

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2001 SPECIAL 301 REPORT

CZECH REPUBLIC

EXECUTIVE SUMMARY

In 2000, long-promised legal reforms, including the correction of certain TRIPS deficiencies, were undertaken in the Czech Republic with the enactment of a new Copyright Law in April 2000. That law went into force on December 1, 2000. In particular, the new law fixed two of the most serious legal shortcomings. It corrected the absence of protection for pre-existing sound recordings; and it added a correction in the civil procedure code to permit *ex parte* searches, the latter being critical for effective enforcement in the software industry.

Still, even with these legal improvements, on-the-ground enforcement in the Czech Republic remains a matter of serious concern. Some industries did report improvements in 2000, including better police cooperation and the disposition of new cases through the judicial system. But all of the copyright industries complain of a failure to treat the significant backlog of cases, and of the long-standing problem preventing effective enforcement, namely, that prosecutors and judges do not use existing remedies to impose deterrent criminal sanctions against pirates. Also, ineffective border enforcement means that the Czech Republic continues to be a source of or a transshipment point for pirate material.

Perhaps the most serious enforcement problem is one that was not addressed in 2000 and, as a result, is getting worse. This is the problem of optical media piracy (CDs, CD-ROMs and DVDs), including its production and distribution in the Czech Republic, and elsewhere in the region. Because this problem has gone unchecked for years, it has resulted in large quantities of optical media material being sold in the Czech Republic and in neighboring countries. In 2000, the industries reported a sizeable rise in the overall plant capacity for and the level of actual optical media piracy material fueled by legal and on-the-ground enforcement deficiencies. Although copyright law deficiencies were corrected in 2000 (i.e., protection for pre-existing material), there are still no optical media production controls, effective border enforcement procedures, to address this problem. As a result of these significant problems and concerns, the IIPA recommends that the Czech Republic remain on the Watch List in 2001.

To correct its problems, the Czech Republic must: adopt optical media regulations; fully implement the new copyright law and civil code provisions; and undertake significant and long-overdue deterrent enforcement activity by police, prosecutors, and in the courts. As one example, the failure to provide protection for preexisting sound recordings until December 2000 (even though obligated to do so since 1996 under the TRIPS Agreement) resulted in a huge production of back-catalog repertoire that was exported for years into other countries in the region. Now that the Czech Republic correctly protects this material (reaching back at least 50 years), it must enforce its law and stop any further production or distribution of this back-catalog material, something it pledged to do in an exchange of letters with the United States government in 2000. Also, the clarification of the Czech civil code provisions that allow for civil *ex parte* searches must be implemented to guarantee the preservation of evidence in software

piracy cases. Last, it must end a cycle of frustration in a country that contains civil and criminal penalties that are among the toughest in Central and Eastern Europe by using its laws effectively to deter piracy. The police investigators, and especially the prosecutors, must stop the delays in bringing cases forward and address the backlog of cases, and judges must stop imposing low level penalties that do not deter commercial pirates of sound recordings, computer software (including business and entertainment software), and motion pictures. These enforcement failures have allowed piracy to remain widespread even in the face of strong laws, and even, this year, in the face of some enforcement improvement.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1995 - 2000

INDUSTRY	2000		1999		1998		1997		1996		1995	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	8.0	18%	10.0	30%	8.0	35%	10.0	35%	10.0	35%	8.2	35%
Sound Recordings / Musical Compositions	35.0	20%	60.0	8%	62.0	6%	62.5	6%	47.5	6%	1.7	6%
Business Software Applications ¹	19.2	39%	30.2	42%	39.5	49%	39.7	52%	56.7	61%	40.5	62%
Entertainment Software ²	45.0	81%	12.0	NA	NA	NA	NA	NA	NA	NA	NA	NA
Books	4.5	NA	4.5	NA	4.0	NA	4.5	NA	4.5	NA	5.0	NA
TOTALS	111.7		116.7		113.5		116.7		118.7		55.4	

COPYRIGHT LAW AND RELATED ISSUES

Optical Media Regulations and Additional Digital Copyright Law Amendments are Needed.

The new copyright law amendments that went into force on December 1, 2000 corrected the most severe legal shortcoming, namely, a guarantee of protection for pre-existing sound recordings (and works). Further the Civil Code was amended to demonstrate with greater clarity that *ex parte* searches consistent with TRIPS are possible under Czech law. In fact, the Czech government insists its law is now fully compatible with TRIPS and the European Union Directives (for example, adding a definition of "computer programs"). The 2000 amendments increased civil and criminal penalties for copyright and neighboring rights infringements (Amendments to the Penal Code, Articles 109 and 152). Also, provisions were adopted in 2000 to comply, in part, with the new WIPO treaties, that is, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT). Before the 2000 amendments were adopted, the Czech Republic had last amended its copyright law in 1996, adding important

¹ BSA loss numbers for 2000 are preliminary. In IIPA's February 2000 Special 301 submission, BSA's 1999 loss and level figures were not available. These numbers were finalized in mid-2000, and are reflected above.

² IDSA estimates for 2000 are preliminary.

protections with regard to computer software, in compliance with the European Union Software Directive.

Even with the commendable changes made in 2000, IIPA believes that the Czech Republic must address three additional areas of legal reform for a modern and effective copyright regime. These legislative concerns are the lack of: (1) optical media regulations; (2) encrypted satellite signal protection; and (3) provisions fully complying with the WIPO digital treaties to stop Internet piracy.

Also, the newly adopted provisions on the collective administration of the rental right (that is, rental levies applied to video shops) found in Article 96 should be implemented in such a way as not to interfere with rights that may have been cleared at the (production) source. In these cases the administration of the new provisions is not necessary, and will in fact negatively impact the market. Moreover, any such collection should recognize the principle that there is no legal basis for the collection of remuneration for nationals of another country for rights not accorded to those nationals. Collection in such circumstances is inappropriate and without legal authority.

Certain aspects of the April 2000 amendments concerning the circumvention of technological protection measures should be modified at the earliest possible opportunity. Technological protection measures are the tools that rightholders use to manage and control access to and copying of their works in the digital environment. Proper and full implementation should include a prohibition on the manufacture, importation, sale, distribution, or other trafficking in devices or services that are aimed at circumventing technological protection measures, as well as outlawing acts of circumvention.

In particular, the provision added in April 2000 relating to the requirement to prove "economic gain" as an element of demonstrating a violation of the anticircumvention provisions (Article 43) must be deleted. That's because experience has demonstrated, unfortunately, that there are countless parties who would devise and publish ways to circumvent technological measures employed to protect copyrighted materials without seeking any economic gain, and the existence, or absence, of economic gain is irrelevant to the interests of copyright holders whose works may be exposed. Unless this provision is revised, Internet piracy activities resulting in millions of dollars of losses that are not for such economic gain may go unpunished, and the Czech Republic will not be in compliance with Article 11 of the WCT and Article 18 of the WPPT. There is another suggested change to Article 43. The technology applied and the means of their defeat change constantly. Therefore, the list of prohibited activities should include an opening clause such as "or otherwise traffics" or "or otherwise makes available" to be inserted between the terms "disseminates" and "utilizes" in Article 43.

Further, in Article 43, "technical devices" should be interpreted broadly, consistent with the WIPO treaties (Article 11 of WCT and Article 18 of the WPPT). That is, all technical devices should be protected against circumvention so long as they "restrict acts, in respect of their works, which are not authorized by the authors [or rightholders] concerned or permitted by law." For example, the technological protection provisions should not be interpreted as being tied to an "infringement of copyright" thus requiring proof of such infringement; to do this could significantly diminish the effectiveness of these provisions.

In addition, rightholders need to be able to protect so-called "copyright management information" that is attached to or accompanies a work or sound recording, including

protection against the alteration, removal or falsification of this information. The 2000 amendments did add rights management information provisions (Article 44). However, the definition of rights management information does not cover information about the author or any other right holder as prescribed in Article 12.2 of the WCT and Article 19.2 of the WPPT.

In 2000, Internet piracy emerged as an issue in the Czech Republic. A local terrestrial television signal containing Motion Picture Association (MPA) member company television programs and motion pictures was temporarily streamed over the Internet to computer screens all over the world via an Internet Website which purported to be the station's official Website. While the transmissions were of a sporadic and indiscriminate nature, they nevertheless constituted blatant copyright and trademark infringements and a breach of territorial limitations of licenses granted by the MPA's member companies to the station. An amicable settlement was ultimately reached between the TV station, the MPA, and the Czech Anti-Piracy Union (CPU), and the station now limits its transmissions to its own indigenous programming.

In addition, in 2000, the recording industry was able to close down 12 pirate Internet sites offering MP-3 format material; as a result, four persons are facing criminal prosecution. However, there are no reports of convictions for Internet piracy. The Business Software Alliance (BSA) reports that five, or approximately half, of the Czech Internet service providers (ISPs) it contacted in 2000 proved cooperative in removing infringing content from its site.

In addition to the Copyright Law amendments, penal code amendments were adopted in 2000, to increase the maximum penalties for copyright infringements for up to five years' imprisonment and a fine of five million Crowns (U.S.\$ 125,000). There remain some statutory impediments to effective enforcement that must be deleted from the Code of Criminal Procedure. There were reports that penal code amendments to reduce the time for criminal proceedings would be considered in 2000, but they were never adopted.

In 2000, amendments were also adopted to the Copyright Protection Act, effective September 1, 2000, giving the Czech Trade Inspection Bureau authority to fight copyright and trademark infringements (and providing fines for violators of up to two million Crowns (U.S.\$ 50,000). In 1999, important amendments (Act No. 191/1999 Coll.) were made that granted Customs officials broader *ex officio* authority to seize suspected infringing copies of intellectual property, including copyrighted material, and providing heavy fines of up to 20 million Crowns (U.S.\$ 500,000) for importing or exporting pirate product.

After one year in place, the law did not bring any expected improvement to the already weak customs enforcement regime because, among other things, the law imposes onerous burdens on rights holders (paperwork and a duty to provide a bond for counterclaims that can take years to resolve). The software industry's experience with Customs generally has been disappointing, and the BSA believes that the new law is proving unsatisfactory. The software industry reports that, among other burdensome procedural obligations, Customs regulations require rightholders to proceed to a court hearing before Customs will permanently seize infringing products. The recording industry reports similar problems. They report that the law that was supposed to fully implement the TRIPS Agreement border obligations has instead taken the Czech Customs officials out of IPR enforcement altogether as a result of these bureaucratic barriers.

In addition to the changes noted, provisions are needed to protect encrypted signals. The amended broadcast law that went into effect on January 1, 1996 did not provide such

protection. These provisions are necessary because of the threats posed to television markets by pirate smart cards and decoders; the law needs to prohibit the production, distribution, possession and use of unauthorized decoding devices. The Czech government has indicated for the past several years that the appropriate provisions would be added either to the media or the telecommunications law, but that has not transpired. The provisions must also fully protect conditional access (as provided for in Article 43 with the suggested revisions noted earlier) and new digital technologies, as well as address the significant collective (community) antenna problem that exists in many Czech cities. And the telecommunication laws must provide that broadcast and cable licenses will only be granted and maintained subject to compliance with these and other copyright provisions.

For years, Czech officials have contended that the Civil Code (Act No. 99/1963) permitted a rightholder to obtain a civil *ex parte* search order. The software industry, in testing these provisions, has had a very mixed experience. In one instance, the procedure required a Czech court to take two months to determine the viability of an application, and the industry was confronted with extremely onerous documentary requirements before a court would consider granting an application. On February 14, 2000, amendments to the Civil Procedure Code were finally adopted to make *ex parte* search applications less difficult to obtain, and to comply with the TRIPS (Article 50) obligations. Under the revised law, rightholders implicitly are permitted to conduct searches without the presence of an adverse party. The ministry responsible for the final text has assured the software industry that the law, as amended, allows civil *ex parte* searches. These amendments became effective at the beginning of 2001, and the BSA will be testing these provisions in 2001 to make certain that, they are in fact working.

Last, there were additional problems with the copyright law amendments adopted in 2000. The new law contains many problematic restrictions on the ability of audiovisual producers to efficiently exploit and distribute works in the Czech Republic. Also, the law fails to differentiate between analog and digital private copying; the private copying exception should not have extended to digital copying of works or sound recordings. Nor should any private copying exception (or any other exemption) interfere with the ability of rightholders to protect their works and sound recordings using technological protection measures.

Ratification of the Two WIPO Treaties

The Czech Republic was not a signatory to either of the two new WIPO "digital" treaties. The Cabinet of the Czech Republic did agree, on January 10, 2001, to accede to both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonogram Treaty (WPPT). The Czech Parliament must now quickly approve such accession so that the Czech Republic can soon become a party to both treaties, and the Parliament must fully implement the treaties through the appropriate laws and amendments detailed above.

COPYRIGHT PIRACY

The rise of optical media piracy in the Czech Republic; production and distribution in the Czech Republic and regionally.

Again in 2000, the Czech Republic remained a country where optical media manufacturers were involved in steady large-scale production of illegal material, including CD stampers. This is true despite huge efforts by some industries to stop optical media piracy. As IIPA has detailed in past reports, the problem is the lack of cooperation from the plants. In sum, steps must be taken to regulate optical disc plants, and to improve border enforcement to contain the problem.

First and foremost, the Czech Republic must set up plant monitoring procedures, like those established in Bulgaria in 1998, to regulate the production, distribution and export of optical media. Such regulations would include provisions to close plants that are caught illegally producing copyrighted material, to seize infringing product and machinery, and to monitor the importation of raw materials (optical grade polycarbonate) used in the production of CDs, DVDs and CD-ROMs (and other optical disc media). Also, all of the plants must be required to adopt source identification (SID) codes, so that the source of illegally produced CDs can be traced and any necessary actions taken against infringing manufacturers.

A serious problem continuing to threaten the music industry in the Czech Republic is the overproduction of optical media (music CDs and CD-Rs, that is, recordable CDs) by at least two of the four known production plants. For the business and entertainment software industry, the problem is the production of compilations on CD-ROMs by these plants. The manufacturing capacity of the CD plants in the Czech Republic -- possibly over 40 million units annually — is far in excess of domestic demand. For instance, the GZ Digital Media plant alone now operates 18 lines with a total daily output of 300,000 units; most of this output is in the form of CD-ROMs, not musical CDs. The activities of these plants are of growing concern to the industry because unauthorized product manufactured in the Czech Republic is being exported to other countries including the EU, Poland and elsewhere in Eastern Europe, upsetting markets in the entire region.

In 1998, the largest plant (GZ Lodenice) did agree to cooperate with International Federation of the Phonographic Industry (IFPI) and adopt SID codes; however, the other plants (CDC Celakovice, Eximpo Praha, and Fermata CD) did not reach such agreements. IFPI filed criminal complaints against CDC Celakovice in 1998, and the IFPI and the Business Software Alliance (BSA) are investigating the activities of a second plant suspected of being involved in large-scale piracy. In October 1998, a police investigation department officially charged the plant manager of CDC with copyright law violations. However, recently that police investigation department decided it was going to refuse to prosecute the manager and dropped the case entirely; the industries appealed to the district state attorney, who refused to intervene. This shows a very serious lack of enforcement commitment by the police department; the Czech government and the proper enforcement authorities must reconsider this decision.

ENFORCEMENT

Enforcement in the Czech Republic has been a source of frustration for many years, in large part because the legal regime is very good, but often unused. The copyright industries have made concerted efforts by their antipiracy groups to develop better cooperation with the police, with some success. However, beyond raids and seizures, cases often languish and there is an especially large backlog of cases that has not been addressed. Border enforcement also is a major shortcoming. In sum, the Czech Republic's enforcement regime, unlike its legal regime, remains incompatible with its TRIPS enforcement obligations due to: the failure to impose deterrent criminal penalties in commercial piracy cases; lengthy delays in bringing and completing both criminal and civil infringement cases; the lack of availability of deterrent civil damages; and ineffective border measures.

The growth of optical media material, produced and distributed in the Czech Republic and in the region, coupled with the failure of the judicial system, is the most serious threat to the health of the copyright industries in an otherwise healthy market. The failure to properly apply deterrent penalties in the judiciary allows piracy to remain widespread in this country and regionally, especially harming the market for business application computer programs and for video and audiovisual public performances. For a number of years, the U.S. government has pressed the Czech government to work with industry representatives to address the optical media production problem and the case backlog problem. Hopefully, these issues will be addressed in 2001.

One way for the Czech government to address wide-scale problems was the establishment (in 1996) of an Inter-Ministerial Task Force, chaired by the Ministry of Industry and Trade. The copyright industries' experience to date has been that the Task Force has not devoted sufficient attention to implementation of existing laws to realize significant and deterrent action against commercial pirates. IIPA reiterates its longstanding request for a Czech government directive to get the Task Force to operate effectively. IIPA suggests that such a directive, to implement proper enforcement, would require regular meetings and reporting on cases by the Task Force, as well as an opening up of Task Force proceedings to the private sector. By all accounts, the Task Force remains ineffective.

Better Cooperation on Criminal Raids by Police, but Lengthy Delays in Moving Cases, Incomplete Investigations, and An Ongoing Failure to Impose Deterrent Criminal Penalties at the Judicial Level Hamper Effective Enforcement.

It is true in the Czech Republic (and every other country with commercial piracy) that sophisticated piracy operations can only be broken by strong deterrent criminal prosecution. The Czech Republic continues to provide good police cooperation but there is an unwillingness by law enforcement authorities to pursue actions to their conclusion. The problem is twofold: (1) a backlog of cases; and, (2) those cases that do move forward have only weak penalties imposed. The problems are linked. The courts have not imposed the strong remedies available because police investigators, and especially the prosecutors, refuse to bring these cases to conclusion within any reasonable amount of time, so weaker penalties are imposed to dispose of cases.

The result is that the level of damages is inadequate and the fines imposed are too low, so there is no deterrence to piracy.

This problem could best be addressed if the Minister of Interior issued a directive instructing criminal police and prosecutors to act on *prima facie* cases of piracy within 30 days of receiving a criminal complaint, and for criminal charges to be announced and presented to the state's attorney for prosecution within a fixed period (less than 60 days) after the raid takes place. In addition, IIPA continues to recommend a directive to transfer *prima facie* cases of piracy to state prosecutors immediately upon the announcement of criminal charges; and for a special group of criminal police investigators to be dedicated to the preparation and investigation of copyright cases. Further, the Czech Republic could improve the investigation process by amending its law to permit tax inspectors to share information on illegal uses discovered in the course of audits with police and affected copyright holders. Criminal proceedings would be greatly improved by eliminating the current requirement that an independent expert report, which invariably causes lengthy delays, must be furnished to prosecutors in lieu of a report prepared by police.

In 2000, some industries, notably the motion picture industry and the business software industry, reported better cooperation with prosecutors and judges in moving current cases forward. But the backlog remains and, more significantly, the Czech government has not moved the "large" commercial piracy cases forward. IFPI is reporting that small routine criminal cases are being taken to and adjudicated correctly by the Czech courts; however, they report that the significant cases against large-scale pirates have not been moving. For example, the most important case for the recording industry against the CDC optical media plant manager was dropped, setting a terrible precedent regarding deterrent prosecutions.

The Business Software Alliance (BSA) reports that the overall speed of criminal and civil enforcement has improved, but still remains a problem. Weak criminal sanctions are another cause for concern. In the past, the average length of time for a decision before a criminal court of first instance has been between one to three years, with a second-level decision taking an additional year. Separate civil proceedings take an equal length of time. Nevertheless, there have been encouraging developments in the number of formal criminal accusations filed by prosecutors, and the fact that judges are issuing any judgments at all (including the first-time conviction in 2000 for end-user piracy). Police are becoming more proactive by conducting raids of both reseller and enduser infringers according to the BSA.

The Motion Picture Association (MPA) reports an improvement in the speed with which routine criminal cases were handled by the courts. However, the MPA also reports a continuation of the significant delays it has experienced in the past, with larger contested cases.

The BSA did recognize improvement in Czech enforcement in 2000, although more could be done. On the criminal side, Czech police conducted 16 raids of suspected software infringers, six of which were enduser raids. Some of the police targets were important Czech businesses, which marked a change from past years. Unfortunately, despite this increased activity the BSA was frustrated, as cases were halted while prosecutors and police sought expert reports, a necessary precursor to the issuance of a criminal accusation against a suspected pirate. In most cases, these reports produced a delay of up to half a year or more. The BSA reported this issue in last year's Special 301 recommendation; the problem persists.

The BSA has observed that following the preparation of expert reports Czech prosecutors are now filing a growing number of accusations. This is a very encouraging development. Prosecutors in Prague and Ostrava have been particularly diligent. This, in turn, has led to a number of criminal judgments for software infringement. The BSA has been disappointed at this stage of proceedings because judges typically impose weak sentences consisting of either suspended prison sentences, or small fines, or both. The BSA was aware of at least 10 criminal judgments for software infringement in 2000 leading to such judgments. In two enduser cases, the court refrained from imposing any fine because the defendants settled with the rightholders. In those cases, the typical sentence was a probationary sentence of between one and twelve months. In three reseller cases, the defendant was fined between U.S.\$100 and U.S.\$800, with only short probationary sentences.

With respect to civil enforcement, the Czech government (as noted already) clarified that *ex parte* searches are available to rightholders. Because the relevant provisions of the Civil Code did not become effective until January 1, 2001, the BSA refrained from testing the old provisions of Czech law in order to focus on the new provisions. Assuming Czech judges grant *ex parte* search applications, rightholders can, unfortunately, still expect to confront lengthy court proceedings.

On an encouraging note, the BSA reports that certain government entities are themselves demonstrating their commitment to using only licensed software by considering the implementation of software asset management policies. Overall, the BSA reported losses of \$19.2 million in 2000 in the Czech Republic; the estimated piracy rate was estimated at 39%.

As in past years, the Interactive Digital Software Association (IDSA) reported wide-scale piracy in the Czech Republic of entertainment software (including videogame CDs and cartridges, personal computer CDs, and multimedia products). Estimated trade losses are not available. The number of raids and cases commenced in 2000 was reported at 39 (up from 33 in 1999), but there is no information on the disposition of these cases. In 2000, at least one factory was producing illegal entertainment software (video games), and there was also the discovery of master disks made in the United Kingdom being sent to the Czech Republic for production there and for distribution throughout the region. IDSA reports good police cooperation in raids against retail pirates, but, as with other industries, enforcement is not effective, especially border enforcement, which is almost nonexistent. For example, IDSA reports that approximately 20% of its criminal complaints ended up with the imposition of fines in the average range of 10,000 to 50,000 Crowns (U.S.\$ 270 to U.S.\$ 1,340), not enough to act as a deterrent to commercial piracy.

The major problem confronting IDSA members is the manufacturing and replication operations, including syndicates producing so-called "gold" recordable (master) disks in the Czech Republic, and prerecorded silver discs that are imported from Bulgaria, Poland, Hungary, Russia and the former Yugoslavia. There is one known factory producing discs in Bulgaria that is a major supplier of the Czech Republic with illegal material.

The IDSA also reports large-scale Internet piracy operations with very high piracy rates reported; these are operations that copy videogames on demand via the Internet and then deliver these copies through the mail. As a result of the growth of these operations, IDSA reports a sharp drop in the number of illegal copies seized and in a flattening of the legal market. Overall, the IDSA reports losses of \$45 million in 2000 and a piracy rate estimated at 81% (these are preliminary figures for 2000 that will be finalized later in 2001).

The International Federation of the Phonographic Industry (IFPI) reports that for the recording industry the principal enforcement complaint is the inability or unwillingness of police investigators (not the criminal police) and state attorneys (the prosecutors) to thoroughly investigate in-depth major criminal cases brought to them by the criminal police. Thus, the evidence presented to the courts is incomplete and ignores important details, such as the channels of the supply and distribution of illegal material. This information, which could shut down piratical operations, is therefore not brought to light in criminal cases.

The IFPI continues to report large-scale seizure of illegal material, almost all of it in the form of CDs (about 20% of this total is now recordable CDs). For example, in one case in July 2000, over 27 million Crowns' worth (U.S.\$ 723,220) of material was seized, but there has been no disposition of the defendants in that case. In the past year, there were other successes for the recording industry. For example, four organized groups of pirates were broken up and their members brought to court; there has been no final adjudication of these cases, either. As in 1999, the recording industry also reports that there are now three major markets selling CDs and CD-Rs of German repertoire operating just over the German border.

Since the 1996 copyright act amendments passed, the once-problematic CD rental problem diminished as the number of rental shops declined significantly; however, that problem was replaced by the more serious CD and CD-R production problem, and by the problem of recordings made from infringing music Websites. Another problem lingers. As of December 1, 2000, the copyright law fixed the problem of the protection for preexisting sound recordings; however, the law permitted a two-year sell-off period of back-catalog inventory. This means that this back-catalog repertoire will linger as a problem for a number of years and continue to be a hindrance to effective enforcement until the material is finally removed from the marketplace.

The level of recorded music piracy in the Czech Republic has climbed from only about 8% last year, to 20% this year. The jump is the result of the growth in the number of CD-R materials being produced for the public on a commercial basis flooding the marketplace. Several owners of establishments offering this material have been charged under the criminal law but none of these cases has reached the courts to date. Estimated losses due to the piracy of sound recordings and music was \$35 million for 2000, much of it exports of pirate Czech product to other countries due to lax border enforcement.

For the motion picture industry, traditional video piracy, involving high-quality copies of video release titles, continues to be a major, if somewhat reduced, piracy problem. Although the enforcement efforts by the local anti-piracy organization, CPU, and the police have progressively improved the situation over the last couple of years, flea markets in the Czech-German border region, particularly those run by ethnic Vietnamese gangs, offer pirate cassettes to German tourists. Some "casual" counterfeit copying also takes place in otherwise legitimate rental outlets. While the video piracy problem in the retail sector has been greatly reduced in major cities, like Prague and Brno, it has nonetheless given way to other forms of piracy, particularly illegal public performances (in buses, restaurants and clubs), pirate optical disks and mail order operations.

Cable and television piracy is also a problem that is seriously impeding further market development. Although the number of active cable operators has decreased in the last few years as the market has consolidated, many cable television stations continue to retransmit a large number of foreign (especially German) satellite and terrestrial broadcast signals. Legal

ambiguities in Czech legislation complicate the situation. The government has little will to address this problem, and the Czech Broadcasting Council has taken a very timid stance toward fighting such piracy. As noted earlier in the report, illegal Web transmissions made a novel appearance in 2000, but the CPU and MPA managed to settle the case without resorting to the authorities. Pirate smart cards and decoders used mainly by private citizens continue to damage the pay television industry.

For the motion picture industry, CPU cooperation with police forces remained good in most cases, although it proved difficult to secure cooperation with certain police departments, especially in western Bohemia. In 2000, the CPU, police and Customs conducted 203 investigations, 86 raids, and seized approximately 6,374 pirate videocassettes, 125 pirate VCDs and numerous counterfeit sleeves. The CPU's cooperation with prosecutors and judges also improved in recent years. The slow judicial process is partly due to languorous police investigations and delays in forwarding cases to the prosecution services. While many routine criminal cases can be disposed of in months, larger contested cases often take over two years to complete and the courts ultimately impose minimal sentences. Civil cases take even longer, making civil lawsuits a completely impractical method to protect copyright. However, the prosecution rate is improving: 72 new criminal cases were launched in 2000.

The book publishers (Association of American Publishers, AAP) report that unauthorized copying and piratical translations into English of college textbooks, as well as scientific, technical and medical publications, is a problem in the Czech Republic. As a result, estimated losses to U.S. publishers were at \$4.5 million in 2000 (up from \$4.0 million in 1998).

In sum, as in years past the enforcement situation for all IIPA members could best be characterized as one of overall good cooperation with the police against small-scale retailers, with such cooperation varying widely from region to region in the country. And, as in years past, the most consistent enforcement deficiency was the failure to move cases toward satisfactory conclusion, especially to address the growing backlog of cases, combined with the inability or unwillingness of the judicial system to properly and effectively prosecute large-scale piratical operations.

Protection and Enforcement Obligations

The Czech Republic currently participates in the U.S. Generalized System of Preferences (GSP) program, which offers duty-free imports of certain products into the U.S. from developing countries. In order to qualify for such unilaterally granted trade preferences, the U.S. Trade Representative must be satisfied that the country meets certain discretionary criteria including whether it provides "adequate and effective protection of intellectual property rights . . ." At the same time that the Czech Republic caused millions of dollars of losses to the U.S. due to piracy, it imported \$225.4 million worth of products without duty, or over 29.9% of its total imports into the U.S. in 1999 (the last full year of available GSP statistics). The Czech Republic should not continue to expect such favorable treatment at this level if it is not providing adequate and effective protection and enforcement of copyright material.