

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE 2004 SPECIAL 301 REPORT

SPECIAL MENTION

GUATEMALA

Guatemala and the United States have just concluded negotiations to finalize Guatemala's participation in the U.S.-Central America Free Trade Agreement (CAFTA). We hope that Guatemala will now promptly resolve ongoing intellectual property/enforcement problems faced by the software industry. The lack of an adequate and effective civil *ex parte* enforcement mechanism, primarily because of information leaks and the imposition of unreasonably high bonds, and the 2001 copyright law amendments reducing criminal penalties for copyright infringement to non-deterrent levels, are some of the more serious enforcement issues faced by software copyright holders. These issues continue to plague copyright enforcement in the country.

CAFTA will mandate that the authorities act and execute in *audita altera parte* requests for relief in an expeditious manner. Ensuring the confidentiality of the information related to those requests is key to maintaining the provisional measure's viability as an effective enforcement tool. Similarly, while permitting the imposition of security or other assurance in order to authorize a provisional measure, CAFTA requires that such security or equivalent assurance be set at a level "so as not to unreasonably deter recourse to such procedures." CAFTA, art. 15.11.18. Finally, the IPR chapter of the CAFTA requires Guatemala to provide criminal remedies, including imprisonment and/or fines, that are "sufficient to provide a deterrent to future acts of infringement." CAFTA, art. 15.11.26(a). This would call for an increase in the length of imprisonment terms and fines under the current law.

By signing the CAFTA, Guatemala has taken positive steps toward achieving the highest standards of protection for copyrighted content. We congratulate the Guatemalan government for these steps and trust that the issues above will be quickly resolved as Guatemala moves ahead to fully implement all of its obligations under the IPR chapter of the CAFTA.