

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2008 SPECIAL 301 REPORT

TURKMENISTAN

Special 301 Recommendation: IIPA recommends that Turkmenistan remain on the Watch List in 2008.

EXECUTIVE SUMMARY

In 1993, Turkmenistan and the United States concluded a bilateral Trade Agreement which detailed mutual obligations to improve the protection and enforcement of intellectual property rights. That agreement entered into force on October 25, 1993. Turkmenistan has never implemented the IPR obligations in that agreement.

In 2007, the U.S. Trade Representative -- in retaining Turkmenistan on the Watch List -- noted "Turkmenistan's lack of progress on IPR issues" and its "lack of fulfillment of its IPR obligations under the [1993] United States --Turkmenistan Trade Agreement." In fact, the Turkmen IPR legal regime falls far short of Turkmenistan's obligations under that 1993 Trade Agreement. Now almost fifteen years since signing the agreement, Turkmenistan has done little to modernize its copyright regime or to join any of the relevant treaties it obligated itself to join in the bilateral Trade Agreement. Turkmenistan is not a member of the Berne Convention, the Geneva Phonograms Convention, or either of the WIPO "digital" treaties. Thus, Turkmenistan is not providing any protection for foreign works or sound recordings, denying even the most basic rights or remedies, much less any actual enforcement of those rights, as required by international norms.

Legal Reform Deficiencies

Turkmenistan never adopted a comprehensive separate copyright and neighboring rights law. Instead, in October 1993, Turkmenistan formally incorporated the Soviet-era Civil Code (Chapter IV) into its legal structure. On March 1, 1999, the Civil Code was revised, with extensive amendments pertaining to copyright. As a result, the operational copyright law is the 1961 Civil Code as amended in 1999. The rights and provisions necessary to comply with basic international norms are lacking. A draft Law on Copyright and Neighboring Rights has been under consideration for years, but has never been adopted by the Parliament to our knowledge.

IIPA recommends the following IPR legal reforms in Turkmenistan:

- 1) Adherence to the Berne Convention.
- 2) Adherence to Geneva Phonograms Convention.
- 3) Adoption of a Berne, WTO TRIPs, and WIPO "digital" treaty (WCT/WPPT) compliant Copyright Law to protect works and sound recordings. Also, the Civil Code should be repealed or scaled back upon adoption of a Copyright Law to avoid confusion and misinterpretation of rights and remedies as between two "competing" laws.
- 4) Adoption of provisions in the Copyright Law to protect for pre-existing works and sound recordings for a minimum of 50 years (and preferably, 70 years).
- 5) Amending the Criminal Code to raise the penalties for IPR violations to deterrent levels (for example, to 500 times the minimum wage).

6) 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. Article 153 of the current Criminal Code does provide sanctions for copyright and neighboring rights violations, but only in cases of “significant harm” — a threshold that is too vague, and likely, too high.

7) Amending the Criminal Code (or Criminal Procedure Code) to permit the confiscation and destruction of manufacturing equipment used to produce pirated material.

8) Amending the Criminal Procedures Code to provide the proper *ex officio* authority for police officials to initiate copyright criminal cases and investigations.

9) Amending the Administrative Code to provide *ex officio* authority to administrative authorities to commence investigations and cases.

10) 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.

11) Amending the Civil Code to provide the proper *ex parte* search provisions for effective enforcement against end-user pirates.

12) 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.

IIPA knows of no cases to date where the Criminal Code (Article 153) was used against a copyright pirate. Turkmenistan, by failing to provide a proper legal regime, and lacking any police, prosecutorial, judicial, or border activity, is clearly not providing “adequate and effective” enforcement as required by the 1993 bilateral Trade Agreement.

After adopting the necessary legal reforms, the Turkmen authorities must, at a minimum, commence police raids and seizures and act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions. The copyright industries have no reports and no information about any enforcement activity undertaken in Turkmenistan in 2007.

According to the recording industry (International Federation of the Phonographic Industry, IFPI), there are no known optical media plants in Turkmenistan.

The U.S. Government and Turkmen Government signed a Trade and Investment Framework Agreement (TIFA) on June 1, 2004 to enhance trade and investment between the two countries.