

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE
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SPECIAL MENTION

CZECH REPUBLIC

Piracy: Music and record piracy in the Czech Republic remains at unacceptably high levels—one in two sound recordings sold is illegal. The main problems frustrating the legitimate market are CD-R piracy and illegal file-sharing, poor border enforcement, delays in criminal enforcement proceedings and lingering deficiencies in the copyright law. The once strong market has been shattered due to massive CD-R piracy that now accounts for 93% of the overall physical music piracy problem in the Czech Republic. According to the recording industry's enforcement statistics, nearly 1 million burned CD-Rs (950,000 copies) with illegal content were seized. The Czech legitimate music market in 2005 continued to decline an estimated 17% in terms of value. The recording industry was further shattered by the so-called hotel exception in the Copyright Law, in force in February 2005, which will bring an estimated 20% decrease also in royalty income. The results of investigations and police raids in Western Bohemia, in particular the Cheb district, confirm that the large-scale CD-R burning is organized by Asian-based and other organized crime syndicates. As this area borders with Austria and Germany, this illegal activity has a direct impact on the music markets there as well. Most of the content on burned CD-Rs is targeted to German speaking nationals. The most serious problem remains in the district of Cheb, where police and Ministry of Interior officials are promising continuous investigations of illegal activities. However, while meaningful enforcement is being pledged, the recording industry calls for more effective intervention. The other major and growing problem is illegal file-sharing in unauthorized peer-to-peer (P2P) services. In January 2006, the Police Department for Internet and Computer Crime in co-operation with the local recording industry disclosed the first ever case against a large scale illegal uploader.

The entertainment software industry reports that the level of piracy for its products continues to be problematic, with little change from the previous year. Pirated console-based entertainment software products continue to be shipped from Russia. Local CD-R burning of pirated materials is also prevalent in the country. The level of piracy for counterfeit and pirated cartridge-based games increased remained high, with Asia remaining the primary source of pirated material. Distribution of cartridge-based products is also controlled by organized criminal groups in the country. Internet café piracy continues to be a problem; only 20% of the 400 cafés have obtained licenses from ESA member companies. Internet piracy in the country remains a growing concern. Entertainment software companies have enjoyed good cooperation with the authorities, and have had some cases successfully resolved. ESA member companies also provided Customs trainings in 2005 which appeared to be well received. However, an ESA member company also reports that problems exist with respect to ES Council Regulation No. 1383/2003. Under the regulation, a right holder must, within three (3) business days, send a statement to the Customs authorities confirming that the goods seized are indeed pirate. In addition, the right holder must, within 10 days, obtain written consent for the destruction of the goods from the importer, or choose to file a legal action. If these deadlines are not met, the shipment must be released into the market. This regulation and the deadlines it imposes causes a significant burden to right holders as a lawsuit must be filed to prevent the counterfeit goods

from entering the market. The importers are not fazed by the prospect of a case and simply continue to engage in their illegal activity. The regulation does more harm to the interests of right holders and it is necessary that it be reformed so more adequately protect right holder interest in keeping counterfeit products from entering the market.

MPA reports that optical disc piracy is the main problem facing the film industry in the Czech Republic. Increasing numbers of pirate optical discs are distributed via the Internet, street markets or newspaper advertisements. Large city street markets are popular for distribution of pirate DVD-Rs. Despite increasing numbers of raids and seizures in these markets, this form of piracy is remaining stable. Along with Czech-language pirate product available throughout the Czech Republic, pirate optical discs aimed at German language foreigners are openly seen in the street markets along the German and Austrian borders. Internet hard goods piracy is growing, mainly through auction and advertisement sites. The popularity of Czech titles in P2P swapping and DVD-R distribution has led to the growth of camcorder piracy. The cooperation of enforcement authorities (police, the Czech Trade Inspection Bureau and Customs) with the local audiovisual anti-piracy organization (CPU) is reasonably satisfactory in most cases. The cooperation of enforcement authorities with each other is gradually developing, but is not satisfactory. In addition, in the judicial arena, the very low sanctions, such as the minimum sentences given to street vendors, continue to be a significant obstacle in dealing effectively with piracy, despite the availability of deterrent sentencing possibilities (up to five years' imprisonment).

Optical disc production: A continuing problem in the Czech Republic is the overproduction of optical media (CDs, CD-Rs, and DVDs). In 2005, there were four known operating CD plants in the Czech Republic, with an unknown number of lines.

Enforcement: The recording industry reports that despite an increase nationwide in the number of investigations, there has been little political interest or central enforcement action to address the growing music piracy problem with closed cases. The criminal enforcement apparatus remains so slow (especially at the investigative, prosecutorial and judicial levels) in music cases that there is no deterrent effect. MPAA reports that it has conducted numerous raids on final vendors and several raids on producers and distributors and has seized a large number of infringing goods, and yet this has not diminished the audiovisual piracy problem. In the first three quarters of 2005, the audiovisual industry anti-piracy organization has already seized almost 320,000 CD-Rs.

Entertainment software companies report that the number of counterfeit products seized in the Czech Republic increased significantly in 2005. In 2004, there were 13 seizure actions and approximately 44,000 counterfeit goods seized. In 2005, 26 actions resulted in the seizure of an estimated 78,000 counterfeit products. These goods were primarily components for cartridge-based goods intended for assembly in country, imported from Asia with many of the importers Vietnamese.

On a positive note, the business software industry reports continuing good cooperation with Czech authorities in 2005, especially with developing systems to monitor governmental compliance with its commitment to use only legal copies of software. The courts continue to issue fairly strong court decisions in criminal software piracy cases. Lowering business software piracy rates in the Czech Republic could improve the local economy.¹

¹ BSA and International Data Corporation (IDC) released a new study on December 8, 2005, which illustrates global economic gains from reducing software piracy. This report, [Expanding the Frontiers of Our Digital Future: Reducing](#)

The Czech government should take the following steps to improve the efficacy of criminal enforcement: (1) demonstrate political will, including by issuing public announcements and internal government orders, to make effective enforcement of IPR laws a priority; (2) have the Interior Ministry take swift action against the omnipresent pirate activities, especially in the Cheb district; (3) adopt optical media regulations to control optical media production and distribution; (4) strengthen border enforcement to stop importation and transshipment of pirated goods, including optical media product; (5) improve the speed of criminal enforcement (at the police investigation, prosecutorial and judicial levels); and (6) improve coordination between the various enforcement bodies (police, customs, prosecutors and the judiciary) so that concrete results in combating piracy is achieved as well as expand their expertise to act against Internet piracy.

Copyright law: The Czech Copyright Act of 2000 is currently being discussed in the Parliament in order to complete the implementation of the EU Copyright Directive and the EU Enforcement Directive. The music and film industries raised joint concerns over the drafting process and the quality and final text of the amendments yet remain unclear. In particular, the two industries raised the following concerns:

- The so-called hotel rooms exception to the communication to the public right that exempts hotel rooms and health institutions from the obligation to pay royalties for the use of music (Article 23)
- Private copying exception and intervention to technical protection measures (Articles 30 and 43)
- Over-regulation of the collecting societies' activities.

The draft amendments were expected to pass its third (formal) reading on February 8, 2006, and the amendments are expected to be in force on April 1, 2006.

Criminal code and other laws: Under the Czech Criminal Code, copyright infringement can be penalized with up to five years imprisonment and a fine of five million koruna (US\$125,000). Amendments to the Consumer Protection Act and the Trade Inspection Act that took effect on September 1, 2000 also give wide authority to the Czech Trade Inspection Bureau to fight copyright and trademark infringement. The Trade Inspection Bureau's team of "examiners" is empowered to seize suspect goods and to destroy them if they are determined to be unauthorized copies or counterfeits. Fines of up to two million koruna (US\$50,000) can also be imposed. In addition, the new draft amendment to the Copyright Act (above) reportedly includes higher penalties for copyright infringement handled out of criminal prosecution (from 15,000 koruna to 150,000 koruna). Despite this good legal framework, there has been no effective use of it to impose deterrence in the marketplace.

Software Piracy to Accelerate Global IT Benefits, using 2004 data, found the following: a 10-point drop in the Czech Republic's piracy rate (from 41% to 31%) could add \$950 million to its economy, increase local industry revenues by more than \$700 million, and pump an additional \$96 million into Czech Republic's tax coffers. The 10-point reduction could also create 2,900 new IT jobs. See http://www.bsa.org/idcstudy/pdfs/Czech_Republic.pdf.

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