Convention that the Government of Uzbekistan removes its reservation to Article 18 so that Uzbekistan can properly provide protection – as required by Berne and the U.S. Bilateral – for preexisting works.
- 2) Joining the Geneva Phonograms Convention.
- 3) Clarifying in the Uzbek Copyright Law that pre-existing works and sound recordings are protected in Uzbekistan for a minimum of 50 and preferably for 70 years (the U.S. provides over 70 years of such protection to foreign works and sound recordings).
- 4) Ratifying and fully implementing the WIPO Copyright Treaty ("WCT"), and the WIPO Performances and Phonograms Treaty ("WPPT").
- 5) Fixing the deficiencies in the Copyright Law including: (1) the absence of an exclusive public performance (or making available) right for producers of sound recordings, at a minimum for digital transmissions; in lieu the current law provides only a right of remuneration (for the public communication of the recording, broadcasting, or communication to the public by cable); and (2) delete the onerous provisions that over-regulate the terms and conditions of authors' contracts.
- 6) Adopting clear civil ex parte search procedures into the Uzbek law.

- 7) Amending the Customs Code to provide customs officials with the proper *ex officio* authority. (Including not adopting a (proposed) registration system for customs enforcement – it will weaken, not strengthen enforcement at the border).
- 8) Amending the Criminal Code (and/or Criminal Procedure Code) as follows:
 - i. To provide for liability for infringement of neighboring rights violations (i.e., crimes involving the pirating of sound recordings);
 - ii. To toughen the existing penalties which are too weak because: (1) there are currently no criminal penalties applied “until one year after administrative penalties are assessed”—providing pirates with a chance to pirate without penalty the first time, and (2) the levels—set at 50 to 100 times the minimum wage—were much too low to be deterrent penalties as needed. The IIPA recommends that the first provision be deleted; and the second (50 to 100 times) be raised considerably to at least 500 times the minimum wage.
 - iii. To add the proper *ex officio* authority for police and prosecutors to commence criminal copyright cases.

IIPA again testified at the U.S. Government’s GSP country practice hearing regarding Uzbekistan’s legal deficiencies on October 4, 2007. Now, over three years later and after two rounds of hearings on this matter, to the best of our knowledge, Uzbekistan has failed to undertake at least seven of these eight steps; it did adopt a copyright law (step #5), which as noted, still has deficiencies. Nevertheless, Uzbekistan enjoyed nearly \$3 million in GSP benefits in 2007, and nearly \$2 million in the first eleven months of 2008. Uzbekistan is not providing the “adequate and effective protection” for intellectual property rights required by sections 2462(b) and (c) of the 1974 Trade Act (the intellectual property provisions in the GSP statute found at 19 U.S.C. §§ 2462(b) and (c)). Thus, Uzbekistan should not receive GSP benefits.

IIPA recommends the adoption of the following legal reforms and treaty accessions in Uzbekistan in order to provide for effective copyright protection and enforcement:

- 1) Adherence to the Geneva Phonograms Convention.
- 2) Amending the Copyright Law to provide protection for pre-existing works and sound recordings for a minimum of 50 years (and preferably, 70 years).
- 3) Amending the Criminal Code to include “neighboring rights” violations (the current code only applies to infringements of “works”).

- 4) Amending the Criminal Code to raise the penalties for IPR violations to deterrent levels (for example, to 500 times the minimum wage).
- 5) Amending the Criminal Code to adopt a threshold for a criminal violation calculated on the basis of the price of legitimate product, instead of a threshold based on an undefined “large-scale damage” for IPR crimes; and, set that threshold at a low actual level.
- 6) Amending the Criminal Code (or Criminal Procedure Code) to permit the confiscation and destruction of manufacturing equipment used to produce pirated material.
- 7) Amending the Criminal Procedures Code to provide the proper *ex officio* authority for police officials to initiate copyright criminal cases and investigations.
- 8) Amending the Administrative Code to provide *ex officio* authority to administrative authorities to commence investigations and cases.
- 9) Amending the Customs Code to grant the proper *ex officio* authority to border officials to seize illegal material and to commence their own investigations and criminal cases.
- 10) Amending the Civil Code to provide the proper *ex parte* search provisions for effective enforcement against end-user pirates.
- 11) Adherence to the WIPO digital treaties: the WIPO Copyright Treaty (“WCT”) and the WIPO Performances and Phonograms Treaty (“WPPT”), plus enacting all of the appropriate implementing legislation in the Copyright Law.
- 12) Correct deficiencies (and some uncertainties) in the Copyright Law of 2006, including:
 - i. providing protection for pre-existing works and sound recordings;
 - ii. adopting an exclusive right of public communication for sound recording producers for the recording, broadcasting, or communication to the public by cable (which appears to be limited to a right of remuneration in Article 51);
 - iii. a clarification about the scope and application of the rental right for audiovisual works and computer programs (Article 21);
 - iv. improvements, consistent with the digital treaties (WCT and WPPT), to the provisions pertaining to technological protection measures (Article 63) and rights management information (Article 64); and

- v. deleting the onerous provisions (found in Articles 38 through 42) that over-regulate the terms and conditions of author's contracts.

Although Uzbekistan has proposed and/or made changes in some of these areas previously, these proposed changes were not always adequate to fix the deficiencies. The 2000 Copyright Law amendments did two things: (1) added "copying of a record" to the enumerated rights of producers to fix a glaring deficiency; and (2) added a broad national treatment obligation into the law (Article 56.3), but not a clear point of attachment for all works and sound recordings — this latter problem appears (in the unofficial translation) to have been corrected by Article 4 of the 2006 law.

IIPA is unaware of any recent amendments to the Criminal Code following passage of the 2006 Copyright Act to adopt deterrent penalties for intellectual property violations. Drafts to amend the Criminal Code were circulated several years ago, but, to our knowledge, never adopted. In fact, a 2004 draft would have weakened, not strengthened, criminal penalties because: (1) no criminal penalties applied "until one year after administrative penalties are assessed" — providing pirates with a chance to pirate without penalty the first time, and (2) the levels — set at 50 to 100 times the minimum wage — were much too low to be deterrent penalties as needed. If a similar draft is proposed, IIPA would recommend that the first provision be deleted, and the second provision (regarding the minimum wage), be raised considerably to at least 500 times the minimum wage, as has been done in other countries.

A 2004 draft to amend the Customs Code would have established a complicated registration system for IPR enforcement at the border. IIPA strongly recommends that Uzbekistan not adopt a border registration plan because it will prove counterproductive to effective enforcement at the border.

A 2001 resolution (No. 285 of the Cabinet of Ministers) established a licensing system for the production, reproduction and sale of records, cassettes and CDs, according to which only licensed entities could carry out such activities. Industry experience shows that such licensing systems are not effective against the pirate production enterprises, which are common in this region. IIPA recommends that this plan be repealed.

IIPA looks forward, as it has in the past, to working with the Government of Uzbekistan and with the U.S. Government to provide further comments on draft laws and regulations, and assistance regarding the recommendations provided in this filing.

Respectfully submitted,
/s/
Eric Schwartz
On behalf of IIPA