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PUBLIC HEARING

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MAY 12, 2000

The Public Hearing was held in the Truman Room in the White House Conference Center, 726 Jackson Place, N.W., Washington, D.C., at 10:00 a.m., John Rosenbaum, Chairman, presiding.

PRESENT:

John Rosenbaum, Chairman
Robert Baker, Department of Treasury
Claude Burcky, USTR
Donna DiPaolo, USTR
Rachel Goslins, U.S. Copyright Office
Katrin Kuhlman, USTR
Deborah Lashley, Department of Commerce
Maureen Pettis, Department of Labor
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Dr. Yaroslav V. Voitko, Chief, Trade and Economic
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Department, Ministry of Economy of Ukraine;
Mr. Oleh V. Riabokon, Counsel to Ministry of
Economy of Ukraine; Mr. Dmytro A. Shevchenko,
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Industrial Property Protection; Mr. Vlad Spanu,
Deputy Chief of Mission, Embassy of the Republic
of Moldova in the U.S.A.
CHAIRMAN ROSENBAUM: Good morning, ladies and gentlemen. We have a rather full schedule today so we are going to start promptly. I'm John Rosenbaum, Assistant U.S. Trade Representative for Trade and Development. We have with us on the side of the table this morning representatives from various agencies. I think I'll let them introduce themselves.

We have to my right Claude Burcky who is the Deputy Assistant USTR for Property Rights. We're glad to have him here this morning since ask some questions that I'm sure are much more knowledgeable and penetrating than the ones I can ask.

MS. DIPAULO: Donna DiPaolo, Director for the Intellectual Property at USTR.

MS. LASHLEY: Deborah Lashley, Trade Compliance Center, Department of Commerce.

MR. BAKER: Robert Baker from Treasury.

MS. WANAMAKER: Diana Wanamaker from the Agriculture Department.

MS. PETTIS: Maureen Pettis from the
Department of Labor.

CHAIRMAN ROSENBAUM: This is the 1999 Country Practice Case Hearings. We were delayed in having these hearings, first because of the GSP program. It was without authorization for about a five-month period from June until December of 1999.

Second, because we lost our hearing room place. I know for some of you, you've had a change of plans from time to time. I'm apologizing for that but it's really beyond our control.

Well, we'll start right away with Eric Schwartz, Counsel for the International Intellectual Property Alliance.

MR. SCHWARTZ: Thank you. My name, for the record, is Eric Schwartz and I'm Counsel to the International Intellectual Property Alliance. Thank you very much for allowing me to speak this morning, mid-morning and this afternoon on a number of petitions.

I'm going to use just a minute or two of my time to make some introductory remarks that pertain to the petitions, not only of Armenia but also
Kazakhstan, Moldova, Ukraine, and Uzbekistan because a lot of what we have included in our petition and a lot of the deficiencies that exist in the countries are, if not similar, very similar or identical. They are based on similar standards based on a bilateral agreement which is identical in all of the countries.

Just for the record, the International Electoral Property Alliance is an alliance of seven associations consisting of the major copyright producers and book publishers, motion picture industry, record industry, software industry, the computer industry including business software and entertainment software and the music publishers and book publishers.

My own experience in this area may also be pertinent to some of the things I'm going to say because, in particular, we're talking in these countries about deficiencies with the Bilateral Agreement that I have a lot of familiarity with because at the time the bilaterals were signed, I was in the U.S. Government in the U.S. Copyright Office and I was the negotiator of the Bilateral Agreement.
with the countries for whom we are filing these petitions.

I know the particulars of the obligations and also the time tables that the countries agree to comply with the Bilateral Agreement. By any measure the five countries are not measuring up to the obligations of the Bilateral Agreement either by not providing adequate copyright protection in their domestic law or in their enforcement provisions the legal reforms necessary or, in all cases, falling down on the enforcement side.

To summarize, the Bilateral Agreement has seven obligations very quickly. They are in our petition but I'll just mention them.

Joining the Berne Convention; protecting sound recordings; protecting American sound recordings by making best efforts to join the Geneva Phonograms Convention; protecting computer programs and databases; providing adequate and effective protection and enforcement which is understood to include deterrent civil criminal penalties as well as effective boarder measures. The seventh was to
establish working groups between the two countries.

I would like to think that having now taken
the long view of 11 years of working with these
countries that there are really three stages of
development, not necessarily sequential, in terms of
passing laws that include on the enforcement side
criminal penalties, adequate criminal procedures,
customs provisions, civil and administrative penalties
that are effective, and on the civil and criminal
side, ex parte search procedures.

Secondly, that the countries join the
relevant treaties: Berne, Geneva Phonograms, TRIPS
Agreement, and now with the problems of Internet
piracy and digital piracy the new digital treaties,
the WIPO. Then, as I said, last the enforcement which
has to be actual working enforcement to provide
adequate and effective protection and simply suggest
that countries can have very good black letter law and
have no on the ground enforcement as to really have no
meaning to the standards for GSP or for any other
purpose to have adequate and effective protection.

That includes the ability and the actual
raids, seizures, prosecutorial actions, and to turn penalties imposed. This is especially a problem because in this region optical media piracy when we talk in particular about Ukraine is something that is growing at an expediential rate in the region as a result of organized criminal activity and it is a runaway problem that for several years we have been trying to get the countries to focus attention on and now it has grown to this size problem.

It is a result of the ineffective enforcement and the poor legal structure that makes these countries so ripe for this type of large scale commercial optical media and other piracy.

Let me turn to Armenia with my remaining seven minutes. By any standard Armenia is not living up to any of the stages that I suggested. Though they obligated themselves in a Bilateral Agreement that went into force on April 7, 1992, over eight years ago, to do the following, and I mentioned the seven obligations in the Bilateral Agreement, they have neither joined the Berne Convention. Have not joined Geneva Phonograms Convention. They do not have a
TRIPS compatible law. They have no enforcement to speak of.

In essence, not joining the Berne or Geneva Phonograms Convention means that there is no point of attachment for the protection of works or sound recordings, American works or sound recordings of any kind. Nor is there clear protection even under their law when they join preexisting works, so-called retroactive protection both for works or sound recordings.

As I said, there's no enforcement to speak of, though the criminal code provisions look to be adequate. There is no police authority to commence their own raids, so-called ex officio authority, none by customs officials to do the same. We know of no convictions under the criminal code and, therefore, no meaningful police or prosecutorial activity, but how could there be because American works aren't even protected in the country.

That is according, by the way, to the Copyright Office's Circular 38A. I have just sort of a minor quibble on that and think that, in fact,
Armenia because they signed the Bilateral Agreement is, in fact, a member of the Universal Copyright Convention as a successor state to the Soviet Union's membership effective May 27, 1973.

That's not indicated in the Copyright Office's circular which identifies countries that are members through international agreements and the Copyright Office gets its information from the U.S. State Department's treaty in force. It's neither here nor there. they clearly are not protecting sound recordings even if they are UCC members.

Also one of the Bilateral Agreement obligations in the discussions that the U.S. Government had with these countries was that they were supposed to send a letter to UNESCO informing them that, in fact, they were a successor to the Universal Copyright Convention since UNESCO and not the WIPO is the secretariat of that international treaty and Armenia did not do that.

That in summary are our concerns with Armenia and it had been several years of trying to get them to enact better laws. What we do know is that in
December of this year they did pass another law. Our attempts to get copies of it both through the government of Armenia and the U.S. Government have so far been unsuccessful.

Our information is that the president of Armenia signed it into force on January 12, 2000. Based on the draft laws, we know it had some improvements but it certainly doesn't have all the improvements necessary to provide adequate and effective protection and enforcement because it didn't have enforcement provisions in it.

Until they joined the treaties, there is still no applicability to American works or sound recordings. As good a law as it may be, it's still not providing the so-called point of attachment to be applicable to American works or sound recordings.

I would be happy to answer any questions you have on Armenia or the Bilateral Agreement.

CHAIRMAN ROSENBAUM: Let's restrict our comments, if any, or questions to the Armenia case. I note that the government of Armenia has chosen not to participate this morning. I don't know if there is
anybody here representing the government of Armenia.

If there is, I would encourage Armenia to participate in the future parts of this GSP review. I think it would be in their interest to do so. Otherwise, we're only going to have what you say, plus our own knowledge.

MR. SCHWARTZ: We welcome their participation as well and I think that has been part of the frustration and the reasons frankly why we filed these petitions, out of a sense of exasperation. The last thing we want to do in these particular countries is punish the developing economies. But the sense that we have had is they do not pay attention to the intellectual property requirements to the Bilateral Agreement.

I know personally that I've gone to many countries and raised the issues of the Bilateral Agreement and have gotten blank stares or questions from middle and high-level government officials who say, "What Bilateral Agreement?" I think filing of the petition was unfortunately necessary to get that attention.
CHAIRMAN ROSENBAUM: Is there anyone here from the Armenia government or the embassy? Anyone have questions?

MR. BURCKY: Just to clarify. I think you may have answered this in your last statement but I take it your industry has done more than just come to the United States Government and seek pressure to get these countries to implement these agreements. Have you actually worked with the governments themselves?

MR. SCHWARTZ: Yes. I mean, at every opportunity we have made ourselves available both in the countries or here in the United States when they are visiting delegations. We meet regularly with visiting delegations of copyright officials, trade officials, private sector individuals trying to establish collecting right societies in the countries.

What we want, as I said, is not to punish countries by revoking GSP and hurting them on trade but the opposite. We want them to develop their trade with the United States and to improve their levels of protection and enforcement. We've been trying to do that.
We are happy to work with any of the
countries on technical matters that they have with
regard to the development of their laws, their
enforcement systems, and I, in particular, have been
involved in numerous training sessions with officials
on effective enforcement on the development of the
laws for eight, nine, 10 years with these countries.

CHAIRMAN ROSENBAUM: Have you been in
contact with the embassy here?

MR. SCHWARTZ: We did send a copy of our
petition to the embassy here. We asked them to send
a copy or a response to us and we did not get a
response in this particular country. Some of the
others I have had meetings with the embassies, but
we'll talk about that when we deal with those
petitions.

CHAIRMAN ROSENBAUM: Anything else? Okay.

We'll be seeing more of you today.

MR. SCHWARTZ: Yes. I'll clear the table.

Thank you very much.

CHAIRMAN ROSENBAUM: I might just say that
these reviews are very rarely end in the withdrawal of
GSP benefits but they do and have done in the past when we find that we're not able to make any progress. When we can't engage the other party, it becomes difficult to show progress.

I would like to invite the representatives of the Dominican Republic to the table. We have with us the Ambassador for the Dominican Republic in Washington, Roberto Saladin. We have the Under Secretary, Ministry of Industry and Commerce, Angel Cano. There are several other officials and I will have the Ambassador introduce all of his colleagues. I don't think I have all of the names.

AMBASSADOR SALADIN: To my right is the District Attorney of Santo Domingo, Francisco Dominguez Brito. To my right the Under Secretary of Industry and Commerce, Angel Cano. Mr. Robert W. Johnson, our lawyer. The Ambassador in Geneva, Dr. Frederico Quayo. The Director of the Copyright Office for the Dominican Republic, Pedro Feliz Montes of the Secretary of Industry and Commerce. I, myself, the Ambassador of the Dominican Republic.

CHAIRMAN ROSENBAUM: Welcome. We are happy
to have all of you. I must say your Ambassador in
Geneva, every time we have a problem with him, he
tells me I taught him all his tricks. Why don't you
proceed as you wish using your 15 minutes as you so
choose.

MR. JOHNSON: Thank you, John. I'm Robert
Johnson, for the record, for Johnson, Rogers and
Clifton. My law firm represents the government of the
Dominican Republic in this case. We are going to have
three witnesses to speak. I'm going to lead off to
discuss the framework of the case and several of my
observation. Ambassador Saladin is going to talk
about the recent developments in the country and the
protection of intellectual property rights. He is
also going to talk about his country's commitment to
meet its TRIPS obligations.

Under Secretary Cano, as the Ambassador
mentioned, is accompanied by the head of the National
Copyright Office and Director of the National Patent
Registry and the District Attorney from Santo Domingo.
Ambassador Quayo is here as an adviser on substantive
issues. We are going to have three people who speak.
The delegation will answer questions if you have technical questions for them.

Frankly, I am glad to be here in this proceeding to have the opportunity to correct some misinformation, some disinformation, and lack of information. I take this case seriously and, as the government will testify, they do too.

This is actually for me the second time I have been involved in an intellectual property case defending the government of the Dominican Republic. On the other hand, I have worked for our colleagues in the motion picture business. My old law firm represented Paramount Pictures and Columbia Pictures and the Motion Picture Association in the recent past. We also represented Simon and Schuster and some other book publishers.

My current law firm represents a best selling author whose work is currently being pirated by the Chinese, the author of Forrest Gump, Winston Groom. We are very sensitive to these issues.

I actually want to commend the IIPA for its constructive criticism in this case. I think they
have spurred the government of the Dominican Republic
and its private sector to a number of changes that we
want to inform the committee about since the petition
was filed almost a year ago.

Many of the criticisms in the petition were
warranted at that time but I do think since then many
have been addressed and we will continue to be engaged
with IIPA and other organizations to address any
lingering issues.

This case started because of copyright
issues, I want to point out. The Dominican copyright
law at the time the petition was filed in June of 1999
was clearly not TRIPS compliant. The Dominican
Republic's TRIPS obligations came into force on
January 1st of this year.

The enforcement, as IIPA claimed, was
somewhat spotty in areas. Now there have been major
improvements in both areas. Don't take my word for
this. I'm sure you won't. Look at what IIPA has said
in this case thus far, what they have said in their
special 301 filings, and what they will say today.

If they don't address this specifically,
please ask them. Please ask the U.S. Ambassador of Santo Domingo. If you ask IIPA, you'll get an answer, I'm sure, that is fair and based on the best information they have. You're not going to get any baseless or distorted criticism from IIPA. That's why I'm personally looking forward to working with them on the remaining issues.

With respect to enforcement, there have been tremendous improvements in the Copyright Office and in the District Attorney's Office in the last year and a half or so. Once the enforcement witnesses talk, I think you'll understand that if information as to counterfeit or pirated materials is presented to them, they are going to guarantee results as far as seizures and destruction of such materials.

The District Attorney's Office twice has conducted block by block, building by building searches in the business district looking for licenses to make sure that business software was licensed. I don't think that has happened in Washington, D.C., or anywhere in the United States where they check every computer and see if you have a license for all the
computer programs on that computer. They checked over a thousand business computers.

One of the problems that has arisen in enforcement is, frankly, the difficulty in identifying good and bad material, material that is pirated or counterfeit. Sometimes it's hard to tell. Sometimes it's obvious on its face.

We have asked IIPA to work with us on information exchange to provide the enforcement authorities with clear information so we can take the proper steps.

As for resources, resources are in short supply and they are always a problem in the law enforcement business. The ball is already rolling for the government of the Dominican Republic to ask the U.S. Government and IIPA for assistance in these areas just like the Dominican government did in the 1993, 1994 intellectual property case where we worked with the Motion Picture Association to get equipment to monitor cable transmissions. As a matter of fact, we asked MPAA for so much assistance to help in this that I think they got sick of us.
I would like to turn briefly to patent issues. They were not part of the original complaint but this seems to be where most of the heat is. As a matter of fact, I met with Ambassador Monat in Santo Domingo several weeks ago and he said where his main concern is he thinks there has been a lot of progress in enforcement and in the copyright issues.

The copyright law, I might add, there's a new legislation that is pending in the Dominican congress and IIPA has commended many parts of it. There are still some areas that they want to see improvement and we've actually had discussions with them as recently as yesterday about what changes need to be done to get the legislation shaped up.

As far as patents, there have been some heated allegations about piracy in the Dominican Republic of U.S. pharmaceutical patents. I think when you examine the 1911 Dominican Patent Law, you'll find that the Dominican Patent Office right now functions merely to look at the formalities of an application. They do not examine the patent application to see whether or not -- they don't examine it like the
Patent Office does here.

What has happened is, in my opinion, the U.S. pharmaceutical industry ignored the Dominican Republic throughout the '80s and '90s as far as registering patents in the Dominican Republic under the Paris Convention. They have just recently started doing it.

Some of these patents that are registered were registered -- a lot of them were registered after the one year time limit in the Paris Convention. The Dominican government under the existing law doesn't have the authority. They don't vouch for the patent and they don't revoke a patent. They don't examine it.

What happens if there is a dispute, somebody will go into business and there will be a Dominican patent holder that holds the Dominican patent based on the U.S. patent. What he needs to do if he thinks somebody is infringing his patent is file a lawsuit and prove that his patent is valid in the lawsuit.

There have been claims that the bonding requirements are onerous. I have to point out that
the new Patent Law has been approved by the Dominican congress and it's at the Office of the President right now being considered. The bonding requirements have been eliminated.

I believe there will be accusations or comments that the Dominican Patent Law is one of the worst in the hemisphere. It may be unlike by the U.S. patent industry because it provides for compulsory licenses but it is TRIPS compliant. TRIPS Article 31 especially provides for compulsory licenses under certain circumstances and the Dominican Patent Law has recently been amended to reflect those additional requirements and conditions in Article 31.

Finally, the Dominican Republic takes its TRIPS obligations seriously. I'm sure the United States does, too. Especially, I hope, Article 67 which requires developed countries to provide technical and financial assistance to developing countries. I think this will be the basis for assistance in the Dominican Republic and to helping improve the patent regime and copyright regime.

Ambassador.
AMBASSADOR SALADIN: Thank you very much.

Good morning, Mr. Chairman, and members of the GSP subcommittee. I'm Roberto Saladin, Ambassador of the Dominican Republic to the United States. I appreciate the opportunity to testify before the committee today. I have prepared a written statement which I would like to be made part of the public record.

In the interest of the time I will summarize it and then ask my colleagues who have come here from Santo Domingo to give a brief analysis regarding the enforcement issues.

My purpose in being here today is two-fold. First, to make this committee aware of the many steps that the government of the Dominican Republic has taken to protect intellectual property right in the country and, in particular, to address those steps that have been taken since the IIPA filed its petition in June, 1999. Especially the important developments that have occurred since the preceding brief was filed on March 16.

Second, I am here to assure this committee that my government is fully committed to protecting
intellectual property rights and to meeting our international obligations. The Dominican Republic will make every possible effort to ensure that the intellectual property rights are respected and enforced within its borders.

Furthermore, we intend to work with the GSP subcommittee, IIPA, WIPO, and other organizations including PhRMA and its counterparts in the Dominion Republic if they are agreeable to give an absolution that addresses the interest of all concerned in a fair and agreeable manner.

The essence of the Dominican government's position is that significant progress has been made in recent years to protect intellectual property rights in the country. Much progress has been made since IIPA petition was filed in June 1999 and the Dominican government is committed to making further progress in modernizing its laws and its enforcement actions.

Moreover, the Dominican government is continuing to take the necessary steps to ensure that the intellectual property rights are protected in practice. What we must keep in mind throughout this
proceeding is that the Dominican Republic has continued to make extremely favorable progress in the area of IPR protections since the Motion Picture Association of American withdrew a GSP petition in September 1994.

Among the more important actions are the following: 1995 investment law enacted. 1996 project to overhaul ITR laws were started by the new administration with President Fernandez Reyna. In 1997 the Dominican Republic acceded to the Berne Convention enacting a modern telecommunication role and the Paris working group compound set up in the Ministry of Commerce and Industry.

In 1998 the IPR unit established by the District Attorney of National District for enacted and promised activities. Market order code package of a new IPR was introduced in the Dominican congress. 1999 comprehensive IPR training intensified. National Copyright Office reorganized and given larger budget an additional responsibilities.

Interagency at the Paris commission created a new IPR law passed by the Dominican senate. 2000
Rurema Commission convened to revise conversion aspects of the IPR bill pending. WIPO asked to review pending IPR bill. IPR training and activities increase, much of them with the support of the U.S. embassy.

Dominican Republic joined WIPO as a full member. Dominican Chamber of Deputies and Senate passed the Patent Law as mentioned by our lawyer with important revisions to make it TRIPS compatible. The bill is under review by President Fernandez Reyna and his staff at this very moment.

On the other side important U.S. corporations as Microsoft and Oracle agreed to large investment in the Dominican Republic based on their confidence in the investment code and intellectual property laws and the authorities willingness to carry out activities if violations occur.

Those two agreements were signed very recently during the visit of President Fernandez Reyna to Sierra where he met Mr. Ballmer, CEO of Microsoft. The agreement between Oracle and the Dominican government was signed by the Technical Secretary of
the Presidency.

Besides that, on August 1st the new Cyberpark will be inaugurated by the present government. We are aware of the importance of the protection of the intellectual property rights because a lot of direct investments of the west needs this framework and once approved by the Chamber of Deputies in the next weeks will be one of the most modern of the whole Latin America.

Importantly, this development has taken place since March 6 when the brief was submitted. The patent law revision was passed first by the Dominican senate on April 4, 2000. The copyright law is pending, as I mentioned before, in the Chamber of Deputies. As the copyright law revision is not as controversial as the patent law, its passage through the legislative process is suspected to be much more smooth.

As our counsel mentioned earlier, the Dominican government strongly believes that the patent law bill is compliant with the TRIPS requirement as a result of the amendment made by the Chamber of
Deputies.

As I told you previously, the Dominican Republic has painstakingly enacted this copyright law to increase the levels of protection and to make the law compatible with TRIPS and other international requirements. IPA has made comments on the features of the legislation on several occasions.

The Dominican Republic currently has a more independent, reliable, and expeditious judicial system due to the recently created national magistrate council and the election of a new supreme court of justice in 1997. This is one of the most important reforms in the present government in the Dominican Republic.

The judicial system now has judges who are elected and have clear public process free of political influences as a whole. Additionally, the creation of intellectual property unity, July 1998, within the Santo Domingo's District Attorney's Office with an increased budget will enable the Dominican Republic to increase persecution of patent law violators.
The Dominican government agencies involved have taken action to improve compliance with the law and attack piracy of the intellectual property rights. To keep this in perspective, the judicial reform, as I just mentioned, are part of reforms and organization of government and economic structure in the Dominican Republic. That has taken place over the past four years.

The government intends to develop and maintain a close working relationship with IIPA, to stamp out piracy in all its manifestations and to take other actions to protect intellectual property rights. To accomplish this, the government is considering suggesting joint action with IIPA to develop educational problems, to develop enforcement mechanism to request technical assistance and other elements of the U.S. Government and from private organizations and to share information.

The GSP and the CBI programs has been of enormous benefit to the Dominican Republic as well as to the United States. They have been crucial in forming the economic development and social
advancement of the Dominican Republic. The allowed
the communication between experts and foreign exchange
nearly to diversify the economy and to reduce the
dependence on the traditional export items.

Our country's participation in the GSP and
CBI program has been of significant benefit to the
United States as well because many of the production
sharing arrangement that has been established between
the U.S. and the Dominican Republic.

We are, by the way, the largest users in the
textile and industry of raw materials of the U.S.
compared to the other Caribbean countries and the
Central American countries.

Our government wants to spread to the GSP
subcommittee its willingness to work with the U.S.
Government and the IIPA in a constructive manner to
develop solutions that address interests of all
concerned in a fair manner including harmonizing with
the TRIPS framework and inspecting for piracy of
protected material.

All of the reform and improvement that I
have mentioned here today and in my written statement
represent a guarantee for investors in the country
including those investing in the new revolutionary new
Cyberpark that will be inaugurated on August 1
sponsored and developed by the Dominican government.

What I have to say to inform you members of
the committee that a new Cyberpark sponsored by the
private sector in Largo Manna were the central
corporation in the U.S., they will be developing
another Cyberpark in the near future. That's why our
government is so much important to the question of the
protection of the intellectual property rights.

Thank you for your attention. I will now
let my colleagues speak about the government's
activities. Thank you again.

CHAIRMAN ROSENBAUM: Thank you, Ambassador.

AMBASSADOR SALADIN: I just pass you the
document for the record.

CHAIRMAN ROSENBAUM: Before we go on, my
primary role here is to see that the trains run on
time, as they say. We have a lot of people to testify
yet today and we only have today to do it. We've had
about a half-hour's presentation.
We're trying to restrict these to 15 minutes so I would prefer at this point to ask my colleagues if they have any questions of you and your colleagues. I know you've come all the way up from the Dominican Republic so I frankly granted an additional 15 minutes but I think if we continue this way, it's not going to be fair to the other speakers.

MR. JOHNSON: John, may I say one thing? Thank you very much. We were intending to submit a detailed report on enforcement anyway on the activities. We'll do it in a written form if that would speed things up.

CHAIRMAN ROSENAUM: You have a question?

MR. BURCKY: Thanks, John. Actually, I wanted to first of all thank you, especially you, Mr. Ambassador, for coming today with such a full delegation to address the concerns. I would say that this discussion here and discussions we've had over the past few days and before that have certainly indicated to me your government's commitment to implement the TRIPS Agreement fully. I appreciate your statement that you are willing to work with all
stakeholders to achieve that.

We do have one technical question of
clarification this morning about the copyright law
which you indicated is on its way through the process
and hopefully will be passed shortly.

MS. DIFAOLE: Thank you. It really is just
a point of clarification, Mr. Ambassador, to make sure
that the subcommittee has full and accurate
information regarding the copyright law that is, as I
understand, now before the chamber of deputies having
been passed by the senate.

The copy of the law that we have looked at
that I understand to be the current version for the
Chamber of Deputies seems to be dated September 14 of
1999. That date stamp is on, I believe, every page of
the document.

However, the written submission that Mr.
Johnson, I believe, made on March 16, 2000, indicated
to me that there were still amendments being made to
the text. I wondered if the text that we have dated
September '99, in fact, reflects amendments made after
that date.
AMBASSADOR SALADIN: I will allow the Under Secretary of Industry and Commerce and Dr. Pedro Feliz, the Director of ONDA to answer this question. Would you like to pass the question to Dr. Pedro Feliz?

MR. FELIZ: (Speaks Spanish).

MR. ESPINEIRA: What he's saying is that this is the version that was submitted to the senate and the one you have is the one approved by the senate. This is now under consideration in the Chamber of Deputies. As far as we can tell, that is the one that is going to be approved.

MS. DIPACOLO: But have amendments been made? Are there amendments reflected in that text which have been made since September?

MR. JOHNSON: We will get you an definitive answer for the record.

AMBASSADOR SALADIN: Maybe I should complement the answer of Pedro Feliz. You know, this law was part of the other market code. Because of the discussion in our national congress and because the most difficult part of the law was the property law,
the congress focused their attention on this part of
the law that was the most difficult because they were
aware that there was a consensus on all the sectors
involved in the copyright law and there were no
objections from anybody.

In the drafting of the copyright law
participates not only the private sector of the
Dominican Republic, the government sector, but the
lawyers of the U.S. corporation that were present in
Santo Domingo. There was a very, very strong
consensus about this law. The amendments were made
mainly on the intellectual property law.

MR. JOHNSON: That doesn't mean any
amendments are foreclosed but we'll give you an answer
because IIPA has suggested additional amendments that
we think should be considered.

CHAIRMAN ROSENBAUM: Thank all of you for
coming. I'm sorry that we don't have more time.

AMBASSADOR SALADIN: For the record, Mr.
Chairman, we could deposit the declaration of the
Under Secretary of Industry and Commerce.

CHAIRMAN ROSENBAUM: Please.
AMBASSADOR SALADIN: Thank you very much.

CHAIRMAN ROSENBAUM: Thank you.

And now I want to invite to the table the IIPA. We have Maria Strong who is the Vice President, and Associate General Counsel Ricardo Dopico, the Director of Latin Music, Recording Industry Association of America, and Elizabeth Pearsall, Legal Counsel for the Business Software Alliance in the Dominican Republic. Welcome all.

MS. STRONG: Thank you to all the members of the subcommittee. My name is Maria Strong and sitting next to me, Elizabeth Pearsall representing the Business Software Alliance, and Ricardo Dopico representing the Recording Industry Association of America.

I would like to say on behalf of all our members we have been working for many years in the Dominican Republic as a staff attorney representing the IIPA. I coordinate with the U.S. Government here in Washington and work with the embassy here in Washington.

Our members, for example, the MPAA, the
BSARAA, and others, they are the ones who are in charge of operational matters in the Dominican Republic and as the actual copyright owners it is they and their members who are regularly in Santo Domingo and other cities taking action.

We appreciate the Ambassador and Mr. Johnson's willingness to work with IIPA and our members. I want to make it very clear to the subcommittee and to the embassy officials that we have a multi-layered level of companies and associations and we can work both here and in Santo Domingo.

The Dominican Republic is no strange to the GSP and CBI process having been here before in the early '90s. I want to acknowledge the process that has been made in the Dominican Republic with respect to amendments in the copyright bill to the 1986 copyright law which, as we all know, is clearly inadequate.

In fact, the government of the Dominican Republic candidly acknowledges and appreciates the comments, as mentioned earlier, our constructive criticism of not only the current law but also the
proposed law which we saw in the market order code two years ago.

Based on the copyright law that we received yesterday, the draft which passed on March 28, for the record, not back in November, we have seen no incorporation of our amendments in that bill so I appreciate the subcommittee's question for clarification.

Back in October the IIPA on behalf of its members filed an 11 page document which addressed certain refinements and issues we would like to see in the proposed copyright bill. For the record, we acknowledge that the pending bill is a vast improvement over the 1986 law.

We do not oppose the efforts of the Dominican Republic to pass this legislation. However, it is critical for everyone to understand that the amendments we propose, while not controversial, are very important to our members and the development of a very good copyright law in the Dominican Republic.

In order for the "Cyberpark to succeed, the amendments we propose, while very technical and very
legal, will promote the development and distribution of new kinds of copyrighted material on different media throughout the Internet and through other means of communication. I want to express our support for the government's willingness to consider our amendments.

While time is short in the Dominican Republic before congress goes out and there are elections, we do emphasize the importance of consideration of our amendments as contained in our October 1999 document.

We also appreciate the efforts taken on enforcement recently after our petition was filed. I would like to go through a couple of points, and I'm sure my colleagues will as well, on our understanding of both the pros and the cons in what has happened over the last nine months or so.

Right now a snapshot version is this. The copyright law is still pending. It has passed the senate and is in the Chamber of Deputies. The changes we have seen, as I just mentioned, our changes have not been incorporated or reflected in the pending law.
Right now there is no civil ex parte remedy for copyright holders to take action in the Dominican Republic should they choose so. Yes, the bill will fix it but it is important to note that we need to see how the remedies in these measures are actually implemented by judges in the Dominican Republic and that can't necessarily be evaluated by the strict passage of a law.

Penalties in the current bill are much improvement but, as of right now, there are very low nondeterrent penalties under Dominican law. I'm sure this frustrates Dominican police and prosecutors who are hard at work to enforce the current inadequate law only to at the end of the day see sentences being nondeterrent.

Status today still remains the fact that the cost of bonds remains very high for foreign right holders to bring cases. The levels of piracy most disturbingly continue to remain high in the Dominican Republic.

I would also like to mention that there's been much emphasis on the Dominican Republic's efforts
to meet TRIPS standards. As I'm sure the subcommittee knows, the TRIPS standards are a floor. They are not the ceiling. In the copyright reality we have higher levels of obligations that are recognized around the world as contained in the WIPO treaties and to much extent that is where our comments are aimed at improving the copyright law. I think it is in everyone's interest, not only U.S. right holders, but Dominican producers and performers and authors to amend their law.

Finally, I would just like to say that the Dominican Republic has been receiving these benefits for 17 years with the CBI and 16 years with the GSP. We've gone through this review before. What we are asking for from you now is the continued review and acceptance of our petition while these changes both legislative and enforcement are being made.

I think there is progress being made and at the end of the day we are looking for the tangible results of the legislation and enforcement, everything from raids through judicial determination.

I would like to pass the microphone to my
colleague from the BSA and then to RIAA, and at the end I would like to reserve some time for myself to bring you up to speed on developments in the motion picture industry. Thank you.

CHAIRMAN ROSENBAUM: Let me just say that this petition that you filed has been accepted. It's under active review and this is part of the review.

MS. PEARSALL: Good morning. My name is Elizabeth Pearsall and I'm here this morning representing the Business Software Alliance. I would certainly like to begin by echoing some of the things that Maria brought to your attention in her remarks. We have definitely seen some very encouraging signs from the Dominican government of their commitment to protecting intellectual property rights in that country.

In particular, I would like to commend the DA, Mr. Dominguez Brito, and his office. They have made a consistent and concerted enforcement effort really since last summer. We through our member companies and through our local counsel in Santo Domingo have had the opportunity to work very closely
with Mr. Dominguez Brito and we look forward to continuing that in the future.

However, our members as software producers we feel that we need to see a comprehensive and sustained government commitment to intellectual property protection. As I mentioned, the enforcement efforts by Mr. Dominguez Brito and also by Mr. Pedro Feliz have been very encouraging.

However, we also need to see legislative improvements. We have been working with the Dominican government in meetings both in Santo Domingo and here in Washington on the work that they've been doing on passing the new copyright bill. We are very encouraged now that one version of that bill has passed the senate and we are looking forward to working with them to refine some of the provisions of that bill as it goes through their lower house.

That is definitely a part of what the BSA members are very interested in seeing. The executive branch through their enforcement actions has been very active and we look forward to being able to observe a continued commitment on the part of the executive
branch. Then also with the judicial branch we are very hopeful that the copyright bill can be passed.

One of the very important provisions for the members of our association in that copyright law has to do with bonding requirements. As you all have probably been made aware, in the past we've had very serious problems with judges in the Dominican Republic requiring extremely high bonds.

In one recent case just within the last few months the bond that the judge required was 200 percent of our damages claim. To further compound this problem, no insurers in the Dominican Republic will issue this bond so basically all our members in order to pursue these cases have to put up a cash bond into the registry of the court for an unspecified period of time that can extend into years. That has certainly been a factor in our ability to pursue some of these cases effectively. It's a factor in our ability to protect the IP rights of our members in the Dominican Republic.

Let me just briefly as a point of clarification, also you heard from His Excellency the
Ambassador that Microsoft and other companies are going to be participating in the Cyberpark project that the Dominican Republic government is working on. We are very excited about the Cyberpark project.

However, I would like to clarify for you that it's my understanding based on assurances from consultants working with the Dominican government that all participants who do business in the Cyberpark will be obligated to a higher level of IP protection than what is provided in Dominican law. They will contract with each other for higher TRIPS compliance and, even beyond TRIPS, IP protections. If that information is of interest to the subcommittee, I can certainly provide you with more specific details on that in a written submission. That's my understanding based on assurances from the Dominican government's consultants working on the Cyberpark project.

CHAIRMAN ROSENBAUM: I think we would be interested in seeing that.

MS. PEARSALL: Absolutely. I'll be happy to provide that. I'm available for questions or otherwise I'll pass the microphone over to my
colleague, Mr. Dopico.

CHAIRMAN ROSENBAUM: You have a few minutes.

MR. DOPICO: I'll try to use them well.

I'll be as brief as possible. Good morning and thank you for the opportunity to speak. My name is Ricardo Dopico here on behalf of the Recording Industry Association. The Recording Industry remains seriously concerned by tolerably high levels of sound recording piracy in the Dominican Republic. While the government has communicated its intention to protect sound recordings and we are hopeful that these promises will be fulfilled.

While there have been a small number of enforcement actions taken since the filing of the IIPA's petition in the past year, these have had little impact. A cassette piracy rate of 80 percent cannot possibly constitute adequate and effective protection.

In addition, surveys conducted as recently as a month ago in the northern region of the country revealed that our initial 'asessments of CD piracy were probably a little low. If unchecked, the record
industry fears that the pirate CD market will overcome or pass the legitimate CD market.

Enforcement is the recording industry's most significant concern and we are hopeful the government will fulfill its obligations under international and bilateral treaties and agreements to provide for vigorous enforcement than we have seen so far. The RIAA wants to be part of this solution and is committed to continue to render assistance both through educational training and resources.

I would like to reiterate that while the copyright bill presently before the Chamber is an improvement over existing legislation, there are some serious deficiencies which were pointed out not only by the IIPA but separately by the U.S. recording industry as well as the Latin American recording industry through the IFPI Latin America back in October and none of these amendments were reflected in the bill that passed in the senate in March of this year.

Despite the current lack of adequate and effective protection, we remain hopeful that the
stated intent of the government to tackle sound
recording piracy will translate into a long-term
process to reduce music piracy to tolerable levels.
The RIAA wants to reiterate that we hope to work
closely with the current administration and with any
subsequent administration to ensure comprehensive
long-term programs.

CHAIRMAN ROSENBAUM: That's good. A fast
talker. Must be from New York.

MR. DOPICO: From Miami.

CHAIRMAN ROSENBAUM: From Miami.

MS. STRONG: I just have some final words on
behalf of the motion picture industry and specifically
the Motion Picture Association which has an anti-
piracy program in Santo Domingo and, as you well know,
was a previous petitioner in a GSP proceeding in this
country.

The biggest problems that these companies
face in the Dominican Republic are cable and MMDS
piracy as well as video piracy. There has been some
anti-piracy efforts on the cable issue late. Within
the last month we understand several ex officio raids
were taken on cable companies.

As I understand it, the MPAA has not yet filed cable cases. They are attempting to work with government authorities in efforts to meet with broadcasting and cable companies in the DR and at last report that has not met with any success.

On the video side, last summer ONDA and their colleagues made several ex officio raids resulting in the seizures of tens of thousands of videos. Right now all seven of the motion picture studios that comprise MPAA are in the theatrical and the television market in the Dominican Republic. Four out of the seven companies currently are in the video market and the other three are considering market entry.

Within recent weeks there has been a serious problem which has developed in the Dominican Republic and we are working with MPAA and will provide further information and post-hearing briefs but let me highlight it here.

Several video cases apparently have been dismissed by a new requirement by ONDA and the
Ministry of Industry and Commerce because they are now
requiring that titles of films be registered with
ONDA. The gist of this is if the video titles -- the
film titles are not registered, then the government of
the Dominican Republic might issue a certificate to
importers of videos allowing them to bring in videos
from outside the country.

This obviously could cause a great market
disturbance in the sequential release of motion
pictures in the Dominican Republic. It may also
impact on the ability of the member companies to
pursue video piracy cases in the Dominican Republic.

As we understand it, this very recent change
in operating procedures is not the result of any
specific law or regulation but is under a letter that
we are in the efforts to get, a letter from ONDA to
the motion picture companies.

An MPAA representative has been in Santo
Domingo recently and has met with ONDA and other
officials to discuss this. As I said, we are working
with MPAA to get further details but this is a very
recent change that is of quite a lot of concern to the
motion picture companies. We are open for questions.

Thank you.

CHAIRMAN ROSENBAUM: Thank you. Let me just say to our Dominican Colleagues, I hope that you can resolve these motion picture problems because we did have a successful conclusion of a previous case and we would like that issue to not be clouded and I could take credit once in a while for some accomplishments in this program.

MR. BURCKY: Solving forever one problem. Well, we look forward very much to your post-hearing brief on that issue. I just wanted to clarify something with respect to sound recording CD and cassette piracy. Is this largely a problem of imports from Asia being shipped or is there a large domestic production problem in the Dominican Republic?

MR. DOPICO: With regard to cassette piracy, it is purely a domestic problem. The blank cassettes are imported from the exterior but the actual production and distribution is purely domestic. With regard to CD piracy, we have two forms. We have some industrial piracy which is being imported from the
exterior, though we have a significant amount, if not
the majority of it, is in the form of CD recordable
piracy which, as you all may know, is a domestic issue
simply because the means of manufacture are very easy
and easy to hide.

MR. BURCKY: Thank you.

MS. DIPACOLO: I'd just like to get a little
bit of clarification on the status of the pending
copyright bill and then the amendments that have been
proposed there, too. I just wasn't clear when you
were discussing these amendments, are these amendments
that IPA has proposed and have not, to your knowledge
to date, been incorporated? Are these amendments that
in your view are necessary to make the bill TRIPS
compliant or are these things that U.S. industry would
like to see in a copyright law that would go above and
beyond the TRIPS minimum?

MS. STRONG: Yes, the IIPA provided comments
to both the U.S. Government and to our colleagues in
the Dominican Republic back in October of 1999. Those
comments were developed in reaction to the then
pending copyright provisions which were separated from
the market code bill.

As our public comments reflect, that bill does seem to reflect most of the implementation with respect to TRIPS requirements. The gist of our amendments, however, does go beyond TRIPS and addresses certain issues that are vital in a digital world with respect to the IIPA treaties.

I would note, however, though there are several provisions in the bill which do address TRIPS, specifically Berne Convention issues. For example, our translation and reproduction licenses that continue to remain in the bill and which we think in a TRIPS world are not necessary and that goes back to a Berne issue.

We also find that there are overbroad exceptions to protection which would violate Berne Article 9, TRIPS Article 13. These are detailed in our October court comments so with respect to the primary TRIPS issues which we as a collect really care about civil ex parte, something as significant as that.

The bill does go a long way in improving the
1986 law so our comments do reflect a mix, but we do believe that the significantly legal technical memis we require with respect to implementation of higher levels of protection are noncontroversial and are necessary to create a kind of economy that can sponsor something like a Cyberpark.

CHAIRMAN ROSENBAUM: Anyone else? Thank you.

Next we will turn to the patent side of the intellectual property rights and the concerns that have been raised about the Dominican Republic. Let me ask for the speakers on that who are Susan Kling Finston of PhRMA, Dr. J. Anthony Inler of Merck, and Juan Acavedo of Bristol-Myers.

Let me just say that this case was brought by those concerned about intellectual property rights and we know you have missed the deadline for filing so we have decided to allow you to have your say. For the record, the GSP case to be expanded or have a separate case on patents will require you all to file independently next time we have a petition which will probably be soon.
MS. FINSTON: PhRMA has every intention of meeting the June 1st deadline. We appreciate this committee's agreement to allow us to speak and address the patent concerns which we think are very serious and we hope that they will be taken into consideration with regard to the issue of the seriousness of the Dominican Republic's commitment to promote protection of all intellectual property because I think that goes to the important issue of whether they really are going to meet their TRIPS commitments which is a requirement for being a beneficiary of GSP and CBI so we appreciate the opportunity to be heard.

CHAIRMAN ROSENBAUM: Let me just say that the deadline for the initial petitions will be put out in the Federal Register notice and it will probably not be June 1.

MS. FINSTON: Oh, it's not June 1? That's great news.

CHAIRMAN ROSENBAUM: Since we've lost six months of this year's review, we have to catch up a little bit.

MS. FINSTON: It's very good news.
CHAIRMAN ROSENBAUM: It will be in the next couple of months.

MS. FINSTON: Okay. Thank you.

Good morning. As Assistant Vice President for Intellectual Property with the Pharmaceutical Research and Manufacturers, I appreciate the opportunity to be here today. Accompanying me is, as you know, Dr. J. Anthony Inler, Director for Public Policy, Merck and Company, Incorporated, and Mr. Juan Acavedo, who has come from Puerto Rico to speak as Vice President of Bristol-Myers Puerto Rico Administration.

PhRMA represents nearly 100 of America's leading research-based pharmaceutical and biotechnology companies. In this year alone PhRMA member companies plan to spend more than $26 billion to develop and bring to market new medications. In 1999 PhRMA members introduced 40 new treatments. It is strong patent protection that makes this possible.

On March 9 we did write in support of IPA's petition and we appreciate this opportunity to discuss
the damage to the research-based pharmaceutical
industry in the Dominican Republic. I would like to
clarify that there are PhRMA member companies with
registered patents in the Dominican Republic, patents
that have been intentionally registered in the DR for
products on the market in the DR that are being
infringed.

I think there was a statement to the effect
that that isn't the case. Although not all member
company's products are registered in the DR, there are
infringements currently taking place of products that
are registered in the DR and I agree that is an
important distinction to make.

Departing from my written statement to
address the current developments, and I also want to
convey our appreciation that when a Dominican witness
could not appear, you did allow, and are allowing, the
substitution of Dr. Inler in his place.

PhRMA does believe the industrial property
bill pending before President Fernandez fails to meet
the international standards contained in TRIPS, the
trade related aspects of intellectual property rights
under the WTO, and that it is not a question of a PhRMA view that we don't like the bill that much.

Going to the issue both of technical assistance and the impartial views of think tanks and other IP rights holders, I would like to take issue with the idea that this is a surprise or that there hasn't been an opportunity for the Dominican Republic to seek the benefit of advice.

It was mentioned in the Dominican Republic presentation, for example, that WIPO advice was sought and that they are aware of some views on the law from that. John Marshall School of Law Professor Doris Long who has since joined the Patent and Trademark Office also has presented the Dominican Republic with an extended criticism that goes along the exact same lines as the PhRMA views in terms of TRIPS inconsistencies.

There are local Dominican groups including, and I will not be pronouncing this properly and I apologize, Fendosian Institutional Adod E Agististio, a think tank based on Santo Domingo that has also provided the similar criticisms, the Association of
Pharmaceutical Industries of Research and Development
EFED, the Association of Intellectual Property Rights,
ADOPE, the Office of Promotion of Foreign Investment,
Dominican Association of Free Trade Zones, the
National Council of Private Enterprises all oppose the
bill's passage.

I am sorry to bore you with this list. I
want to make it clear that PhRMA is not seeking a
dispute. American companies want to work productively
in the Dominican Republic and have a long history of
operations in the Dominican Republic. This is not a
PhRMA argument and this is not our trying to impose
higher standards on the Dominican Republic. We share
the concerns of many other organizations but this bill
does not meet TRIPS requirements.

PhRMA has asked President Fernandez to
reject the flawed legislation. We have absolutely no
assurance that he will veto the bill or direct there
be changes to be made to meet TRIPS requirements.

The current law contains provisions as bad
or worse than those in Argentine patent law. PhRMA
continues to believe that the Dominican Republic's
draft industrial property bill is a tool for those who
are attempting to weaken the fabric of the WTO TRIPS
Agreement.

If the legislation is implemented with
impunity, the negative precedent will harm prospects
for effective patent protection in the region and the
larger developing world.

In addition, going to the issue of the
Dominican Republic's intention, they are currently in
violation of the TRIPS obligations under Article 39(3)
for protection of confidential data.

In spite of both domestic law and
international commitments, the Department of Health in
the DR continues to approve the import, export,
manufacturing, marketing, and/or sale of
pharmaceutical products which are unauthorized copies
of patented products which are registered in the
Dominican Republic.

In fact, four weeks after the WTO TRIPS
implementation deadline on January 28, 2000, the legal
counsel to the president of the Dominican Republic
issued a formal opinion authorizing the Secretary of
Health to issue all health registration for pharmaceutical products regardless of opposition by patent holders.

That is why this is not a local issue for the courts. We are not talking about the unintentional infringement of a patent due to an error in registration. We are talking about a systematic policy at the highest levels of government to instruct the Ministry of Health to continue a current policy of registering for sale products which are known to infringe by their direct reliance on confidential protected data.

We submitted in our March supplement to the IIPPA petition examples of some of these certifications. There is no question this is a direct policy of the current government.

In fact, USTR already has found these practices pose a threat to the protection of intellectual property in the Dominican Republic. On May 1, 2000, Ambassador Charlene Barshefsky, U.S. Trade representative, noted in this year's special 301 release that the Dominican Republic may well face a
WTO action later in this year because of serious concerns about the adequacy and effectiveness of protection for both copyrighted works and patented products. In addition, the Dominican Republic was included in the special 301 priority watch list.

Given the foregoing, PhRMA asks the GSP committee to review the eligibility of the Dominican Republic as a GSP beneficiary, as well as eligibility for relevant expanded benefits under the Caribbean based leadership and that these benefits be suspended or withdrawn in whole or in part if the Dominican Republic does not improve its record on both protection of patented pharmaceutical products as well as on protection with copyrighted works and we think that is consistent with the statutes that authorize these benefits.

Thank you very much. I would now like to ask Dr. Inler to make some supplementary comments that go further into the issues I've raised.

CHAIRMAN ROSENBAUM: Would you share your microphone with him, please.

DR. INLER: Good morning. Mr. Chairman and
other members of the GSP committee, my name is Tony
Inler. I am the Director of Public Policy at Merck,
a research-based pharmaceutical company. I appreciate
this opportunity to contribute to the committee's 1999
Country Practices Review.

As you know, the objective of the
generalized system of preferences is to promote
economic growth and development by stimulating
exports. This unilateral trade program as more than
fulfilled its promise by allowing in 1998 duty free
entry into the United States more than 4,650 products
from 140 countries and territories.

Among the criteria for country eligibility
for this program is Section 502(c)(5) which states,
and I quote, "The extent to which such a country
provides adequate and effective protection of
intellectual property rights including patents,
copyrights, and trademarks."

It is my contention, and that of my
colleagues, that the Dominican Republic now falls, and
for the foreseeable future will continue to fall, well
short of that clearly stated standard.
We further believe that the failure of the Dominican Republic to honor its international obligations, specifically the trade related intellectual property or TRIPS Agreement, has serious repercussions for our commercial prospects both in the Dominican Republic and markets in neighboring Caribbean and Central American countries as well.

This is reflected in the Dominican Republic's leadership role in the region in promoting and actively participating in CARICOM and Caribbean free trade agreements. The estimated value of this larger pharmaceutical market is approximately $1.8 billion.

Let me illustrate the problem with examples from my company. As in many countries around the world, we currently have patents on key products in the Dominican Republic. Looking at six of these, the situation is as follows. For Analapril, a major anti-hypertensive, we have identified no fewer than 19 copies. Our patented product is not even the market leader and, in fact, commands only 17 percent of a nearly $2 million market. Another anti-hypertensive,
Vasoretic, has six copies and a 26 percent share of a $1 million market.

Our newer products in this therapeutic area, Cozar and Hizar, are doing a little better. Four copies and 42 percent of the market for the former and one copy and 74 percent of a much smaller market for the latter. Likewise our cholesterol lowering product Zocor faces one copy, while Proscar competes against two.

When you add up the sales of the original products and the 33 copies of them, they are just over $3.7 million. The copy share is fully 72 percent of that or $2.675 million.

Needless to say, these figures are extremely disappointing for an industry characterized by its dependence on intellectual property protection. The research-based pharmaceutical industry must have full and complete enforcement of this protection to continue to pursue the discovery of new compounds for the benefits of millions of people around the world.

There's a great difference between the cost of producing an original product and the cost of
producing copies. The estimated cost of producing an original pharmaceutical product is more than $500 million. It generally takes 10 to 12 years to bring a new compound through three stages of clinical trials and then to the market. Our industry needs time to recover this substantial investment. Therefore, it is essential to keep copies off the market and thus ensure market exclusivity for the period granted by the patent in accord with international agreements.

Patents protect the idea behind the invention thus preventing others from exploiting the original product. Data exclusivity protects the valuable proprietary and confidential data required to get marketing approval.

Our position is that regulatory authorities should not accept or approve applications for marketing approval of a similar drug until the data exclusivity period referenced in TRIPS Article 39(3) is over and should not grant marketing approval if an intervening patent already exist.

I would like to close by quoting from an issue brief published by the Alexis de Tocqueville
In thinking about the cost of the lack of intellectual property protection, it states that the real losers will be Dominican consumers. Foreign companies that depend on patent protection such as the pharmaceutical industry will be reluctant to invest in the Dominican Republic or market new drugs there.

Local pharmaceutical companies will continue to copy patented drugs and thus contribute little to new research efforts, particularly those directed at localized health concerns.

Again, I thank you for the chance to present our views and urge you to take appropriate measures including withdrawal of GSP benefits if the Dominican Republic continues to refuse to meet the Section 502(c)(5) standard of adequate and effective protection of intellectual property rights.

CHAIRMAN ROSENBAUM: Thank you. Maybe I have to recuse myself since my wife takes Zocor.

DR. INLER: I hope it helps her.

MR. ACEVEDO: Good morning, ladies and gentlemen.

MS. FINSTON: Did we hand out --
CHAIRMAN ROSENBAUM: It might help to have
the written copy of Juan's --

MR. ACEVEDO: Good morning ladies and
gentlemen. It is a pleasure to be here before such an
important panel of U.S. Government officials.

My name is Juan Acavedo and I work for
Bristol-Myers Squibb as Vice President of Corporate
and Government Affairs for Puerto Rico and the
Caribbean.

Bristol-Myers Squibb believes that it is
extremely important that the U.S. Government maintains
strong opposition to the adoption of this legislation.
Otherwise, it is very likely that this clearly non-
TRIPS-compliant bill will be passed into law.

I want to outline to this committee the
current impact of patent violations in Dominican
Republic through actual examples and thus explain why
it is so necessary to reinforce the importance of
TRIPS-compliant legislation in the Dominican Republic.

The total pharmaceutical market in the
Dominican Republic is approximately $200 million or 25
percent of the total Caribbean market. There are more
than 150 companies competing in the Dominican Republic pharmaceutical market. Many companies are incorporated under Dominican laws and, therefore, are considered local companies, but are composed of foreign capital and controlled by foreign interests.

For example, two of the major copy companies, Rowe Laboratories, C.A. and Roemmers, S.A., are incorporated under Dominican Law. But if we look more deeply, the reality is different -- the president of Rowe Laboratories is Rodolfo Wehe, a German-Argentinean citizen. This company is 99.2 percent controlled by one of the major pharmaceutical distribution companies in the country (Leterago).

The president of this company is also Rodolfo Wehe. Furthermore, the influence of the company has a much wider scope since this company appears to be part of a large group of interrelated pharmaceutical companies (Rowe, Roemmers, Leterago, Lynea, Ethical, Ratio, BYK, Osmopharm, Sohanare, K.H.3, Hexal, Miupa, Merz, Bussie, Pharma Investi, Mack, Nattermann and Prodes).

Three of these companies are well-known
copiers of pharmaceutical products (Rowe, Roemmers and Ethical), and three others have filed annulment suits for Merck's patents (Hexal, Ratio and Lynea). Roemmers, S.A. is also a local incorporated company but in reality is a division of Roemmers, S.A. I.F., a well-known Argentinean company. The president of the local company is Rodolfo Federico Hess, an Argentinean citizen, and its executive Vice-President is Eduardo Macchiavello, also Argentinean.

Rodolfo Wehe and Eduardo Macchiavello are recurrent names in the incorporation documents of most of the aforementioned companies.

In addition, the adviser to the Industry and Commerce Office of the Dominican Republic for the proposed industry property bill was Mr. Carlos Correa, an Argentinean and well-known representative of CILFA, an association representing local Argentine companies which copy the products of the research-based industry.

All of these companies exploit their image as the local "national industry," and are members of INFADOMI (Industrias Farmaceuticas Dominicanas), an
association representing the interests of the local
pharmaceutical industries. The truth is most of the
products produced by these firms are imported from
Argentina or other Latin American countries, either
through finished product or by bulk that is only
packaged in the DR.

This association (INFADOMI) has been the
spokesman of these companies and one of the most
aggressive activists advocating in favor of approving
the industrial property bill notwithstanding its non-
compliance with TRIPS. The President of INFADOMI is
also the Argentinean Eduardo Macchiavello.

Once an unauthorized copy enters the market,
original brand revenues erode rapidly during the first
year and steadily thereafter. After a few years the
original brand sales becomes a fraction of what they
used to be. When a pharmaceutical compound is copied
before the expiration of its patent, as is the
practice in the Dominican Republic in flagrant
violation to their own law of 1911, the company that
copies the product prices it receives the benefits
from the therapeutic innovation, clinical results and
promotional efforts that the original compound brought
to the market.

There is no assurance that the copied
product is bioequivalent to the original brand, thus
raising concerns about quality of the raw materials.
Manufacturing processes may not meet good
manufacturing practices (GMP) as required by the FDA.

These activities erode the revenue
generation of the original compound, which is
essential to cover the development costs, the
generation of clinical trials, marketing expenses, and
most important, the need to reinvest in research and
development in order to discover new and innovative
compounds. Bristol-Myers Squibb alone plans to spend
more than $2 billion on company-wide research and
development this year.

Bristol-Myers Squibb pharmaceutical sales in
the Dominican Republic account for $4.3 million with
a market share of 2.2 percent, and is ranked in the
14th position. Currently, we have two products that
have been copied by three companies: a local company,
Ethical; a Colombian company, Chalver; and an
Argentinean company, Asofarma. These products are Buspar (buspirone) and Taxol (paclitaxel).

Buspar is a chemical compound indicated for the management of anxiety. Taxol is a natural compound with anti-tumor activity, indicated for the treatment of ovarian, breast and lung cancer, and Kaposi Sarcoma.

Total annual sales of copies of Bristol-Myers Squibb's two products accounts for approximately $417,000 versus $350,000, a negative impact of 119%. This is the estimated impact for Bristol-Myers Squibb in only two products. When this is projected to the other 16 U.S. companies doing business in the Dominican Republic, the resulting impact is even more dramatic. The U.S. pharmaceutical industry currently assesses its economic losses in pharmaceutical products, in the DR market, in excess of $50 million.

Bristol-Myers Squibb will soon introduce Vanlev (omapatrilat), a new therapeutic approach that may more effectively address hypertension, a condition affecting more than 600 million people worldwide. Vanlev has the clear potential to revolutionize the
treatment of hypertension by extending and enhancing
the lives of millions of patients worldwide who suffer
from this serious medical condition. We are in the
process of filing applications to market Vanlev with
more than 20 regulatory authorities worldwide.

If the DR President approves the proposed
industrial property bill, as currently drafted,
Bristol-Myers Squibb Vanlev's patent rights will be
undermined. This bill would allow unrestricted
compulsory licensing of Vanlev.

This exhibit demonstrates the scale of
copying of innovative products by local companies that
have not invested in their development.

Time does not allow us to cover all of the
examples of unauthorized copies of medicines in great
detail. I hope that these examples have provided this
committee with a sense of the impact of patent
violations in Dominican Republic and the need to seek
a TRIPS-compliant industrial property bill that will
protect the intellectual property of the U.S.
companies conducting business in this country.

Bristol-Myers Squibb concurs in the request for relief
made by Ms. Finston on behalf of PhRMA. Thank you very much.

CHAIRMAN ROSENBAUM: Thank you.

MR. BURCKY: Thank you all very much for coming and providing us with this presentation. I would note that the previous testimony of the government of the Dominican Republic indicated that they, in fact, are open to discussing with all stakeholders resolving the issues over TRIPS deficiencies.

Yet, with respect to the copyright law, I detected that a dialogue was already underway with the industry to address remaining TRIPS deficiencies. I would ask is PhRMA or any of the member companies engaged in a dialogue with the Dominican Republic to address what seems to be a clear difference of opinion over whether the bill that is about to be passed is, in fact, TRIPS compliant?

DR. INLER: Claude, I think it's always been clear, we've worked together a long time, that when we're asked for technical assistance or to comment on a provision from our perspective we are always happy
to do that and there is no difference in this particular case.

We would be glad to sit down with representatives of the Dominican Republic government at any time to discuss specific provisions and provide our input, our expertise. What we are not prepared to do is renegotiate the TRIPS Agreement country by country.

It's our view that countries which sign the agreement in 1995 have, in fact, passed the deadline for being in full compliance with those provisions honoring the international agreements and we are not in a position to take your place or your colleague's place in renegotiating that.

Nor do we feel that it is appropriate at all to have the government convene a group of competing interests to sit down and negotiate the lowest common denominator. We would be glad to meet with representatives of the Dominican government. I know Ambassador Monat and his colleagues in the embassy would be happy to join in that and work with us, but we will not be part of a group that purports to
renegotiate or interpret TRIPS or includes competing elements.

MS. FINSTON: If I could just add one thing. After it passed originally in the senate, we did try to engage with the legislatures on the basis that Tony is indicating under terms that are allowed under U.S. law and under conditions that he has outlined and the way that the process proceeded after initial meetings there were conditions introduced that made it impossible for member companies to continue a dialogue under terms that wouldn't open them to liability in the U.S. and we can't operate on that basis.

We would be interested in pursuing again the kind of dialogue that we tried to do late last year and early this year. We, like IIPA, found that our suggestions were not taken and that other interests were stronger and overtook the process.

CHAIRMAN ROSENBAUM: It's almost noontime so my prescription is you're taking a lunch. Thank you.

As I said, we're coming up to the lunch hour. We will continue now with hearing from the Government of the Republic of Kazakhstan but we will
finish before noon with Eric Schwartz of the IIPA and then come after lunch starting again with the IIPA for a presentation, I guess, that has to do with Ukraine. We're not going to hear from the Wedderburn & Jacobs. We're going to go right to Kazakhstan.

MR. UMAROV: Good morning. I'm Minister Counselor of the Embassy of the Republic of Kazakhstan here in Washington. I appreciate this opportunity to speak to this distinguished group.

Let me first start with saying that we consider this petition as very serious and the government of Kazakhstan is committed to doing whatever possible to improve the situation. Further in my presentation I'll just speak about that.

Let me mention by just saying that Kazakhstan is only eight years of independence. That's a very short of time and, of course, I don't mean here to use it as an excuse but I would like this fact to be borne in mind when we will be speaking about the country.

I think it is of no necessity to tell here that Kazakhstan before gaining its sovereignty in
1990. Presently during these last years everything had to be done from scratch to put the new market arena system into operation.

Today's world is complex and sophisticated and Kazakhstan is just making its first steps into the world economy. Sometimes it has to deal with the issues which he have not any experience before. With just considering that the U.S. law makers are still working on some of the issues affecting and improving the legislation this year, Kazakhstan is just eight years of age and is dealing here with the basics.

Of course, not everything could be done in a very short period of time but there is the will and commitment of the government to work in this sphere and to put protection of intellectual property into force.

In the cases where Kazakhstan legislation has some drawbacks, we have an unprecedented case when international laws are prevailing the national legislation. In this way we are trying to eliminate a situation when we could be out of the international standards.
Kazakhstan consistently undertakes measures to further develop and improve legislation and implementation practice in the sphere of intellectual property rights. These efforts are aimed at meeting and observing TRIPS and eventual Kazakhstan accession to the WTO.

Though Kazakhstan is only eight years of independence, still Kazakhstan has done a lot in those years. Kazakhstan is a full-fledged member of the Berne Convention. Starting on April 12, 1999, Kazakhstan is a full-fledged member. I know that there are concerns concerning Phonograms Convention.

On February 16, 2000, the government of Kazakhstan submitted for parliament’s consideration the deal on Kazakhstan accession to the convention protection of phonograms from the legal reproduction of October 29, 1991. The bill is currently under discussion at the committees of Margalis. This is the lower chamber of the parliament.

In December of '99 the interagency review process began to consider the draft bill on Kazakhstan's accession to the Rome Convention on
protection of interest of manufacturers of phonograms
and protesting organizations of October 1961.

I would like to assure that all the
necessary work for acceding to Phonograms and Rome
Conventions will be completed during this current
year. All efforts are done towards that end.

With regard to the IIPA's remarks that it's
not clear whether Kazakhstan adopted any border
control legislation to stop the consummate flow of
pirate production, it should be noted that Article
218-1 and 218-5 of the law of the Republic of
Kazakhstan on customs clearly define a mechanism of
intellectual property right protection for goods
crossing the border of the country. Customs committee
of the Ministry of State Revenues of the Republic of
Kazakhstan enforces the provision of the law in
practice.

On March 1, 2000, the Joint Order of
Ministry of Internal Affairs, Ministry of State
Revenues, Ministry of Justice of Kazakhstan on
measures to protect property rights of orders and
owners of neighboring rights approved by the General
Prosecutors Office came into force. This enforcement mechanism is over there.

With regard to other items subject to intellectual property rights protection such as inventions, models, industrial samples, trademarks, etc., the National Patent Organization of Ministry of Energy, Industry, and Trade of the Republic of Kazakhstan is working on improving and expanding legislation in that sphere to meet TRIPS requirements.

Significant corrections and changes were made in the current legislation concerning the protection of industrial property. In particular, last year a new park regarding protection of intellectual property rights was introduced to Kazakhstan's civil code.

New patent law, laws on trademarks, and on protection of selection of achievements were also adopted. Provisions of existing laws and regulations were modified to meet requirements of international conventions in the field of industrial property. Kazakhstan legislation in the area of industrial property protection by the estimates of independent
experts could be considered as a model to other states in the region.


I would like to say a little bit about the bilateral cooperation with the U.S. in developing IP protection practices.

Further commenting on the subject, we would like to state that the IP issue occupies significant
place in bilateral Kazakhstan/U.S. dialect. In the final report of Kazakhstan/U.S. joint commission signed by Kazakhstan President Nursultan Nazarbayev and U.S. Vice President Al Gore. It was in December of last year.

It is stated that Kazakhstan expressed strong support for the work of the WTO in Seattle. Kazakhstan reaffirmed its commitment to proceed with accession as quickly as possible and actively enforce laws and regulations such as intellectual property rights that would enhance the trade and investment requirement.

With regard to Kazakhstan's customs role on IP protection, we would like to mention another provision of the final report of the commission stating that the U.S. side intends to run the technical assistance according to the WTO and reaffirm its readiness to continue to work for Kazakhstan customs officials to bring customs practices in line with international standards.

All of the above mentioned gives certification to state that IIPA premise of Kazakhstan
has not enacted that of a copyright or met its
enforcement obligations, thus failing to meet its obligation in copyright areas as required by the Bilateral Agreement is incorrect. Thus the government of Kazakhstan respectfully request that the IIPA petition be rejected.

CHAIRMAN ROSENBAUM: Thank you for coming. Let me see if my colleagues have some questions for you.

MR. BURCKY: Thank you very much for the clarification about what your government is undertaking to do to address the concern about IP protection in Kazakhstan. Can you give me any sense of the prospect or the legislation to join the Geneva Phonograms Convention? I know you say it was introduced in February. Is it particularly controversial? Is it something that we could expect would move swiftly through your parliament?

MR. UMAROV: According to the information that we have, the parliament is going to consider this year this legislation. I**presently don't have the exact timetable because you understand that the
parliament is presently heading a pool and a lot of laws have to be taken.

We have a strong commitment of the parliament to consider it this year. When I started my presentation I said that the government and the parliament has all the commitments and strong will to have this be adopted this year.

CHAIRMAN ROSENBAUM: Katrin?

MS. KUHLMAN: I was going to ask that question, too.

MR. UMAROV: We consider it very seriously so we would like to be eligible for GSP.

CHAIRMAN ROSENBAUM: You are getting GSP now and we realize you are only eight years old but your government did make certain commitments in the Bilateral Agreement and we expect that you will meet your obligations as we are doing on our side.

MR. UMAROV: Sure. I think the government which is only -- I don't know any other example of a country having eight years of independence to have everything perfect. I would like to say that surely the legislations which we have are of international
standards.

The problem right now for us to enforce it and to create an environment in the country that this all will be done because only the legislation does not solve the problem so the government is presently working hardly to create this environment, this climate for all this legislation to be fully implemented.

CHAIRMAN ROSENBAUM: Thank you very much for coming.

Mr. Schwartz.

MR. SCHWARTZ: Thank you, Mr. Chairman, and members of the committee. Let me respond to -- well, first, let me begin by saying that I concur and appreciate the government's activity to date on some of the legislative reforms. I agree that they have made some progress but, as I mentioned in my earlier presentation, they made commitments in a Bilateral Agreement that went in force in February of 1993 with commitments to make best efforts to do these things. I believe it was by the end of 1993 so seven years ago. It may have been by the end of '94.
Yes, they joined the Berne Convention but the absence of Geneva Phonograms has been troubling. What I have in terms of an update on that information I should share with you. According to an April 20th Kazakh news agency report the Geneva Phonograms legislation passed the lower house on April 19th. It was being sent for discussion to the senate's upper chamber. That's the good news.

The bad news is the statement by Deputy Justice Minister Andre Kotlav who said that Kazakhstan would not be answerable for the recordings made before the convention came into force in Kazakhstan. Only those sound recordings which will be made after Kazakhstan joins the convention will be protected in the country.

The good news is they will join, although the time table is not clear when the senate will adopt the Phonograms Convention. The bad news is that they are making clear they will not provide any retroactive protection for preexisting work.

As a matter of copyright enforcement, an issue we've obviously raised many, many times, the
absence of protection for preexisting works essentially thwarts any effective enforcement for copyright piracy because if you don't stop the piracy of old materials, it competes with the new material.

The police fail to seize the material at the kiosk because they say that it includes a mixture of old and new material and, therefore, they really can't start sorting that which is pre-19 or 2000 and that which is post-2000 and you have no effective enforcement activity.

I would simply urge my colleagues and friends in Kazakhstan to at least reconsider this particular part of the adherence to the Geneva Phonograms Convention. Granted the Geneva Phonograms Convention doesn't require retroactivity but the TRIPS Agreement does and so does adequate and effective enforcement and protection.

CHAIRMAN ROSENBAUM: While we're on that point, let me interrupt you. Mr. Umarov, could you come up here a second, please? I don't know whether you heard Mr. Schwartz' assertion that this would only apply to new --
MR. UMAROV: Yes, I heard about this.

CHAIRMAN ROSENBAUM: We seem to have a different interpretation here so who is right?

MR. UMAROV: Actually, as I've mentioned before, Kazakhstan has -- just to have the international laws prevail over the national ones in cases when they compete with each other. In case the senate approves that, I do hope that this issue will not be raised by the parliament. If it is, then we will urge from our side to work on this. I just tell you frankly I just don't have this feeling about this particular issue and how it was considered in the parliament.

MR. BURCKY: But I take it, Eric, from your statement this is someone within the administration.

MR. SCHWARTZ: This was someone within the Kazakh administration and I'll be happy to share with you and with the committee this is a BBC article that we got online from Interfax Kazakhstan news agency April 20, 2000.

MR. UMAROV: Can we clarify an additional point? You make reference to the fact that
international treaties take precedence over domestic law where there is a conflict. But, Eric, do I understand correctly that Geneva is not going to take care of this problem.

MR. SCHWARTZ: That's right. I mean, the Geneva Convention does not require retroactive protection so the fact that they join the Geneva Phonograms Convention, and it supersedes any inconsistencies or unclear provisions in their domestic law, means that they will not be providing retroactive protection for sound recordings to the extent that a judge understands the way in which the interaction between the Berne Convention and the Kazakhstan law works. They could provide retroactive protection for works, books, music and musical compositions and films and the like retroactively.

What we suggest, and have been suggesting for a number of years to Kazakhstan and other countries, is to adopt explicit language in their copyright law that explicitly makes clear this retroactive protection because the police -- I mean, when this becomes an issue that copyright lawyers can
issues a separate order which imposed an individual license requirement on all export/import of companies named in this application.

As of today, nine plans alleged in production and distribution of the pirated CDs are released. Four out of them are those named on the list provided by the Office of the United States Trade Representative earlier in December 1999 to the Ukrainian government.

Inner-ministerial committee on protection of intellectual property. It was adopted on February 16, 2000. The key task of this committee is recognition of activities of all state institutions in the field of protection of intellectual property rights.

The first meeting of the committee took place on March 6, 2000. The committee and the Minister of Interior jointly with the General Prosecutor's Office, State Custom Service, Tax Administration, and the Security Service to prepare and submit for review a plan of action to fight piracy activities.

Now for new legislation. On March 23, 2000,
the illegal production, use, and sales of control
labels by imprisonment meant for up to five years or
a fine from $300 to around a $1,000 nontaxable income
with confiscation of all personal property.

That's it for now. I'll give the floor to
Mr. Riabokon.

MR. RIABOKON: Thank you. I would like to
start out comments with a note that we are very
sympathetic to an U.S. industry that incurs losses
caused by its act of copyright in Ukraine.
Notwithstanding, we do not appreciate the way the U.S.
decided to deal with this problem, especially by
accusing Ukraine of the breech of the U.S./Ukraine
trade agreement.

U.S. industry has not even tried to utilize
existing in Ukraine enforcement mechanisms but it has
already stated that the system is ineffective.
Ukraine has fulfilled all of its international
obligations in Article 8 of the Ukraine and U.S.
agreement on trade relations of '92 and the company
letters on intellectual property issues.

Ukraine is a member of the Berne Convention.
Ukraine has provided copyright protection for computer programs and databases, as well as sound recordings under its copyright laws. Ukraine did adhere to the Geneva Phonograms Convention and demands by the petitioner that Ukraine shall provide retroactive protection to preexisting works under this convention has no legal ground as in accordance with paragraph 3, Article 7 of the convention, "No state shall be required to apply the provisions of this convention to any phonogram fixed before this convention entered into force with respect to that state."

Ukraine does provide protection to the preexisting U.S. copyrighted works in accordance with Article 18 of the Berne Convention. Again, I am turning to the prehearing brief filed by the petitioners, pages 4 and 11 where petitioner stated that in accordance with the Bilateral Trade Agreement Ukraine has undertaken to provide full retroactivity to the copyrighted works as per Article 18 of the Berne.

We believe this statement is misinterpreting the provisions of the agreement. According to
paragraph 3, Article 8 of the Bilateral Trade Agreement, which I quote, "Upon the date when both parties are members of the Berne union, the protection of works in existence prior to that date shall be determined in accordance with Article 18 of the 1971 Paris Act of the Berne Convention."

Ukraine did fulfill its obligations and thus provide protection in accordance Article 18 of the Berne. As there was no convention between Ukraine and the United States governing the application of the retroactivity principle stated in Article 18 of the Berne Convention, Ukraine used the right granted in Article 18 to individual countries by specifying that the convention shall not apply to works that on the date of its coming into force for Ukraine have already fallen into the public domain on its territory. Therefore, Ukraine has fully observed its obligations under paragraph 3 of Article 8 of the Bilateral Trade Agreement.

Ukraine did meet with the United States in the framework of working groups. Ukraine enforces the copyright and the enforcement is effective when it is
used. Under Article 42 of the copyright law, enforcement of moral and economic rights of the right holders is available through civil, administrative, and criminal procedures.

Any person including foreign persons whose copyright or neighboring rights have been infringed in Ukraine has the right to file a claim in Ukraine in court. I would like to know unlike the Dominican presentation that we were given where court bond is about 200 percent, Ukraine is very reasonable and would not be higher than five percent.

The court can order to desist infringement including stopping production of goods or performance of the work, phonogram, broadcasting, distribution, or to attach or confiscate all copies, equipment, and raw materials used in production of application if there is enough evidence on the record supporting the infringement of copyright and neighboring rights.

To provide effective deterrent to further infringement the court can also order to destroy or seize all copies of a work or phonogram that were produced and distributed infringing the exclusive
rights of the right holder.

Further, the law also provides to the right holders a right of claim such as compensation of losses, a word to their favor of all revenues of an infringer, or compensation the amount of which can be determined by the court from 10 to 50,000 times of the minimum wage rate, and moral damages in the amount awarded by the court.

In addition to compensation, the infringer must pay a state penalty of 10 percent of the total amount granted to the party that brought the case. Taking into account the need for prompt and effective legal action against infringement, the court may order provisional injunctive relief which may take the following forms: attachment of property of funds that belong to the defendant; prohibition by the defendant to take certain actions; prohibition for third parties to take certain actions with regard to the subject of the case.

We have started the situation with the U.S. companies and we are trying to identify what cases were brought by U.S. companies. To our big surprise,
we have established the following.

U.S. companies have no basis to judge whether enforcement of copyright is adequate and effective in Ukraine for no claims were filed by U.S. nationals with the supreme court of Ukraine for the period of '92 to 2000. In the highest court of arbitration there were no cases filed in 1999.

Meanwhile, other foreign companies effectively and adequately enforced their copyrights in Ukraine. In our prehearing brief we cited one of those cases. We have also provided a translated copy of a court decision that proves how effective the enforcement system may be. In that case, the Russian company effectively enforces copyright in a computer program receiving $137,000 in damages compared to the total estimated commercial value of the program at $110,000.

- Administrative and criminal measures serve as an additional deterrent and an effective supplement to the civil judicial remedies in fighting infringements of copyright and neighboring rights.

U.S. industry urges that all the Ukrainian enforcement
is ineffective. Again, we would like to ask whether U.S. industry has filed any complaint with the agencies responsible for implementing administrative and criminal measures. According to our information, there were no applications filed by the U.S. industry.

Further, it seems like the petitioners build their whole case around the issue of ex officio actions like there is no other means of enforcing copyright infringement but to allow police to seize the property at will.

Notwithstanding, Ukraine already has administrative and criminal regulatory framework that allows certain ex officio actions as was reports in our prehearing brief. We took some of the statistic data provided by the Minister of Interior which shows that in 1999 there were 6,000 companies investigated for infringement of copyright legislation.

Every third company was found in violation. Penalties were applied in 1,800 cases. 108 criminal investigations were initiated. 85,000 video tapes, 157,000 audio tapes, and 78,000 optical disks were confiscated. The statistics go on and you can see it