



September 30, 2003

*Electronic filing to fr0086@ustr.gov*  
Ms. Carmen Suro-Bredie  
Chair, Trade Policy Staff Committee  
Office of the U.S. Trade Representative  
1724 F Street NW  
Washington, DC 20508

Re: Public Comments on the Caribbean Basin Economic  
Recovery Act (CBERA) and the Caribbean Basin  
Trade Partnership Act (CBTPA), 68 Fed. Reg. 49537  
(Aug. 18, 2003)

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) takes this opportunity to respond to the TPSC's request for comments concerning the operation of the Caribbean Basin Initiative (including comments on the performance of each CBERA and CBTPA beneficiary country), under the criteria described in certain sections of the CBERA, as amended. Section 212(f) of the CBERA, as amended, requires the President to submit a report to Congress regarding the operation of the CBERA and CBTPA on or before December 31, 2001, and every two years thereafter. Please note that IIPA's filing today supplements a submission on CBERA which the IIPA made to the U.S. International Trade Commission earlier this year.<sup>1</sup>

Comprehensive, modern copyright laws, combined with effective enforcement of those laws, are the twin pillars necessary for copyright industries – both U.S. and local industries – to flourish. The copyright standards in the CBERA (as amended) have provided, and can continue to provide, a good foundation for these eligible countries to improve both their copyright laws and enforcement mechanisms, in order to protect both their domestic rightholders as well as foreign rightholders. However, the bottom line is that the CBERA countries must do more to meet their current copyright and enforcement obligations.

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<sup>1</sup> See IIPA, June 30, 2003 Submission to the U.S. International Trade Commission on its Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries, Consumers and Beneficiary Countries, Investigation No: 334-227 (June 30, 2003), available at [http://www.iipa.com/rbi/2003\\_Jun30\\_CBERA\\_ITC\\_REPORT.pdf](http://www.iipa.com/rbi/2003_Jun30_CBERA_ITC_REPORT.pdf).

## **About the IIPA**

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. IIPA is comprised of six trade associations (listed below), each representing a significant segment of the U.S. copyright community. These member associations represent over 1,300 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media). The copyright industries remain a vibrant force in the American economy.<sup>2</sup>

## **Copyright Law and Enforcement Standards in the CBERA, as Amended**

The 1983 enactment of the CBERA<sup>3</sup> was a pivotal moment in time regarding the use of U.S. trade policy to promote exports of products and services protected by copyright, patents, trademarks, and other intellectual property laws. For the first time, Congress explicitly linked trade benefits to intellectual property protection by beneficiary countries. Under CBERA program, countries can only receive trade preferences if they satisfy statutory criteria which include intellectual property rights (IPR) standards. The CBERA IPR provisions contain both mandatory and discretionary criteria.

Over three years ago, Congress passed the Trade and Development Act of 2000 which enhanced trade benefits for Caribbean and Central American countries.<sup>4</sup> Known as the United States-Caribbean Basin Trade Partnership Act (CBTPA), Title II of this law amended the CBERA to authorize the President to designate countries in this region to be eligible for preferential tariff treatment for certain articles by (1) extending duty-free and quota-free treatment for certain textile and apparel goods and (2) extending NAFTA-equivalent tariff treatment to a number of other products previously excluded from the CBERA program. In order to qualify for these benefits, the countries must meet certain designation criteria. Specifically, to be a “CBTPA beneficiary country,” a country must meet the original CBERA criteria which include two IPR criteria, three mandatory and two discretionary.

First, regarding the mandatory criteria, the CBERA requires that beneficiary country status be denied if such country has nationalized, expropriated or otherwise seized ownership or

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<sup>2</sup> According to *Copyright Industries in the U.S. Economy: The 2002 Report*, prepared for IIPA by Economists, Inc., the core U.S. copyright industries accounted for 5.24% of U.S. GDP or \$535.1 billion in value-added in 2001. In the last 24 years (1977-2001), the core copyright industries’ share of GDP grew at an annual rate more than twice as fast as the remainder of the economy (7.0% vs. 3.0%). Also over these 24 years, employment in the core copyright industries more than doubled to 4.7 million workers (3.5% of total U.S. employment), and grew nearly three times as fast as the annual employment growth rate of the economy as a whole (5.0% vs. 1.5%). In 2001, the U.S. copyright industries achieved foreign sales and exports of \$88.97 billion, a 9.4% gain from the prior year. The copyright industries’ foreign sales and exports continue to be larger than almost all other leading industry sectors, including automobiles and auto parts, aircraft, and agriculture. IIPA’s 2002 report can be accessed in its entirety at [http://www.iipa.com/copyright\\_us\\_economy.html](http://www.iipa.com/copyright_us_economy.html).

<sup>3</sup> See Section 212 of the CBERA, Pub. L. No. 98-67 (codified at 19 U.S.C. 2701 et seq.).

<sup>4</sup> Trade and Development Act of 2000, Pub. L. 106-200 (May 18, 2000).

control of property owned by a U.S. citizen (19 U.S.C. § 2702(b)(2)(A)) or has taken steps to repudiate or nullify any intellectual property (19 U.S.C. § 2702(b)(2)(B)). Furthermore, if a government-owned entity broadcasts U.S. copyrighted material, including films or television material, belonging to United States copyright owners without their consent (19 U.S.C. § 2702(b)(5)), the President shall not designate that country.<sup>5</sup> Second, beneficiary countries must meet the two discretionary IPR criterion of the CBERA, found 19 § U.S.C. 2702(c)(9) and (10). According to these provisions, the President shall take into account

(9) the extent to which such country provides under its law adequate and effective means for foreign nationals to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark, and copyright rights;

(10) the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted materials, including films or television material, belonging to United States copyright owners without their express consent; [...]

The criterion requiring “adequate and effective” protection of intellectual property rights, including copyright protection and enforcement, is a flexible one that changes over time toward higher standards.

The U.S. Congress expanded the level of the intellectual property rights provisions when it passed the CBTPA in 2000. There, Congress took the opportunity to spell out what it believes is covered by the “adequate and effective” criteria. Section 213(b)(5)(B)(ii) of the CBTPA (codified at 19 U.S.C. 2703(b)(5)(B)(ii)) defines the IPR-related discretionary eligibility criteria to include:

the extent to which the country provides protection of intellectual property rights consistent with or greater than the protection afforded under the Agreement on Trade-Related Aspects of Intellectual Property Rights described in section 101(d)(15) of the Uruguay Round Agreements Act.

The reference to “greater than” TRIPS is explained in the conference report as follows:

With respect to intellectual property protection, it is the intention of the conferees that the President will also take into account the extent to which potential beneficiary countries are providing or taking steps to provide protection of intellectual property rights comparable to the protections provided to the United States in bilateral intellectual property agreements.<sup>6</sup>

Accordingly, each country was to satisfy, again, all the CBERA criteria as well as the explicit TRIPS-or-greater criteria and bilateral IPR agreement standards in order to enter the CBTPA. However, as a matter of political reality, the President declared all 24 CBERA beneficiaries as eligible CBTPA beneficiary countries on October 2, 2000.<sup>7</sup>

Simply put, many of the CBTPA-eligible countries fail to meet the higher IPR standards – substantive levels as well as enforcement performance -- elaborated under the CBTPA, as

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<sup>5</sup> IIPA believes that the CBI program would be strengthened further if the statute were amended to classify explicitly the violation of a trade agreement as a mandatory criterion.

<sup>6</sup> See Conference Report of the House of Representatives on the Trade and Development Act of 2000 [to accompany H.R. 434], Joint Explanatory Statement of the Committee of Conference on Subtitle B—Trade Benefits for Caribbean Basin Countries.

<sup>7</sup> “USTR Announces AGOA/CBI Country Designations,” Press Release 00-67, Office of the United States Trade Representative, available at <http://www.ustr.gov/releases/2000/10/00-67.pdf>. See also 65 Fed. Reg. 60236 (Oct. 10, 2000).

amended. All countries<sup>8</sup> in this region should be on-notice that they must take appropriate action, both in terms of reforming their legislation as well as enforcing their laws, to meet their “part of the bargain” in receiving these unilateral preference trade benefits. After all, some of these countries have been receiving CBI trade benefits since the mid-1980s.

## **Copyright Piracy in the Central American and Caribbean Region**

IIPA believes that the most immediate problem in the Central American and Caribbean, as is the case throughout the Americas, is the failure of many of these countries to adequately enforce their existing copyright laws. High levels of piracy — of films, television programs, home videocassettes, music, sound recordings (audiocassettes and CDs), business software, and entertainment software on all platforms, textbooks, trade books, reference and professional publications and journals -- hurt both U.S. and local creators.

Strong and comprehensive copyright protection and enforcement are the key ingredients to robust economic growth and development. Copyright gives creators the basic property rights that enable them to authorize and control the copying, distribution, performance and display of the works they create. Inadequate laws and ineffective anti-piracy enforcement adversely affects employment, job creation and revenues, both in the United States as well as abroad. With many of these U.S. companies increasingly relying on foreign licensing and sales revenues, piracy combined with inadequate enforcement, has become a major impediment to this continued revenue growth and has become the major market access barrier for the copyright industries. The challenges faced by the copyright industries and national governments to enforce copyright laws grow exponentially as the forms of piracy shift from hard-goods and toward digital media and unauthorized electronic transmissions. Over the last two years in particular, the unauthorized “burning” of CDs has grown rapidly throughout Latin America and the Caribbean, thus challenging the ability of legitimate businesses engaged in the creation and distribution of copyright materials – sound recordings, computer software, videogames, books, and to a lesser extent, DVDs of audiovisual works – to compete against these pirated products.

Inadequate and ineffective copyright enforcement has failed to stem this piracy problem and continues to distort trade in this region. Criminal and civil justice systems must work in a transparent and expeditious manner and apply deterrent penalties and remedies. Here is a summary of the problems our industries face in this region:

- For the motion picture industry, the unauthorized reception and retransmission of U.S. domestic satellite signals in Central America and the Caribbean region remains a priority concern. Without authorization from copyright owners, cable system operators, broadcast television, hotels, resorts, bars and homeowners have erected satellite dishes to intercept programming intended for reception with the United States. In other cases, videos and DVDs are used at the station head-end to provide broadcast or cablecast programming, all done without authorization. This signal theft harms the theatrical exhibition of motion pictures in

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<sup>8</sup> The following countries are the current beneficiaries of the CBI, and are CBERA/CBTPA-eligible: Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Montserrat, Netherlands Antilles, Nicaragua, Panama, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago and British Virgin Islands.

these markets and slows the development of a legitimate home video market as well. In addition, video piracy at the retail level remains a problem throughout the region.

- Business software piracy involves counterfeiting, resellers, mail order houses, bulletin boards, and end-user piracy. The greatest threat comes from end-user piracy, where typically a corporate or institutional user copies software onto the hard disks of many more computers than the number authorized. End-user piracy occurs in government, education, and business enterprises throughout this region. It is imperative that software producers have access to both criminal and civil *ex parte* search remedies.
- Piracy of sound recordings and music remains extremely high in this region. While audiocassette piracy (analog) had been the preferred business of pirates in recent years, the industry reports that the levels of CD piracy (digital) has risen dramatically throughout this region—particularly on CD-R. It is imperative that governments of Central American and Caribbean nations demonstrate through concerted efforts that it is simply unacceptable to offer pirate products for sale. Such a commitment places a premium on the ability and willingness of police to act in an *ex officio* manner, and on prosecutors and courts dealing with piracy to act in a serious manner. In addition to hard goods piracy, internet-based piracy is quickly advancing, and the legislation and practices of the countries in the region need to respond to this new challenge.
- The major forms of piracy afflicting the U.S. book publishing industry in the region are commercial and photocopying piracy. Photocopying shops near universities often fill requests for illegal reproductions of entire textbooks. This problem has been reported throughout much of Central America as well as the Dominican Republic.
- The U.S. entertainment software industry suffers from inadequate enforcement by governmental and judicial authorities in the region. For example, Panama has served as a major transshipment point for pirated and counterfeit entertainment software products on all platforms, including cartridges, personal computer CD-ROMs and multimedia products.

The IIPA provided updates on the copyright situation in four CBERA countries in the context of the 2003 Annual Special 301 Review. A chart outlining a conservative estimate of almost \$50 million in estimated trade losses due to piracy of U.S. copyrighted materials in just three of the CBERA countries appears below:

**2002 ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY (in millions of U.S. dollars)  
AND PIRACY LEVELS IN SELECTED COUNTRIES**

Country	Motion Pictures		Records & Music		Business Applications <sup>9</sup>		Entertainment Software		Books	TOTAL LOSSES
	Loss	Video Piracy Level	Loss	Piracy Level	Loss	Piracy Level	Loss	Piracy Level	Loss	
Bahamas	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Costa Rica	2.0	40%	7.0	50%	8.3	61%	NA	NA	NA	15.7
Dominican Republic	2.0	60%	6.9	65%	3.6	61%	NA	NA	1.0	13.5
Guatemala	2.0	60%	4.8	NA	10.6	61%	NA	NA	NA	19.9

NA: Not Available

Copies of IIPA's 2003 country reports (summarized below) can also be accessed at the IIPA website at <http://www.iipa.com/countryreports.html>. The following paragraphs summarize the problems faced by U.S. copyright industries in these four countries.

**DOMINICAN REPUBLIC:** The Dominican Republic remains on the USTR Special 301 "Priority Watch List" and IIPA continues to request high-level bilateral engagement between the U.S. and the Dominican Republic to address the longstanding problems of high piracy levels and erratic enforcement experienced by some of our industries. In June 1999, the IIPA filed a petition with the U.S. government to initiate a review under the Generalized System of Preferences (GSP) and CBI trade programs of the eligibility of the Dominican Republic to participate in these programs due to its failures to provide adequate effective copyright protection for U.S. copyright owners and to provide equitable and reasonable market access. The U.S. government accepted IIPA's petition, a public hearing was held in 2000, and another GSP hearing is scheduled for October 7, 2003.<sup>10</sup>

IIPA notes that the leverage provided by this GSP/CBI review did help foster legislative progress in the Dominican Republic. Specifically, the Dominican Republic adopted a new copyright law in October 2000, fulfilling many years of effort to replace its inadequate 1986 copyright law. That legislative achievement represented success in advancing higher levels of substantive copyright protection as well as expanding the battery of tools available for criminal, civil and administrative copyright enforcement in the Dominican Republic. However, progress on actual enforcement measures to deter piracy in-practice has been slow, and severe piracy problems remain for some of the copyright industries. IIPA and its members intend to participate in the GSP hearings scheduled for October 7, 2003,<sup>11</sup> as well as the October 8, 2003

<sup>9</sup> BSA estimates for 2002 are final and reflect losses to U.S. publishers only; they do differ from the BSA trade loss numbers which it releases in its global survey. The BSA global numbers reflect losses to (a) all software publishers in that country and (b) losses to distributors/retailers in that country. BSA's latest report appears in its *Eighth Annual BSA Global Software Piracy Study* (2003), which is available at [www.bsa.org](http://www.bsa.org).

<sup>10</sup> See IIPA, Notice of Intent to Testify and Pre-hearing Brief in the Dominican Republic GSP Review, Case 012-CP-02, submitted to the GSP Subcommittee, Sept. 26, 2003, available at [www.iipa.com/gsp/2003\\_Sep26\\_GSP\\_DomRep.pdf](http://www.iipa.com/gsp/2003_Sep26_GSP_DomRep.pdf).

<sup>11</sup> See USTR, Generalized System of Preferences: Notice Regarding the 2001, 2002 and Ongoing Practice Reviews, 68 Fed. Reg. 52437 (Sept. 3, 2003).

hearings on the U.S.-Dominican Republic Free Trade Agreement.<sup>12</sup> We highlight for your attention:

- The motion picture industry reports that broadcast piracy in the Dominican Republic remains the worst in the entire hemisphere. Administrative authorities (including the copyright office and the telecommunications authority) have met with difficulty in taking actions against certain television broadcast stations. In April 2003, a new anti-piracy campaign was initiated in which these authorities began inspecting broadcast stations to verify they had contracts to authorize broadcasting of all, including U.S., programming. After some delay, these authorities presented criminal complaints to the prosecutors. A criminal case was submitted against one of the stations, and unfortunately, the first hearing scheduled for August 20, 2003, was postponed until October 20, 2003. At the same time, one of the more notorious broadcast stations continues to steal U.S. programming with impunity.
- The motion picture industry is also concerned about the fair and transparent handling of some its video piracy cases, which have, until recently, been progression rather smoothly. This involves concerns over preferences given to political and family connections over even-handed law enforcement extends to video as well as television rights. In a series of resolutions issued July 11, 2003 (Resolutions 4-03, 5-03, 6-03, 7-03), the Ministry of Culture disallowed motion picture studios from determining their own method of distribution and eliminated the Copyright Office's (ONDA) ability to independently investigate copyright violations of audio-visual works (administratively weakening the copyright law, Law 65-00). These decisions showed the government's predisposition towards political and personal considerations over its legal commitments. All the copyright industries were very concerned about these regulations and the adverse precedent they might create to undermine enforcement actions. After much bilateral attention, the Ministry of Culture revised its July 2003 regulations in August 2003, in part, to correct two glaring problems: that the motion picture studios were not considered copyright holders (thus greatly interfering with their ability to take anti-piracy actions) and that ONDA lost its *ex officio* inspection authority.
- The recording industry continues to experience severe roadblocks at the judicial level. So far, 70 criminal cases for copyright infringement of sound recordings brought were pending trial in August 2003; 15 of which were added during this year alone. Since 1999, the RIAA has been successful in obtaining only 16 prosecutions, including prison sentences, court fines and restitution in the amount of US\$122,000. All these adjudicated cases are on appeal, and no review dates have been scheduled by the Court of Appeals. As a result, there is in fact no practical deterrence against music piracy in the Dominican Republic. The 2000 copyright law provides more tools for Dominican Republic agencies and rightholders to take concrete action against piracy. The Executive Branch has failed, for example, to fulfill its promise to coordinate action against piracy with the new measures by failing to develop a promised interagency effort to coordinate actual anti-piracy actions by the appropriate agencies and by failing to adequately support ONDA. In addition, there continues to be little encouragement to pursue prosecutions under the

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<sup>12</sup> See USTR, Request for Comments and Notice of Public Hearing Concerning Proposed United States-Dominican Republic Free Trade Negotiations, 68 Fed. Reg. 51823 (Aug. 28, 2003). IIPA intends to request to appear at this hearing, which is tentatively scheduled to begin on October 8, 2003.

law. The judicial system needs to bring about swifter resolution to pending cases, both newly entered and awaiting on appeal, in order to install confidence in their system and create a much needed deterrent in the Dominican Republic.

- Although the business software industry has reported some enforcement successes in the Dominican Republic, piracy levels of its copyrighted works remain high (61%) as well. BSA runs a campaign involving criminal actions, administrative actions as well as civil actions. With respect to criminal/administrative actions this year, BSA reports it continues to be able to work very effectively with ONDA and the Fiscalia (prosecutors) in this new enforcement regime. During 2002, ONDA and the Fiscalia were proactive on software industry cases, with ONDA conducting inspections and seizures and referring evidence to the Fiscalia for criminal prosecution. Working with Dominican prosecutors in the Fiscalia offices, BSA achieved 12 convictions of software piracy in recent years. Other prosecutions for piracy and counterfeiting are working their way through the Dominican courts. Since the beginning of 2003, ONDA continues to be helpful and supportive in performing inspections not only in Santo Domingo but also in other cities such as Santiago, La Vega, San Pedro de Macorís, La Romana, and San Francisco de Macorís.

IIPA has been informed that very recently, the Dominican authorities have appointed a new specialized IPR prosecutor, with nationwide authority.

**THE BAHAMAS:** In January 2000, the Government of the Bahamas implemented its copyright law. The law included an overbroad compulsory license that violated numerous international copyright standards and established an unacceptable precedent. Cable operators were authorized to downlink and retransmit pay television signals from the U.S., including via the Internet. Bilateral negotiations between the governments took place in 2000 and The Bahamas agreed to narrow the scope of its compulsory license to permit rebroadcast via cable only of copyright works that are broadcast free-over-the-air. Shortly thereafter, The Bahamas took its first steps toward correcting these problems by introducing amending legislation, but the legislation has stalled and other regulatory issues have not been satisfactorily resolved. Close attention must be paid to two issues in particular: (1) monitoring the adoption of the copyright amendment legislation presented to parliament, and (2) ensuring that consultations between the Copyright Royalty Tribunal and U.S. rightholders result in more equitable remuneration for the compulsory licensing of free-over-the-air broadcasts of copyrighted works.

Prompt and effective implementation of bilateral agreements is a primary concern to all the U.S. copyright-based industries. Because of the severe lack of progress by the Bahamas in implementing its copyright-related commitments, the U.S. Trade Representative elevated it to the Special 301 “Priority Watch List” on May 1, 2003.

**COSTA RICA:** Effective criminal copyright enforcement is the predominant problem in Costa Rica. Prosecutorial and judicial delays and the lack of specialized investigators in copyright cases present particular problems, although in early 2002, the Costa Rican government did announce steps to improve IPR enforcement. On the legislative front, Costa Rica passed intellectual property legislation in October 2000 (over the objection of the copyright industries) which amended certain procedures and sanctions in intellectual property rights cases. Amendments to improve criminal sanctions for copyright infringement and to enhance the

enforcement infrastructure remain pending. Costa Rica presently appears on USTR's Special 301 "Watch List."

**GUATEMALA:** The copyright industries continue to confront high piracy levels and inadequate copyright enforcement in Guatemala. Legislative reform in 2000 offered both positive steps forward and big steps backward. Amendments to the Guatemala copyright law (Decreto 56-2000) entered into effect on November 1, 2000. On a positive note, the law reinstated "public" prosecution of copyright crimes; this issue had been at the top of the copyright industries' agenda for years. The Decree also implemented certain requirements of the WIPO treaties. Unfortunately, the amendments also seriously weakened existing civil and criminal remedies; criminal penalties were substantially decreased, and the statutory damages provision was removed entirely. Unfortunately, the copyright law amendments have done little to improve copyright enforcement in-practice in Guatemala. The prosecutors are overburdened and understaffed. The software industry reports that there is no effective way to maintain the confidentiality of a civil *ex parte* search petition, thus completely undercutting the usefulness of this TRIPS-required tool. Guatemala presently is on USTR's Special 301 "Watch List."

### **Copyright Law Reform in the CBERA Countries**

Copyright protection accomplishes a wide variety of public goals: it rewards creators; it develops local economies; it creates local jobs and income; it promotes foreign investment; it generates tax revenues; it establishes a structure for commercial practices; and it supports integration with the world trading system. In recent years, several Central American and Caribbean nations have taken positive steps toward achieving this goal by amending their copyright laws or passing entirely new laws. For example, we are aware that the Bahamas, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, Panama, St. Lucia and Trinidad & Tobago have passed new copyright law legislation and/or amendments in recent years.

One of the copyright industries' most critical substantive challenges is to ensure that levels of protection available in any country extend to the important changes made by digital, networked environments. In order for protection to be "adequate and effective," modern copyright laws must respond to this fundamental change by providing that creators have the basic property right to control the reproduction, distribution and transmission of their creations, whether those works are in analog or digital form and whether they are distributed as permanent copies or via transmission over electronic networks like the Internet. It is no longer sufficient, therefore, in the Internet and digital world, that countries merely meet their obligations under the WTO TRIPS Agreement.

The new means by which protected works can be reproduced digitally and globally transmitted electronically without authorization has given rise to the negotiation of the two new "Internet" treaties under the auspices of the World Intellectual Property Organization (WIPO). The WIPO Copyright Treaty (WCT) entered into force on March 6, 2002, and the WIPO Performances and Phonograms Treaty (WPPT) entered into force on May 20, 2002 and together they provide the legal infrastructure for this new digital and Internet environment. The U.S.

government has been working at all levels to encourage countries to sign, ratify and implement both WIPO Treaties.<sup>13</sup>

Of the CBERA beneficiary countries, only Costa Rica, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, Panama and St. Lucia have deposited their instruments of ratification/accession with WIPO. All countries must implement these new obligations and IIPA again strongly recommends that the U.S. government strongly urge the other CBERA countries to promptly ratify these two WIPO treaties and implement their obligations into domestic law.

### **A Note on the Regional FTAA and Bilateral FTA Processes**

A brief word is needed about regional trade developments which affect the CBERA countries. The U.S. government, supported by the U.S. copyright industry, is seeking specific obligations (both substantive and enforcement-related) in the IPR chapter of the Free Trade Area of the Americas (FTAA). IIPA and its members are on-the-record with respect to the high levels of protection we believe should be included in the FTAA IPR Chapter,<sup>14</sup> and we continue to support progress in the FTAA context.<sup>15</sup> The FTAA negotiations offer an unparalleled opportunity to articulate strong and unambiguous commitments to fight piracy and to pave the way for growth in the production of cultural materials and new technology, and growth in e-commerce, by creating standards that will ensure their protection in the on-line environment. Similarly, strong and comprehensive copyright-related provisions must be included in the IPR chapter in the U.S-Central American Free Trade Agreement (CA-FTA).

### **Conclusion**

IIPA believes that one of the most immediate, economic problems in this region is the failure of many of the Caribbean region countries to adequately and effectively enforce their current copyright laws. It is important to keep in mind that domestic copyright law reform, while critical to meeting the IPR standards of the CBERA (as amended), is not sufficient in and of itself. We look forward to working with the Administration and Congress to increase the effectiveness of this important trade policy tool to tackle copyright piracy and improve copyright reform efforts in this region.

Respectfully submitted,



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<sup>13</sup> Office of the U.S. Trade Representative, Press Release on the 2003 Special 301 Report, May 1, 2003 at page 5, available at <http://www.ustr.gov/reports/2003/execsummary.pdf>.

<sup>14</sup> See IIPA, Public Comments on the Second Draft Consolidated Text of the Free Trade Area of the Americas (FTAA) Agreement, February 27, 2003, available at [http://www.iipa.com/rbi/2003\\_Feb27\\_FTAA.pdf](http://www.iipa.com/rbi/2003_Feb27_FTAA.pdf).

<sup>15</sup> See IIPA, Position Paper to the FTAA Americas Business Forum VIII, submitted August 29, 2003, for the November 2003 event to be held in Miami, Florida, available at [http://www.iipa.com/rbi/2003\\_Aug29\\_FTAA\\_ABF\\_Miami\\_Position\\_Paper.pdf](http://www.iipa.com/rbi/2003_Aug29_FTAA_ABF_Miami_Position_Paper.pdf).