

The Congressional International Anti-Piracy Caucus

Senator Sheldon Whitehouse, Co-Chair
Senator Orrin G. Hatch, Co-Chair



Congressman Adam B. Schiff, Co-Chair
Congressman Bob Goodlatte, Co-Chair

2009 COUNTRY WATCH LIST

The Congressional International Anti-Piracy Caucus will focus on copyright piracy problems in China, Russia, Canada, Spain and Mexico for 2009. The Caucus is particularly concerned with the mounting challenges of protecting copyrighted works in the online environment. While we are pleased with the World Trade Organization's ruling on several aspects of the China intellectual property rights (IPR) case, and are hopeful that this will spur progress in China, intellectual property theft there remains a serious problem that merits continued U.S. engagement. While Russia has made some progress on meeting its obligations under the U.S.-Russia IPR Agreement, much work remains before we can support Russia's accession to the rules-based World Trade Organization. We remain deeply concerned that Canada has failed to update its copyright laws to provide for online enforcement, making it a safe haven for Internet pirates. Last year we specifically highlighted the seriousness of the piracy issues in Canada, and we are pleased with the United States Trade Representative's decision to elevate Canada to its Priority Watch List.

Internet piracy in Spain has reached an epidemic level, and rights holders lack the necessary tools to enforce their rights on the Internet, undermining the development of legitimate online commerce and damaging both U.S. and Spanish copyright industries. While Mexico continues to make strides in improving enforcement, the absolute level of piracy in Mexico and dearth of deterrent-level penalties are decimating this market.

CHINA

The state of copyright piracy in China remains largely unchanged from last year. As we reported in 2008, the Chinese government has permitted piracy to fully contaminate the online marketplace via an array of nefarious illegal websites, file storage sites, user generated content sites, and so-called "deep-linking" sites that knowingly connect users to infringing content. According to the Office of the United States Trade Representative and industry representatives, *Baidu* – China's largest online MP3 search engine – is responsible for the vast majority of illegal downloading of music in China, deriving significant advertising revenue in connection with its music service. This is just one of the many examples of Chinese sites whose entire business model relies on providing access to infringing materials. In the publishing industry, some China-based companies are disseminating millions of copies of scientific journals obtained illegally from university libraries.

Despite the Chinese Government's many public assurances that it is committed to combating copyright piracy, little action has been taken against infringing online activities, very much

mirroring the lack of effective actions against physical piracy over the years. The Chinese Government has long trumpeted its commitment to administrative sanctions as a remedy against copyright piracy. While such sanctions have been ineffective against physical piracy for most industries, they could be useful against online piracy if the fines against sites operating in violation of the law were sufficiently high. This would create an opportunity for legitimate online commerce to develop in China. Yet in this instance, where the magnitude of such piracy is overwhelming, the Chinese Government has inexplicably refrained from using its administrative sanction authority.

While there have been some modest improvements in the piracy rate for computer software – at 80% – the software piracy rate remains much too high, demonstrating the need for redoubled enforcement efforts including the imposition of criminal penalties for corporate end-user software piracy.

China's crippling market access restrictions against some American content providers further exacerbate these problems, allowing pirates largely free reign in China's market by significantly reducing the ability of U.S. copyright owners to provide legitimate content to Chinese consumers.

RUSSIA

Since the signing of the U.S.-Russia IPR Agreement in November 2006, the Russian Government has taken some positive steps. While some modest declines have been observed in the area of computer software piracy, much remains to be done. In particular, we are disappointed that there has been inadequate progress in addressing Internet and optical disc piracy through the effective enforcement of criminal laws with deterrent penalties. Moreover, Russia should work quickly to implement an optical disc licensing regime and pass legislation granting *ex officio* authority to its enforcement personnel, both important elements of the U.S.-Russia Agreement.

One particular concern, pertaining to the issuance of licenses by collecting societies, was presumably corrected in statute with the requirement of state accreditation. It has now been over a year since this provision went into force, but unfortunately, many rogue "collecting societies" and commercial entities that purport to operate under such "licenses," continue to function without any interference from the state. Swift and effective action by the Russian Government is necessary to address the illegal activities of these "societies," online sites, and other entities involved in the distribution of infringing materials. In addition, prolonged delays in proper accreditation have created an uncertain environment and new rogue "societies" continue to operate, taking advantage of this legal uncertainty.

CANADA

Unlike its major trading partners, Canada does not have any legislation or developed jurisprudence which clearly provides an effective means for copyright holders to protect their works from online piracy or to enable a legitimate digital marketplace to develop. This legal void has made Canada an attractive location for illicit websites, and Canada has regrettably become known as a "safe haven" for Internet pirates. There is an urgent need for amendments to the Copyright Act in order to comply with the World Intellectual Property Organization (WIPO) Internet Treaties. This includes provisions that prohibit circumvention of technological copyright protection measures and trafficking in circumvention devices, and proposals to ensure

that copyright owners can effectively combat online piracy by enacting an effective legal framework governing Internet Service Provider (ISP) liability and responsibility. Canada's enforcement record also falls short of what should be expected of our neighbor and largest trading partner, primarily due to the following: ineffective border controls, inadequate enforcement resources and policies, and a seeming unwillingness to impose deterrent penalties on copyright pirates. Canadian parliamentary leaders and government officials, at the highest levels, have acknowledged many of these deficiencies, but have done little to address them.

We call upon the Canadian Government to swiftly adopt measures that would do the following: clarify that parties who facilitate, encourage, and profit from widespread infringement are liable under Canadian law; meaningfully engage ISPs in the fight against online piracy; reaffirm that unauthorized downloading is not protected by the personal use exception/levy; and effectively prevent the circumvention of technological protection measures, including banning trafficking in circumvention devices.

SPAIN

Creators continue to be gravely concerned with Spain's rampant Internet piracy problem. Peer-to-peer (P2P) piracy in Spain is widely perceived as an acceptable cultural phenomenon, and the situation is exacerbated by a government policy that has essentially decriminalized illicit P2P file sharing. Moreover, the inadequate implementation of EU-level requirements regarding ISPs has contributed significantly to this problem. Spanish ISPs, exhibiting an unwillingness to collaborate in the fight against Internet piracy, make use of their file sharing and downloading service capabilities to promote their businesses. Negotiations between rights holders and Internet Service Providers to develop a framework to promote legitimate electronic commerce and full respect for intellectual property rights have yet to yield an acceptable conclusion. The current situation is untenable. We call upon the Government of Spain to exert active leadership, working with rights holders and ISPs, to implement reasonable practices to protect the legal transmission of creative works online.

MEXICO

While Mexican Government officials tasked with copyright issues have reportedly shown a perceived willingness to address these issues, the sheer dimension of the piracy problems in Mexican markets remains severe with little or no improvement in 2008. Piracy involving hard goods, piracy on the Internet, unauthorized camcording in theaters, and unauthorized photocopying at universities continued at high levels last year. We recognize the efforts of Mexican enforcement agencies and note with appreciation the high level of cooperation between most authorities and rights holder organizations.

Notwithstanding these efforts, the following five factors continue to contribute to the lack of meaningful results: (1) unsatisfactory state and municipal government efforts, with only a handful of state governments interested in combating illegal trade and piracy; (2) the continued lack of adequate resources and the failure to implement a national anti-piracy plan that enhances and coordinates federal and state activities; (3) the lack of *ex officio* authority for law enforcement officials, resulting in the need for rights holders to file complaints even with respect to well-known pirate marketplaces where significant illegal activities continually take place (this tolerance for open and notorious pirating activity, in the absence of a formal complaint from a copyright owner, contributes to a societal perception that copyright infringement is not a serious offense and does not affect the interests of the state); (4) the lack of deterrent sentences,

demonstrating the need for sentencing guidelines and judicial training; and (5) the lack of an effective legislative framework, which should include more robust circumvention and camcording prohibitions.

The Congressional International Anti-Piracy Caucus, originally formed in 2003 and currently co-chaired by Senators Sheldon Whitehouse and Orrin G. Hatch, and Representatives Adam B. Schiff and Bob Goodlatte, is made up of over 70 members of Congress. The goals of the Caucus are to provide briefings for congressional delegations traveling to countries with significant piracy problems; staff and member briefings and forums on international intellectual property protection and piracy; demonstrations of new technologies and products designed to improve consumers' entertainment experiences and to reduce piracy; and to work closely with the committees of jurisdiction in the House and Senate on related hearings and legislation.