

GREECE

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Greece remain on the Watch List in 2009.

Executive Summary: The level of copyright piracy in Greece remained high in 2008. Attempts to combat Internet piracy are frustrated by data protection legislative complications that pose a huge hurdle to pursuing investigations and litigation against infringers, especially in the peer-to-peer file-sharing area. Physical piracy of many copyrighted products remain readily available in the cities and on the streets. Regarding business software piracy, the tax police (YPEE) are working hard, and issued two waves of software audit letters to small- and medium-sized companies in 2008. The unauthorized photocopying of books and journals continues to occur on and near university campuses. Over the past year, Internet piracy became a major threat, no longer a distant fear but a stark reality. Despite some good cooperation between the copyright industries and the police, the overall enforcement system in Greece fails to tackle the endemic piracy problems. Some promising legal reforms were passed in 2007 but are not yet fully in force. For example, both the ministerial decree permitting administrative fines for certain infringing acts (including software and sound recording piracy) and a 2007 ministerial decree granting law enforcement authority to take action against street vendors distributing pirated products have not been fully implemented. Furthermore, lengthy court delays and a lack of deterrent sentences continue to frustrate rights holders. Defendants rarely receive sanctions, and those who do usually get suspended sentences. The industries are hopeful that the new Interministerial Steering Committee, which held its first meeting in May 2008, will open its doors for full input from the copyright sector so that all expertise may be brought to address the serious piracy and enforcement problems in Greece.

Priority actions requested to be taken in 2009: The copyright industries recommend that the following actions be taken in the near term in Greece in order to improve the adequate and effective protection of copyrighted materials there:

Enforcement

- The Interministerial Steering Committee should announce a comprehensive national anti-piracy plan and campaign that augments raids, prosecutions, criminal (and non-suspended) sentencing at deterrent levels, training for enforcement officials and public awareness efforts.
- Continue and enhance cooperation with the police on inspections, raids and other anti-piracy activities, and encourage greater cooperation from the Immigration and Municipal police.
- Initiate greater involvement by the tax police (YPEE) in anti-piracy actions affecting all copyright sectors, expanding on the good work they are doing in the software sector. (1) It is important that YPEE continues the software sector project that it has begun by sending direct mails (letters) to all Greek companies with more than 10 employees. (2) YPEE should impose administrative fines for both sellers and buyers of pirate music and other pirated copyright products. (3) YPEE should continue its software audits when it does tax inspections and publicize any enforcement actions that result from such audits. (4) YPEE should make music and sound recording audits when inspecting commercial enterprises such as bars and restaurants.
- Institutionalize a Special Operational Department for IPR issues within YPEE.
- Give law enforcement authorities the mandate and jurisdiction to pursue investigations on university campuses where Internet and hard goods piracy flourishes without significant threat.
- Take action against copy shops making illegal photocopies of books around university campuses, including Athens University of Business and Economics, Aristotle University of Thessaloniki, the University of Patras, the University of Piraeus and Deree College, among others, and coordinate campus policies to prohibit use of illegal materials on campus.
- Encourage Government ministries and agencies to legalize business software usage in public agencies.
- Direct prosecutors to bring cases more swiftly and aim for deterrent, non-suspended penalties.
- Courts should apply all possible procedural measures to guarantee defendants' presence at court hearings.
- Instruct all courts to issue deterrent sentences, including imprisonment and fines as provided by the law, and to not suspend sentences or fines (suspensions of fines are not permitted under the law).



- Judges serving on the new special IP (civil) courts in Athens, Piraeus, and Thessaloniki should be directed to work only on IPR cases and be relieved of their other duties. Such an IP court should also be established in Patras. The scope of these courts' jurisdiction should be expanded to criminal copyright cases.
- Improve IPR training and education for police, prosecutors, judges, and customs officials

Legislation

- Develop legislation to provide Municipal Police with authority to arrest and prosecute street vendors for intellectual property infringements.
- Develop legislation to make the unauthorized camcording of motion pictures in theatres a criminal offense.
- Amend legislation to permit ISPs to reveal identities of copyright infringers consistent with the 2008 European Court of Justice (ECJ) *Telefonica* case decision, including appropriate steps to facilitate the ability of rights holders to obtain the necessary information to take civil actions to protect their rights.
- Maintain the civil procedural law provisions regarding ex parte search orders. With respect for cases involving copyright infringement, rights holders should always have the possibility to obtain a search order without summoning the defendant.

GREECE Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2005-2008 ¹								
INDUSTRY	2008		2007		2006		2005	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Business software ²	198.0	58%	109.0	58%	93.0	61%	88.0	64%
Sound recordings & musical compositions	NA	60%	NA	60%	30.0	60%	26.0	60%
Motion pictures ³	NA	NA	NA	NA	NA	NA	72.0	NA
Entertainment software ⁴	NA	NA	NA	NA	30.2	68%	NA	NA
Books	NA							
TOTALS	198.0		109.0		153.2		186.0	

COPYRIGHT PIRACY IN GREECE

Hard goods piracy remains engrained in cities throughout the country, and presents a formidable enforcement challenge, despite many raids and good cooperation between enforcement authorities and rights holders. Internet piracy has become a serious problem, especially in the audiovisual and sound recording sector. Problems continue in combating end-user piracy of business software in corporate settings and unauthorized commercial photocopying on university campuses.

Business software piracy: The Business Software Alliance (BSA) reports that end-user piracy continues to be the biggest piracy threat to its industry in Greece. The widespread use of unlicensed software and distribution of low quality pirated CDs across the country is another problem. BSA notes that the level of software piracy in Greece remains high, but has declined slightly in recent years (from 61% in 2006 to 58% in 2008). To be clear, this level of piracy is still among the highest in Europe (with only Bulgaria and Romania having higher rates). Much of this decline over the last few years may be attributable in part to the work of the Tax Police (YPEE) and their sending software audit letters to small- and medium-sized businesses in Greece. It remains imperative that these letters are accompanied by actual enforcement action, where warranted, in order to press for legal

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in Appendix B of IIPA's 2009 Special 301 submission at www.iipa.com/pdf/2009spec301methodology.pdf. For information on Greece under Special 301, see Appendix D at <http://www.iipa.com/pdf/2009SPEC301USTRHISTORY.pdf> and Appendix E at <http://www.iipa.com/pdf/2009SPEC301HISTORICALSUMMARY.pdf> of this submission. To read IIPA's cover letter to this Special 301 submission, go to <http://www.iipa.com/pdf/2009SPEC301COVERLETTER.pdf>.

² BSA's 2008 statistics are preliminary, represent the U.S. software publishers' share of software piracy losses in Greece, and follow the methodology compiled in the Fifth Annual BSA and IDC Global Software Piracy Study (May 2007), available at www.bsa.org. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software.

³ MPAA's 2005 estimates used a methodology that analyzed both physical/"hard goods" and Internet piracy.

⁴ ESA's reported dollar figures for 2006 reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses."

software use.⁵ BSA's preliminary estimated 2008 losses due to piracy rose to \$198 million, largely due to a significant increase in the size of the information technology (IT) market for computers.

Piracy of music and sound recordings: The recording industry reports that physical piracy levels for recorded music dropped during 2008, after five years of increases that left the market flooded with pirated product. However, in 2008 Internet piracy (discussed below) grew significantly. In the physical environment, film piracy at video clubs, of which there are far more than record stores, is extensive, as is the problem of street piracy. The cities with the largest problems regarding music street piracy are Patra, Kalamata, Corfu, Crete and Thessaloniki, while the situation in the center of Athens has been substantially improved. Regarding physical piracy there is a clear network of illegal immigrants that operates at all levels from manufacturing to retail distribution of pirate music products, and this accounts for over 90% of the pirate physical market. Piracy of sound recordings and music in Greece represents around 60% for both international and local repertoire. To be clear, the legitimate market for physical copies of recorded music is in disarray. According to a report compiled for the Greek music market by Deloitte, the total loss (state, social security, rights holders, industry, retailers, etc) due to physical piracy for the years 1996-2007 was over €1.15 billion (US\$2 billion). Losses to Internet/mobile piracy cannot be estimated.

Audiovisual piracy: The Motion Picture Association (MPA) and its local anti-piracy organization, EPOE, report that hard goods piracy, principally DVD-Rs and Internet piracy are almost on equal footing in Greece. Local representatives report that they have seen a slight decrease in street piracy of filmed entertainment products due, primarily, to the recent enforcement actions by the Greek government. Retail piracy levels remained unchanged although several pre-released film titles including *Transporter 3*, *Twilight*, *Valkyrie*, *Wendy and Lucy* and *The Wrestler*, have found their way to retail stores, which causes significant economic harm affecting the full life cycle of a film. It is evident that the Internet is the major source of illegal content for street vendors and video retailers. The major problem cities are Athens, Thessaloniki, Patras and some of the Greek islands, such as Zante, especially during the summer months.⁶ Furthermore, mod chips for consoles and region circumvention of DVD players are available in the Greek market. All mod chips are imported, mostly from the Far East.

Book and journal piracy: Illegal commercial-scale photocopying of academic textbooks continues in Greece, causing significant damage to higher education textbook publishers.⁷ Photocopy shops near university and college campuses regularly process orders for entire classes of students. Photocopy shops are making cover to cover, bound copies for distribution to students, with little or no deterrent. In fact, bulk discounts for students are common.⁸ Major universities all over Greece are affected, including Athens University of Business and Economics, Aristotle University of Thessaloniki, the University of Patras, the University of Piraeus and Deree College, among many others. The authorities should take notice of this issue, tackling the copyshops through effective enforcement and encouraging universities to implement policies that encourage use of legitimate materials on campus. The police do not have jurisdiction to pursue IPR cases on university campuses (academic asylum) where Internet and hard goods piracy flourish, and this poses a difficult political and enforcement problem. These enforcement problems are only exacerbated by the difficulty of collecting evidence of infringement due to the increasing "print to order" nature of the copyshops. At least one court case is pending, after several delays, following a 2007 raid, and authorities should ensure that this case is adequately heard and leads to deterrent penalties.

Internet piracy: As of early 2008, Internet piracy was still in its nascent stages in Greece, and peer-to-peer (P2P) file-sharing piracy had not yet deeply infiltrated the Greek market. However, this changed in 2008. Internet piracy is growing rapidly, mainly via P2P and cyber-lockers (with relevant links offered through forums) and occasionally via illegal sites hosted in Russia (such as music-bazaar.com and legalsounds.com). Leech sites and download sites are also a growing problem.

According to the EETT's (the Greek National Regulating Authority for the Telecommunications) report for the second quarter of 2008, broadband connections by the end of June 2008 were 22.45% higher than those of December 2007 and 63.71% higher than those of June 2007, now reaching more than 1.2 million users. EETT's report of December 2008 shows 1.5 million

⁵ According to a 2008 report issued by BSA-IDC, the information technology sector's contribution to the Greek economy could be even bigger if Greece's PC software piracy rate were to be lowered 10 percentage points over the next four years. This would create an additional 1,035 jobs, \$385 million in local industry revenues and \$130 million in additional tax revenues for federal, regional, and local governments. See [The Economic Benefits of Reducing PC Software Piracy](http://www.bsa.org/idcstudy), released January 22, 2008, and is available online at <http://www.bsa.org/idcstudy>.

⁶ However, problems associated with a particular geographical location should be viewed within the context of other factors such as time of the year, availability of local law enforcement personnel dedicated to piracy enforcement as well as any local surge of other serious crimes at that time.

⁷ Reports indicate that for some books adopted by large classes, sales are less than one quarter of what they should be based on the numbers of students, due to the quick response by copyshops upon finalization of the adoption process.

⁸ Recent examples include "buy four photocopies, get one free" deals, advertised by flyers near major universities.

broadband connections, which represents an increase of over 20% since June 2008. In contrast, mobile piracy is not such a severe problem in Greece as it is in other European countries. Although mobile penetration in Greece has reached a high level of 13.4 million connections by the end of 2007 (for a population of around 11 million people), mobile piracy seems to be low, mainly due to restrictions set either by mobile companies or the hardware itself. There are approximately 3.8 million Internet users in Greece, representing about 35% of the population (according to www.internetworldstats.com). The major legislative deficiency (discussed below) involves Greek legislation which prevents Internet Service Providers (ISPs) from disclosing information their subscribers' names or physical addresses in order for rights holders to continue investigations and pursue legal actions against suspected infringers. ISPs require a court or prosecutor's order to disclose the names of infringing subscribers.

COPYRIGHT ENFORCEMENT IN GREECE

On a positive note, the copyright industries report that their working relationships with the Greek enforcement authorities improved substantially in 2008 compared to 2007. This was promoted by the active involvement of the Hellenic Copyright Office (OPI), the work of the U.S. Embassy and industries' enhanced public education efforts. The principal challenges remain achieving tangible enforcement results through a difficult judicial system and affecting needed legislative/administrative reform (either to implement existing laws or further reform laws).

The Interministerial Committee: Two years ago, a Joint Task Force was established under the OPI. Last year the Task Forces in Athens and Thessaloniki were institutionalized to form a new Interministerial Steering Committee. Led by the Ministry of Foreign Affairs, this Committee's objective is to ensure more efficient coordination of all intellectual property initiatives in order to prevent piracy and counterfeiting. Its first meeting, devoted primarily to organizational issues, was held in May 2008. Unfortunately, none of the private sector organizations that were able to participate in the previous Task Force in Athens have been allowed to participate in this new Interministerial Steering Committee.

The copyright industries support the Interministerial Steering Committee and urges it to develop a national IPR action plan, coordinate enforcement efforts at an operational level, including the effective implementation of the administrative fine regulation and the ministerial decree on street vendors, adopt procedures for ISPs to deal effectively with repeat infringers, and develop and fund public awareness and education efforts, all working with industry. The Committee should receive regular reports of statistics on numbers of actions, level of crime addressed and location of actions from each enforcement body, as well as court statistics from the justice ministry. The committee should publish an annual report of this data. The problem is that this Committee does not consistently cooperate with industry; such cooperation is imperative to the success of any national IPR action plan.

Successful actions with the tax police on business software cases. BSA reports continued good cooperation and communication with the Tax Police (YPEE). Because the BSA program in Greece involves only end-user piracy actions (and not reseller piracy actions), BSA works closely with the YPEE on these administrative actions. The Chief Officer of YPEE changed during 2008, and BSA has established a good relationship with the new Chief Officer. However, the Chief Officer changed once again in January 2009. Two waves of audit letters were sent by YPEE in 2008 to small and medium enterprises (companies with 20–39 employees and companies with 16–19 employees). During 2008, YPEE conducted an undisclosed number of raids. YPEE should publish monthly statistics on the number of such raids, and the number and size of the fines imposed, and provide this data in regular reports to the Interministerial Committee. BSA would like to see a more systematic follow-up of these warning letters and more raids against non-responsive companies. There have been far too few raids and too little actual results. BSA appreciates the work done by YPEE, and expects that in 2009 YPEE will continue to send software audit letters, and even more importantly, YPEE will follow-up in the appropriate cases by: (a) initiating raids against companies, (b) incorporating software audits in the tax controls, and (c) imposing the administrative penalty when illegal copies of software are found. In addition, BSA believes the Greek Government should publicly commit to fight software piracy; no such announcement occurred in 2008. Such a public pronouncement by the government (perhaps coming from the Ministry of Finance) would greatly increase public awareness regarding the risks and illegality of unlicensed software and would codify the government's commitment to protect intellectual property.

Need to implement administrative fines in software and recording piracy cases: Although the Greek Government approved an innovative law amendment in January 2007 that introduced administrative fines for software infringements, the enforcement authorities have not yet implemented this law (see further discussion in legal reform section, below). The National Police and Tax Police (YPEE) have not issued Circulars to adopt the new legal framework on administrative fines nor have they mobilized their resources to inspect for software piracy. For the last three years, the only enforcement activity implemented by the government has been the YPEE's audit letters (mentioned above).

The recording industry also is very concerned with the lack of effective administrative enforcement and the lack of progress on this front in 2008; there has been no progress. Suspects caught with infringing music and software simply refuse to pay the fine for pirated CDs. Pirates prefer to face a full trial, where the Judges issue light penalties, usually suspended, even though the law foresees fines of €1,000–10,000 (US\$1,335–\$13,350), depending on the quantities seized. The Ministry of Culture in its effort to issue a directive adjusting procedural details did not take the suggestions of the recording industry and the local collecting society for music rights (AEPI), two organizations that have a long-standing experience in fighting piracy, into consideration. As a result, the new law is so vague and full of gaps that the police are reluctant to proceed on the basis of the administrative fine procedures, afraid of falling in its many legal traps.

Civil infringement actions on business software: BSA reports that in 2008, as in 2007, it experienced no significant problems related to its civil software cases. Search orders are granted without major difficulties and these cases are usually settled out of court. With respect to BSA end-user actions in 2008, 3 civil raids were executed, 79 warning letters were sent, 18 follow up letters were sent, 4 interim measures were filed, and 5 settlements were finalized. BSA has not filed any civil lawsuits seeking damages, it has filed only applications for injunctions. There is still one case under judicial review, however. In early 2006, a BSA member company conducted a software audit of a Greek public entity that is supervised by a Greek government ministry. Over several years, this Greek entity purchased this software through an annual tender process. The audit found the Greek entity had increased its number of users without purchasing additional licenses and also cancelled several tenders aimed at purchasing more licenses. Follow-up efforts by the company to collect amounts due were not productive. The software company filed a case in court, requesting damages; the first hearing was initially scheduled for November 2008, and was then adjourned until February 2009.

Criminal actions (raids) in the film and recorded music industries: EPOE reports that the audiovisual industry's relations with the local enforcement authorities continued to improve in 2008. Enforcement problems remain three-fold: (1) a lack of coordination between the Municipal Police, the City Police and YPEE; (2) an abundance of criminal offenses that are considered more serious than intellectual property infringements; and (3) widespread suspension of sentences. While there has been an increase in *ex officio* police raids in some cities, there also has been a decrease in police interest to go after pirates in certain areas outside of Athens. In 2008, EPOE conducted 73 raids (with an equivalent number of criminal actions initiated). There were 155 *ex officio* cases, also with an equivalent number of criminal actions initiated by the police; this is a significant increase over 2007 results and may be due mainly to the involvement of the Greek government.

The recording industry reports that its work and relationship with police authorities, especially in Athens, remained very good in 2008. However, this industry has had no cooperation with the fiscal police (YPEE, as reported above). The total number of cases, as per police statistics, dropped from 1872 in 2006 to 972 in 2007. The recording industry reports 588 cases in the first half of 2008 (full year statistics are not yet available).

Difficult problems with the courts--long delays, non deterrent sentences: A major hindrance to effective IP enforcement in Greek is its judicial system. The Greek Interministerial Steering Committee has tacitly admitted that Greek courts do not enforce the copyright law. Addressing the numerous possible causes of the below-discussed problems has been tediously slow, but a few years ago, even the possibility of improving this situation would not be possible, and there appears to be some possibility now.

Few prosecutions: Greek prosecutors, especially at the local level, are often reluctant to pursue intellectual property cases and have largely ignored Supreme Court circulars directing them to give intellectual property cases a high priority. Although this systemic aversion appears to be slowly changing in major Greek cities (such as Athens, Thessaloniki and Patras), it remains a major obstacle to achieving effective deterrence. As one way to address this situation, EPOE has had to utilize the criminal "flagrant crimes procedure" which helps to reduce the court load when a case is postponed indefinitely, but this can be invoked only where the defendant is taken into custody within 24 hours of the issuance of the complaint; otherwise the case is assigned to await its typical criminal court hearing, usually more than a year later.

Delays and time consuming procedures: There are very long waiting periods for cases to be scheduled for trial. There are also numerous delays or postponements for a number of reasons that might drag a case to run the statute of limitations.

Suspended sentences and non-deterrence: There is a public perception that Greek courts tend to be lenient and with respect to copyright, most cases result in suspended sentences.⁹ For example, the one-year imprisonment sentence provided by law usually becomes three to four months imprisonment, but suspended for three years, and the €3000 fine (US\$3,860) is simply stricken entirely. In the rare occasions of more severe penalties, the defendants file an appeal, managing to put their sentence on hold. Also, defendants often do not appear in court on the day of their scheduled hearing. The industry is seeing similar tactics in the felony courts which deal with major piracy cases where the hearings are set two to three years after the arrest, and in the meantime, the defendants are not kept in prison awaiting their trial. This manipulation of the judicial system translates to a lack of punishment with the only complication for infringers being the loss of their confiscated discs and equipment and the time they may have spent in the court. Fortunately, some First Instance Courts, especially in Athens, Piraeus, and Thessaloniki, are no longer suspending fines – even when they find mitigating circumstances. Unfortunately, however, these fines are often annulled by the Appeals Court. The situation could be further improved if the Immigration Service and the Municipal Police, which appear either to be busy with other cases or to lack the legislative mandate to act, could be directed to assist in anti-piracy actions.

Special IP Courts: Special IP courts, which hear only civil IP cases, have been established in Athens, Piraeus and Thessaloniki. The copyright industries will continue efforts to expand such courts to Patras. In addition, it would be helpful if judges on the special IP courts could be relieved of their other (non-copyright) duties in order to focus on the IP docket. It also would be ideal if the scope of these courts' specialized court could be expanded to criminal copyright cases.

Supreme Court Circular: Several years ago the Supreme Court issued four judicial circulars to assist in disseminating the Court's view on the importance of IPR protection. This circular was addressed to all the judges nationwide, calling on them to apply properly the copyright law. Unfortunately, this judicial circular failed to have any measurable effect.

Actions against Internet piracy: Internet investigations in Greece can go only so far as identifying an infringing IP address. The relevant law for disclosure of personal data is very strict and limited to a specific range of crimes which, unfortunately, does not include copyright infringement. The Minister of Justice recognizes this limitation and has promised that the law (2225/1994) will be reformed to include felony aspects of copyright infringement. The release of the infringers' identity – among other targets -- is necessary so that the affected rights holders can initiate criminal or civil actions. MPA reports that it has one case pending against a "leech" site.

Cross-industry cooperation on Internet piracy cases: Greek ISPs are currently not cooperating with rights holders on Internet piracy actions, except occasionally on P2P sites hosted in Greece. This inaction does nothing to address the serious problem of P2P sites hosted outside of Greece. Some Greek ISPs even advertise their fast connections using mp3 files as a yardstick, thereby implying that faster connections can give a user easier access to music and movie files.

Over the past year, negotiations between copyright rights holders and ISPs have been underway, done under the auspices of the Hellenic Copyright Office (OPI). OPI is aiming for a result where the ISPs adopt voluntary measures in order to decrease Internet piracy. The three major issues for the copyright sectors consists of the following: (1) blocking access to illegal sites hosted in countries with poor or no IP protection; (2) adoption of 3-steps procedures of termination of P2P users' accounts; and (3) inclusion of felony aspects of copyright infringement in the provisions of the law regarding disclosure of personal data over telecommunications. The Ministry of Justice has promised to act on the third prong. The EETT can play a substantial role in the first two prongs. The copyright sector believes that the 3-step termination and access blocking do not compromise the user's privacy and therefore could be adopted by local ISPs.

Efforts to get other Greek ministries involved continued. In meetings between OPI and copyright organizations, it has been decided that the copyright organizations would send joint letters to relevant Greek authorities. In December 2008, such joint letters, requesting help from Greek authorities regarding ISP cooperation were sent to the Ministries of Justice and Culture and

⁹ First, at the Misdemeanour (All-Day) Courts for low-scale offenders, judges hand out very light sentences, which are often suspended. This is particularly the case for the courts outside Athens. However, when appeals are filed, no bail is set to guarantee the appearance of the defendant in the higher court and the sentences handed out in first instance are suspended. In addition, the appeal courts do not impose any fines. Second, at Felony Courts for large-scale offenders, the infringers are released until trial by the prosecutors without any bail and in many cases without any limitative clauses. As a result, when the case appears in front of the Felony Court after two to three years' time, the defendant usually does not turn up. Especially in cases where the felon is an immigrant and cannot be easily located and arrested, this tactic is equivalent to acquittal. As a result of this court policy, the recording industry reports that several offenders have been arrested and charged two to three or even five to ten times, and have returned to their music piracy business.

EETT. IFPI Greece reports that it participated in a meeting with EETT's Vice Chairman who promised a reform of the General Licensing Code and also committed to host a meeting between the ISPs and the copyright organizations.

COPYRIGHT LAW REFORM AND RELATED ISSUES

Greece has revised its 1993 Copyright Act (Law 2121/93) a number of times over the past 15 years. In fact, Greece was the first of the EU member states to complete implementation of the directives in its copyright law, and the copyright industries have been generally pleased with that implementation. Greece also has implemented the EU Enforcement Directive. But because of difficulties and gaps in measures necessary to strengthen anti-piracy enforcement, there have been a variety of legislative and administrative solutions offered by the copyright industries. Some of these have been implemented, and others are still under development.

Pending reform of the Copyright Act in 2009: A Legislative Committee currently operating at the Hellenic Copyright Office under the Ministry of Culture is close to concluding its work to propose further reforms to the Greek Copyright Act. Over the past year, the copyright sectors offered various proposals to this committee. For example, it is hoped that the non-suspension of court-imposed fines and/or stiffer sentences is somehow included in this package. Other proposals include an amendment that court-imposed fines must be paid immediately; establishment of special police units throughout the country to address exclusively copyright infringements; non-suspension of sentences pending appeal; and, ISP coordination on copyright infringement matters. In addition, a provision should be added that those sentenced for a copyright offense should be unconditionally obliged to immediate payment of the fine, failing which they should be kept in custody until the monetary penalty is paid.

This Legislative Committee completed its work at the end of 2008, as expected. However, the Committee's release of the its work for public review has been delayed due to a cabinet reshuffle. Greece's new Minister of Culture will now need to become familiar with the Committee's proposal before making it public. The copyright sector hopes that the expected consultation process to discuss this Committee's proposals will be open and transparent.

Copyright Act Amendments in 2007: The Greek copyright law was amended in January 2007 (Law 3524/2007), which became part of the Copyright Act 2121/93, to give copyright infringers the option of paying an administrative fine in lieu of criminal prosecution. The amendment provides that street vendors caught in possession of up to 500 music CDs and up to 50 software CDs will be given the opportunity to pay an administrative fine of €20 (US\$27) for each music CD and €1,000 (US\$1,285) for each software CD, but the total administrative fine will be not less than €1,000. The law applies to several, but not all, copyrighted materials; it does apply to sound recordings and business software, with the support of those industries. The MPA lobbied for the complete removal of audiovisual products from this law because of its concern that this would only exacerbate the level of audiovisual piracy because it would not be restricted to only first-time offender. Furthermore, a decision by the Ministers of Finance and Culture was issued in September 2007 to provide the procedures of imposing the administrative sanctions, but these have not yet been implemented, due to administrative complications (such as the procedures for destroying the seized items, oversight of product destruction and exact procedures to collect fines, where fines were to be paid, what happens if arrests occurred early in the morning). It is not yet known whether any of the necessary tweaks to these provisions will be included in any future copyright reform package.

Criminal law reform: The Minister of Justice has promised to reform the criminal law (2225/1994) in which felony aspects of copyright infringement will be included. The law has been forwarded by the Hellenic Copyright Office to the Ministry of Justice, but because of recent GOG cabinet reshuffling, it has been put on hold. The copyright sectors are seeking reforms here similar to those reforms they are seeking in discussions with OPI on the Copyright Act.

Administrative fine law: Unfortunately the Administrative Fine, Law 3524, issued in January 26, 2007, has been ineffective. This fine has not been applied in practice, despite numerous complaints from IP rights holders and trade organizations. The recording industry reports that suspects refuse to pay the fine, insisting on a trial, which will take years. The business software industry notes that neither the National Police and Tax Police (YPEE) have issued Circulars to adopt the new legal framework on administrative fines nor have they mobilized their resources to do inspections for software piracy.

Joint law enforcement teams and ineffective implementation against street vendors: Ministerial Decree No. K1-1178, was signed June 25, 2007, and was intended to help remove street vendors from the streets by empowering the Municipal Police, the Tax Police and the regular Police to confiscate and destroy all items protected by the current intellectual property legislation when sold in the streets by street vendors. The Ministerial Decree was a welcome step forward, but its effective

implementation continues to be delayed for several reasons. First, a tri-partite destruction committee must be created to implement the destruction of the seized counterfeit and pirate items, and the Greek Government has been slow to resolve internal administrative problems between the Ministries. It appears to have been quite difficult to get these teams organized (as an aside, the recording industry considers it more effective if the Municipal Police would confiscate and destroy the pirate products, without the need to have any committees). Second, the Municipal Police, who are unarmed and have no authority to arrest people, refuse to go out without armed police escort because they are physically attacked by street vendors. Improved efforts are needed to get the three Ministries involved, that is, Internal Affairs, Public Order and Development, to considerably speed up the implementation process. Reports also suggest that amendments have been proposed to amend this Decree in order to simplify the procedure for the seizure and destruction of pirate products. Given recent reorganizations within the Greek government, this issue is not at the forefront.

Problems with obtaining access to personal data from ISPs: A critical legal issue involves industries' efforts to amend Article 4 of Law 2225/1994 so that ISPs are required to disclose the identity of users suspected of copyright infringement. A standing committee was supposed to deal with the amendment of this data protection law (2225/94), which lays down the principles applying to the disclosure of personal data of violators using telecommunication systems. Copyright rights holders proposals were ignored, and as a result, there is no access to data allowing them to enforce their rights against rampant Internet piracy, in particular P2P infringers. This further exacerbates the situation in a market already devastated by huge physical piracy. The Minister of Justice recognizes this limitation and has promised that the law (2225/1994) will be reformed so that the felony aspects of copyright infringement will be included. Any legislative action should be consistent with the 2008 European Court of Justice (ECJ) decision in the *Telefonica* case, and include appropriate steps to facilitate the ability of rights holders to obtain the necessary information to take civil actions to protect their rights.

Immigration control: The industries were told in 2006 that the Ministry of Foreign Affairs intended to introduce legislation whereby immigrant street vendors engaged in any copyright violation would be deported and that Greek Embassies worldwide would be notified so that new visa requests by copyright violators will be denied. Once again, as with so many other initiatives in this area, no step has been taken towards solving this problem, which lies at the root of the pirate retail problem in Greece. Recent report indicated that there has been no movement on this issue and legislation has not been introduced.

Civil procedure law reform: The ongoing reform of the civil procedural law will affect the procedures granting search orders. The legislative committee proposes, in case of an *ex parte* search order, to summon the other party within three days. If this proposal is approved by the committee, this will cause a lot of problems to the issuing of *ex parte* search orders. Rights holders should always have the possibility to obtain a search order without summoning the defendant. This legislation remains pending but there is no estimate as to when it might pass.

Government software legalization: BSA reports no new developments or progress on government legalization efforts during 2008. The Greek Government should lead by example, stressing the importance of protecting intellectual property rights and legal software use within the Public Administration. By taking these positive steps and implementing policies that support legal software use, the government could raise significant awareness of the problem and help bring down the unacceptably high business software piracy rate.

IPR TRAINING AND PUBLIC AWARENESS

The copyright industries did offer and provide IPR-related training sessions to Greek enforcement officials. For example, the recording industry (IFPI) and the film industry (EPOE) held training seminars for police and custom authorities and IFPI and EPOE also participated in additional seminars for custom authorities that were organized by the government. BSA reports that in 2008 it offered trainings/seminars on software matters to YPEE. However, unlike trainings which took place in prior years, no trainings in 2008 were scheduled by YPEE. The industries believe that IPR training for judges must be organized by the Greek government. The industries consistently ask that such training be arranged, as it is a critical first step to lead to the proper application of the law which in turn will lead to effective enforcement against piracy.

More IPR training and education for police, prosecutors, judges, and customs officials is urgently needed. We understand that the Hellenic Copyright Office, working with the U.S. Embassy, has moved positively in this direction. The industries also hope that the Interministerial Steering Committee will include IPR training on a permanent basis, including resources and funding provided by the government.