COMMONWEALTH OF INDEPENDENT STATES

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)
2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

IIPA recommends that the following five Commonwealth of Independent States (CIS) countries – Belarus, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan – should be placed on the Watch List for 2011. All but Kazakhstan were on the Watch List in 2010; Kazakhstan was not listed in 2010, and we believe should be elevated to the Watch List for 2011. All five countries are failing to comply with existing bilateral and/or multilateral treaty obligations to provide adequate and effective protection and enforcement – in each country report we specify the details of the deficiencies.

Each of the five countries, of course, have their own copyright laws, treaty accessions and ratifications, and variances in other issues. However, IIPA has combined the reports of these five countries into a single report because the overwhelming majority of issues in each country are based upon similar bilateral agreements (negotiated and signed separately) with the United States in the mid-1990s, and, they have similar legal reform and enforcement scenarios. The U.S. trade agreements conferred Normal Trade Relations (then known as "Most Favored Nation") on each country in exchange for a series of legal reforms, treaty accessions, and ratifications which have, to date, not been met.

The details of the recommended legal reforms, treaty accessions and ratifications, and enforcement obligations for each of the five countries – Belarus, Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan – is set out below in the individual country reports.

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BELARUS

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)
2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Belarus remain on the Watch List in 2011.

Priority actions requested to be taken in Belarus in 2011 – Key Legal Reforms: There are a number of serious legal deficiencies that are preventing effective enforcement in Belarus. The IIPA recommends the following changes to the Government of Belarus as legal reform priorities:

- Amendments to the Criminal Code to provide criminal penalties for first-time IPR violations. Currently, criminal penalties only apply for IPR violations after there has been an administrative violation and an exhaustion of administrative remedies.

- Amendments to the Copyright Law (1998) to fully implement the WIPO digital treaties (WIPO Copyright Treaty, WCT and the WIPO Performances and Phonograms Treaty, WPPT). Such amendments would include:

  a) Revising the current anti-circumvention and copyright management information provisions which are not now fully compatible with the WIPO digital treaties because they do not provide "effective legal remedies" (e.g., in accordance with Article 11 of the WCT). In particular, the law needs to cover prohibitions 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. Furthermore, the definition of "technical measures" does not cover access controls.

  b) Protecting "copyright management information" that is attached to or accompanies a work or sound recording. Such provisions should protect against the alteration, removal or falsification of this information.

- Amendments to the Criminal Code to: (a) adopt a "significant amount of use criteria" calculated on the basis of the price of legitimate product, instead of the existing too high threshold based on "large-scale damage" for IPR crimes; and, (b) lowering the actual amount of the current threshold (in Article 158) to commence liability, which is now BR12.1 million (US$4,020).

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

- Amendments to the Criminal Procedure Code to provide the proper *ex officio* authority for police officials to initiate copyright criminal cases and investigations.

- Amendments to the Administrative Code to provide *ex officio* authority to administrative officials to commence investigations and cases. At present, a statement from a right holder is required to commence an administrative case. The administrative remedies are applicable for violations of copyright and neighboring rights, including acts of illegal retail sale and distribution.

- Amendments to 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.

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

- Amendments to the Copyright Law (1998) to provide clear protection for pre-existing works and sound recordings. Belarusian officials have insisted that this protection already exists, at least for works (Article 42 of the 1996 law and Article 3 of the 1998 law make international treaties such as the Berne Convention self-executing in Belarus). While this may be correct, the law should be clarified by statutory amendment or decree to avoid any confusion on the part of police, prosecutors, and judges tasked with enforcement of these rights.

Summary of U.S. – Belarus IPR Issues: In January and February 1993, Belarus and the United States exchanged letters to implement a bilateral Trade Agreement which detailed mutual obligations to improve the protection and enforcement of intellectual property rights. That agreement entered into force on February 16, 1993. It has been nearly 18 years, and still Belarus has not adequately implemented the IPR obligations in that agreement.

In April 2010, the U.S. Trade Representative – while retaining Belarus on the Watch List – noted that the U.S. remained "concerned about Belarus' delayed implementation of IPR commitments under the United States-Belarus Trade Relations Agreement...Amendments to the copyright law are still needed to implement obligations of the WIPO Internet Treaties. In addition, the government should take action to ensure the use of licensed software by government entities. Counterfeit and pirated goods, including pre-release films, continue to be widely available. Enforcement officials continue to lack *ex officio* authority to investigate, seize infringing goods, and prosecute IPR cases, and Belorussian law does not allow adequate scope for *ex parte* searches. Reports indicate that IPR enforcement remains largely non-existent…The United States continues to urge Belarus to strengthen its IPR laws and to take enforcement actions against piracy and counterfeiting."

Belarus is a member of all of the relevant IPR treaties, including the Berne Convention (1997), the WCT (2002), the WPPT (2002), and the Geneva Phonograms Convention (2003). It was not until 2002 that Belarus joined any neighboring rights treaty – joining both the Geneva Phonograms and the WPPT that year. However, the delay of many decades (Geneva was put into force in 1971), allowed a large back-catalog of unprotected sound recordings to flourish in the marketplace, making enforcement that much more difficult, even today. In addition, Belarus has not fully implemented the digital treaties, nor adopted basic digital piracy enforcement steps, such as "notice and takedown" procedures.

In the past, IIPA and USTR reported on the troubling problem of optical media production facilities migrating into (and out of) Belarus from neighboring countries; in the past two years, we have had no reports of such cases.

IIPA continues to urge the Government of Belarus to improve its border enforcement – to prevent any optical disc or other hard-copy production plant or equipment from Russia (or other neighboring countries) from relocating to Belarus, as well as to stop the importing and exporting of illegal optical media discs (CDs, DVDs, CD-ROMs, CD-Rs, etc.). IIPA is aware of one optical disc plant (opened in October 2004) in Belarus. The Vigmaplast optical disc replication plant is operating near Minsk; it has two lines and an estimated plant capacity of seven million discs a year. We understand that it was assigned a source identification (SID) code.

Legal Reform Deficiencies: In 1996 (in force, June 18, 1996), Belarus enacted a new law on copyright and neighboring rights; amendments were adopted in 1998. The 1998 amendments were intended to, among other things, partially implement the WIPO "digital" treaties (WCT and WPPT). To our knowledge, no further amendments have been adopted. The 1998 amendments to the Copyright Law added provisions relating to anti-circumvention devices and services, and the removal or alteration of rights management information (Article 39.5). The remedies for anti-circumvention and rights management information protection include injunctive relief, monetary damages, and seizure of devices. Related Criminal Code provisions were adopted in 2000. The provisions (Article 201) include sanctions of up to five years imprisonment for repeat offenders of copyright and neighboring rights violations. As noted above, there are nine IIPA priority legal reforms that we recommend.

Enforcement: Under Article 40 of the Copyright Law (1998), civil penalties for copyright or neighboring rights violations include injunctive relief, damages (including lost profits), seizure and impoundment of infringing

copies, as well as statutory penalties of between 10 and 50,000 times the minimum wage. Belarusian officials point to the Civil Code (1999) as providing additional remedies for IPR violations.

In general, levels of piracy remain extremely high, and enforcement remains virtually nonexistent in Belarus. Several years ago, Belarusian officials reported that the Council of Ministers (an Inter-Ministerial Committee) had adopted a program for IPR protection focusing on legislative reforms (including copyright, patent and trademark laws), but there have been no further reports of any activity by this Committee and the plan was never implemented. IIPA continues to recommend a focus on legal reforms, as well as on enforcement, including steps against digital piracy, and against hard copy piracy – running raids and seizures, commencing criminal cases against commercial pirates, and using administrative remedies to curtail street piracy.

As Belarus moves to accede to the World Trade Organization, it needs to bring its laws into full compliance with the WTO/TRIPS obligations by adopting the revisions noted above and by improving on-the-ground enforcement. IIPA continues to recommend government action against any known production facilities, monitoring optical disc production in particular (at the one known plant), and using the criminal law remedies.

There are no comprehensive enforcement statistics for 2010. In recent years, the industries reported a trend of raids by the enforcement agencies (a positive step), but these raids were aimed only at small-scale retailers of illegal material. Raids against small-scale retailers have little deterrent effect on the overall piracy problem. Furthermore, the administrative fines imposed, even against these retailers, have generally been insignificant.

KAZAKHSTAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)
2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Kazakhstan be placed on the Watch List in 2011.

Priority actions requested to be taken in Kazakhstan in 2011 – Key Legal Reforms: There are several needed legal reforms – all tied to improving enforcement – that remain in Kazakhstan. IIPA recommends that the Government of Kazakhstan should adopt the following changes:

- In the Civil Code: provide proper *ex parte* search provisions for effective enforcement against end-user pirates.

- In the Copyright Law: adopt the necessary amendments to fully implement the WIPO digital treaties (WCT and WPPT). IIPA has, in the past, provided extensive comments to the government on the necessary treaty compatible amendments – especially focused on improving enforcement against Internet piracy. In fact, "digital piracy" is not defined in any of the IPR laws, which according to some industries, makes enforcement very difficult. At the top of the list of priorities for digital treaty implementation, IIPA recommends that Kazakhstan adopt provisions that protect the use of technical protection measures applied by rights holders to works and sound recordings.

- In the Customs Code: provide *ex officio* authority for customs officials to seize illegal material and to commence their own investigations and criminal cases.

- In the Criminal Code (or Criminal Procedure Code): provide for the confiscation and destruction of manufacturing equipment used to produce pirated material. Currently, there are provisions permitting the destruction of goods only upon a court order.

- In the Administrative Code: provide *ex officio* authority for administrative officials to commence investigations and cases. The Administrative Code (Article 129), as amended in 2005, lowers the threshold for bringing cases. However, only the Ministry of Justice (Copyright Office), and not the police, can bring charges for such offenses. IIPA recommends that the existing police *ex officio* authority be broadened to include administrative violation as well.

- Adopt a proper regulatory scheme, including criminal penalties, for the production and distribution of optical disc material and equipment.

- Summary of U.S. – Kazakhstan IPR Issues: Kazakhstan has made several notable legal reforms over the past several years, in part, to comply with its commitments under the 1992 U.S.-Kazakhstan Trade Agreement (in force, February 18, 1993). However, as a result of a "moratorium" on government anti-piracy activity, at least one copyright industry reports a noticeable decline in the number of enforcement actions – such as raids by the financial police, the regular police forces, and the Justice Ministry officials – in the past several years. As noted above, several deficiencies remain in the Kazakh legal regime, including a high burden of proof in criminal cases, and an absence of proper resources – which have contributed to weak criminal enforcement.

In 2005, Kazakhstan made significant improvements in its IPR enforcement regime with the adoption of a package of IPR reforms. Additional reforms and enforcement activities are necessary, however, to address the growing threat of Internet piracy, the on-going problems with hard copy (optical disc) piracy at street markets (in Almaty, Shymkent and Atyrau, in particular, and elsewhere across Kazakhstan), and, for the software industry, to stop the prevalent sale of pre-installed pirated software on computers. Reports persist that organized crime

syndicates are responsible for the high piracy levels; enforcement against this problem can only be addressed with effective criminal measures. The development of a modern IPR regime in Kazakhstan will benefit local as well as foreign rights holders. The software and recording industries consider Kazakhstan the most promising marketplace of the C.I.S. region, behind only Russia and Ukraine.

The Copyright Law was amended in 1996, and further amended in 2004, 2005 and 2007. IIPA understands that further revisions are being contemplated (but were not acted on in 2010) to the Copyright Law, as well as revisions to the Customs Code (to provide *ex officio* authority). These, and other IPR issues on legal reforms and enforcement of IPR, have been discussed in the past several years with the U.S. Government in bilateral talks with Kazakh officials as part of World Trade Organization (WTO) accession.

The 2004 amendments provided the long-sought explicit protection for pre-existing foreign works and sound recordings. Kazakhstan joined the Berne Convention (1999); the Geneva Phonograms Convention (2001); and, it joined the two WIPO "digital" treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), effective in 2004.

Legal Reform Deficiencies: The 2004 amendments to the Copyright Law of 1996 provide a flat 50-year window of pre-existing protection for foreign works and sound recordings. Thus, pre-1954 works and sound recordings remain in the public domain. The 2004 amendments took over 10 years to adopt, which, in the interim flooded the market with (now illegal) back-catalog material. This remains a major enforcement problem that Kazakhstan has not properly addressed. Other changes made in 2004 included laws to facilitate electronic commerce and Internet technology, and to, at least partially, implement the WIPO digital treaties, as well as E.U. directives.

In 2005, (effective November 26, 2005), additional amendments to the Copyright Law of 1996 were adopted, as well as amendments to the Criminal Code, the Criminal Procedure Code, the Civil Code, and the Administrative Code. Perhaps the key amendment in 2005 was the change to Article 184 of the Criminal Code, which repealed the previously undefined "huge damage" threshold for criminal cases and replaced it with a threshold based on the harm done or value of the works or recordings exceeding 100 times the government set monthly wage (or for more serious crimes, 500 times that amount). The 2005 amendments repealed the requirement that there be proof of "financial gain" for criminal charges to rest – this was a major improvement. Other positive steps (also in 2005) were the changes made in the commercial and licensing laws to ban the sale of copyrighted material at street kiosks, requiring instead that this material be sold in retail stores. In December 2007, the Supreme Court issued a decree pertaining to the implementation of certain provisions of the existing Copyright Law.

IIPA understands that Article 192(4) in the Criminal Code provides police with *ex officio* authority to commence criminal copyright cases, but that it is rarely used. For the past several years, IIPA has provided the Government of Kazakhstan with "model" enforcement provisions for its consideration as it moves toward WTO accession reforms. IIPA urges the Government of Kazakhstan to use the IIPA draft and to consult with local copyright industry representatives, to adopt these enforcement revisions in 2011.

The Customs Code was completely revised in 2003. However, those changes did not include the necessary *ex officio* authority to seize suspected infringing material at the border as required by the TRIPS Agreement, which as noted, is a critical missing element in the enforcement regime against hard-copy piracy. The 2003 amendments also added a complicated registration system for copyright right holders seeking enforcement at the border, which further weakens the system. IIPA continues to recommend that this registration system be repealed. Last, Kazakhstan (as well as Russia and Belarus, as part of an anticipated Customs Union), is considering a complicated duty valuation that would be (unfairly) based on royalties rather than, as in most countries, on the value of the underlying carrier media (i.e., the discs). IIPA recommends that Kazakhstan (and the Russia/Belarus customs union) reject these unfair tariff rates to allow for copyright industries to invest in the local market.

Enforcement: The Government of Kazakhstan has made strides to improve its enforcement regime, with its noted legislative reforms and with ongoing police activities. However, for the past three years, there has been a decline in the number of police raids and seizures, and in prosecutorial activity as well. Thus, there were few criminal cases for IPR offenses (an on-going trend, even according to Kazakh government statistics). IIPA knows of no criminal convictions in 2010 in the music, film, or entertainment software industries; there was, in 2008, one notable criminal case commenced involving a distributor of pirated software (and pornography). The copyright industries report in recent years that even though there were some additional cases brought to courts, the majority of pirates were not brought to justice due to administrative burdens, prosecutorial inexperience and delays, and an overall ineffective judicial system. As in recent years, some of the industries report good cooperation with and enforcement activity by the financial police, the internal affairs police, and with the various public prosecutors in some cities in particular (Almaty, Karaganda and Astana).

Enforcement is undertaken by a variety of agencies, including the Copyright Agency within the Ministry of Culture (16 departments) and various enforcement agencies. These agencies have assisted with some raids, in recent years, including against software pirates. A special IPR Department was created within the Finance Police (with national authority), but problems interpreting the law, in particular the threshold for criminal and administrative action, have hampered their enforcement activities. In recent years, the copyright industries have signed a Memorandum of Understanding with the Government of Kazakhstan. There have also been training programs conducted throughout the country. IIPA continues to encourage the government to act, especially against criminal operations, and to improve its overall enforcement with deterrent penalties.

The Business Software Alliance (BSA) reports that there have been, in recent years, reductions in the types of open and notorious piracy that existed about five years ago, because those who sell software or computer equipment and devices now generally understand that there are criminal, administrative, and civil penalties for such activities. Piracy is now focused on end-user and Internet piracy. This migration of piracy, especially to the Internet, and, a decrease in criminal enforcement efforts (especially a decline in police and prosecutorial activity last year), have kept piracy rates high. The Business Software Alliance reports (based on preliminary 2010 figures), that the piracy rate for business software in Kazakhstan was 76% and the commercial value of pirated software was $49.1 million.

In the past, BSA has reported on some raids undertaken against optical disc (CD) and hard-disc software pirates, and, even one against an Internet pirate, as well as the commencement of civil actions. The Criminal Code (Article 184(2)) has had limited impact in some instances, because it has been applied to the manufacturing and sale of illegal copies, but has not extended to contemplated but not completed sales; additionally, many cases have been dismissed or delayed unnecessarily.

In the past several years, a new form of piracy surfaced pertaining to the sale of pirated stickers of the required certificates of authenticity that must be placed on some IP products, such as software. The Government of Kazakhstan needs to address this form of piracy.

While the U.S. copyright industries have been sustaining millions of dollars in losses in Kazakhstan, the country received GSP trade benefits of approximately $61 million in 2010 (and additionally, $48 million in 2009). In April 2006, as a result of improvements in Kazakhstan's IPR legal regime, the U.S. Government concluded its GSP review of IIPA's petition of Kazakhstan. IIPA asks the U.S. Government to continue to closely monitor Kazakhstan's GSP obligations vis-à-vis its IPR legal and enforcement regime.

IIPA suggests that police and administrative activity can, if used correctly, be a very positive first step. IIPA recommends that stepped-up seizure and confiscation of illegal copyright materials should be undertaken, as well as the closure of shops and businesses conducting illegal business using the licensing law.

There are two known optical disc production facilities reported in Kazakhstan at present (the latter opened in August 2005). Each of the two plants has a single production line. The total plant capacity of the two plants is 11.6 million discs per year. Both plants now have IFPI-issued SID (source identification) codes (August 2002; August 2005) and have provided exemplars (examples) of discs manufactured at the plants to be used for forensics evidence. To date, there is no forensic evidence of illegal production at either optical disc plant. Still, IIPA recommends the adoption of optical disc regulations to properly monitor the production and distribution of material and equipment at these and any future plants, including tying illegal commercial production to criminal penalties. The absence of such a system, the lack of overall strong enforcement, and the infrastructure in Kazakhstan, are an invitation for plants and organized crime syndicates to move their operations into Kazakhstan from neighboring countries, such as Russia.

TAJIKISTAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)
2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Tajikistan remain on the Watch List in 2011.

Priority actions requested to be taken in Tajikistan in 2011 – Key Legal Reforms: There are a number of serious legal deficiencies in Tajikistan that make the IPR regime in Tajikistan inconsistent with international obligations, including the WIPO digital treaties. IIPA recommends the following legal reforms to improve the IPR regime in Tajikistan:

- Adherence to the Geneva Phonograms Convention (or, in lieu, the WIPO Performances and Phonograms Treaty - WPPT).

- Amending the Copyright Law to: (a) comply with the WIPO Copyright Treaty (WCT) and the WPPT – including basic protections for copyrighted materials on the Internet – an exclusive right of making available to the public for authors (i.e., a communication to the public right consistent with the WCT, Article 8), and for phonogram producers (i.e., consistent with the WPPT, Article 14); protection for the use of technical protection measures applied by rights holders to works and sound recordings; effective legal remedies against those who engage in acts of circumvention or distribute circumvention devices; (b) provide protection for pre-existing works and sound recordings for a minimum of 50 years (and preferably, 70 years); and (c) delete the onerous contract regulations.

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

- Amending the Criminal Code to cover all IPR violations of "works" and "neighboring rights."

- 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. The current Criminal Code (Article 156) provides for copyright and neighboring rights sanctions, but only where there is "significant harm" to the rightholder.

- Amending the Criminal Code to set the penalties for IPR violations to deterrent levels (for example, to 500 times the minimum wage).

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

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

- Amending the Administrative Code to provide *ex officio* authority to administrative officials to commence investigations and cases.

- 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.

Summary of U.S. – Tajikistan IPR Issues: In 1993, Tajikistan 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 November 24, 1993. Tajikistan has never fully implemented the IPR obligations in that agreement.

In April 2010, the U.S. Trade Representative – in retaining Tajikistan on the Watch List – noted that Tajikistan "has yet to fully implement its IPR commitments under the 1993 U.S.-Tajikistan Trade Agreement. Tajikistan made progress in 2009 by acceding to the WIPO Copyright Treaty and by amending its Administrative Code in an effort to implement Article 18 of the Berne Convention to provide protection for certain preexisting works. The United States encourages the Ministry of Culture to continue working towards accession to the WPPT in 2010. Tajikistan does not provide protection for U.S. and other foreign sound recordings, and concerns remain over the lack of proper *ex officio* authority for criminal and border enforcement, and over insufficient criminal penalties for IPR infringement." As in years past, the U.S. Government has urged Tajikistan to work through the Trade and Investment Framework and the ongoing WTO accession negotiations to rectify these and the other noted legal and enforcement shortcomings, many of which Tajikistan obligated itself to undertake almost 18 years ago in the Bilateral Agreement.

Although accession to the WCT in 2009 was positive news, unfortunately, Tajikistan did not also deposit its instrument of accession to the other WIPO "digital" treaty, the WPPT. Instead, on May 19, 2008, Tajikistan joined the Rome Convention. Because it has not yet adhered to the Geneva Phonograms Convention, or the WPPT, Tajikistan does not currently provide protection for any U.S. sound recording.

Legal Reform Deficiencies: In 2000, Tajikistan adhered to the Berne Convention. However, the Tajik Copyright Law (in force, December 17, 1998) falls short of full compliance with the Berne Convention and other international norms. There are many deficiencies in the Copyright Law, noted above, including: (1) the over-regulation of the terms and conditions of authors' contracts; and (2) provisions that provide only for a right of remuneration for producers of sound recordings for the public performance, broadcasting, or communication of a phonogram to the public by cable.

The Customs Code (last revised in 1995) does provide liability for the transfer of illegal goods, including intellectual property material, through the border. A 2002 resolution (No. 185 of the Cabinet of Ministers) established border control rules for goods, including IPR works, and it implemented a customs registry for IPR works requiring a right holder to file a statement and set of documents for border enforcement. These regulations are cumbersome and an ineffective tool that IIPA recommends should be repealed.

There has not been a single criminal IPR case reported under the existing laws. Nor has there been a single case reported under the Administrative Code. The Administrative Code, last revised in 1999 (Article 158-2), provides levies, fines, and seizure of illegal copyright and neighboring rights material. The copyright industries have no reports concerning enforcement activity in Tajikistan.

On December 10, 2002, the U.S. and Tajik Presidents signed a joint statement reaffirming the relationship between the two countries and "recognizing the importance of . . . the rule of law" as well as pledging to work together on economic and political reforms. IIPA recommends that the Government of Tajikistan affirm this statement by meeting its obligations and amending its relevant IPR laws and engaging in effective enforcement. The U.S. Government and Tajik Government signed a Trade and Investment Framework Agreement (TIFA) on June 1, 2004 to enhance trade and investment between the two countries, and have since held talks in the context of the TIFA, to further improve trade relations.

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

TURKMENISTAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)
2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Turkmenistan remain on the Watch List in 2011.

Priority actions requested to be taken in Turkmenistan in 2011 – Key Legal Reforms: The basic copyright and related laws, enforcement provisions, and treaty accessions for a modern IPR regime are absent in Turkmenistan. As a result, the IIPA recommends the following IPR legal reforms in Turkmenistan:

- Adherence to the Berne Convention.
- Adherence to Geneva Phonograms Convention.
- Adherence to the WIPO digital treaties – the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).
- Adoption of a Berne, WTO TRIPs and WIPO digital treaties (WCT/WPPT) compliant Copyright Law to protect works and sound recordings. This includes, as a priority, the need to adopt provisions that protect works in the digital era – such as the use of technical protection measures applied by rights holders to works and sound recordings. The law should also protect pre-existing works and sound recordings for a minimum of 50 years (and preferably, 70 years). 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.
- Amending the Civil Code to provide the proper *ex parte* search provisions for effective enforcement against end-user infringers.
- Amending the Criminal Code to raise the penalties for IPR violations to deterrent levels (for example, to 500 times the minimum wage).
- 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, to 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 in practice to provide any effective enforcement.
- Amending the Criminal Code (or Criminal Procedure Code) to permit the confiscation and destruction of manufacturing equipment used to produce pirated material.
- Amending the Criminal Procedures Code to provide the proper *ex officio* authority for police officials to initiate copyright criminal cases and investigations.
- Amending the Administrative Code to provide *ex officio* authority to administrative officials to commence investigations and cases.
- 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.

Summary of U.S. – Turkmenistan IPR Issues: 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. Eighteen years later, Turkmenistan has not implemented the IPR obligations in that agreement.

In April 2010, the U.S. Trade Representative – in retaining Turkmenistan on the Watch List – noted "Turkmenistan has yet to implement the IPR provisions of the 1993 U.S.-Turkmenistan Trade Agreement (Bilateral Trade Agreement). Turkmenistan has not joined the treaties identified in the Bilateral Trade Agreement, including the Berne Convention, Geneva Phonograms Convention, and the WIPO Internet Treaties. The Civil and Criminal Codes provide some degree of protection against IPR infringement; however, Turkmenistan still must adopt explicit and comprehensive administrative and civil procedures and criminal penalties for IPR infringement. Turkmenistan has not adopted a separate copyright law and does not provide protection for foreign sound recordings and preexisting works. IPR enforcement is inadequate in part because Customs officials do not have *ex officio* authority to interdict suspected infringing material at the border. The United States urges Turkmenistan to adopt the necessary legal reforms to implement its obligations under the Bilateral Trade Agreement, and to improve its IPR regime." Turkmen officials participating at a U.S. Patent and Trademark Office (GIPA) program in December 2009, said that Turkmenistan planned to join the Berne Convention and the Geneva Phonograms Convention in 2010, but alas, it did not meet that goal.

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 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.

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 and have subsequently held talks in the context of the TIFA, to further improve trade relations.

UZBEKISTAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)
2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Uzbekistan remain on the Watch List in 2011.

Priority actions requested to be taken in Uzbekistan in 2011 – Key Legal Reforms: IIPA recommends the adoption of the following legal reforms and treaty accessions in Uzbekistan in order to provide for effective copyright protection and enforcement:

- Revoking the reservation to Article 18 of the Berne Convention by a formal notification from the Government of Uzbekistan to the WIPO, in order to properly provide protection for pre-existing works compliant with Berne and the U.S. bilateral agreement.

- Adherence to the Geneva Phonograms Convention.

- Adherence to the WIPO digital treaties – the WIPO Copyright Treaty ("WCT") and the WIPO Performances and Phonograms Treaty ("WPPT").

- Correcting deficiencies (and some uncertainties) in the Copyright Law of 2006, including:

    i. Providing protection for pre-existing works and sound recordings for a minimum of 50 years (and preferably, 70 years).

    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. Clarifying the scope and application of the rental right for audiovisual works and computer programs (Article 21).

    iv. Complying with the digital treaties (WCT and WPPT) – by improving the provisions pertaining to technical protection measures (Article 63, which currently provides for no civil or criminal remedies) and rights management information (Article 64).

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

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

- Amending the Criminal Code to include "neighboring rights" violations (the current code only applies to infringements of "works").

- Amending the Criminal Code to raise the penalties for IPR violations to deterrent levels (for example, to 500 times the minimum wage).

- 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.

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

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

- Amending the Administrative Code to provide *ex officio* authority to administrative officials to commence investigations and cases.

- 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.

Summary of U.S. – Uzbekistan IPR Issues: In November 1993, Uzbekistan and the United States signed a bilateral Trade Agreement (in force, January 13, 1994). The agreement conferred Normal Trade Relations (then known as "Most Favored Nation") status on Uzbekistan, in exchange for Uzbekistan agreeing to adopt critical IPR legal reforms, and to comply with international copyright treaty norms. Unfortunately, over seventeen years after the 1994 Trade Agreement, some of the most basic protections continue to be denied right holders in Uzbekistan. For example, since Uzbekistan is still not a member of the Geneva Phonograms Convention, it does not provide any protection or rights for U.S. or other foreign sound recordings. Further, it does not protect pre-existing foreign works prior to 2005 as a result of a reservation it made when it joined the Berne Convention (in contravention to that Convention and the 1994 Trade Agreement).

In April 2010, the U.S. Trade Representative, in announcing Uzbekistan's retention on the Watch List, noted ongoing concerns because Uzbekistan "has yet to fully implement its commitments under the 1994 U.S.-Uzbekistan Trade Agreement. Uzbekistan's copyright law does not provide protection for preexisting works for U.S. and other foreign sound recordings. Uzbekistan has not joined the Geneva Phonograms Convention. Enforcement remains weak and criminal penalties for IPR violations are not sufficient to provide a deterrent effect. Additionally, amendments are needed to provide enforcement officials, including Customs officials, with *ex officio* authority to initiate enforcement actions and investigations. The United States will continue to work with Uzbekistan through its WTO accession process and the ongoing review under the U.S. Generalized System of Preferences program." As a result of its ongoing failures to improve its IPR regime, IIPA continues to recommend that the U.S. Government should deny Uzbekistan trade benefits and preferences including its eligibility to participate in the Generalized System of Preferences (GSP) program, because Uzbekistan is not providing the statutorily mandated "adequate and effective" copyright protection and enforcement under its present IPR regime.

Legal Reform Deficiencies: 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 requirements of the Berne Convention and WTO/TRIPs, which the government hopes to accede to at some

[1]Note, IIPA 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 official English translations of these laws/regulations).

future date. The 2006 law added: a making available right; a right of communication to the public; provisions pertaining to technical protection measures and copyright management information; regulations pertaining to private copying and public performance royalties; and, extensive provisions and regulations involving collective administration (Chapter Four of the law). 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, such as, those pertaining to technical protection measures).

In 2005, Uzbekistan adhered to the Berne Convention (effective April 19, 2005). Unfortunately, Uzbekistan made a reservation to its accession regarding Article 18 that denies protection for pre-existing works from the United States and all other Berne countries. This reservation, as noted by WIPO and other copyright experts to the Government of Uzbekistan, is in contravention to the Article 18 obligations of Berne (and the 1994 Agreement). Uzbekistan must withdraw its reservation immediately and provide clear protection for pre-existing works (and separately, for sound recordings as well).

On November 30, 2005, IIPA testified at the GSP country practice hearing regarding Uzbekistan's legal deficiencies. After that hearing, the U.S. Government 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 U.S. Government with eight recommendations for improving IPR in Uzbekistan, in a written response on December 14, 2005. We testified again on October 4, 2007, and on April 24, 2009 at GSP hearings. Now, more than five years later, and after three rounds of hearings, the Government of Uzbekistan has failed to adopt seven of the eight recommendations (which, for the most part, track the 1994 trade agreement obligations). The same set of recommendations is set out above – with some additional detail.

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, one draft (2004) would have weakened, not strengthened, criminal penalties because: (1) no criminal penalties are 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 — are much too low to be deterrent penalties. 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.

Enforcement: The U.S. Government and Uzbek Government signed a Trade and Investment Framework Agreement (TIFA) on June 1, 2004 to enhance trade and investment between the two countries. The governments have since held talks, in the context of the TIFA, to further improve trade relations.

In 2010, Uzbekistan benefited from $2.1 million worth of GSP benefits (compared with $414,000 for all of 2009). Thus, even as the U.S. Government is promising to enhance trade and investment with Uzbekistan and providing GSP benefits and other aid, the Uzbek copyright regime is, at present, among the weakest of all of the countries in the C.I.S. The IIPA recommends that the U.S. Government should remove Uzbekistan from eligibility to receive GSP benefits because Uzbekistan is not complying with the IPR eligibility requirements for GSP benefits, namely the requirement to provide "adequate and effective" copyright protection and enforcement. Further, Uzbekistan is not in compliance with its bilateral and multilateral obligations, and is woefully inadequate in its IPR regime as a potential WTO member.

After the Uzbek Government adopts the necessary legal reform and treaty accessions, it also needs to commence enforcement actions. Such actions should begin with police raids and seizures at a minimum, and it must act to stop the retail distribution of illegal material through the use of administrative and criminal sanctions. There have been reports of some actions against retail shops that sell pirated product, which if true, are a positive step.

The IFPI reports there are no known optical media plants in Uzbekistan.