

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D.C. 20506

FOR IMMEDIATE RELEASE  
Saturday, April 29, 1995

95-32  
Contact: Anne Luzzatto  
Dianne Wildman  
Kirsten Powers  
Jamal Simmons  
(202) 395-3230

1995

USTR ANNOUNCES TWO DECISIONS:  
TITLE VII AND SPECIAL 301

United States Trade Representative Mickey Kantor today announced decisions and initiated actions in two important areas: Special 301 -- protection of intellectual property rights -- and Title VII/discrimination in foreign government procurement.

Today's decisions reflect the Administration's continued resolve to take strong measures to ensure comparable market access and intellectual property protection for U.S. products and to promote more open foreign procurement practices -- measures which are key to this Administration's policy of opening markets and creating opportunities for U.S. companies and jobs for U.S. workers.

Title VII

In announcing this year's results, Ambassador Kantor called Title VII "a valuable tool in breaking down discriminatory government procurement practices around the world." During this Administration alone, Title VII has been used to achieve a number of agreements, including:

- the 1993 Memorandum of Understanding (MOU) with the EU, followed up by the 1994 Marrakesh Agreement;
- a construction agreement with Japan in January 1994;
- and, in October 1994, the Framework Agreements with Japan on telecommunications and medical technology.

1995 Results

This year, no new identifications were made, but several areas deserving special attention as issues of substantial concern were highlighted in this year's report to Congress. These issues are:

Corruption and Transparency: The issue of corruption in foreign procurement and lack of transparency in procurement practices is an important one. Kantor said, "This Administration is determined to increase public awareness of these problems and push initiatives to clean up government procurement practices around the world. Efforts to eliminate corruption in government procurement and increase transparency will not only eliminate persistent international trade barriers, but will also benefit foreign governments' standing with their domestic constituencies and increase their efficiency."

The United States has taken the lead in promoting international disciplines against corruption, including through work in the OECD and the Summit of the Americas (SOA).

Coupled with efforts on corruption, the Administration is pursuing initiatives on transparency in procurement. These pursuits include expanded membership in the WTO Government Procurement Code, which Kantor called, "the best guarantee against discrimination in government procurement," and through further work in the SOA and APEC.

German Implementation of the 1993 Mou: This year's Title VII Report also highlights U.S. concerns with German implementation of the 1993 U.S.-EU MOU on Government Procurement, which covers the government-owned power generation utility sector. The Administration's concerns have been heightened by difficulties a U.S. firm has experienced in obtaining a German review of allegations of discrimination in a steam turbine procurement covered by the MOU.

Because of these concerns, Kantor intends to monitor German implementation of the MOU very closely to ensure that U.S. firms get a fair shake in this very important sector.

Japan Telecommunications and Medical Technology: *Since the last Title VII review, the United States has concluded government procurement agreements with Japan in the telecommunications and medical technology sectors. Upon conclusion of these agreements, the United States terminated the 1994 Title VII identification of Japan in October 1994. The first set of consultations with Japan under these two agreements is scheduled to take place this summer. The United States is monitoring closely Japanese compliance with these agreements to ensure that tangible progress is achieved.*

Kantor also announced that the 1994 Title VII report to Congress will include information on procurement practices of Australia, Brazil and China, in addition to Japanese procurement practices in two other sectors -- supercomputers and computers.

Finally, Ambassador Kantor noted that the sanctions first applied in 1993 against the EU for discrimination in the telecom sector continue and are being extended to the three new member states -- Austria, Finland and Sweden.

## Special 301

### Accomplishments Over The Past Year

Ambassador Kantor today noted the substantial progress made over this past year in improving intellectual property protection, particularly in those countries whose practices have been major IPR concerns in the past. This progress included countries that U.S. industry groups had recommended for "priority foreign country" designations this year.

A most important accomplishment was the successful conclusion of the U.S.-China IPR Enforcement Agreement, signed on February 26. This agreement commits China to strong measures to curb piracy--particularly in computer software, audiovisual works, patented works and trademarks. The signing of the agreement concluded an eight-month section 301 investigation into China's IPR enforcement practices.

Very recent additional progress included implementation of what Kantor expects to be much improved patent protection in Argentina; new bilateral understandings with Bulgaria on copyright and Singapore on patents, as well as a commitment announced by Indonesia to strengthen copyright enforcement, particularly for computer software. Kantor also took careful note of Turkey's recent commitment to the EU to implement modern IPR protection. Noting longstanding concern about the lack of adequate intellectual property protection in Turkey, Kantor stated that the USTR will monitor this development closely.

Kantor pointed out that many other trading partners also made progress this year in resolving longstanding problems. Over the past 12 months, new copyright laws or amendments were enacted or brought into effect in several countries including Australia, Costa Rica, India, Panama, Poland, New Zealand and Thailand. New patent legislation was enacted in Mexico and Colombia. New trademark legislation became effective in the Ukraine. Improved enforcement procedures were implemented in Italy, Korea, Saudi Arabia, Taiwan and the UAE. Bahrain, Paraguay, Poland, Russia and Saudi Arabia joined international IPR conventions. Trinidad and Tobago signed a bilateral IPR agreement with the United States and an understanding with Japan was reached regarding certain patent issues.

Kantor noted that further progress can be expected as a result of the coming into effect this year of the WTO's TRIPs Agreement (Agreement on Trade-Related Aspects of Intellectual Property rights). "The United States has now fully implemented its TRIPs obligations, in many instances in advance of the required implementation date of January 1, 1996. We look to other countries to do the same. We will continue to press all WTO member-countries to implement their TRIPs obligations in the shortest possible time."

### Special 301 Decisions

Given the substantial recent progress noted above, Kantor announced that there will be no priority foreign country designations at this particular time. However, he stressed: "I have intentionally increased the number of out-of-cycle reviews that will be conducted this year." Through the "out-of-cycle" review process, Kantor plans to review progress in certain countries during the course of the year, rather than only at the end of April when the annual review occurs. Kantor further stressed that the 1974 Trade Act permits USTR to make additional identifications at any time that the facts warrant.

Kantor announced placement of eight trading partners on the "priority watch list." Five of these countries -- Brazil, Greece, Japan, Saudi Arabia, and Turkey will be subject to review

during the course of the year to ensure that pressure is maintained on these countries for progress. Other countries on the priority watch list are the European Union, India and Korea.

Kantor stated: "I look for and expect continued progress by all countries in meeting our concerns. This includes raising the level of intellectual property protection at least to TRIPs standards as quickly as possible. However, in the coming months I will not hesitate to designate as a priority foreign country any country where such a designation is warranted."

Kantor further announced that 24 countries would be placed on the "watch list," and that "out-of-cycle" reviews would be conducted with four of these countries -- Argentina, the United Arab Emirates, Indonesia and South Africa.

Kantor also noted growing concerns about IPR problems in five countries and highlighted developments in, and expectations for progress in six countries.

Details of Ambassador Kantor's special 301 decisions are provided in the attached Fact Sheet.

## FACT SHEET

### "SPECIAL 301" ON INTELLECTUAL PROPERTY RIGHTS

#### ACTIONS TAKEN

United States Trade Representative Michael Kantor announced today the Administration's decision with respect to this year's review under the so-called "special 301" provisions of the Trade Act of 1974 (Trade Act).

This decision reflects the considerable progress made over the course of 1994 and thus far in 1995 in resolving intellectual property problems with many countries. It also reflects the increasing general level of protection for intellectual property in other countries resulting in part from the accelerated implementation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement).

Ambassador Kantor's decision includes the following specific actions:

#### **For "priority watch list" countries:**

The Administration announced that "out-of-cycle" reviews would be conducted with the following countries:

#### By October:

- **Greece:** We seek enactment of a broadcast law and vigorous action against unauthorized broadcasting of U.S. films.
- **Saudi Arabia:** We look for continued enforcement against copyright piracy.

#### By mid-December:

- **Turkey:** To ensure that Turkey is modifying laws and practices to provide modern copyright, trademark and patent protection and enforcement.

The Administration will review the status of bilateral talks with **Japan** over patent scope issues in mid-December as well.

The Administration placed three additional trading partners on the priority watch list: Korea, the EU and India.

#### **For "watch list" countries:**

The Administration announced that "out-of-cycle" reviews would be conducted with the following countries:

By end of July:

- **Argentina:** To review implementation of patent issues, as well as the protection of data submitted for marketing approval against unauthorized disclosure or use in the review of other applications.

By mid-September:

- **South Africa:** We seek solutions to trademark problems.

By October:

- **The United Arab Emirates:** To review whether continuing progress is occurring in the UAE's fight against piracy and counterfeiting.

By mid-December:

- **Indonesia:** to ensure that Indonesia is taking steps against software and book piracy.

The Administration placed 20 other countries on the "watch list" as described below.

In addition, the Administration noted growing concerns about IPR problems in five countries and highlighted developments in, and expectations for progress in six countries.

The Administration reiterates its commitment to ensure full and effective implementation of the "special 301" provisions of the Trade Act and rapid implementation of the WTO TRIPs Agreement. The Administration will continue to encourage other countries to accelerate implementation of the WTO TRIPs agreement and move to even higher levels of IPR protection. To these ends, the Administration will continue to engage countries in dialogues aimed not only at resolving the problems that brought about their inclusion on the "special 301" lists, but also seeking an improvement in the overall level of intellectual property protection.

STATUTORY AUTHORITY

The "special 301" provisions of the Trade Act of 1974, as amended, require the USTR to determine whether the acts, policies and practices of foreign countries deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons who rely on intellectual property protection. "Special 301" was amended in the Uruguay Round Agreements Act to clarify that a country can be found to deny adequate and effective intellectual property protection even if

it is in compliance with its obligations under the TRIPs Agreement. It was also amended to direct the USTR to take into account a country's prior status and behavior under "special 301."

Once this pool of countries has been determined, the USTR is required to designate which, if any, of these countries should be designated "priority foreign countries." "Priority foreign countries" are those countries that:

- (1) have the most onerous and egregious acts, policies and practices which have the greatest adverse impact (actual or potential) on the relevant U.S. products; and,
- (2) are not engaged in good faith negotiations or making significant progress in negotiations to address these problems.

If a country is identified as a "priority foreign country", the USTR must decide within 30 days whether to initiate an investigation of those acts, policies and practices that were the basis for identifying the country as a "priority foreign country". A "special 301" investigation is similar to an investigation initiated in response to an industry Section 301 petition, except that the maximum time for an investigation under Section 301 is shorter in some circumstances (i.e., where the issue does not involve a violation of the Agreement on TRIPs).

The USTR undertakes a review of foreign practices each year within 30 days after the issuance of the National Trade Estimates (NTE) Report. Today's announcement follows a lengthy information gathering and negotiation process. The interagency Trade Policy Staff Committee that advises the USTR on implementation of "special 301" obtains information from the private sector, American embassies abroad, the United States' trading partners, and the NTE report.

This Administration is determined to ensure the adequate and effective protection of intellectual property rights and fair and equitable market access for U.S. products. The measures announced today result from close consultations with affected industry groups and Congressional leaders, and demonstrate the Administration's commitment to utilize all available avenues to pursue resolution of intellectual property issues. In issuing the announcement, Ambassador Kantor is expressing the Administration's resolve to take uniformly strong actions under the "special 301" provisions of the Trade Act.

DESCRIPTION BY COUNTRY OF EXISTING SITUATION AND MEASURES TAKEN**Priority Watch List**

The Administration has decided to place eight trading partners on the priority watch list because the lack of adequate and effective intellectual property protection or market access in these countries is especially significant for U.S. interests. USTR will devote special attention to resolving these problems, many of which are longstanding. The trading partners are:

Brazil continues to fail to adequately protect intellectual property. Brazil was designated a "priority foreign country" in 1993 and a section 301 investigation was initiated. The Administration terminated that investigation and revoked Brazil's "priority foreign country" status in February, 1994 after the Government of Brazil described measures it was taking and would take to increase IPR protection. Legislation to modernize Brazil's patent law continues to remain under consideration in Congress; amendments to the copyright law have not been introduced, although computer software legislation was recently submitted. The Administration looks for Brazilian enactment of modern patent, trademark and copyright legislation. An "out-of-cycle" review will be completed to assess progress made in Brazil. The Administration will take appropriate action based on the findings of the review.

The European Union continues to deny equitable access to U.S. providers of television programming through the use of television broadcast quotas. In addition, certain EU member-states, France and Belgium, require the denial of national treatment to U.S. rights holders. Patent filing fees in the EU and in its member-states are extraordinarily expensive; fees associated with filing, issuance and maintenance of a patent over its life far exceed those in the United States. The patent "working requirement" in certain member states may discriminate against products manufactured outside the European Union.

Greece has not yet acted to stop motion picture and sound recording piracy, including widespread unauthorized broadcasts of protected films and T.V. programs by unlicensed television stations. Greece has also failed to enact a new broadcast law which would help address this problem. This problem led the Administration to elevate Greece to the "priority watch list" in November, 1994. Although a few actions were taken by the Greek Government against unauthorized broadcasts by unlicensed T.V. stations after this change in "special 301" listing, piracy still remains essentially unchecked. The Administration will maintain Greece on the "priority watch list" at this time. However, an "out-of-cycle" review will occur by October, by which time the Administration looks to Greece to have more aggressively



addressed these problems. The Administration will take appropriate action which could include trade measures based on the results of the review.

India was a "priority foreign country" from 1991-1993. In 1994, the Administration moved India to the "priority watch list," largely on the basis of positive amendments to its copyright law. However, implementing regulations governing the new copyright law have not been put in place and enforcement is not yet effective. As part of its implementation of the WTO agreements, India implemented the patent "mailbox" provisions of the TRIPs agreement. However, these provisions have not yet been passed by India's Parliament. Moreover, India's industrial property laws continue to fall short of providing adequate and effective protection. In particular, the Administration looks to India to enact modern patent and trademark legislation.

Japan Despite conclusion of two patent-related agreements in 1994, patent-related problems continue, particularly with respect to the narrow scope and interpretation of patent claims in Japan. This practice has severely limited the ability of U.S. patent holders in a range of industries, particularly biotechnology, to acquire exclusive rights comparable to those available to Japanese patent holders in the United States. The U.S. and Japan have agreed to begin discussion of these issues in June. The status of these discussions will be reviewed in mid-December. Other continuing patent problems remain to be addressed as well, as does U.S. concern about enforcement against computer software piracy and retroactive copyright protection for sound recordings.

Korea Major problems include large amounts of end-user software piracy, particularly by large conglomerates; lack of recognition of well-known trademarks; failure to protect pre-1987 works under the copyright law; lack of protection for trade secrets and software and motion picture import valuation. With respect to this last issue, Korean Customs is valuing imports of software and video films on the basis of the full value of their content, rather than the medium, contrary to international practice. Concerns have also been expressed recently about consideration being given to permitting computer software decompilation.

Saudi Arabia has been kept on the "priority watch list", with an out-of-cycle review scheduled by October 1995. Saudi Arabia made considerable progress in intellectual property protection over the past year. It deposited its instruments of accession to the Universal Copyright Convention in April 1994, and protection for foreign works took effect on July 1, 1994. In recent months, Saudi Arabia has begun to take action enforcing copyright protection. It remains on the priority watch list in order to give the U.S. time to assess the ongoing effectiveness of these efforts in reducing the availability of pirated software, videos and sound recordings. Saudi Arabia's copyright law contains

deficiencies making it incompatible with international standards, including an inadequate term of protection.

Turkey has been kept on the "priority watch list" because it continues to lack modern patent or copyright legislation. Enforcement of existing copyright law is ineffective and copyright piracy is widespread. Turkey is a significant producer of pirated pharmaceutical products because such products are not patentable there. In March 1995, in the course of customs union negotiations with the European Union, Turkey committed itself to bring its intellectual property laws into line with international norms over the next four years. In April 1995, Turkey's Parliament began debate on amendments to the copyright law that would address many, although not all, of the shortcomings in the current law. A draft patent law has also been prepared; the question of when Turkey will begin to protect pharmaceutical products is not yet resolved, however. The draft does not contain "pipeline" protection for pharmaceutical products. An out-of-cycle review will be held no later than December 15, 1995 to assess the extent to which Turkey, in the interim, has extended effective protection to the holders of U.S. intellectual property.

#### Watch List

In reviewing the practices of all of our trading partners, the USTR has decided that 24 countries should be placed on the "watch list". The Administration uses the "watch list" as a means of monitoring progress in implementing commitments with regard to the protection of intellectual property rights and for providing comparable market access for U.S. intellectual property products.

Countries placed on the watch list are:

Argentina recently addressed a major U.S. concern by issuing regulations to implement a modern patent system. The U.S. was pleased with this development, resolving a longstanding problem. However, certain problems remain, including concerns about the protection of data submitted for marketing approval. The U.S. will monitor this situation carefully to ensure that this progress is maintained and that U.S. patent applicants can benefit fully in a manner consistent with modern international patent practice. An out-of-cycle review will be conducted by the end of July.

Bahrain: Bahrain extended protection to foreign works when it joined the Berne Convention in February 1995. The U.S. urges Bahrain to bring its copyright regime into line with its obligations under the Berne Convention and the WTO, and to begin to take effective enforcement action against widespread piracy of copyrighted works of all types.

Canada: Canada has been elevated to the watch list because the U.S. is concerned about current policies of the Canadian Radio-television Communication Commission (CRTC) which discriminate against non-Canadian television services. The U.S. is also concerned by the Government of Canada's announcement in December, 1994, of its intention to seek legislation to implement additional policies that discriminate against non-Canadian periodicals and to seek legislation which may discriminate against U.S. copyright holders. The U.S. is currently addressing certain CRTC policies in a Section 301 investigation and will closely monitor the development of the proposed legislation affecting periodicals and copyrights.

Chile: Chile's patent term is TRIPs-inconsistent, pipeline protection remains unavailable, and there is inadequate protection for plant varieties and animal breeds. Additional problems are computer software piracy, and the absence of protection for semi-conductor mask works and encrypted satellite signals. Copyright protection for computer software and the existence of rental and importation rights remain unclear. We expect that these issues will be addressed as part of Chile's accession to the NAFTA.

China: The IPR enforcement agreement signed on February 26 commits China to strong measures to curb piracy. A top priority for the U.S. Government will be to ensure that this agreement is implemented fully and on schedule. The Administration will thus monitor very carefully Chinese implementation of the agreement.

Colombia: The Colombian Government has made significant improvements in its intellectual property rights protection; as a member of the Andean Pact, it has enacted three Decisions on intellectual property which improve protection over previous decisions, but still do not provide adequate and effective protection in all areas, particularly in the patent area. While Colombia has a modern copyright law, it has had difficulty in enforcing existing copyright laws. The U.S. will continue to seek a bilateral IPR agreement with Colombia.

Costa Rica: Costa Rica's patent law is deficient in several key areas. The term of patent coverage is a non-extendable 12 year term from the date of grant. In the case of products deemed to be in the "public interest", such as pharmaceuticals, chemicals and agro-chemicals, fertilizers, and beverage/food products, the term of protection is only one year from date of grant.

Egypt: Egypt has taken significant steps in improving the legal framework for protection of copyright works, and has devoted resources to enforcing its copyright law. The U.S. remains seriously concerned, however, about the lack of effective patent protection in Egypt. The U.S. urges Egypt to promptly enact a modern patent law that provides immediate patent protection for

all types of products, including pharmaceuticals, agricultural chemicals and foodstuffs.

El Salvador: El Salvador's intellectual property rights law, passed in 1993, went into effect on June 15, 1994. The new law has been in effect for almost a year, but the Government of El Salvador has yet to promulgate implementing regulations. Enforcement of copyrights has been a significant problem. In addition, although El Salvador extends protection to trademarks through its participation in the Central American Convention for the Protection of Industrial Property, trademark enforcement has been weak. The U.S. urges the Government of El Salvador to issue complete implementing regulations for the new law and enforce it effectively. The U.S. welcomes the extension of the patent term for pharmaceuticals to 20 years from filing, done as a result of the passage of Uruguay Round implementing legislation on March 9, 1995.

Guatemala: Guatemala does not adequately protect pharmaceuticals and its copyright law is deficient. The U.S. urges Guatemala to give priority to moving copyright law reform through its legislature and to offer better patent and trademark protection. The U.S. remains concerned about the interception and unauthorized retransmission of U.S. satellite-carried programming by cable and multichannel microwave distribution systems.

Indonesia: Enforcement including the imposition of deterrent penalties for computer software and book piracy needs to be improved. In 1993, the U.S. software and book publishing industry led one of the largest raids in Asia against pirates. However, the chief defendants in the case received suspended sentences. The Indonesian Government has recently announced an action plan in which it will intensify its enforcement efforts against copyright piracy and require Government Ministries to purchase only licensed software. The Government also has promised to introduce legislation in 1995 to bring Indonesia's copyright, trademark and patent laws into conformity with TRIPs. We look for the prompt enactment of these measures. U.S. firms continue to encounter problems with textile design piracy in Indonesia. An out-of-cycle review will be conducted by December 15.

Italy: The Italian Government stepped-up enforcement efforts over the past year, including several large well-publicized raids, particularly against copyright piracy. Nevertheless, losses due to piracy remain high. The major impediment to reducing video piracy has been the inadequacy of criminal penalties. Counterfeiting of trademark products and alleged deficiencies in the Italian judiciary have become growing concerns for U.S. industry. The patent "working requirement" in Italy may discriminate against products manufactured outside the European Union.

Pakistan: The U.S. notes greater efforts to combat copyright piracy. However, Pakistan's patent law provides process but not product protection for pharmaceutical or agricultural chemicals. Proving infringement of a process patent is difficult and such patents are easily circumvented. The U.S. seeks the prompt revision of this law. U.S. industry concerns continue about the inadequate protection of textile designs and trademarked products.

Peru: The Peruvian Government passed a new industrial property rights law in 1992, and, as a member of the Andean Pact, enacted three Decisions on intellectual property which improve protection over previous decisions but still do not provide adequate and effective protection in all areas, particularly in the patent area. The Peruvian Government needs to intensify its anti-piracy efforts, particularly to combat sound recording and book piracy.

Philippines: Under the 1993 bilateral agreement with the United States, the Philippines committed to make "best efforts" to enact amendments to its copyright, patent and trademark laws by the end of 1994, as well as take specific actions to improve its IPR enforcement. These commitments have not been fully implemented. The Administration looks to the Government of the Philippines to 1) enact this legislation quickly; 2) resolve book compulsory licensing problems; and 3) continue progress in eliminating the use of pirated software in government agencies.

Poland: The U.S. continues to monitor implementation and enforcement of rights provided under the copyright law enacted in February 1994. The U.S. remains concerned that about the inadequacy of protection provided to sound recordings under Poland's copyright regime, and urges Poland to accede to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (the Geneva Convention).

Romania: Romania's copyright law is inadequate, and piracy rates are high; the unauthorized use of copyrighted works by television stations is a particular problem. The U.S. looks to the Government of Romania to act quickly to pass and enforce new copyright legislation, as it committed to do by the end of 1993 under the bilateral Trade Agreement signed with the United States in April 1992.

Russian Federation: The U.S. recognizes the progress Russia has made in establishing the legal framework necessary for the protection of intellectual property rights, and welcomes Russia's accession to the Berne and Geneva Conventions in March, 1995. Nevertheless, high and growing levels of piracy of copyrighted works are of great concern. The U.S. is prepared to work cooperatively with the Russian government in addressing

enforcement issues, and to provide training and technical assistance for that purpose.

Singapore: IPR problems centered on two recent legislative changes that have had the effect of weakening patent protection in Singapore with respect to compulsory licensing and government use. Moreover, the U.S. looks to Singapore to implement its TRIPs obligations in this area by January 1, 1996. A recent exchange of letters with Singapore is expected to address these concerns. The inadequate protection of textile designs in Singapore remains a problem.

South Africa: Many U.S. firms refrained from investing or conducting business in South Africa during the anti-apartheid sanctions period. Some of these firms are now blocked from using the trademarks they had registered in South Africa because South African firms have challenged these registrations under a law which permits the expungement of a registered mark not used for more than five years. In addition, in enforcing the Trade Mark Act of 1963, South Africa has not provided protection against the pirating of well-known international marks. The U.S. welcomes the expressed willingness of senior South African officials to resolve these issues, and recognizes that effective protection of intellectual property rights plays a key role in maintaining equitable relations with its trading partners. To determine whether South Africa will have made progress in correcting these shortcomings, and if not, what next steps need to be taken, the U.S. will conduct an out-of-cycle review by September 15.

Thailand: Thailand enacted a new copyright law in November, 1994 that addressed many U.S. concerns. As a result, Thailand was moved from the priority watch to the watch list in November. Certain U.S. concerns remain, however. They include: the lack of a TRIPs-consistent patent law; the need to ensure that deterrent penalties are imposed on convicted pirates, including the establishment of IPR courts and that the software provision in the 1994 copyright law not be implemented in such a way as to prejudice U.S. companies, particularly with respect to government use and/or the decompilation of software.

Taiwan: The 1994 special 301 review lowered Taiwan from the priority watch to the watch list, recognizing significant progress made by Taiwan. Outstanding U.S. concerns include: 1) inadequate retroactive copyright protection; 2) lack of protection for integrated circuit layout designs and 3) lack of adequate protection for trade secrets. Taiwan also needs to complete an understanding with the U.S. establishing reciprocal patent and trademark filing benefits.

UAE (United Arab Emirates): In September 1994, the UAE moved decisively against the production and sale of pirated videocassettes and sound recordings, and, more recently, has

stepped up action against pirated software. The U.S. commends the UAE for its commitment to copyright enforcement, and for the success of its enforcement efforts. The U.S. looks to the UAE to begin to improve its patent regime, and will conduct an out-of-cycle review by October to assess progress in the patent area.

Venezuela: The Venezuelan Government enacted, as a member of the Andean Pact, three Decisions on intellectual property which improve protection over previous decisions but still do not provide adequate and effective protection in all areas, particularly in the patent area. Also, despite enactment of a new copyright law in 1993, implementing regulations have not been passed, the National Copyright Bureau has not been created to ensure compliance with the law, enforcement is inadequate and piracy remains a serious problem. The U.S. will continue to monitor the law's implementation and enforcement of penalties against infringers, as well as recently initiated expedited proceedings for patent and trademark applications.

#### OTHER OBSERVATIONS

This year, the USTR wishes to draw attention to a number of countries where the lack of adequate and effective protection of intellectual property rights is becoming a concern. These countries are Jordan, Kuwait, Oman, Qatar, and Vietnam. The USTR expects that these countries will begin to take steps to address the shortcomings in their intellectual property regimes. The USTR will monitor developments in these countries and, in next year's Special 301 review, will assess the extent to which they have made progress in providing better protection for intellectual property.

In addition, the USTR wishes to note developments in the following countries.

Bulgaria has taken significant steps to halt the unauthorized production and export of sound recordings, to raise penalties for copyright violations, and to set up systems aimed at protecting copyright holders against infringement of their rights. The USTR commends the Government of Bulgaria for taking these actions, and expects this commitment to effective enforcement to continue.

Cyprus has experienced a significant drop in copyright piracy following the implementation, in January 1994, of its new copyright law. The U.S. urges the Government of Cyprus to continue to act against piracy of software and of video and audio recordings. The U.S. welcomes the intention of the Government of Cyprus to secure passage, by July 1995, of a new patent law that would address the shortcomings in Cyprus' current patent regime.

Germany: Efforts by U.S. firms to combat high levels of computer

software piracy are hampered by conflicting local, state and federal competency which results in inadequate protection and insufficient sanctions. The U.S. will be monitoring German activities to extend required TRIPs-consistent protection to sound recordings by January 1, 1996.

Honduras has drafted, and intends to pass by November 1995, copyright law amendments intended to address shortcomings that remained when new copyright legislation was enacted in 1993. The U.S. continues to work with Honduras on achieving improved patent and trademark laws and their enforcement.

Israel has an antiquated copyright law which, combined with poor enforcement, has led to widespread cable and software piracy. We seek rapid revision of the copyright law and improved enforcement, and passage of a law governing licensing of satellite signals by cable operators.

Paraguay continues to be a regional hub for counterfeit production and distribution of pirated copyright works. There are also a number of inadequacies in Paraguay's IPR laws.



SPECIAL 301  
PROGRESS ON INTELLECTUAL PROPERTY ISSUES

MAY 1994 - APRIL 1995

- o *Armenia* will continue to be a Contracting State of the Patent Cooperation Treaty. (May)
- o *Bulgaria* withdrew the declaration which it made under Article 33(2) of the Berne Convention for the Protection of Literary and Artistic Works. The effect of this withdrawal is that any disputes with Bulgaria under the Berne Convention can now be referred to the International Court of Justice. (May)
- o The *Indian* Parliament adopted comprehensive amendments to the 1957 Copyright Act bringing its copyright regime largely into conformity with the TRIPs agreement. Implementing regulations had not yet been issued as of April 1995, but should occur shortly thereafter. (May)
- o *Costa Rica* enacted amendments to its copyright law to explicitly protect computer software and increase criminal penalty provisions. (May)
- o *Poland's* new Law on Copyright and Neighboring Rights entered into effect on May 23. (May)
- o The Government of *El Salvador* announced on June 15 the termination of the twice extended grace period for implementation of the 1993 copyright law. Implementing regulations, however, are still pending in the legislature. (June)
- o The U.S. Patent and Trademark Office published a "Green Paper" on intellectual property and the National Information Infrastructure. (July)
- o *Austria* became a Member State of the International Union for the Protection of New Varieties of Plants (UPOV). (July)
- o *Guyana* became a member of the World Intellectual Property Organization (WIPO), and adhered to the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works. (July)
- o *Saudi Arabia* acceded to the Universal Copyright Convention (UCC) on July 1, 1994. (July)

- A new law "On The Protection of Rights to Trade and Service Marks" became effective in the *Ukraine*. (July)
- The *United Republic of Tanzania* became a new member of the Berne Union for the Protection of Literary and Artistic Works. Also, the United Republic of Tanzania made a declaration under Article 33(2) whereby they do not consider themselves bound by paragraph (1) of Article 33 of the Berne Convention. (July)
- *Hungary* enacted amendments to its Industrial Property and Copyright Legislation of 1994. (July)
- *Peru* acceded to the Treaty on the International Registration of Audiovisual Works. (July)
- *Belgium* enacted the Law on copyright and Neighboring Rights and the Law Transposing to Belgian Law the European Directive on the Legal Protection of Computer Programs. (August)
- *Estonia* became a Contracting State of the Patent Cooperation Treaty. (August)
- The U.S. and *Japan* concluded two agreements under the Framework, one in January and the other in August. The second agreement will effect procedural changes in Japan's patent processing procedures in exchange for changes in U.S. patent processing procedures. (August)
- *Liberia* became a Contracting State of the Patent Cooperation Treaty. (August)
- *Swaziland* became a Contracting State of the Patent Cooperation Treaty. (September)
- On September 1, 1994, the Ministry of Information of the *United Arab Emirates* began the rigorous enforcement of its 1992 copyright law, resulting in a sharp decrease in the availability of pirated products on the market. (September)
- *Trinidad and Tobago* signed a comprehensive bilateral intellectual property rights agreement with the U.S. on September 26.
- *Estonia* acceded to the Berne Convention for the Protection of Literary and Artistic Works. (October)
- *Mexico* revised its patent law to come into compliance with its NAFTA obligations. Amendments to its 1991 industrial property law, effective October 1, create

the Mexican Institute for Industrial Property (IMPI) and give this agency enhanced powers to implement and enforce Mexico's IPR laws. (October)

- *Poland* extended the effects of its accession to the Berne convention for the Protection of Literary and Artistic Works to Articles 1 to 21 and the Appendix. (October)
- The Trademark Law Treaty, concluded under the auspices of WIPO, harmonizes and simplifies procedures for the registration and maintenance of trademarks. (October)
- *Thailand* was downgraded from the special 301 "priority watch list" to the "watch list" upon passage of long-awaited copyright amendments that strengthened IPR protection and increased penalties for infringement. (November)
- A *U.S.-Gulf Cooperation Council (GCC)* IPR enforcement training seminar was held in Saudi Arabia with private sector participants. (November)
- The General Assembly of the European Telecommunications Standards Institute (ETSI) approved an "interim" IPR policy to replace a more problematic March 1993 policy that was never implemented. (November)
- *Argentina* became a Member State of the International Union for the Protection of New Varieties of Plants (UPOV). (December)
- *Lithuania* became a new member of the Berne Union for the Protection of Literary and Artistic Works. (December)
- *Vietnam* passed a new copyright ordinance in December.
- *Taiwan* implemented a trademark export monitoring system. (October)
- *Indonesia* issued the final Ministerial Decree required to implement the 1992 Film Law which legalizes the import of laser discs, deregulates video distribution, and expedites the laser disc and videocassette censorship process. (October)
- *Italy* enacted the EU rental rights directive. (November)

- *New Zealand* enacted the Layout Designs Act of 1994, intended to bring its level of protection for integrated circuit layout designs into conformity with TRIPs. (November)
- *Costa Rica, Guatemala, El Salvador and Nicaragua* signed the revised Central American Convention on Industrial Property on November 30, 1994. *Honduras* did not sign this convention. The revised Convention has not yet come into force. (November)
- The *European Union* (EU) initiated a review of the EU Broadcast Directive, to be completed by the end of 1995. (November)
- The Government of *Bolivia* issued a Supreme Decree on December 7 that provided regulations for the 1992 Copyright Law. (December)
- *New Zealand* enacted the Copyright Act of 1994 to amend the 1962 Copyright Act. *New Zealand* also amended eleven other laws with an aim toward bringing its IPR regime into compliance with the TRIPs agreement. (December)
- The *Colombian* Congress enacted legislation to ratify the Paris Convention for the Protection of Industrial Property on December 28; it is now undergoing a review by the constitutional court. (December)
- *Italy's* Guardia di Finanza (Finance Police) conducted its first major operation against a corporate end-user on December 16, raiding the Italy-based division of Mitsubishi Electric Europe GMBH. (December)
- Several provisions of the TRIPs agreement became effective on January 1 when the World Trade Organization (WTO) came into force. (January)
- *Poland* joined the Berne Convention. (January)
- ANDEAN Decisions 344/345/351 took effect in *Columbia, Peru and Venezuela* on January 1.
- A new copyright law took effect in *Panama* on January 1 that substantially improves its protection for copyrighted works. (January)
- *Paraguay* ratified the Paris Convention for the Protection of Industrial Property. (January)

- The *Italian* Court of Cassation reaffirmed that illegal photocopying of books for profit is a penal offense, thus clarifying that Law 159 adds an administrative sanction to the penal offense but does not supplant it. (February)
- On February 26, the U.S. and *China* reached an agreement on intellectual property rights providing improved enforcement and enhanced market access for IPR-related industries. As a result of the agreement Ambassador Kantor rescinded an order to impose \$1.08 billion of trade sanctions against *China*. (February)
- *Bahrain* adhered to the Berne Convention, the Paris Convention and the World Intellectual Property Organization (WIPO). (February)
- *Hungary* acceded to the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (Rome Convention). (February)
- *Singapore* became a Contracting State of the Patent Cooperation Treaty. *Singapore* also acceded to the Paris Convention for the Protection of Industrial Property and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. *Singapore* also brought into effect new patent legislation. (February)
- *Uganda* became a Contracting State of the Patent Cooperation Treaty. (February)
- A G-7 Global Information Infrastructure (GII) Summit was held in Brussels to begin collaboration on the basis of eight core principles, one of which includes a recognition that the protection of intellectual property rights is essential to the development of the GII. (February)
- The first meeting of the WTO TRIPs Council was held in Geneva. (March)
- *Italian* police forces conducted separate large-scale raids against video and software pirates in Milan, Naples, Rome and Genoa. (March)
- The *Russian Federation* acceded to the Berne Convention and to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms. (March)

- o *El Salvador* extended its patent term to 20 years as part of its Uruguay Round Implementing Legislation (March).
- o On March 8 *Turkey* and the European Union signed a customs union agreement to be implemented on January 1, 1996, which will require, inter alia, Turkey to conform with the TRIPs agreement and enact pharmaceutical patent protection by January 1999. (March)
- o In response to Ambassador Kantor's request, *Canada* agreed on March 7 to review the underlying Canadian Radio-television and Telecommunications Commission (CRTC) policy which resulted in Country Music Television's delisting. This policy review may result in changes to existing discriminatory CRTC policies.
- o *Peru* acceded to the Paris Convention for the Protection of Industrial Property. (April)
- o The President of *Argentina* vetoed troublesome provisions of a recently enacted patent law, and brought into effect by executive decree a new patent law. (April)
- o *Bulgaria* exchanged letters with the U.S. Government addressing many copyright issues, particularly relating to sound recording piracy. (April)
- o *Singapore* exchanged letters with the U.S. Government addressing concerns about Singapore's new patent law. (April)
- o *Indonesia* announced a commitment and action plan to strengthen copyright enforcement, particularly for computer software. (April)