

## 2003 SPECIAL 301 REPORT

### Executive Summary

United States Trade Representative Robert B. Zoellick today announced the results of the 2003 "Special 301" annual review, which examined in detail the adequacy and effectiveness of intellectual property protection in approximately 74 countries.

USTR notes with disappointment Ukraine's persistent failure to take effective action against significant levels of optical media piracy and to implement intellectual property laws that provide adequate and effective protection. As a result, Ukraine will continue to be designated a Priority Foreign Country and the \$75 million worth of sanctions imposed on Ukrainian products on January 23, 2002 will remain in place. This continued failure to adequately protect intellectual property rights could also jeopardize Ukraine's efforts to join the World Trade Organization (WTO) and seriously undermine its efforts to attract trade and investment. The U.S. Government continues to remain actively engaged with Ukraine in encouraging the nation to combat piracy and to enact the necessary intellectual property rights legislation and regulations.

The Special 301 report addresses significant concerns with respect to such trading partners as Brazil, The Bahamas, Mexico, India, Indonesia, Korea, Lebanon, Taiwan, Poland, the Philippines, Russia, the European Union (EU), and members of the Andean Community. In addition, the report notes that the United States will consider all options, including but not limited to initiation of dispute settlement consultations with countries that do not appear to have implemented fully their obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).

In this year's review, USTR devotes special attention to the growing issue of counterfeiting and piracy, with particular emphasis on the ongoing campaign to reduce production of unauthorized copies of "optical media" products such as CDs, VCDs, DVDs, and CD-ROMs. Counterfeiting of trademarked goods is an increasing problem in many countries, including China, Paraguay, Poland, the Philippines, Russia, Vietnam, and Turkey. In addition, USTR continues to focus on other critically important issues including internet piracy, proper implementation of the TRIPS Agreement by developing country WTO Members and full implementation of TRIPS standards by new WTO Members at the time of their accession. USTR also continues to encourage countries to ensure that government ministries use only authorized software.

Over the past year, many developing countries and newly acceding WTO Members made progress toward implementing TRIPS obligations. Nevertheless, full implementation of TRIPS obligations has yet to be achieved in certain countries, particularly with respect to the Agreement's enforcement provisions. As a result, piracy and counterfeiting of U.S. intellectual property remain unacceptably high in these countries.

The United States is committed to a policy of promoting increased intellectual property protection. In this regard, we are making progress in advancing the protection of these rights through a variety of mechanisms, including through the negotiation of free trade agreements. We are pleased that the recently concluded free trade agreements (FTAs) with Chile and Singapore will strengthen the protection of intellectual property rights in those two countries. Specifically, the intellectual property chapters of those two agreements provide for higher levels of intellectual property protection in a number of areas covered by the TRIPS Agreement. We are also seeking higher levels of protection and enforcement in the FTAs that are currently under negotiation with Central America, Morocco, Australia, and the Southern Africa Customs Union, and in the ongoing negotiation of a Free Trade Area of the Americas.

USTR will continue to use all statutory tools, as appropriate, to improve intellectual property protection in such countries where it is inadequate, such as Ukraine, Russia, Brazil, Peru, Ecuador, Bolivia, Venezuela, the Dominican Republic, Pakistan, Thailand and Turkey including through implementation of the Generalized System of Preferences and other trade preference programs.

### **Global Scourge of Counterfeiting and Piracy**

One area of particular concern in this year's report is counterfeiting and digital piracy, which has increased dramatically in recent years. Unfortunately, in the area of counterfeiting what was once a localized industry concentrated on the copying of high-end designer goods has now become a massive, sophisticated global business involving the manufacturing and sale of counterfeit versions of everything from soaps, shampoos, razors and batteries to cigarettes, alcoholic beverages and automobile parts, as well as medicines and health care products.

Counterfeiting of such a broad range of products on a global scale affects more than just the companies that produce legitimate products. While it has a direct impact on the sales and profits of those companies, counterfeits also hurt the consumers who waste their money and sometimes put themselves at risk by purchasing fake goods. It also hurts the countries concerned, by decreasing tax revenues and deterring investments. In addition, counterfeiters pay no taxes or duties and do not comply with basic manufacturing standards for the health and safety of workers or product quality and performance.

Piracy and counterfeiting of copyrighted products in digital format, as well as counterfeiting of all types of trademarked products, has grown to such a scale because it offers enormous profits and little risk for the criminal element of society. Criminals can get into the counterfeiting business with little capital investment, and even if caught and charged with a crime, the penalties in many countries are so low that they offer no deterrent. This is why USTR seeks through our FTAs, and through our bilateral consultations to ensure that criminal penalties are high enough to have a deterrent effect, as well as to ensure that pirated and counterfeit products, and the

equipment used to make them, are seized and destroyed. These products can be produced and sold at prices much lower than legitimate products, but still deliver attractive profit margins for the infringer because the counterfeit and pirated products are usually made with substandard materials, and undergo little or no quality control or even basic health and safety testing. The economic damage caused by counterfeiting to the legitimate companies whose products are counterfeited is enormous. Losses to U.S. industries alone are estimated at \$200 to \$250 billion per year.

### **Controlling Optical Media Production**

To address existing and prevent future piratical activity, over the past year some of our trading partners, such as Malaysia and Taiwan, have taken important steps toward implementing, or have committed to adopt, much needed controls on optical media production. We await news of aggressive enforcement of these laws. However, others that are in urgent need of such controls, including Ukraine, Thailand, Indonesia, Pakistan, the Philippines, and Russia, have not made sufficient progress in this regard.

Governments such as those of China, Hong Kong, and Macau that implemented optical media controls in previous years have clearly demonstrated their commitment to continue to enforce these measures. The effectiveness of such measures is underscored by the direct experience of these governments in successfully reducing pirate production of optical media. We continue to urge our trading partners facing the threat of pirate optical media production within their borders to adopt similar controls or aggressively enforce existing regulations in the coming year. USTR is concerned, moreover, about recent reports of increased piracy and counterfeiting in Bulgaria, which had been a model in its region for taking the necessary steps to tackle optical media piracy by, for example, enacting optical media controls. Particularly troubling are reports that the CD plant licensing laws may be revised in a manner that would undermine, not improve, their effectiveness. We will be closely monitoring the situation and look to the Government of Bulgaria to maintain strong optical disk regulations.

### **Implementation of the WTO TRIPS Agreement**

One of the most significant achievements of the Uruguay Round was the negotiation of the TRIPS Agreement, which requires all WTO Members to provide certain minimum standards of protection for patents, copyrights, trademarks, trade secrets, geographical indications and other forms of intellectual property. The Agreement also requires countries to provide effective enforcement of these rights. The TRIPS Agreement is the first broadly-subscribed multilateral intellectual property agreement that is enforceable between governments, allowing them to resolve disputes through the WTO's dispute settlement mechanism.

Developed countries were required to fully implement TRIPS as of January 1, 1996, while developing countries were given a transition period – until January 1, 2000. Ensuring that

developing countries are in full compliance with the Agreement now that this transition period has come to an end is one of this Administration's highest priorities with respect to intellectual property rights. With respect to least developed countries, and with respect to the protection of pharmaceuticals and agriculture chemicals in certain developing countries, even longer transitions are provided.

Progress continues to be made by developing countries toward full implementation of their TRIPS obligations. Nevertheless, certain countries are still in the process of finalizing implementing legislation and establishing adequate enforcement mechanisms. Every year the U.S. Government provides extensive technical assistance and training on the implementation of the TRIPS Agreement, as well as other international intellectual property agreements, to a large number of U.S. trading partners. Such assistance is provided by a number of U.S. Government agencies, including the U.S. Patent and Trademark Office, the U.S. Copyright Office, the State Department, the U.S. Customs Service, and the Justice Department, on a country-by-country basis, as well as in group seminars, including those co-sponsored with WIPO and the WTO. Technical assistance involves review of, and drafting assistance on, laws concerning intellectual property and enforcement. Training programs usually cover the substantive provisions of the TRIPS Agreement, as well as enforcement. The United States will continue to work with WTO Members and expects further progress in the near term to complete the TRIPS implementation process. However, in those instances where additional progress is not achieved in the near term, the United States will pursue our rights through WTO dispute settlement proceedings.

One the key implementation priority that we have focused on in this review is the implementation of Article 39.3, which requires WTO Members to protect test data submitted by drug companies to health authorities<sup>1</sup> against disclosure of that data and against "unfair commercial use" of that data.

Most countries, including the United States, impose stringent regulatory testing requirements on companies seeking to market a new drug or agricultural chemical product. Many countries have recognized, however, the value of allowing abbreviated approval procedures for second-comers seeking to market an identical product to one that has already been approved. Generally, these second applicants may be required to demonstrate only the bioequivalence of their products with the product of the first company, and will not be required to repeat all of the expensive and laborious clinical tests conducted by the first company to prove the safety of the product.

However, because of the expense involved in producing the safety and efficacy data needed to obtain marketing approval, the TRIPS Agreement recognizes that the original applicant should be entitled to a period of exclusivity during which second-comers may not rely on the data that

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<sup>1</sup> Such data is typically required by authorities in order to establish the safety and efficacy of a drug, and obtain government approval to market the drug.

the innovative company has created to obtain approval for their copies of the product. During this period of exclusive use, the data cannot be relied upon by regulatory officials to approve similar products. This period of exclusivity is generally five years in the United States and six to ten years in the EC member States. Other countries that provide a period of exclusivity against reliance on data include Australia, Canada, China, Czech Republic, Estonia, Japan, Jordan, Korea, Mexico, New Zealand, Slovenia, and Switzerland. We commend Hungary and Colombia on their recently implemented decrees that provide data protection. We urge all WTO members to swiftly complete their implementation of Article 39.3 including the rest of the countries in the Andean Community, as well as Israel.

### **Internet Piracy and the WIPO Copyright Treaties**

Throughout the world, countries have begun to recognize the importance of the Internet as a vehicle for economic expansion. However, despite the promise that the Internet holds for innovative and creative industries, it also creates significant challenges, as it serves as an extremely efficient global distribution network for pirate products. We are currently working with other governments, and consulting with U.S. industry, to develop the best strategy to address Internet piracy.

An important first step in the fight against Internet piracy was achieved at the World Intellectual Property Organization (WIPO) when it concluded two copyright treaties in 1996: the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), referred to as the WIPO Internet Treaties. These treaties help raise the minimum standards of intellectual property protection around the world, particularly with respect to Internet-based delivery of copyrighted works. They clarify exclusive rights in the on-line environment and specifically prohibit the devices and services intended to circumvent technological protection measures for copyrighted works. Both treaties entered into force in 2002.

These treaties represent the consensus view of the world community that the vital framework of protection under existing agreements, including the TRIPS Agreement, should be supplemented to eliminate any remaining gaps in copyright protection on the Internet that could impede the development of electronic commerce.

In order to realize the enormous potential of the Internet, a growing number of countries are implementing the WIPO Internet Treaties and creating a legal environment conducive to investment and growth in Internet-related businesses and technologies. In the competition for foreign direct investment, these countries now hold a decided advantage. We urge other governments to ratify and implement the two WIPO Internet Treaties.

## **Other Initiatives Regarding Internet Piracy**

We are seeking to incorporate the highest standards of protection for intellectual property into appropriate bilateral and regional trade agreements that we negotiate. We had our first success in this effort by incorporating the standards of the WIPO Internet Treaties as substantive obligations in our FTA with Jordan. The Jordan FTA laid the foundation for pursuing this goal in the free trade agreements we negotiated with Chile and Singapore as well as in the Free Trade Area of the Americas (FTAA) and other FTAs currently under negotiation and yet to be launched. Moreover, our proposals in these negotiations will further update copyright and enforcement obligations to reflect the technological challenges we face today as well as those that may exist at the time negotiations are concluded.

## **Government Use of Software**

In October 1998, the United States announced a new Executive Order directing U.S. Government agencies to maintain appropriate and effective procedures to ensure legitimate use of software. In addition, USTR was directed to undertake an initiative to work with other governments, particularly those in need of modernizing their software management systems or about which concerns have been expressed, regarding inappropriate government use of illegal software.

The United States has achieved considerable progress under this initiative. Countries that have issued decrees mandating the use of only authorized software by government ministries include Bolivia, China, Chile, Colombia, Costa Rica, the Czech Republic, France, Ireland, Israel, Jordan, Paraguay, Thailand, the U.K., Spain, Peru, Greece, Turkey, Hungary, Korea, Hong Kong, Macau, Lebanon, Taiwan and the Philippines. Ambassador Zoellick was pleased that these governments have recognized the importance of setting an example in this area and expects that these decrees will be fully implemented. The United States looks forward to the adoption of similar decrees, with effective and transparent procedures that ensure legitimate use of software, by additional governments in the coming year.

## **Intellectual Property and Health Policy**

In announcing the results of the 2003 Special 301 review, Ambassador Zoellick reiterated that USTR would not change the present approach to health-related intellectual property issues. That is to say, consistent with the United States' protection of intellectual property, we remain committed to working with countries to develop workable programs to prevent and treat HIV/AIDS, malaria, tuberculosis and other epidemics.

We have informed countries that, as they take steps to address a major health crisis like the HIV/AIDS crisis in sub-Saharan Africa, they should be able to avail themselves of the flexibilities afforded by the TRIPS Agreement, provided that any steps they take comply with

the provisions of the Agreement. The Declaration on the TRIPS Agreement and Public Health agreed upon at the WTO Doha Ministerial in November 2001 is a reflection of this commitment.

The U. S. Government also remains committed to a policy of promoting intellectual property protection, including for pharmaceutical patents, because of intellectual property rights' critical role in the rapid innovation, development, and commercialization of effective and safe drug therapies. Financial incentives are needed to develop new medications. No one benefits if research on such products is discouraged.

### **WTO Dispute Settlement**

The focus this year is on resolving the WTO disputes that were announced through previous Special 301 determinations, either through informal consultations and settlement, which can be more efficient and are therefore the preferred manner of resolving disputes, or where those are unsuccessful, through full utilization of the dispute settlement process . The following section provides updates of previously announced WTO cases, highlighting the progress made in the past year.

#### **ARGENTINA**

On May 6, 1999, the United States filed a WTO dispute settlement case challenging aspects of Argentina's system of patent protection and protection for confidential test data. In late April 2002, the United States and Argentina agreed to harvest progress made during consultations and partially settle this dispute.

On the two outstanding issues that remain, that of data protection and the ability of patentees to amend pending applications to claim certain enhanced protection provided by the TRIPS Agreement, the United States retained its right to seek resolution under the WTO dispute settlement mechanism and is currently working with Argentina to resolve these issues.

#### **EUROPEAN UNION**

At the conclusion of the 1999 Special 301 review, the United States initiated a WTO dispute settlement case against the EU, based on the apparent TRIPS deficiencies in EU Regulation 2081/92, which governs the protection of geographical indications (GIs) for agricultural products and foodstuffs in the EU. The regulation appears to deny national treatment to foreign GIs. According to the plain language of the regulation, only EU GIs may be registered. With respect to trademarks, the regulation permits dilution and even cancellation of trademarks when a GI is created later in time. Our initial WTO consultation request alleged that this regulation denies national treatment to foreign geographical indications, and does not provide sufficient protection to trademarks that are similar or identical to a GI and appears, therefore, in violation of the

Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). The United States requested consultations regarding this matter on June 1, 1999, and numerous consultations have been held since then. The United States appreciates that the EU has recently issued some amendments to its regulation. However, these amendments do not address our principal concerns with respect to full national treatment and appropriate protection for trademarks.

On April 4, 2003, the United States submitted an additional request for consultations on EU Regulation 2081/92 to the EU. This additional request alleges that the EU Regulation is not consistent with the national treatment obligations and the most-favored-nation obligations of Articles I and III of the General Agreement on Tariffs and Trade 1994. In this request, we have also reiterated the concerns raised in our original consultation request. Under WTO rules, other Members may request to join consultations if they share our concerns and have a substantial trade interest. In addition, Australia has requested separate consultations with the EU regarding Regulation 2081/92.

The United States will continue to seek a solution with the EU while remaining prepared to take any appropriate action to pursue its rights in this matter.

#### ***Potential Dispute Settlement Cases***

No new dispute settlement proceedings are being announced at this time. However, the United States will continue to monitor WTO Members' compliance with the TRIPS Agreement and remains prepared to take appropriate action when necessary.

Several countries do not appear to meet their TRIPS obligations. The United States will consider all options, including but not limited to possible initiation of new WTO dispute settlement cases, in working with these countries toward full TRIPS implementation. The United States will continue to consult in the coming months with all of these countries in an effort to encourage them to resolve outstanding TRIPS compliance concerns as soon as possible.



## STATUTORY AUTHORITY

The "Special 301" provisions of the Trade Act of 1974, as amended, require USTR to identify foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that 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 USTR to take into account a country's prior status under "Special 301," the history of U.S. efforts to achieve stronger intellectual property protection, and the country's response to such efforts.

Once this pool of countries has been determined, the USTR is required to decide 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 trading partner is identified as a Priority Foreign Country, 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 Special 301 is shorter in some circumstances.

Today's Special 301 announcement follows a lengthy information-gathering and negotiation process. The interagency Trade Policy Staff Committee that advises USTR on implementation of Special 301 obtains information from the private sector, American embassies, the United States' trading partners, and the *National Trade Estimates* report.

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

## **PRIORITY FOREIGN COUNTRY**

### **UKRAINE**

The U.S. Government withdrew benefits from Ukraine under the Generalized System of Preferences (GSP) in August 2001, and imposed \$75 million worth of sanctions on Ukrainian imports on January 23, 2002, based on the repeated failure of Ukraine to comply with the June 2000 Joint Action Plan. These sanctions are still in effect due to Ukraine's failure to adopt and enforce adequate Optical Disc (OD) media licensing legislation. Although enforcement efforts have resulted in a significant decline in the production of pirate media within Ukraine, there is still substantial traffic in illegal optical disc media, both in street sales to consumers as well as larger distribution to Western Europe, the Baltics, and elsewhere. Despite these problems, Ukraine's copyright law is generally adequate and there has also been some progress in fulfilling TRIPS requirements as part of Ukraine's WTO accession process. Unfortunately, any positive movement on copyright is still overshadowed by the continued lack of adequate OD media protection. We urge the Ukrainian Government to pass an adequate optical media law in the very near future. In addition, enforcement of trademarks is lacking. A number of U.S. firms have complained of trademark counterfeiting for fertilizers and other industrial products.

## **SECTION 306**

### **CHINA**

The United States and China concluded bilateral intellectual property (IP) agreements in 1992 and 1995 that were the basis for resolving two investigations under Section 301. The U.S. Government has been monitoring China's implementation of these agreements since they were concluded. In addition, China became a member of the World Trade Organization (WTO) in December 2001 and agreed that it would implement fully its IP obligations from the date it became a WTO Member.

China's WTO accession, and the concomitant entry into force of its intellectual property rights (IPR) obligations have resulted in improvements in China's statutory system for the protection of intellectual property. However, significant concerns remain, particularly with respect to enforcement of IPR. The TRIPS Agreement requires China to implement effective enforcement procedures and provide remedies that have a deterrent effect. Although China has revised its IP laws and regulations to strengthen administrative enforcement, civil remedies and criminal penalties, violations of IPR are still rampant. The lack of transparency and coordination among Chinese government agencies, local protectionism and corruption, high thresholds for criminal prosecution, lack of training and weak punishments all hamper enforcement of IPR. China remains one of the last countries in the world that fails to use, in practice, its criminal law to go

after commercial copyright pirates and trademark counterfeiters.

In the field of trademark protection, we are concerned that foreign trademark owners do not appear to be receiving national treatment with regard to their well-known marks. China has recognized nearly 200 marks as “well-known,” none of which is a foreign mark. Another national treatment concern was addressed, however, in late 2002, when China amended its regulations to permit foreign-invested enterprises to file for trademarks without an agent, something only Chinese companies previously had been entitled to do.

We urge China to pursue a sustained, transparent effort to punish and deter copyright piracy, trademark counterfeiting and trade in pirated and counterfeit products; dedicate more resources to enforcement, and undertake more frequent, unannounced police raids in pursuit of IPR infringers; increase coordination between the various national and local authorities charged with IPR enforcement; ensure that China’s officials take a serious and consistent approach to sentencing, including setting and enforcing deterrent levels of fines; and reduce the high thresholds for criminal prosecutions that, in practice, prevent effective application of China’s criminal law to IPR violators; provide adequate training for patent and trademark examiners and IP enforcement agents; and ensure that criminal action can be taken against exports of pirated or counterfeit product. As a priority matter, China should ratify and implement the two WIPO Internet Treaties at the earliest possible opportunity.

## **PARAGUAY**

Paraguay continues to have problems in providing protection to copyrights and trademarks, both with respect to poor internal enforcement and weak border enforcement. The USTR identified Paraguay as a Priority Foreign Country in January 1998 as part of Special 301 Out of Cycle Review. The subsequent 301 investigation terminated with the signing of a comprehensive Memorandum of Understanding (MOU) on the protection of intellectual property in 1998. We still are concerned by several issues, including: the involvement of organized crime in piracy and counterfeiting operations; the relatively few resources that are provided for criminal investigations, raids and investigations, and the attendant lack of those activities; and the lack of willingness on the part of the judiciary to impose deterrent sentences. The MOU expired in January of 2003, but USTR and Paraguay have agreed to extend the provisions of the understanding until it can be renegotiated, likely in the fall of 2003. At that time we will review Paraguay’s progress in meeting the requirements of the MOU as well as the other matters in order to determine the appropriate goals for any renegotiated MOU.

## **PRIORITY WATCH LIST**

### **ARGENTINA**

Argentina will remain on the Priority Watch List as its copyright, patent, and data protection regimes do not appear to comply with its international obligations. There is lax and ineffective enforcement against piracy (including rampant CD-R and videogame piracy) and counterfeiting; in addition, unauthorized use of protected seed varieties remains a problem. Enforcement for copyrights on recorded music, videos, books and computer software remains inconsistent and inadequate resources and border controls and slow court procedures have hampered the effectiveness of enforcement efforts. In April 2002, the United States and Argentina reached an agreement with respect to most claims in a WTO dispute brought by the United States with respect to Argentina's implementation of its TRIPS obligations. Two important issues, including data protection, remain unresolved. Argentina is in the process of passing legislation to implement the terms of the April 2002 settlement, although industry has expressed concerns regarding the inadequacy of the injunctive relief provisions in the pending legislation. The USTR will monitor Argentina's compliance with the commitments made under the Bilateral Council on Trade and Investment with respect to the agreement on patents.

### **BAHAMAS**

The United States remains concerned that The Bahamas has not implemented its commitment to the United States in 2000 to enact legislation to correct deficiencies in its copyright law. Particularly problematic are provisions in the law permitting the compulsory licensing to Bahamian cable operators of retransmission of premium cable television programming. Inadequate remuneration for the compulsory licensing of free-over-the-air broadcasts is an additional concern, particularly with respect to uses by hotels and other commercial enterprises. The U.S. Government has urged The Bahamas to enact the necessary amendments to its copyright law and will closely engage The Bahamas in the coming months to review actions in this regard. At the same time, the U.S. Government continues to encourage U.S. copyright owners and operators of premium cable services to enter into negotiations with licensed Bahamian cable companies to provide for the legitimate cable transmission of copyrighted works in the Bahamas.

### **BRAZIL**

Brazil is both one of the largest markets globally for legitimate copyrighted products and one of the world's largest pirate markets. Losses suffered by the U.S. copyright industry are the largest in the hemisphere, with industry estimates exceeding \$771 million in the 2002 due in large part to growing optical disk piracy. Problems have been particularly acute with respect to sound

recordings and videocassettes, and virtually all audio cassettes sold are pirated copies. Despite having adopted modern copyright legislation that appears largely to be consistent with TRIPS, Brazil simply has not undertaken adequate enforcement actions against increasing rates of piracy. In particular, very few prosecutions and deterrent convictions result from raids. There have been recent efforts to move towards enforcing copyright protection in the tri-border area. We look forward to stepped up enforcement actions by the Brazilian Government in the near term. In addition, we encourage the incoming Brazilian administration to: initiate legislation that strengthens the Brazilian enforcement framework against copyright and trademark infringement; commit resources to a broad enforcement action plan that effectively coordinates the work performed by several federal and state authorities, including the police, customs authorities, tax authorities and the judiciary; and investigate and raid illegal domestic manufacturing sources, distribution channels and key distributors. We also look to Brazil to improve greatly the processing of patent applications in a manner that is consistent with its international obligations. We will continue to monitor Brazil's progress in these areas, including through the ongoing GSP review that was initiated by USTR in 2001.

## **EUROPEAN UNION**

At the conclusion of the 1999 Special 301 review, the United States initiated a WTO dispute settlement case against the EU, based on the apparent TRIPS deficiencies in EU Regulation 2081/92, which governs the protection of geographical indications (GIs) for agricultural products and foodstuffs in the EU. The regulation appears to deny national treatment to foreign GIs. According to the plain language of the regulation, only EU GIs may be registered. With respect to trademarks, the regulation permits dilution and even cancellation of trademarks when a GI is created later in time. Our initial WTO consultation request alleged that this regulation denies national treatment to foreign geographical indications, and does not provide sufficient protection to trademarks that are similar or identical to a GI and is, therefore, in violation of the TRIPS Agreement. The United States requested consultations regarding this matter on June 1, 1999, and numerous consultations have been held since then. However, to date, we have not reached a mutually agreeable solution. While the EU has recently issued some amendments to its regulation, these amendments do not address our principal concerns with respect to full national treatment and appropriate protection for trademarks. Finally, lack of full implementation of the EU Biotech Directive by EU member states is also of concern.

## **INDIA**

Indian intellectual property protection continues to be weak. There are some tenuous first signs that the situation may be changing, as witnessed by the passage of long-awaited patent law amendments in May 2002. However, this law still appears to contain several TRIPS inconsistencies. In addition, piracy of copyrighted works remains a problem, particularly popular fiction works and certain textbooks, and protection of foreign trademarks remains difficult. India should adopt immediately amendments to its copyright law fully and correctly

implementing the WIPO Internet Treaties and correcting TRIPS deficiencies in its protection of computer software. Counterfeiting is rife in the Indian marketplace, for example in the auto, pharmaceutical, consumer goods and apparel industries. Particularly troubling are extensive public health and safety risks posed by counterfeit medicines and auto parts. To make matters worse, a major problem is India's export of counterfeit goods to the Middle East, southern Africa and Europe. While the United States is encouraged by the Indian Government's recent statements, especially concerning the implementation of data exclusivity regulations, action has yet to be taken. We urge the Indian Government to issue data protection regulations that reflect the internationally recognized standard of protection for undisclosed test data and to ratify and implement the two WIPO Internet Treaties.

## **INDONESIA**

Indonesia took some noteworthy steps to strengthen its IPR regime over the past year, but significant problems remain. The Indonesian Government enacted an extensive revision of its copyright law in July 2002, that addressed a number of concerns of the United States. It initiated public awareness campaigns and began addressing problems of interagency coordination. However, overall protection of intellectual property rights remains weak. The Indonesian Government has been drafting regulations governing optical media production for over a year, and they are now scheduled to be issued in July 2003, but has not firmly committed to seizing and destroying machinery and materials used in piracy. Meanwhile, U.S. industry continues to report increases in illegal optical media production lines for both domestic consumption and export. U.S. copyright industries estimate \$253 million in losses in 2002, an increase of more than one-third since 2001. U.S. industry also has raised serious concerns about trademark violations of a wide range of products. While the number of raids against retail outlets for pirate optical media products has increased, long delays remain in prosecuting intellectual property cases and the Indonesian Government has not promulgated sentencing guidelines with deterrent penalties. The United States provided Indonesia with a new IPR action plan in May 2002, which contains specific recommendations for improving the legal and enforcement system, and urges Indonesia to continue working with the United States under the Trade and Investment Framework Agreement to implement the recommendations in the work plan.

## **LEBANON**

The United States remains concerned by Lebanon's severe copyright piracy problem and the lack of a comprehensive governmental commitment to eliminate piracy and foster legitimate business. Despite the entry into force in 1999 of a new copyright law, there has been little action by Lebanon against piracy. Some raids of pirate stores and operations occurred in 2002, leading to the first sentencing of a software pirate and financial penalties in other cases. However, pervasive cable piracy continues to undermine legitimate theatrical, video, and television service providers. Overall Lebanon had made little progress in 2002 in addressing its significant IPR deficiencies. The United States urges the Lebanese Government to press forward with its recent

proposal to draft a law regulating the cable television industry and to mount an aggressive campaign against pirates. End-user piracy of computer software is widespread among large companies, banks, trading companies, and most government ministries. Also troubling is an overly broad software exception for certain educational uses in the new copyright law that seriously undermines the viability of this market for legitimate products. Book piracy also remains a serious problem. A 2001 petition by U.S. industry to suspend Lebanon's benefits under the GSP trade program is under review by the U.S. Government. A committed and vigorous program to enforce intellectual property rights, particularly copyright protection, is essential to the success of the Lebanese Government's efforts to reform its economy, increase trade and foreign direct investment and prepare for accession to the WTO.

## **PHILIPPINES**

The Philippines has taken some steps to strengthen IPR legislation and enforcement, including providing patent protection to plant varieties; enhancing the ability of the Customs Bureau to stop IPR violations at ports of entry, and increasing the number of raids on suspected counterfeiters. Nonetheless, U.S. industry continues to report wide-ranging concerns. Optical media piracy has exploded in the past year and the Philippines has gone from being a net importer to being a net exporter of pirated optical media. Counterfeit products produced, marketed in, or exported from the Philippines include clothing, medicines, consumer electronics, automotive products, cosmetics and toys. Piracy of books, cable television, and software, especially by end-users, remains significant. The pharmaceutical industry has raised concerns about data exclusivity and enforcement issues. Evidence suggests the Philippines has become a "safe haven" for organized piracy and counterfeiting as neighboring economies improve their IPR enforcement. U.S. industry reports that counterfeit pharmaceutical products account for 30 percent of the market, increasingly threatening legitimate distribution channels and raising serious public health resources. The U.S. Government provided the Philippines with an IPR action plan in August 2002 with specific recommendations on judicial, legislative/regulatory, and enforcement issues, but the Philippines has yet to respond effectively to this plan. A key recommendation was to enact optical media legislation, but an optical media bill languishes in a Senate committee, and the Government of the Philippines has not made its passage a priority. The U.S. Government urges the Philippines to pass the optical media bill, criminally prosecute IPR violators, expedite pending IPR cases, establish deterrent penalties for IPR violators, and implement the WIPO digital treaties.

## **POLAND**

Despite intensified USG engagement with the Polish government, the IPR situation in Poland has not improved since the 2002 review. The main concern substantively with Poland is the lack of political will by the Polish Government to shut down the open air market inside the Government owned Warsaw Stadium, which is awash in pirated optical media products and counterfeit goods. Although police raids at the stadium occur, the penalties imposed after

prosecutions are light, if imposed at all, and do not act as a deterrent to continued illegal trade. In addition to the Stadium problem, optical disc piracy in Poland is on the rise and becoming a greater problem. While Poland has nine operating optical disc plants that produce legitimate products, we are concerned that pirated product may be produced at some of these plants as well. Pirate optical media product is entering Poland via its porous borders, and there are reports of exported pirated product to other Eastern and Western European countries. Given the growing problem of optical disc piracy, legislation is needed to control optical media production in Poland. We urge the Polish Government to swiftly enact an optical disk licensing regime and significantly improve enforcement in the major cities and border towns.

In addition, despite a new pharmaceutical law that came into effect on October 1, 2002, there are still significant shortcomings with the protection of confidential test data submitted for marketing approval. Specifically, the fact that data protection is linked to the existence of a patent is troubling, since these two types of rights, patent protection and data protection are independent of each other. Also problematic is the fact that the period of protection is calculated based on first registration globally, which significantly diminishes the period of protection in Poland, since most pharmaceuticals are first registered outside of Poland.

## **RUSSIA**

Although Russia has made considerable progress in revising several of its intellectual property laws over the past year, Russia still needs to enact amendments to its copyright law to bring it into conformity with TRIPS Agreement requirements. In addition, ineffective enforcement of its laws, in particular, copyright and trademark laws, remains a serious concern. While Russia took some actions in 2002 to improve coordination on IPR enforcement, piracy of works on optical media is a large and growing problem. The number of optical media facilities has doubled since 2001. Further enforcement action, such as the recent Russian Anti-Piracy Program (RAPO) raid on a DVD plant in Russia responsible for up to 30% of the pirated DVDs on the Russian market, will be necessary to continue to combat this problem. Weak protection of intellectual property rights, results in substantial losses to U.S. industry annually. We urge the Russian Government to close immediately the plants producing illegal optical disks; adopt a comprehensive optical media regulatory and enforcement scheme; combat organized crime involvement through specialized enforcement units and the enactment of tough penalties for organized crimes; enact and enforce effective border measures to stop the export and import of counterfeit and pirated products; significantly improve criminal investigations and raids against pirates engaged in commercial distribution of counterfeit and pirated products; and make the necessary legal reforms to the copyright law, and facilitate stronger and more effective IPR enforcement compatible with international standards including those in the TRIPS Agreement and the WIPO internet treaties.



## **TAIWAN**

Taiwan declared 2002 an “Action Year for IPR” and considered new initiatives to improve legislation, strengthen enforcement, encourage speedy trials, and promote deterrent-level sentencing. In 2003 Taiwan took some concrete positive steps to bolster its enforcement capability, including expanding an interagency IPR task force to 220 people, and opening warehouses to store seized pirated goods and manufacturing equipment. The administration also introduced for consideration by its legislature an amended copyright law meant to strengthen protection of IPR and bring Taiwan into compliance with its obligations under the TRIPS Agreement and other international IPR standards. However, these positive steps have not produced results, and piracy and counterfeiting levels remain unacceptably high. Taiwan is one of the largest sources of pirated optical media products in the world and corporate end-user piracy and trademark counterfeiting are at high levels. U.S. companies continue to report significant problems in protecting and enforcing their IPR. Official raids are hampered by lack of expertise and poor interagency coordination; resulting penalties are neither timely nor strong enough to deter infringement. The lax protection of IPR, including lack of enforcement against piracy and trademark counterfeiting in Taiwan therefore remains a serious concern for the U.S. Government. The United States will continue our dialogue with Taiwan on the protection and enforcement of IPR during the coming year to help improve the situation

## **WATCH LIST**

### **AZERBAIJAN**

Azerbaijan needs to take several remaining steps in order to fulfill its intellectual property rights commitments under the 1995 U.S.-Azerbaijan Trade Agreement. Specifically, Azerbaijan is not providing any protection to U.S. and other foreign sound recordings, and Azerbaijan does not clearly provide retroactive protection for works or sound recordings under its copyright law. In addition, there is weak enforcement of intellectual property rights in Azerbaijan. While criminal penalties for intellectual property rights violations have been adopted, there are still major shortcomings in Azerbaijan’s legal regime. For instance, the provisions under the Azerbaijani Criminal Code are minimal and contain a high threshold for the imposition of criminal penalties and they do not provide *ex officio* authority. Moreover, they are limited to copyright and patent violations, completely excluding neighboring rights violations. The Customs Code does not appear to provide the proper authority for Customs to seize material at the border as required by the TRIPS Agreement. Lastly, it is not clear that Azerbaijan has *civil ex parte* search provisions as required by TRIPS.

### **BELARUS**

Belarus needs to take several remaining steps in order to fulfill its intellectual property rights commitments under the 1993 U.S.-Belarus Trade Agreement. Enforcement of intellectual

property rights in Belarus also is very weak and sales of pirated material are extremely high. In fact, while Belarus has amended its Criminal Code to adopt deterrent penalties for intellectual property rights violations, the Criminal Code still does not contain the proper authority for officials to initiate criminal copyright cases. Although the government of Belarus recently announced that the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (Geneva Phonograms Convention) has now entered into force in Belarus, there still is no retroactive protection for works or sound recordings under Belarus' copyright law. Moreover, the Interior Ministry has made very discouraging statements that it does not intend to take action to end retail piracy of optical media. Belarus also has become a transshipment point for pirate materials throughout the region. The United States, however, is gratified to see that Belarus has made some progress this year, in particular, shutting down the large Armita optical media plant. It remains important that the criminal investigation involving Armita proceed to a successful conclusion, and that positive enforcement actions be taken to prevent the relocation of other optical media facilities to Belarus. The United States believes that Belarus' application for WTO membership offers an important opportunity to address these legal and enforcement deficiencies.

## **BOLIVIA**

The Bolivian Government has taken several positive administrative steps with respect to enforcement of intellectual property rights, such as the creation of a special prosecutor for intellectual property rights. However, enforcement continues to be sporadic and ineffective in reining in rampant piracy, especially that of CDs, videos, and software. Also, the government has not taken significant steps toward legalizing the use of its own software. The Government of Bolivia is long overdue in enacting intellectual property legislation to implement its TRIPS obligations. In fact, efforts to amend its copyright law have languished. Significantly, Bolivia also does not adequately protect against the improper use of undisclosed proprietary data that is submitted for marketing approval, as required under Article 39.3 of the TRIPS Agreement. We urge Bolivia to take strong actions to protect intellectual property rights, including by issuing a data protection decree. We will monitor Bolivia's actions in this respect, and will review any progress in the Fall.

## **CANADA**

Canada continues to make progress in improving its IPR regime. In December 2002, the Government of Canada (GOC) revised its Copyright Act (Bill C-11) so that internet retransmission is, in effect, excluded from its compulsory licensing regime -- that is, unless licensed by the Canadian Radio-television & Telecommunications Commission (the "CRTC") and the CRTC has determined not to so license internet retransmissions. This follows amendments made to Canada's patent law in 2001 to provide 20 year patents that were filed before October 1, 1989. Despite these positive developments, the problems that originally caused Canada to be placed on the Watch List in 1995 remain largely unresolved. For example,

although Canada continues to make some limited progress on resolving the outstanding issue of national treatment of U.S. artists in the distribution of proceeds from Canada's private copying levy and its "neighboring rights" regime, it still does not provide full national treatment. In addition, Canada does not provide effective data exclusivity protections, and systematic inadequacies in Canadian administrative and judicial procedures allow entry of infringing generic versions of patented medicines into the marketplace. Further, this is the third consecutive year that Canada's border measures have been the target of severe criticism by IP owners, who consider Canada's border enforcement measures to be inconsistent with its TRIPS obligations.

## **CHILE**

We look forward to seeing Chile implement the provisions of the recently negotiated intellectual property chapter of the U.S. Chile Free Trade Agreement, which provides high levels of protection of appropriate for the digital age, including non-discriminatory treatment for U.S. software, music, text, and motion pictures. Protections for U.S. patents, trademarks and undisclosed information exceed past trade agreements (e.g. NAFTA and the U.S.-Jordan FTA), and obligate Chile to make its IP laws and enforcement practices conform to the most advanced standards. This is a good agreement for both the United States and Chile. The protection of intellectual property is important for economic development because it promotes the creation of knowledge industries and provides incentives for increased investment. The agreement includes important new protections for Chilean writers, singers, and software developers, specifically ensuring that they will continue to reap the rewards of their creativity in the digital realm. The Agreement also will make Chile an attractive location for clinical trials for pharmaceuticals.

However, to date, Chile's IPR laws are not yet fully TRIPS-consistent. Shortcomings with respect to enforcement remain and we are concerned with Chile's large backlog of pending patent applications. In addition, the United States was very disappointed with the registration of several pharmaceutical products that appear to infringe validly issued Chilean patents. We expect these issues to be resolved through Chile's implementation of the U.S.-Chile FTA and look forward to following Chile's progress with respect to meeting its commitments under this and the TRIPS agreement. Upon full implementation of the U.S. – Chile Free Trade Agreement, we would expect to re-evaluate Chile's status in the Special 301 review.

## **COLOMBIA**

In 2002, Colombia took an important step by passing Decree 2085 to implement fully Article 39.3 of the TRIPS Agreement. The U.S. Government is monitoring implementation of this decree closely in the context of Colombia's ATPA eligibility. Piracy levels in Colombia continue to be high. The home video market is 90 percent pirate, and the U.S. industry is working hard to keep cable piracy from escalating. Pirated sound recordings can be found easily in flea markets and on streets in major cities, and the growth of illegitimate CD-R replication

continues to undermine what is left of the legitimate music market. Illegal use of business software in small and medium-sized businesses is widespread, with rates higher in areas outside the major cities. Pirating of video game software on all platforms and illegal photocopying of books are widespread. However, Colombia's progress on the data protection issue is exemplary. Therefore, we are moving Colombia from the Priority Watch List to the Watch List and will monitor further progress in the copyright area.

## **COSTA RICA**

At the beginning of 2002, the Costa Rican Government (GOCR) announced steps to improve intellectual property protection through a government strategy for improving the enforcement of intellectual property rights it began in 2001. The United States recognized progress under this strategy by moving Costa Rica from the Priority Watch List to the Watch List in 2002. However, there remain deficiencies in Costa Rican intellectual property law that have not been addressed. In addition, significant barriers to effective enforcement remain. Two amendments to improve penalties and enforcement infrastructures in Costa Rica's intellectual property laws are pending and an executive decree on data exclusivity has yet to be signed. Additionally, significant delays in judicial proceedings and a lack of official investigators, public prosecutors and criminal and civil judges specializing in intellectual property continue to hamper effective enforcement. We look to the GOCR to enact necessary IP legislation and decrees and to improve enforcement in the near term.

## **CROATIA**

Croatia's otherwise strong protection and enforcement of intellectual property rights – particularly concerning copyright and trademarks – is undermined by inadequate protections in the patent area and delayed judicial decision-making. The absence of confidential data protection; the lack of linkage between the national patent authority and the central health regulatory authority; and the failure of Croatian courts to rule on intellectual property cases in a timely manner prevent rights holders from effectively protecting their intellectual property against infringement. Long delays in granting of health registration further erode the benefits of intellectual property protection. We look to the Croatian Government to ratify and implement the 1998 bilateral Memorandum of Understanding Concerning Intellectual Property Rights in the near term, and to bring provisions such as those on data protection fully into force. In addition, we encourage Croatia to maintain criminal copyright enforcement.

## **DOMINICAN REPUBLIC**

Levels of copyright piracy in the Dominican Republic remain high, over 60 percent in almost all copyright sectors. The Government of the Dominican Republic (GODR) has taken some commendable steps in 2002, however, to improve copyright protection and enforcement. Enforcement of the 2000 copyright law remains critical to continued success. During 2002,

television piracy worsened. Recently, the GODR has taken important and encouraging steps where there had been no previous action against violators of broadcast piracy. The GODR initiated inspections of two television stations and submitted evidence of piracy to the Attorney General for prosecution, and initiated action against a third station. It is imperative that the Dominican Republic sustain effective enforcement against broadcast piracy.

Under the auspices of the United States-Dominican Republic Trade and Investment Council (TIC), the GODR has demonstrated renewed commitment to addressing U.S. concerns. Between October 2002 and March 2003 meetings of the TIC, the GODR appointed an intellectual property rights committee to complete a review of the patent law to bring it into compliance with TRIPS. The changes to the patent law recommended by the committee now are reflected in an executive decree. We look to the Dominican Government to implement a decree that is fully consistent with international standards in the near term. In 2002, ONDA, the Dominican Copyright Office, continued its aggressive campaign of inspections, raids and seizures against pirates, but requires further GODR support and resources to sustain this campaign.

## **ECUADOR**

In 2002, there was a lessening of intellectual property protection in Ecuador, with a decrease in enforcement efforts. The Ecuadorian Institute for Intellectual Property (IEPI) canceled a patent for a major U.S. pharmaceutical product. Copycat manufacturers succeeded in obtaining sanitary registrations for medicines protected by patent. Industry concerns about a poorly worded provision in the Education Law (which has been interpreted as guaranteeing free software to educational institutions) were not addressed fully. For all of these reasons, we are placing Ecuador back on the Watch List this year. In addition, we will monitor Ecuador's progress on the protection of intellectual property, especially with respect to the data protection issue, and will review progress on these issues in the Fall.

## **EGYPT**

Egypt made significant progress in strengthening its IPR protections through improvements in its domestic legal and enforcement regimes in 2002. The major development in 2002 was Egypt's passage of a new comprehensive IPR law which represents an improvement in all major facets of Egypt's IPR regime, although apparent TRIPS-inconsistencies are found throughout. Egypt did meet certain key TRIPS requirements, including providing data exclusivity (Article 39.3) and exclusive marketing rights, and enacting a patent mailbox. The Egyptian Government continues to advance its effort to ensure the use of legitimate software in all government offices. In addition, Egypt's parliament ratified the WIPO Patent Cooperation Treaty, a step that the Egyptian Government intends to follow up with changes in its domestic regulations necessary to come into compliance with the treaty. Egypt also made some progress in combating piracy of records and music, books, and business software applications.

In order to maintain forward movement in IPR protection in the coming year, it is essential that Egypt address the TRIPS-inconsistencies in its IPR law, particularly in the areas of copyrights, trademarks, and patents, as well as take steps to further strengthen protection of confidential test data. Egypt has acknowledged that its IPR law is not fully TRIPS-consistent, and the U.S. Government welcomes Egypt's commitment to address deficiencies in its IPR law, in large part through implementing regulations. Improved enforcement must also be a priority. Much work remains to be done in countering photocopy and reprint piracy, retail piracy, corporate end-user software piracy, piracy of console-based and PC-based video game platforms and increasing efforts to end pirate distribution on the basis of false licenses. Continuing improvements in IPR protection will be a key factor in advancing Egypt's efforts to further expand its trade and investment ties with the United States.

## **GUATEMALA**

Although intellectual property rights enforcement has improved since the creation of the Special Prosecutor's Office for intellectual property crimes last year, Guatemala continues to experience high piracy levels. In November 2002, the Guatemalan Congress effectively suspended the processing of pharmaceutical and chemical patents through 2004 and eliminated the protection of test data provided in support of applications to introduce these products in the local market. The executive branch of the Government of Guatemala worked to submit a new bill to the Guatemalan Congress to reinstate immediately the processing of pharmaceutical and chemical patents. This legislation, which recently passed, also will provide a term of protection of five years of data protection for pharmaceuticals and ten years of data protection for agrochemicals for data provided in support of the application to bring these products to market.

Other problems in Guatemala include substantially decreased criminal penalties as a result of the amendments to the copyright law passed in 2001; lack of a statutory damages provision for civil copyright infringement; and ineffective legal remedies in civil actions. We are encouraged that Guatemala recently deposited its instruments of accession to the WIPO Copyright Treaty and the WIPO Performances and Phonogram Treaty.

## **HUNGARY**

Hungary has undertaken some positive steps towards more complete implementation of its international obligations by putting into effect a ministerial decree providing for data exclusivity protection on January 1, 2003. However, unfortunately, the decree provides retroactive protection for products that received first marketing authorization in the EU or Hungary on or after April 12, 2001, rather than January 1, 2000, as required by TRIPS. We are concerned by this, as well as by the fact that the data protection term is linked to the existence of a patent. We urge Hungary to resolve these issues in an expeditious manner. At the same time, we recognize that Hungary has made important strides in modernizing its legal regime for copyright over the past several years, including extensive revisions to its criminal code. Enforcement, however,

remains problematic and piracy remains high considering Hungary's well-developed legal system.

## **ISRAEL**

In 2002 Israel maintained the momentum it began to build in 2001 in the enforcement of copyrights and trademarks, accordingly, we are moving Israel from the Priority Watch List to the Watch List. Israel has increased its budgetary, educational, police and judicial resources devoted to these enforcement efforts yielding concrete results in terms of raids, prosecutions and convictions, and contributing to a drop in the piracy level with regard to U.S. rightholders. Israel took an additional important step in protecting intellectual property in 2002 with its passage of the Amendment to the Copyright Ordinance, which increased criminal penalties for piracy in general and strengthened the ability of Israeli authorities and courts to prosecute and punish copyright crimes.

Despite these important developments, several key issues still need to be addressed. It is essential that progress continue to be made in copyright and trademark enforcement, such as providing the Israeli police, prosecutors and courts with sufficient resources to fully meet enforcement requirements. While the United States welcomes Israel's passage of the Amendment to the Copyright Ordinance, it is concerned that the new law excludes corporate end-user piracy from criminal liability, a step that may lead to weaker protection for business software. A 2001 opinion by the Ministry of Justice concluding that payment for the broadcasting and public performance of U.S. sound recordings is no longer necessary remains a concern, and the U.S. Government continues to seek clarification regarding the bearing of this opinion on Israel's bilateral obligations to the United States. And, most significantly, although Israel has been obligated since January 1, 2000 to provide data exclusivity, it has failed to do so. This policy places it at odds with other OECD-level economies and many of its neighbors that have met their TRIPS Article 39.3 obligations. The U.S. government urges the Israeli Government and the Knesset to enact quickly TRIPS-consistent legislation that will provide a reasonable period of non-reliance on confidential data similar to that granted in OECD and many neighboring countries. On the outskirts of the recent OECD meeting in Paris, Ambassador Zoellick and Vice Prime Minister and Minister of Industry, Trade and Labor, Ehud Olmert agreed that the two countries would engage in an intensive dialogue to attempt to resolve all outstanding intellectual property issues.

## **ITALY**

Despite continued implementation of its recent Anti-Piracy Law, and increased enforcement actions in 2002, Italy continues to possess one of the highest piracy rates in Western Europe – affecting all copyright-based sectors. Widespread piracy of business applications software remains a particular U.S. concern. Notwithstanding new government procedures to exempt business software that were enacted on January 25, 2003, when the Italian Government changed

the implementing regulations to the 2000 Copyright Law to permit exemptions from the SIAE sticker for business software, Italy continues to enforce a problematic program requiring copyright owners to pay for and apply a government-approved sticker on genuine copyrighted works. In addition, U.S. pharmaceutical manufacturers assert that Italian government actions in 2002 may unfairly curtail patent protection for drugs by changing the criteria relating to patent term restoration.

## **JAMAICA**

Jamaica's trademark and copyright regimes are generally consistent with international standards and enforcement efforts over the past year have been commendable. However, lack of parliamentary action to bring Jamaica's patent, industrial design, and plant variety laws into conformity with its international obligations remains the primary motivation for Jamaica remaining on the Watch List. The United States urges Jamaica to complete the process of enacting the necessary legislation and intends to engage the Government of Jamaica over the coming months to assess the status of that effort.

## **KAZAKHSTAN**

Kazakhstan needs to take several remaining steps in order to fulfill its intellectual property rights commitments under the 1992 U.S.-Kazakhstan Trade Agreement. In particular, Kazakhstan does not clearly provide full retroactive protection for works or sound recordings under its Copyright Law. In addition, there is weak enforcement of intellectual property rights in Kazakhstan, and as a result, piracy and counterfeiting rates are growing problems. Criminal penalties for intellectual property rights violations were adopted in 2001, but the United States remains concerned about the effectiveness of these Criminal Code provisions in deterring piracy and counterfeiting, due to the high burden of proof. It remains unclear whether new criminal penalties for IPR violations will be effectively enforced and deter piracy.

## **KOREA**

The United States continues to have serious concerns regarding adequate protection and enforcement of intellectual property in Korea. In 2002, in reliance on Korea fulfilling specific pledges the Korean Government made to the U.S. Government to improve IPR protection and enforcement, Korea was moved from the Priority Watch List to the Watch List. While Korea has taken some steps to fulfill its spring 2002 commitments, such as drafting legislation to provide the Standing Inspection Team with police powers, these steps fall far short of what Korea pledged to do. In addition, since the last Special 301 report, new and significant IPR issues emerged that have required strenuous efforts by the U.S. Government to resolve: one related to alleged infringement of a U.S. industry's IP in the creation/promulgation of a new telecommunications standard ("WIPI") and the other concerning pirates' ability to obtain rights to register and distribute U.S. films in the Korean market. The U.S. Government appreciates the



efforts of the Korean government in resolving the intellectual property issues regarding the WIPI standard and will carefully monitor the situation to ensure the agreement with US industry is being implemented fully. Regarding film registration, while the U.S. Government recognizes Korea's cooperation in devising and implementing an interim resolution of this problem, a permanent solution has not yet been implemented. This issue is of serious concern to U.S. rights holders who already have lost millions of dollars in revenues as a result of this lack of adequate IP protection.

The U.S. Government also notes that Korea has not taken sufficient new steps since last year to address U.S. concerns, outlined in the 2002 Special 301 Report, related to the protection of temporary copies, reciprocity provisions regarding database protection, ex parte relief and the lack of full retroactive protection for pre-existing copyrighted works.

As a result of incomplete follow through on key April 2002 commitments, the emergence of serious new IP issues, and the failure by Korea to make progress on other issues of priority raises concerns about adequate and effective protection for intellectual property rights in Korea. As a result, USTR has decided to conduct an out-of-cycle review in the fall.

The United States' decision on whether Korea should remain on the Watch List or be moved to Priority Watch List will be based on Korea's taking action in all of the following areas. As it agreed in 2002, the Government of Korea should: 1) Take all actions necessary to ensure that the Standing Inspection Team (SIT) is granted police powers at the earliest opportunity; 2) Draft and submit legislation to the National Assembly that establishes the exclusive right of transmission for sound recordings, including both the full right of making available and the full right of communication to the public, and seek its enactment by the end of 2003; 3) Provide additional, new data on the ROKG's enforcement efforts that is sufficient to more fully evaluate the full range of its enforcement activities, including the imposition of deterrent penalties, and sufficient to allow right holders to have the opportunity to take action against infringers who are not convicted. In addition, in order to resolve the film distribution issues, the Government of Korea should: 4) Draft and submit legislation to the National Assembly to grant the Korea Media Review Board (KMRB) all authority necessary to stop film piracy. This legislation and/or the implementing regulations must: a) clearly provide the KMRB the authority to reject false applications; b) clearly provide the KMRB the authority to cancel existing ratings which were approved on the basis of a false application; and c) not place undue burdens on legitimate rights holders to prove their rightful ownership; 5) Fully and faithfully implement its agreement on the "WIPI" intellectual property issue.

## **KUWAIT**

The United States supports the steps Kuwait has taken to improve enforcement and protection of intellectual property rights over the past year. However, copyright violations continue to pose a serious problem, and the piracy rate in Kuwait remains the highest in the region. The United

States looks to Kuwait to intensify the depth and breadth of its efforts. Recognizing that Kuwait stands at a critical juncture in its fight against piracy, we will continue to work with the Kuwait to meet its international obligations and commitments. Steps that are needed include working with the National Assembly to pass long-promised amendments to Kuwait's 1999 copyright law, increasing the effectiveness of enforcement procedures, strengthening an existing interagency process, and improving judicial capacity to penalize present offenders and deter future ones.

## **LATVIA**

While there were some positive developments in 2002, with some major raids on sellers of pirated optical media and while Latvia has improved its intellectual property rights regime in order to meet the obligations under the TRIPS Agreement, there remains concern over its weak enforcement regime. Large volumes of pirated products, including pirate optical media products are transshipped through Latvia from Russia and Ukraine. Latvia's record on combating transshipment of pirate goods has been mixed. The police, customs officials, prosecutors and judicial authorities have not placed sufficient emphasis on combating piracy. Industry and government efforts are underway to educate these authorities and improve enforcement.

## **LITHUANIA**

The most persistent problem in Lithuania regarding copyright protection is a lack of adequate and effective enforcement, which undermines legislative progress that Lithuania has made in recent years. Lithuania appears to remain a major transshipment country for pirated optical media products in the East and consumers in the West. An important development in the last year was the Lithuania's enactment of regulations to provide protection for confidential test data submitted by pharmaceutical firms.

## **MALAYSIA**

The Malaysian government intensified its efforts to eliminate the use, sale and production of pirated products over the past year. It effectively has used the Optical Disk Act of 2000 (enacted in September 2001), which established a licensing and regulatory framework for manufacturing copyrighted works, and has increased the number of enforcement officers to implement this Act. These enforcement officers have energetically raided vendors, users and manufacturers of pirated goods and sealed licensed optical disc factories for violating the Optical Disk Act. These stepped up enforcement efforts have led some unlicensed manufacturers to cease operations in Malaysia. Despite this noteworthy progress, optical media piracy, including of music, entertainment, and business software remains widespread and the products of sophisticated Malaysian pirates are marketed worldwide. In addition, U.S. industry has raised concerns about trademark counterfeiting of such products as office machines, apparel, and other goods. Prosecution is a weak link in the enforcement chain, and the judicial process remains slow. We urge the Malaysian government to address these concerns, to step up the prosecution of IPR

cases and follow through with plans to provide deterrent sentencing for IPR violators.

## **MEXICO**

This is the first time that Mexico has been placed on the Watch List since 1999. Despite some signs of progress, the United States remains concerned that several TRIPS and NAFTA issues, including lax enforcement against copyright piracy and trademark counterfeiting, remain serious problems. In addition, a new matter that arose over the last year that generated concerns by U.S. pharmaceutical companies: the lack of coordination between Mexican health officials and the Mexican Institute of Industrial Property (IMPI) with regard to the granting of marketing approval for their products. The Ministry of Health have allowed Mexican companies to rely on the confidential test data submitted by U.S. companies without authorization from the U.S. companies. Therefore the Government of Mexico (GOM) has improperly granted marketing approval to Mexican companies copies of U.S. products. More importantly, the Ministry of Health's actions have undermined validly granted patents that were issued by IMPI. We are aware of GOM efforts to remedy this situation and will await the outcome of these efforts. If those efforts are not successful, we will analyze the situation to determine what recourse may be available under international agreements, including NAFTA. We also remain concerned that many firms complain about the difficulty they face in enforcing their trademark rights in Mexico. We note that the complaints seem almost uniformly to involve issues of process or administration, resulting, for example, some companies failing to secure their rights in well-known marks in Mexico for as many as 14 years. We hope that this situation will be properly resolved in the near term and that Mexico will provide a systematic and effective means for right holders to protect their well-known marks.

In addition, the United States has longstanding concerns that raids rarely lead to prosecutions and convictions. While we are encouraged that in the last few months Mexico has been developing legislation to classify piracy as an organized crime, and has created a special IPR prosecutor within the Mexican Department of Justice (Procuraduria General de la Republica - PGR), we are still concerned by the lack of progress in making effective use of such provisions. The copyright industries estimate losses of \$731 million in 2002. We are also concerned about recent copyright amendments which were proposed which did not appear to meet international obligations, nor address implementation of the WIPO Internet Treaties. We urge the Mexican Government to: ensure that marketing approvals are not granted to infringing copies of patented products; expand its anti-piracy program to all major cities; improve investigations and raids against pirates at both levels of commercial distribution and street piracy; and encourage prosecutors to bring cases swiftly and press for deterrent sentences. We will monitor Mexico's progress on these issues in the coming months.

## **PAKISTAN**

In 2002, Pakistan was the fourth largest source of counterfeit and piratical goods seized by the U.S.

Customs Service as they were entering the United States. The vast majority of these goods were either apparel items with counterfeit trademarks or optical media products. Moreover, production of pirated optical media has grown substantially in 2002. With respect to patents, Pakistan's 2002 ordinance undermines improvements that the Government of Pakistan made to its patent law in 2000 to comply with its TRIPS obligations. In addition, there is no protection for confidential test data. The United States calls on the Government of Pakistan to improve its civil and criminal enforcement of intellectual property rights, including judicial and prosecutorial measures to address counterfeiting and piracy, expeditiously close pirate optical media production facilities and enact an optical media licensing regime to impede the growth of pirate enterprises and deter future potential pirates. We also call on the government of Pakistan to reinstate patent protection, and implement the protection of undisclosed test data in the near term.

## **PERU**

The Government of Peru issued a software legalization decree and recently took some steps to destroy pirated and counterfeit products. However, piracy rates for all copyright industries remained high, in particular for sound recordings, where, according to industry, piracy has devastated the legitimate market. Of concern specifically is the fact that few prosecutions and deterrent sentences are issued. In the patent area, Peru recently rescinded second-use patent protection for pharmaceuticals in the face of Andean Community pressure. In addition, Peru is failing to protect confidential proprietary test data that is submitted for marketing approval of pharmaceutical and agricultural chemical products. This is a growing, and glaring problem and U.S. industry reported that it has caused significant commercial damage. The industry is particularly concerned that infringing copies take market share away while rights holders are forced to expend resources and time seeking redress in local courts. We urge Peru to take strong actions to protect intellectual property rights, including by issuing a data protection decree. We will monitor Peru's actions in this respect, and will review any progress in the Fall.

## **ROMANIA**

Ongoing piracy problems overshadow the real progress Romania has made in developing its intellectual property regime. Although Romania increased raids and seizures of infringing materials in 2002, poor border enforcement, the low priority level given to piracy by regional and local authorities, prosecutors and courts, and the lack of resources dedicated to the issue, all combine to make intellectual property protection a continuing challenge in Romania. We urge the Romanian government to make enforcement against piracy a priority and set goals for tough anti-piracy sanctions; encourage the police to increase the number of anti-piracy raids; encourage the prosecutors to actively pursue more cases; provide a clear basis for civil *ex parte* searches; and improve border enforcement by providing customs officials with *ex officio* authority to make inspections and seizures.

## **SAUDI ARABIA**

Saudi Arabia has made great strides in fighting copyright piracy and trademark counterfeiting over the past year. Patent protection also received a boost when the recently established judicial Patent Committee, issued its first decision, found in favor of the patent holder against an infringer. Saudi Arabia is also working to revise its intellectual property laws, issuing amendments to the trademark law last August and working to issue new copyright and patent legislation. However, the United States remains concerned about continued high losses experienced by U.S. copyright and trademark-based industries. The lack of deterrent penalties and lack of transparency in the enforcement, prosecutorial, and judicial processes severely undermine the protection of intellectual property rights in Saudi Arabia. We look to Saudi Arabia to continue its enforcement efforts; ensure that the judicial system reinforces these actions with serious and consistent sentencing, including deterrent fines and penalties; and to improve transparency in the enforcement, prosecutorial, and judicial processes.

## **SLOVAK REPUBLIC**

The Slovak Republic was added to the Watch List in 2001 because it lacks protection for confidential pharmaceutical test data submitted to obtain marketing approval. There is no evidence that the situation has improved. The United States remains concerned about the lack of this important protection, which is a TRIPS requirement. In the area of copyright piracy, home CD-burning is on the rise and pirate CDs continue to be available on the public market in Eastern Slovakia.

## **TAJIKISTAN**

Tajikistan has yet to fulfill all of its intellectual property rights commitments under the 1993 U.S.-Tajikistan Trade Agreement. Specifically, Tajikistan is not yet a party to the Geneva Phonograms Convention, nor does it provide any protection to U.S. and other foreign sound recordings, or retroactive protection for works or sound recordings under its Copyright Law. Criminal penalties for intellectual property rights violations have not yet been adopted as required by the bilateral trade agreement. In addition, Tajikistan also does not provide *ex officio* authority to commence criminal cases. We call on Tajikistan to make improvements and enforcement of its existing laws an immediate priority.

## **THAILAND**

A public education campaign, and a recent coordination of its IPR agencies provide some hope for the coming year with respect to the protection of intellectual property in Thailand. It passed a Trade Secrets law, which it is preparing to implement. The Royal Thai Government organized the 13 agencies responsible for IPR issues to develop a more coordinated campaign against piracy, which began in early April 2003. However, we are concerned with the explosion of copyright

piracy within its borders. U.S. industry continues to raise concerns about the overall environment for production, sale, and export of a wide range of infringing products and the impunity accorded well-connected figures involved in infringement. Optical media piracy, including business and entertainment software, and increasing production and export of pirate CDs remains a particularly acute problem. Signal theft/cable piracy continues to be widespread. The United States urges Thailand to continue to strengthen its IPR regime and will provide Thailand with specific recommendations on judicial, legislative/regulatory, and enforcement issues. Key among these will be swift enactment of a strong optical media bill in the near term, which will help ensure the effectiveness of Thailand's stepped-up enforcement efforts concerning piracy counterfeiting.

## **TURKEY**

Although there has been some positive movement concerning protection of copyrights in Turkey, the situation regarding data exclusivity shows little sign of improvement. Turkey still has not adopted any administrative or legal mechanism to protect proprietary commercial data and lags far behind other EU aspirant countries in its protection of commercially valuable data for pharmaceuticals. With respect to trademarks, U.S. companies complain that Turkey has become a source of significant counterfeit production for the domestic market and export to Western Europe. On the copyright front, the judiciary's failure to treat piracy as a serious criminal matter and continued procedural hurdles in enforcing copyright owners' rights make for a mixed record overall. Although the Ministry of Culture has taken some positive steps to thwart copyright infringement regarding DVDs and other optical media products, serious problems still remain. In order to facilitate adequate protection of copyrighted materials, Turkey's judiciary needs to hand down deterrent penalties for intellectual property infringement, and customs needs to make greater efforts to tighten border controls

## **TURKMENISTAN**

Turkmenistan needs to take several remaining steps in order to fulfill its intellectual property rights commitments under the 1993 U.S.-Turkmenistan Trade Agreement. Specifically, Turkmenistan is not yet a party to the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) or the Geneva Phonograms Convention. Turkmenistan is not providing any protection to U.S. and other foreign sound recordings, nor does it clearly provide retroactive protection for works or sound recordings under its Copyright Law. In addition, criminal penalties for intellectual property rights violations have yet to be adopted as required by the U.S.-Turkmenistan Trade Agreement. Furthermore, the Customs Code does not provide the proper authority to seize material at the border, as is necessary to conduct effective border enforcement.

## **URUGUAY**

In 2002 Uruguay amended its 65-year old copyright law. The new amendments entered into effect in January 2003 and represent an improvement over the prior 1937 Law and contain many

provisions that upgrade the prior Uruguayan copyright scheme. In recent years, however, the major obstacle to copyright owners in Uruguay has been lack of effective enforcement against widespread piracy. Enforcement at the borders needs to be improved significantly, especially given the growth of optical media piracy throughout the Mercosur region and Uruguay's role in the transshipment of pirate and counterfeit goods into other countries in Latin America. While we are pleased with progress on copyright protection, we remain concerned about the inadequacies of Uruguay's patent law. We will continue to discuss intellectual property issues in the context of the U.S. - Uruguay Joint Commission on Trade and Investment. In addition, we urge Uruguay to ratify the two WIPO Internet Treaties.

## **UZBEKISTAN**

Uzbekistan needs to take numerous remaining steps in order to fulfill its intellectual property commitments under the 1994 U.S.-Uzbekistan Trade Agreement. Specifically, Uzbekistan is not yet a member of the Berne Convention or the Geneva Phonograms Convention; is not providing any protection or rights to U.S. and other foreign sound recordings; and does not clearly provide protection for pre-existing works or sound recordings under its copyright law. In addition, criminal penalties for IPR violations have yet to be adopted as required by the bilateral agreement. Furthermore, the Customs Code does not appear to provide the proper authority to seize material at the border, as is necessary to conduct effective border enforcement, we are encouraged that a new draft customs law is due for consideration in Uzbekistan's parliament on August 28, 2003. We urge the Government of Uzbekistan to enact this legislation expeditiously.

## **VENEZUELA**

In 2002, Venezuela's commitment to the protection of intellectual property rights appeared to be decreasing. Venezuela began issuing approval for drugs by relying on confidential test data of bio-equivalents that were already on the market, and reversed course on the issuance of second use patents to U.S. interests and revoking several which were already issued. Piracy and counterfeiting were increasingly problematic, and deterrence and prosecution levels remain low. We urge the Government of Venezuela to take strong actions to protect intellectual property rights, including by issuing a data protection decree. We will monitor Venezuela's actions in this respect, and will review any progress in the Fall.

## **VIETNAM**

Enforcement of intellectual property in Vietnam remains weak, and violations are rampant. While Vietnam has increased the number of administrative and law enforcement actions against IPR violations over the past year, effective enforcement remains the exception rather than the norm. Market access barriers, especially with regard to "cultural products," continue to impede the availability of legitimate product, further complicating efforts to combat piracy. In most cities, according to industry estimates, up to 100 percent of the music CDs, VCDs, and DVDs on sale are

pirated. Trademark violations also are prevalent, with all types of clothing and other items carrying unlicensed versions of famous trademarks available throughout major cities. In spite of this continuing bleak portrait, progress is being made to implement the major IPR provisions of the U.S. - Vietnam Bilateral Trade Agreement (BTA), which entered into force on December 10, 2001. As part of the BTA, Vietnam committed to make its IPR regime, including enforcement, TRIPS-consistent by December 10, 2003. In 2002 and early 2003 Vietnam improved its IPR legal and enforcement structures, including implementing new regulations; mandating increased inspections and raids; making further progress on acceding to several WIPO conventions; and establishing penalties for violating rules for the protection of plant species. The United States encourages Vietnam to build upon its strong public commitment to IPR protection by effectively implementing and enforcing its new laws and regulations to reduce the pervasive piracy and counterfeiting that continue to exist.



## Developments in Intellectual Property Protection

2002-2003

### 2002

#### May

- On May 8, the Republic of Slovenia deposited its instruments of ratification to the Patent Law Treaty and the Hague Agreement Concerning the International Deposit of Industrial Designs.
- On May 14, India passed the second amendment to its 1970 patent law, which recognized some of the shortcomings of the earlier law, including the extension of pharmaceutical process patent protection from 7 years to 20 years.
- On May 18, Senegal became party to the WIPO Copyright Treaty.
- On May 20, Honduras became party to the WIPO Copyright Treaty.
- On May 20, the WIPO Performances and Phonograms Treaty (WPPT) entered into force. The following parties had acceded to or ratified the Treaty on that date: Albania, Argentina, Belarus, Bulgaria, Burkina Faso, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Ecuador, El Salvador, Gabon, Georgia, Honduras, Hungary, Latvia, Lithuania, Mali, Mexico, Moldova, Panama, Paraguay, Romania, Saint Lucia, Senegal, Slovakia, Slovenia, Ukraine and the United States.
- On May 22, Kazakhstan issued a resolution with a package of measures intended to correct deficiencies in the Kazakh IPR regime, such as including providing clear protection for pre-existing works and sound recordings and civil *ex parte* procedure.
- On May 25, Guinea became party to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.
- On May 26, Slovenia became party to the Trademark Law Treaty.
- Morocco's Ministry of Health's Office of Medicines and Pharmaceuticals evaluated weaknesses in the 1960 pharmaceuticals law and sent new legislation to eliminate all obstacles to foreign investment in the sector, including IPR issues, to the Secretariat General.
- Panama held an intensive IPR workshop focused on helping judges, prosecutors, police and

customs officials implement IPR laws.

## June

- On June 2, Egypt passed a comprehensive IPR law (Law No. 82) that will bring Egypt's IPR regime into closer compliance with TRIPS. Implementing regulations for the copyright portions of the new law have not yet been issued.
- On June 8, Qatar passed a new Copyright and Neighboring Rights Law, which entered into effect on August 3<sup>rd</sup>. On June 15<sup>th</sup>, Qatar passed a new intellectual property rights law for trademarks commercial indications, trade names, geographical indications and industrial designs, which entered into effect on August 27<sup>th</sup>.
- On June 12, the law on amending Belarusian Customs Code came into effect, providing Customs Authorities with legal mechanism to block the transfer of pirated products and equipment through the Belarusian customs border.
- On June 12, Jamaica became party to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.
- On June 28, Ukraine became party to the Hague Agreement Concerning the International Deposit of Industrial Designs.
- The El Salvador Legislative Assembly passed the Law of Trademarks and Other Distinctive Signs, in an effort to comply with TRIPS, and also created a new separate Registry for Intellectual Property. The Salvadoran National Registry Center also divided the Registry of Commerce and Intellectual Property in two, creating a new separate Registry for Intellectual Property.
- The Philippines enacted a new plant varieties protection law.

## July

- On July 2, the Dominican Congress passed a new Criminal Procedures Code that continues to allow ONDA and Fiscalia to conduct *ex officio* actions.
- On July 10, the Thai Trade Secrets that includes provisions for data protection became effective.
- On July 18, Peru became party to the WIPO Performances and Phonograms Treaty.
- On July 25, the Bulgarian Parliament approved amendments to the 1993 Law on Copyright

and Neighboring Rights, which expanded certain rights and remedies, and entered into effect on January 1, 2003.

- The Greek General Secretary of the Ministry of Interior signed a circular directing the appropriate use and procurement of all government software.
- The Ho Chi Minh City Economic Police in Vietnam raided a workshop producing high quality counterfeit famous name brand shoes and resulted in the seizure of 23 truckloads of fake components, supplies, and production equipment.

## **August**

- On August 6, Saint Vincent and the Grenadines became party to the Patent Cooperation Treaty.
- On August 10, Thailand's Economic Crimes Investigation Division conducted Thailand's first successful raid against a cyber-pirate, shutting down an operation that marketed pirate software, music, and movies over the internet and at local shopping malls.
- On August 15<sup>th</sup>, the Kyrgyz Republic became party to the WIPO Performances and Phonograms Treaty and became a party to the Trademark Law Treaty.
- Colombia passed Decree 2085 which provides data exclusivity protection as provided for under TRIPS Article 39.3.
- From February to August of 2002, El Salvador conducted a joint audit with the Business Software Alliance (BSA) of all government computers within the executive branch and several autonomous agencies and agreed to replace all unregistered software.
- The Qatar Ministry of Economy and Commerce established a committee to supervise a new trademark enforcement campaign and began a renewed emphasis on combating trademark violations.
- Saudi Arabia issued an amendment to the trademarks law, effective December 2002, providing for trademark protection for renewable 10-year terms of exclusive ownership. Penalties allow for fines up to sr 1 million (USD 267,000) and jail time up to one year, which may be doubled for repeat offenders.

## **September**

- On September 1, Estonia's new Penal Code and the new Misdemeanor Law were implemented, criminalizing IPR violations and increasing possible fines.

- On September 15, China enacted new implementing regulations for its trademark and copyright, increasing the maximum fines for trademark infringement six times higher than under earlier regulations and allowing local administrative authorities to impose discretionary fines.
- Greece became the first European Union country to implement the European Copyright Directive (2001/29/EC), thus amending Greek law to implement the obligations of the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).
- Lebanon had its first IPR case that resulted in a jail sentence.
- The Saudi Arabia Ministry of Information began a targeted copyright awareness campaign.
- South Korea drafted and forwarded legislation to the National Assembly for approval to give the standing inspection team police powers to tackle software piracy more effectively.

## **October**

- On October 4, the Philippines became party to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.
- On October 9, Japan became party to the WIPO Performances and Phonograms Treaty.
- On October 12, 2002, the Kyrgyz Republic became a party to the Geneva Phonograms Convention.
- On October 25, Mongolia became party to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.
- Kuwait launched a new joint work team in an effort to streamline the IPR enforcement process and enhance the inter-ministerial task force established in 1999.
- Mexico started an antipiracy campaign in Mexico City with "anti-piracy" television commercials, radio slots, billboards and advertisements.
- Nicaragua's Public Ministry dedicated three special IP prosecutors to fight IPR infringement.
- The Philippines signed an updated administrative order for Customs, prescribing the rules

and regulations implementing the Intellectual Property Code in relation to the country's TRIPS requirements.

## **November**

- On November 3, Israel's Amendments to the Copyright Ordinance became effective, strengthening criminal liability for copyright infringement with increased prison sentences and penalties, vicarious liability for officers of companies committing offenses, and improved presumptions of proof with respect to the elements of proof.
- On November 7, Kazakhstan became party to the Trademark Law Treaty.
- Morocco's Ministry of Health's Office of Medicines and Pharmaceuticals sent the Secretariat General a new pharmaceuticals code that would eliminate investment and IPR obstacles in the sector. The next step is approval by the Government Council, and the code is expected to be implemented in 2003.
- New Zealand's Trade Marks Act 2002 was approved by Parliament and made specific trademark infringements criminal offenses punishable by up to five years imprisonment. This act also amended the Copyright Act 1994 by increasing the maximum penalty for specific copyright infringements from three months to five years imprisonment.
- Russia passed amendments to its Trademark Law.

## **December**

- On December 14, Armenia's amendments to its copyright law entered into force, extending copyright protection for pre-existing works, providing national treatment and stiffening criminal penalties.
- On December 10, thirteen Thai government agencies signed on to an interagency MOU to enhance IPR coordination.
- On December 17, the Brazilian Congress passed Law 10,603 in an effort to comply with data exclusivity obligations under TRIPS.
- On December 19, Nigeria deposited its instruments of ratification to the Patent Law Treaty.
- On December 3, the Mexican Chamber of Deputies approved legislation which reforms the Federal Law Against Organized Crime. If passed by the Senate, copyright infringement would become a crime punishable under this organized crime legislation. Thus, if organized crime elements in piratical behavior is proved, copyright pirates could face 20-40

years in jail, in addition to the penalty for the underlying intellectual property crimes.

- New Zealand introduced legislation to prohibit the parallel importation of films and videos for a period of nine months from a title's first international release. The legislation is expected to pass in 2003.
- South Korea amended its Computer Programs Protection Act to address the problem of service provider liability for copyright infringement of computer programs taking place over their networks. The amendments will take effect on July 1, 2003 with implementing regulations still to be developed and issued.
- Canada revised its Copyright Act (Bill C-11) to explicitly exclude internet retransmission from its compulsory licensing regime.

## **2003**

### **January**

- As of January 1, data exclusivity became effective under Bulgaria's new pharmaceutical law.
- On January 1, Hungary acceded to the European Patent Convention and has amended the Hungarian Patent Act accordingly. On January 1, Hungary's 2001 Ministerial Decree providing data exclusivity protection took effect.
- By January 1, 2003, Slovakia had established a panel of three judges to adjudicate IPR cases at three regional courts, in Banska Bystrica, Kosice and Bratislava.
- On January 1, Taiwan established the integrated enforcement task force (IETF), which will ultimately have 220 members.
- On January 5, Belarus became party to the International Union for the Protection of New Varieties of Plants (UPOV, 1991).
- On January 7, Estonia became party to the Trademark Law Treaty.
- On January 8, Guatemala became party to the WIPO Performances and Phonograms Treaty.
- On January 10, Uruguay amended its 1937 copyright law to correct most TRIPS deficiencies and incorporate several key elements of two WIPO Treaties, the WIPO

Copyright Treaty and the WIPO Performances and Phonograms Treaty, which Uruguay has not yet ratified.

- On January 25, the Intellectual Property Rights Division of the Singapore Police raided a major software pirate syndicate making arrests and seizing over one million Singapore dollars (600,000 us dollars) worth of DVDs and CDs.
- On January 31, Armenia became a party to the Geneva Phonograms Convention.
- Egypt's People's Assembly ratified the WIPO Patent Cooperation Treaty (PCT).
- Russia's amendments to its patent law were finalized.

## **February**

- On February 1, China implemented changes to the Patent Cooperation Treaty Regulations.
- On February 4, Guatemala became party to the WIPO Copyright Treaty.
- On February 5, Armenia became a member of the WTO.
- On February 7, Lithuania's Ministry of Health issued an order providing protections for pharmaceutical companies' confidential test data, effective March 1, 2003.
- On February 25, Republic of Korea became party to the Trademark Law Treaty.
- A new Kenyan copyright law was made effective and is being implemented.
- Panama put on an intensive IPR workshops focused on helping judges, prosecutors, police and customs officials implement IPR law.

## **March**

- On March 6, Nicaragua became party to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Nicaragua also acceded to the Patent Cooperation Treaty.
- On March 18, the Lithuanian President signed into law amendments to the Law on Copyright and Related Rights which were aimed at raising the standards of protection to the levels found in the WIPO internet treaties.

- On March 17, the Kyrgyz Republic became party to the Hague Agreement Concerning the International Deposit of Industrial Designs.
- On March 17, Serbia and Montenegro closed “CD Alley” and now requires kiosks owners to meet legal business registration requirements.

## April

- On April 7, amendments to the Serbian criminal code addressing criminal enforcement of piracy were submitted to the Serbian Parliament. Amendments include increased criminal penalties for piracy, including prison sentences, and gives the police the authority to seize and destroy pirated products and production equipment.
- On April 10, Republic of Korea joined the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks.
- On April 15, Guatemala passed a patent law in an effort to comply with the TRIPS agreement.
- On April 17, Belarus became party to the Geneva Phonograms Convention, following Presidential Decrees made in August 2002. As a party, Accession to the Convention satisfies some of Belarus’ outstanding bilateral obligations and provides a point of attachment for the protection of U.S. sound recordings in Belarus.

## WIPO Internet Treaties: WIPO Performance and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT)

The following became parties to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaties (WPPT) during May 2002 - April 2003. The WPPT entered into force on May 20, 2002.

Albania	May 20, 2002	El Salvador	May 20, 2002
Argentina	May 20, 2002	Gabon	May 20, 2002
Belarus	May 20, 2002	Georgia	May 20, 2002
Bulgaria	May 20, 2002	Guatemala	January 8, 2003
Burkina Faso	May 20, 2002	Guinea	May 25, 2002
Chile	May 20, 2002	Honduras	May 20, 2002
Colombia	May 20, 2002	Hungary	May 20, 2002
Costa Rica	May 20, 2002	Jamaica	June 12, 2002
Croatia	May 20, 2002	Japan	October 9, 2002
Czech Republic	May 20, 2002	Kyrgyz Republic	August 15, 2002
Ecuador	May 20, 2002	Latvia	May 20, 2002



Lithuania	May 20, 2002	Philippines	October 4, 2002
Mali	May 20, 2002	Romania	May 20, 2002
Mexico	May 20, 2002	Saint Lucia	May 20, 2002
Moldova	May 20, 2002	Senegal	May 20, 2002
Mongolia	October 25, 2002	Slovakia	May 20, 2002
Nicaragua	March 6, 2003	Slovenia	May 20, 2002
Panama	May 20, 2002	Ukraine	May 20, 2002
Paraguay	May 20, 2002	United States	May 20, 2002
Peru	July 18, 2002		

In addition, Togo and Serbia and Montenegro have deposited their instruments of ratification or accession and will become parties to the WPPT on May 21 and June 13, 2003, respectively.

The following became parties to World Intellectual Property Organization (WIPO) Copyright Treaty during May 2002 - April 2003. The WCT entered into effect on March 6, 2002, three months after 30 countries had deposited their instruments of ratification.

Guatemala	February 4, 2003
Guinea	May 25, 2002
Honduras	May 20, 2002
Jamaica	June 12, 2002
Mongolia	October 25, 2002
Nicaragua	March 6, 2003
Philippines	October 4, 2002
Senegal	May 18, 2002

In addition, Togo and Serbia and Montenegro have deposited their instruments of ratification or accession and will become parties to the WCT on May 21 and June 13, 2003, respectively.