

ESTONIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Several copyright industries, and in particular the software industry, are concerned about the weak overall enforcement in Estonia.¹ The software piracy rate was estimated at 48% in 2011, far higher than the Western European region.² IPR enforcement is not a priority for the government and recent efforts to amend relevant laws threaten to weaken protections for rights holders. Notably, the Ministry of Justice has proposed amendments to the Penal Code that would require evidence of several additional criteria in order to qualify certain forms of wilful copyright piracy, such as enterprise end-user software piracy, for criminal liability. Depending on how these new criteria are interpreted this could, in effect, decriminalize many forms of copyright piracy that are currently criminal offenses in Estonia. A draft amendment has been approved by the government and has been sent to the Parliament for enactment. The Ministry of Justice has also initiated an effort to codify the IPR laws and to create a new Copyright Act. An initial draft appears to impose limitations on some of the rights of copyright holders that exist under current law.

These legislative developments are compounded by a dismal record on enforcement. Resources have shrunk over the past few years, from four special IPR units, comprised of four or five dedicated officers devoted to IPR enforcement, to only one officer specializing in IPR enforcement (and with additional, non-IPR responsibilities as well). There are virtually no examples of recent *ex officio* enforcement actions, and for a variety of reasons, most criminal actions that were initiated, were terminated during the investigation phase. Those investigations that do move forward to prosecution are often terminated on the grounds of a “lack of public interest” even when there is evidence of substantial damages to rights holders; many of those investigations take over one year before they are terminated. Only one or two criminal cases per year are brought to court, resulting in a judiciary that is largely unfamiliar with presiding over cases involving copyright piracy.

Civil proceedings in Estonia are complicated, and costly. The burden of proof for rights holders is quite high. There are no punitive or preventive damages provided by Estonian law. For example, damage awards against enterprises that are found to have used unlicensed software are, at most, the license fee that would have been paid during the period of infringing activity. This, of course, provides no deterrence against using unlicensed software.

This situation runs counter to the aim of the Government of Estonia to develop a knowledge-based economy. Rather than protecting rights holders and incentivizing the risks and rewards of creativity and innovation, Estonia’s dismal record and worsening trends on IPR protection are stifling the development of new products and new delivery models and businesses in Estonia.

Estonia should, as an urgent matter, take steps to: improve the legal framework for IPR protection, including by ensuring that copyright piracy can be criminally prosecuted and that there is a legal basis for deterrent penalties and damage awards; increase resources and training for IPR enforcement; and collaborate with rights holders to conduct educational campaigns to promote greater public awareness of the importance of IPR to the Estonian economy.

¹For more details on Estonia’s Special 301 history, see previous years’ reports at <http://www.iipa.com/countryreports.html>. For the history of Estonia’s Special 301 placement, see <http://www.iipa.com/pdf/2014SPEC301HISTORICALCHART.pdf>. For a discussion of IIPA’s 2014 Key Initiatives and Challenges, see IIPA, *2014 Special 301 Submission*, at <http://www.iipa.com/pdf/2014SPEC301COVERLETTER.pdf>.

²Data on software piracy rates and commercial values are taken from the 2011 BSA Global Software Piracy Study at www.bsa.org/globalstudy. This study assesses piracy rates and the commercial value of unlicensed software installed on personal computers during 2011 in more than 100 markets. The study includes a detailed discussion of the methodology used. BSA plans to release an updated study in the second quarter of 2014.

