

LATVIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2012 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that the U.S. Government should actively monitor developments in Latvia during 2012 with respect to the issues discussed in this Special Mention report.¹

Executive Summary: Several copyright industries report that poor enforcement persists in Latvia, and in particular, the business software industry reports both high piracy rates and a weak enforcement apparatus. IIPA and its members met with the Government of Latvia in 2011, and appreciate the Government's pledge of better cooperation with IIPA and its members on key enforcement issues (including software legalization programs). IIPA is also cognizant of the significantly reduced police and prosecutorial resources in the country as a result of the severe economic crisis in Latvia over the last several years; IIPA and its members, hope that, nonetheless, working in cooperation with the Government of Latvia in 2012, there can be a significant improvement in the current IPR enforcement regime.

According to the Business Software Alliance (BSA), the software piracy rate in Latvia has essentially remained unchanged for the last five years, and remains high in both the business and public sectors – that is, end-user businesses and government institutions using unlicensed software.²

In prior years, the Business Software Alliance (BSA) reported on the challenges it faced with obtaining successful criminal convictions, in large measure because of deficiencies in the intellectual property rights (IPR) sections in the Criminal Code. In January 2011, the Criminal Code was revised to, in theory, make it easier to commence cases and succeed (as a result of new evidentiary burdens), especially, in software piracy cases. However, even though the code improved, there were only a few court convictions in 2011 and most cases settled before they reached the courts. This is because of ongoing and additional shortcomings in the Latvian judicial process: namely, very lengthy proceedings (that permit defendants to unreasonably delay proceedings); a still too high evidentiary burden in criminal and civil proceedings; and, a judiciary (courts and prosecutors) unwilling to bring copyright cases. In addition, penalties for copyright infringements for the few cases that do make it through the courts, remain minimal (usually comparable to the fines assessed for minor administrative offenses), and, in a number of cases, infringing goods have even been returned to the pirates. In short, the majority of judges and prosecutors do not comprehend the serious harm – both social and economic – that results from IPR infringements, and are not treating these cases properly.

IPR protection must be again added to the list of state priorities to help develop and grow the (technology and knowledge-based) economy, and as a weapon against the ongoing underground economy (the black and grey markets) which fosters tax and fair competition problems for legitimate businesses and the government. IIPA recommends that police, prosecutors and judges should increase their focus on IPR cases, and undertake these efforts in cooperation with their colleagues from other EU and developed countries. The Latvian Judicial Training

¹For more details on Latvia's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2012SPEC301HISTORICALCHART.pdf>, as well as the previous years' reports, at <http://www.iipa.com/countryreports.html>. For a summary of IIPA's 2011 global issues, see our cover letter at <http://www.iipa.com/pdf/2012SPEC301COVERLETTER.pdf>.

²BSA's 2011 software piracy statistics will not be available until after the filing deadline for this submission, but will be released in May 2012, at which time piracy rates and U.S. software publishers' share of commercial value of pirated software will be available at www.iipa.com. The 2010 statistics follow the methodology compiled in the Eighth Annual BSA and IDC Global Software Piracy Study (May 2011), <http://portal.bsa.org/globalpiracy2010/index.html>. These figures cover packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA's 2012 Special 301 submission at <http://www.iipa.com/pdf/2012spec301methodology.pdf>.



Center regularly organizes training programs and seminars for judges and other law enforcement officials; unfortunately, during 2011 there were no such seminars or trainings held to address IPR issues. Additionally, although a few colleges offer IPR courses, there are too few courses, and very little competency in teaching about IPR laws, its protections and benefits, in college and pre-college educational systems. These classes should be part of the basic school curriculum, on the benefits – to science, culture and the arts – of copyright and IPR protections generally, as well as part of a broader public education campaign on the economic and non-economic benefits of IPR protection and enforcement.

As enforcement priority actions in 2012, IIPA recommends that the Latvian judiciary accelerate IPR proceedings, that is, that they move to avoid the unnecessary delays in investigations and prosecutorial activities. A relaxation of the onerous evidentiary burdens regarding the preparation of expert reports in criminal cases is also required to enable effective enforcement. Further, rights holders ask that when a copyright case does go to trial and results in a conviction, courts impose deterrent penalties.

One way to improve enforcement would be to improve the communication and cooperation among all enforcement authorities, including: the Economic Police, the Municipal Police, the Financial Police, Customs, and the prosecutors and judges, as well as to increase effective cooperation between authorities and right holder organizations. It is also important to sustain and advance capabilities of the state police division that is in charge of such matters as cyber-crimes and IPR protection. The Government of Latvia should also become a role model for the general public by legalizing its own software use, which it has, to date, failed to do. It would also be helpful for all of the enforcement agencies to be publically tasked to make IPR protection a priority.

Enforcement: The IPR Enforcement Division of the State Police established in 2006 was, unfortunately, closed in 2010. Although some of its former staff joined the Cybercrime Division under the Economic Police, IPR issues are no longer a priority. As a result, IPR enforcement efforts continue to be ineffective. In total, BSA reported 57 end-user *ex officio* raids conducted by the Economic Police in 2011 against businesses; additionally a few cases were initiated by the Cybercrime unit of the Economic Police for illegal software usage. In addition to end-user piracy, BSA has also been trying to address channel piracy (that is, distribution piracy, including the sale of pre-loaded software); however, as the result of poor government-led IPR enforcement, there was little progress to report in 2011. We highlight the following issues and recommendations as priorities for 2012:

- The pirated products sold in flea markets across the country. For example, at the largest illegal marketplace in Riga (Latgalite), the police have completely discontinued their efforts to stop sales of pirated goods because of the complex evidentiary burdens and the high bar for proving infringement in IPR cases.
- The widely available copies of illegal prerecorded optical media (DVDs, CDs etc.) containing musical recordings and software – including both pirated and parallel import copies – coming from Russia.
- Internet piracy cases, which in 2011, were not being prosecuted at all even as illegal file-sharing became commonplace. In 2005, an Internet case was initiated by Microsoft (for the sale of counterfeit CDs containing Microsoft software being sold on an eBay site). The damages were estimated to be more than \$3 million and still, to date, the court has not rendered even a preliminary judgment in the case.

Legislation: In late 2010, the Latvian Parliament adopted several important amendments in the Criminal Code. Prior to those amendments, under Article 149, an unreasonable burden of proof (especially in software cases), made it virtually impossible to succeed in IPR cases, so there was little impetus for police or prosecutors to commence investigations. Effective January 1, 2011, Article 149 was deleted and replaced with an improved burden of proof (in a new Article 148). In sum, IIPA believes that most of the basic (critical) legal reforms are in place, but the enforcement environment remains weak. Still, there are some additional legislative reforms that IIPA and its members recommend to further IPR enforcement improvement.

The criminal procedural provisions are archaic and result in substantial difficulties during prosecutions, especially because they call for the securing of detailed (and unnecessary) expert reports in all copyright infringement cases before criminal actions can be undertaken. Additionally, the police are very reluctant to verify accounting documents of pirate software resellers, or to question employees during raids – either of which would be very useful for completing investigations. In many cases, courts drop charges against the owners or managers of companies using unlicensed software because of a lack of evidence (since the evidentiary burden is so high); these burdens require either proof of “individual guilt” or “direct intent” of the individual – these requirements are very difficult hurdles to overcome.

Amendments in 2006 to the Copyright Law and Civil Procedure Act incorporated WTO TRIPS-mandated civil *ex parte* search procedures. However, courts remain reluctant to effectively apply these provisional measures, and require an onerous burden to obtain an indictment (even though the goods seized can be used in a later infringement action). Additionally, plaintiffs are required to post bonds (deposits) at very high rates, generally the equivalent of the likely amount of the claim; this discourages rights holders from otherwise commencing legitimate claims. Additionally, there are no provisions requiring the use of legal software in the Public Procurement Law. The BSA has proposed amendments to this law, and, along with IIPA, hopes the Government of Latvia, as promised in its meetings in 2011, will move to legal government software, and to amend the law to ensure fair competition in the procurement of software by government entities.

Last, the Copyright Law (Article 69.2) provides for the ability to claim damages in copyright infringement cases, but the amount of claimed compensation cannot exceed the amount of the license fee that the right holder would normally receive. This does not provide any deterrence against piracy, but instead encourages infringements, since infringers know that if they get caught they will likely not have to pay anything more than a regular licensing fee.