

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2004 SPECIAL 301 REPORT

ESTONIA

EXECUTIVE SUMMARY

Special 301 recommendation: Estonia should be added to the Special 301 Watch List in 2004.

Overview of key problems: In Estonia over the past year, there has been virtually no improvement whatsoever with enforcement activities in fighting all forms of piracy. Since the government's swift actions in the notorious Kadaka Market in 2000, law enforcement authorities have failed to take any effective actions against those involved in the continuous large-scale trade in pirate goods in the Tallinn harbor area (Sadamarket and Merkeskus being the best known distribution points) and in the Kadaka Market where pirate traders operate openly, without any fear of police action. Similarly, those involved in hand-to-hand piracy and Internet piracy operate with impunity, especially in FTP (file transfer protocol) servers. Industry reports indicate that a new optical disc plant may have arrived in Estonia. Effective enforcement measures, such as well prepared raids, expeditious prosecution and deterrent sentencing, should be taken. There has been no evidence of any form of effective border enforcement against the vast amounts of pirate products entering the country from the eastern and southern borders. Furthermore, there has been no evidence of basic communication and co-operation with respect to pirate goods between the police and customs which is an essential and basic requirement in any government program that is serious about tackling piracy.

Recent legal reforms have left several critical problems in the copyright law. Although the 2002 amendments to Estonia's 1992 Copyright Law did improve some measures, several key standards for effective copyright protection in the digital age remain missing. Substantive obligations under TRIPS are still missing, such as the failure to provide a civil *ex parte* search remedy. Estonia has the distinction of being the only EU accession country which has not ratified the two 1996 WIPO Internet treaties. Furthermore, U.S. record producers are still not protected equally with Estonian and other international producers, creating a discriminatory situation. The Estonian government is contemplating additional copyright law amendments in early 2004. Copyright developments and additional legislation affecting copyright enforcement (such as the Trade Law, etc.) planned for 2004 should be closely monitored for compliance with Estonia's bilateral and international obligations.

Actions which the Estonian government should take in 2004

- Publicly demonstrate the political will to implement effective IPR law enforcement and follow up as a matter of priority in co-operation with the right holders organizations;
- Significantly strengthen border enforcement inspections and seizures, to stop the importation and transshipment of pirated goods from Russia and Belarus (via Latvia and Lithuania) to other countries in Eastern Europe (especially into Finland and other Scandinavian countries);

- Improve criminal enforcement by increasing the number of police actions, bringing prosecutions, and issuing deterrent sentences;
- Encourage enforcement authorities to cooperate actively with rights holders when combating copyright piracy;
- Establish system at the borders to track the importation of blank optical media products;

Legislation

- Ratify the WIPO Performances and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT);
- Fully implement the WIPO treaties' obligations into national law (there is a copyright law reform effort underway);
- Increase the levels of sanctions available in the Misdemeanor Act because they are too low to be deterrent;
- Amend the law to provide for civil *ex parte* searches, as required by TRIPS (this apparently will be introduced as part of a new Civil Procedural Code);
- Amend the law to provide statutory damages, a TRIPS-compatible remedy which assists courts in awarding damages in civil copyright infringement actions;
- Withdraw Estonia's reservation to Article 5 of the Rome Convention.

ESTONIA
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1999 – 2003 ¹

INDUSTRY	2003		2002		2001		2000		1999	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music	6.5	60%	9.0	60%	9.0	60%	9.0	60%	9.0	70%
Motion Pictures	2.0	35%	2.0	30%	1.5	40%	2.0	60%	NA	60%
Business Software Applications ²	NA	NA	4.2	53%	3.3	53%	NA	69%	NA	72%
Entertainment Software	NA	60%	NA	NA	NA	90%	3.7	98%	NA	NA
Books	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
TOTALS ³	NA		15.2+		13.8+		14.7+		9.0+	

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2004 Special 301 submission, available at <http://www.iipa.com/pdf/2004spec301methodology.pdf>.

² BSA's 2003 piracy statistics were not available as of February 13, 2004, and will be made available in the near future and posted on the IIPA website at <http://www.iipa.com/>. BSA's statistics for 2003 will then be finalized in mid-2004 and also posted on the IIPA website. In IIPA's February 2003 Special 301 filing, BSA's 2002 estimated losses of \$5.7 million and levels of 52% were also identified as preliminary; BSA's revised 2002 figures are reflected above. BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. business software publishers in Estonia, and differ from BSA's trade loss numbers released separately in its annual global piracy study which reflect losses to (a) all software publishers in Estonia (including U.S. publishers) and (b) losses to local distributors and retailers in Estonia.

³ In IIPA's 2003 Special 301 submission, IIPA estimated that total 2002 losses to the U.S. copyright-based industries in Estonia were \$16.7 million. IIPA's revised 2002 loss figures are reflected above.

In September 2003, the U.S. government welcomed the European Commission's decision which endorses a political understanding preserving the U.S. bilateral investment treaties (BITs) with several EU-accession countries, including Estonia.⁴ This BIT is important, as it provides a broad provision on national treatment.

COPYRIGHT PIRACY IN ESTONIA

Optical disc (OD) piracy: The Estonian market remains flooded with illegal OD product manufactured in other countries, notably Russia, Ukraine and Belarus, imported also through the neighboring Baltic States. EOCP reports that the large-scale import of pirated goods continues. For example, in April 2003, the police found some 22,000 pirate optical discs containing music, films and games in an apartment in Tartu City in southeastern Estonia (see the discussion below). The country's besieged industries face the added problem of a rapid growth of localized/domestic unauthorized reproduction onto CD-Rs. The share between the home-burned CD-Rs and manufactured CDs is estimated to be 55%/45% respectively. BSA reports that CD piracy is still at the "cottage industry" stage in Estonia, and does not appear to be well organized. The failure of police to use their *ex officio* authority and sporadic actions by customs officials has allowed pirate material to flow unimpeded into and out of Estonia by hand-carry, road vehicle and by road.

A startling new development is a reliable report that Estonia may be acquiring a CD line. The recording industry has the information that the Estonian company, Baltic Media Manufacturing, purchased a CD-line from the Swedish plant, and was allocated a mould code in December 2003. However, there is no further information about the number of lines etc available. This fact in itself clearly calls for the need of the regulation of the manufacture and distribution of optical discs.

Estonian customs has not contributed to determining the main smuggling routes of pirate goods and the extent of transshipment of pirated goods through Estonia. Industry reports indicate that there have been a few transit cases in which Russian music repertoire was intercepted in Estonia. The recording and motion picture industries confirm that the main transshipment location is Finland. From there, the pirated products are allowed unfettered access to other European countries. The industries had hoped that the October 2000 promise by customs officials to heighten border measures, especially against the tourist-related "suitcase" piracy in Tallinn's passengers' harbor, would provide effective. Unfortunately, customs raids against "suitcase" piracy are extremely rare and too sporadic to be an effective tool.

Internet piracy: Internet piracy in Estonia during 2003 continued to be a serious and increasing concern to the copyright industries. The most prevalent forms of Internet piracy include: (a) mail order piracy, which involves the Internet as a marketplace and the postal

⁴ See U.S. State Department, "U.S. Welcomes EC Decision on Bilateral Investment Treaties," September 3, 2003 at usinfo.state.gov. Previous IIPA Special 301 country reports on Estonia at <http://www.iipa.com/countryreports.html>. For more information on Estonia's limited history under Special 301, see IIPA's 2004 Special 301 Appendix E (<http://www.iipa.com/pdf/2004SPEC301HISTORICALSUMMARY.pdf>). Estonia participates in the U.S. Generalized System of Preferences (GSP) trade program; during the first 11 months of 2003, \$27.9 million worth of Estonian goods (or 17.7% of Estonia's total exports to the U.S.) entered the U.S. under the duty-free GSP code, representing a 105% increase over the same period in the previous year.

service to deliver illegal goods; (b) direct download piracy from file transfer protocols (FTP) servers; (c) peer-to-peer and file-sharing networks such as KaZaA and StreamCast. EOCP reports that it sent a total of 166 cease-and-desist letters to the websites consisting of illegal material in 2003, all of which were removed by the Internet service providers (ISPs). Information on about 20 illegal websites was sent to other organizations. During 2003, BSA continued to cooperate with a number of Estonian ISPs with regard to the removal of web pages offering infringing material. During the course of 2003, BSA identified 32 sites offering infringing material, and sent 29 warning letters to ISPs, resulting in 15 pages being taken down by ISPs, and a further 14 pages being removed by content providers. However, BSA is concerned with the increasingly prevalent problem caused by the availability of server space on FTP servers, which allows the easy uploading of infringing material for download by third parties, and presents significant enforcement challenges to right holders.

In April 2001, the private sector (including EOCP) concluded a Memorandum of Understanding (MoU) with Estonian Internet Service Providers (ISPs) enabling the effective survey (notice) and removal (takedown) of infringing materials from the Internet. As the 2001 MoU proved useful, especially in the Internet piracy fight, but required updating, the copyright industries groups launched the second set of negotiations with the ISPs to sign another MoU in order to obtain additional cooperation/measures in three areas: (1) free and 24-hour access to all FTP servers, including passwords in protected servers, etc.; (2) the immediate removal of pirated files (the current MoU requires 48 hours' response time); and (3) the identification of FTP users by ISPs. Unfortunately, the negotiations are still pending and the future of the possible new MoU is uncertain. The ISPs have agreed to participate in the round-table organized by EOCP and BSA in the first quarter of 2004.

Piracy levels remain high. Piracy levels for many of the copyright industries in Estonia remain high; there has been no noticeable improvement in the past year. The anti-piracy group EOCP is composed of record, film and entertainment software industries, and works with the business software industry (BSA) in running educational seminars for police and customs officials in Estonia.

Piracy of sound recordings and music remains widespread in Estonia. The continuous in-flow of pre-recorded sound recordings and simultaneous rapid growth of CD-R piracy of music are damaging the legitimate market steadily. Recorded musical works are widely distributed hand-to-hand (mainly on CD-Rs), on the Internet and are still sold in the main markets in Tallinn (the Kadaka Market, Merekeskus and Sadamarket), and along the eastern Estonian border with Russia. The local anti-piracy group EOCP continues to assist the police in developing production identification systems and preparing legal actions and evidentiary material. The estimated level of music piracy was 60% in 2003, with estimated trade losses due to the piracy of sound recordings and musical compositions placed at \$6.5 million. The drop in estimated losses between 2002 and 2003 is not due to a drop in piracy levels, but rather by a decrease in legitimate sales.

The Motion Picture Association of America (MPAA) reports Estonia is a country of considerable concern for audiovisual piracy because of its geographic proximity to Russia. The high piracy level and pirate product production in Russia does have an adverse influence on the Estonian market. Estonia has long been considered by Finnish tourists to be a place where they can stock up on counterfeit goods in the numerous shopping malls located in and around Tallinn. Retail piracy exists, but a growingly prominent sale method by the pirates is to sell their product in shopping malls hand-to-hand, through mail order, and over the Internet. The rate of video piracy in 2003 was placed at approximately 35%. Due to the growth of the market

demand for the DVD format in 2003, the DVD piracy is starting to become a problem. EOCP emphasizes the need of customs control on the borders to be more effective and well organized. Internet piracy, in the form of both web-based marketing and illegal downloading, is becoming a serious concern. The Internet is also being used for the sale of pirate smart cards. Cable and satellite television (smart cards) piracy are also present in Estonia (with estimated piracy rates of 20% and 95% respectively). Annual losses to the U.S. motion picture industry due to audiovisual piracy in Estonia were estimated to be approximately \$2 million in 2003.

The Business Software Alliance (BSA) reports that business software piracy in Estonia takes various forms, including companies using illegal software, the distribution of pirated software by resellers, hard-disk loading, and infringements on the Internet (both digital downloads and hard-good ordering). In October 2003, BSA launched a month-long information campaign to support legalization of business software applications in small to medium-sized business settings. This campaign was mounted in an effort to reduce the consistently high levels of business-use piracy within Estonia.

The entertainment software industry reports that pirate video games continue to be imported from Russia, and are at times shipped through Poland. Pirate products are routinely available for sale at informal markets in the country. The level of enforcement has dropped considerably compared to the level of cooperation received from law enforcement in the previous year. Piracy is rife at Internet cafés where customers are permitted to download and burn pirate material using the cafés' computers.

COPYRIGHT ENFORCEMENT IN ESTONIA

The Estonian government must express the political will to implement effective IPR law enforcement. Furthermore, Estonian enforcement officials, working with industry, must act to stop hand-to-hand piracy, large-scale organized crime operations in the markets and the collectively large-scale losses at the border. Industry is not aware of any national anti-piracy strategy devised by the government.

Minimal police anti-piracy actions: Anti-piracy actions taken by the Estonian police are few and far between. Two serious problems are the low priority of IPR crimes and the lack of co-operation between different police departments.

The local anti-piracy organization EOCP reports that in 2003 it participated in 31 police raids and prepared 59 expert opinions for the police. According to EOCP data, the total amount of pirate products with music, films and entertainment software seized by the police in 2003 was around 40,000 units (including 28,431 CDs, 3,829 DVDs, and 4240 VHS tapes). The EOCP organized five training seminars for the police and customs officials in 2003. EOCP reports that in April 2003, the police raided a residential apartment in Tartu City and discovered some 22,000 pirate CDs and DVDs containing music, films and games, including the music CD-Rs with Finnish repertoire. The unfurnished apartment, located in a relatively upscale area of the city, was clearly used solely for storage purposes. The seized material was sent to EOCP in autumn 2003 and is currently under examination. The recording industry reports that the limited analysis indicates that the seized CDs originated from Russia, likely to be imported through Latvia.

Sadly, where there is localized interest by the police in tackling piracy, there is an absence of central control, coordination and support. As a result, regional incidents are not investigated for the potential of trans-regional links. Further, EOCP's only recourse for assistance is to the Police Prefecture level, as Central Criminal Police have dissociated themselves from this area.

Ineffective border enforcement: As the copyright industries have explained before, all forms of pirated material regularly move between Estonia and neighboring countries due to poor border enforcement. The pirate material is mostly smuggled and (often coming from optical media production facilities in Russia) usually warehoused in Estonia because of poor on-ground enforcement, and then shipped to other European countries. As already discussed, the "suitcase" problem involves foreign tourists purchasing pirated material in Estonian shops and then exiting the country. The problem is most prevalent in shopping malls for (primarily Finnish) tourists in Merekeskus and Sadamarket in the harbor area in Tallinn. The 2001 announcement by the Estonian customs authorities that they would seize the suitcase material was a positive step toward addressing the border enforcement problem. However, both the Estonian customs law and the Finnish copyright law have a personal use importation exception, which has the effect of permitting amounts of pirated materials in personal luggage into Finland.

Estonia did improve its customs code as part of its WTO accession package, giving customs officials the appropriate *ex officio* authority to seize suspicious material without a court order or at the behest of the right holder.⁵ However, the main problem with Customs is that it has no will to deal with IPR cases and faces the lack of resources as fighting with piracy is not a priority for it. EOCP reports that customs anti-piracy efforts are almost non-existent and seized quantities reach up to 10-30 pirated units per raid, which is unacceptably out of balance with the scale of the piracy problem. Customs has still not found the smuggling route of the pirate copies into Estonia either over the eastern or southern borders. There is virtually no cooperation with the police in anti-piracy enforcement—customs officials are not informed of the results of the police raids. The co-operation with the recording and film industry is generally poor and without any results, although some regions like the eastern border shows signs of interest to tackle with the piracy problem. Customs officials admit to problems with the detection of illegal material; hopefully, the training sessions held in recent years will improve this situation. The new 2002 Penal Code also affects customs, which has to impose the penalties following the new law. However, the new law does not affect the core enforcement duties of customs officials.

Customs officials must improve their coordination with the police. In addition, the Estonian government should completely implement the October 2000 decision by customs officials to seize parallel import material with effective border enforcement. Given the reports that Estonia may soon have an optical disc plant, it is strongly suggested that a system at the borders be established to track the importation of blank optical media products and polycarbonate (both legitimate products in themselves).

Problems with invalid licenses in customs shipments seem to be diminishing. EOCP has made itself readily available to assist in determining the authenticity of the contracts, and the problem is becoming less common. Most important, these materials are legally regarded as pirated copies according to Article 80 of the Copyright Law, and those cases should be dealt with similarly to the piracy cases. Customs officials report that many shipments of Russian materials enter Estonia, with the Russian distributor claiming the same invalid license

⁵ Estonian customs provisions are included in its law entitled, "The Prevention of Import and Export of Goods Infringing Intellectual Property Rights Act of 2001," which entered into force on September 1, 2001.

to distribute the material there. Like the police, customs officials claim they have no means of verifying the validity of these contracts, and no ability to stop this material.

Insufficient police raids: The illegal open markets first appeared in 1993-1994. In October 2000, the government of Estonia pledged to deal with the open illegal markets and lax border enforcement. As a result of police and private industries' action, the number of stalls selling illegal material in the Kadaka Market was dramatically reduced. The Kadaka Market was restructured in October 2002 and now operates as one supermarket chain; however, there are still 5-6 kiosks operating and the traditional "under-the-counter" piracy problem continues. The Kadaka Market falls under the jurisdiction of one of Tallinn's police districts, which generally does not initiate any activities to close the kiosks. The police inactivity continued in 2003, when only a few raids were conducted in the Kadaka Market and other shopping malls in the harbor area. The 2002 enforcement actions must be repeated in Kadaka, other markets and cities to eliminate the remaining piracy. These markets not only hurt the local copyright market, but also cater to tourists, thus contributing to the "suitcase" piracy.

Inadequate punishment for retail storeowners: Enforcement against the owners of kiosks and stores that sell pirated material is hampered because officials have not used the 2000 Licensing Law to fine the businesses or to revoke their business licenses. The 2000 Licensing Law will be replaced by the Trade Law, the draft of which was discussed by the Parliament in the second reading in January 2004. The draft Trade Law will also amend the Copyright Law [Article 84(1)] prohibiting the trade with the pirate copies in the misdemeanor procedure. Estonian police should be more active in using the new Trade Law by officially requesting the revocation of trade licenses as an additional penalty.

Prosecutorial delays and high evidentiary burdens: Prosecutorial delays by the police and legal roadblocks have so far prevented effective prosecution. For example, false contracts, especially Russian sub-license agreements, are presented to and accepted by the courts. Estonian officials have, so far, been unable to craft viable methods to verify documents. EOCP has provided great assistance in this regard because of its around-the-clock availability to the authorities. BSA has also experienced difficulties in obtaining updates and information from police in relation to prosecutions, including important information such as whether seized pirated CD's have been destroyed or not.

CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS ESTONIA IN 2003		
ACTIONS	SOUND RECORDINGS, FILMS and ENTERTAINMENT SOFTWARE (EOCP)	BUSINESS APPLICATIONS SOFTWARE (BSA)
Number of Raids conducted	31	37
By Police	31	36
By Customs	N/A	1
Number of cases commenced (including Internet cases)		
Number of defendants convicted (including guilty pleas)	N/A	
Acquittals and Dismissals	N/A	
Number of Cases Pending		
Total number of cases resulting in jail time	N/A	0
Suspended Prison Terms		1

Maximum 6 months		1
Over 6 months		
Over 1 year		
Total Suspended Prison Terms		
Prison Terms Served (not suspended)		
Maximum 6 months		
Over 6 months		
Over 1 year		
Total Prison Terms Served (not suspended)		
Number of cases resulting in criminal fines		1
Up to \$1,000		1
\$1,000 to \$5,000		
Over \$5,000		
Total amount of fines levied		US\$560

No civil ex parte search authority and no statutory damages: Civil remedies in Estonia remain weak. Although the Estonian Government is making progress in terms of implementing a civil search remedy, progress is glacial. In the latter part of 2003, the Ministry of Justice prepared a draft civil search and seizure procedural remedy, which has been returned to the Ministry of Justice after consultations with interested parties. The draft has been presented to the Estonian Parliament for further consideration in the spring of 2004, although this apparently will mean that any implementation of the law will be unlikely before autumn 2004. The absence of such a remedy within Estonian law is likely to continue to cause BSA significant enforcement problems throughout 2004, particularly in view of the low level of police activity in relation to end-user piracy. BSA test cases brought in 2002 and 2003 confirmed the absence of the civil search and seizure remedy from Estonian law.

COPYRIGHT AND RELATED REFORM IN ESTONIA

The WIPO treaties: Estonia was a signatory to both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) in 1997. However, Estonia has not yet started the ratification process to officially join these two treaties; it is the only EU accession country which has not yet joined. Estonia should make all efforts to ratify the WCT and the WPPT, and implement the treaties' obligations into national law.

Estonia's plans to amend its copyright law to implement the WIPO treaties were delayed until the mid-2003 in order to combine efforts to implement the two WIPO treaties as well as various EU directives. In summer 2003, the Ministry of Culture prepared the first draft amendments to the Copyright Law and started an active dialogue with local rights holders and other interest groups. The Ministry's draft is due to be sent to the Estonian Government by the second half of February 2004; it is clear that more amendments will be needed to strengthen the proposed legislation (see further discussion below).

Copyright law: Soon after its independence, Estonia adopted a then-modern copyright law which entered into force on December 11, 1992. It also undertook a series of reforms to join the international trade and copyright community.⁶ The Estonian copyright law was amended

⁶ For example, Estonia enacted additional amendments to the Copyright Act, as well as to the Criminal Code, the Code of Administrative Offenses, and the Customs Act, in 1999 partly in anticipation of ratification of the WTO TRIPS Agreement. Most significant in the package of amendments was a provision to give customs officials the necessary *ex officio* authority to seize infringing goods at the border. Also included were increases in criminal sanctions, amendments relating to collective administration, and provisions necessary to implement the European Union Rental

in November 2002 in an effort to harmonize the provisions of the copyright license agreements with the Obligations Law.

However, the 2002 copyright law amendments did not resolve all the outstanding issues the copyright industries had advocated that Estonia address in order to make a first-rate copyright law. Additional recommendations to the copyright (and other) laws included, for example:

- Provide for minimum statutory damages, relieving plaintiffs from proving actual damages in cases involving copyright disputes between all parties, including legal entities
- Expressly afford civil *ex parte* search authority;
- Replace the current right of remuneration for sound recording producers for the broadcasting, public performance and other communication to the public of their phonograms with exclusive rights;
- Add a right of presumption of authorship for sound recording producers.⁷ Presumption of ownership would not be new to Estonia's legislation, as the copyright law includes the same principle for authors;
- Delete Article 62(2), the author's rights "safeguard clause," which is unnecessary and inconsistent with the Rome Convention (Article 1).

In particular, with respect to WIPO treaties' implementation, Estonian law must:

- Provide right holders the full reproduction rights in compliance with the WIPO treaties and other international laws;
- Adopt an exclusive right of communication to the public, including a right of making available;
- Allow rights holders to enforce their rights against the circumvention of technological protection measures. Implementation of this requirement should include a prohibition on the manufacture, importation, sale, distribution, or other trafficking in circumventing devices or services that are aimed at circumventing technological protection measures, as well as outlawing acts of circumvention;
- Allow right holders to protect "copyright management information" that is attached to or accompanies a work or sound recording, including protection against the alteration, removal or falsification of this information.

Directive. In 2001, additional amendments were made to enhance anti-piracy efforts, such as prohibiting trade in specific goods if the legal person holding a license trades in pirated products. In 2000, Estonia acceded to the Geneva Phonograms Convention (May 28, 2000) and the Rome Convention (April 28, 2000). New penal code amendments entered into force on September 1, 2002.

⁷ One of the main obstacles to effective enforcement is cumbersome and unnecessary requirements of proof of rights ownership imposed upon rights holders. The cumbersome burden of proof as to the ownership and subsistence of copyright and neighboring rights enables defendants to delay judicial proceedings, and in some cases escape justice, even when it is clear from the outset that the plaintiff owns the copyright or neighboring rights in question. This issue has become particularly problematic now that hundreds of thousands of different infringing optical discs (CDs, CD-ROMs, VCDs, DVDs) are regularly seized during raids.

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Local copyright industry colleagues inform IIPA that some of the above issues may be corrected in the latest draft copyright amendment proposal (an English translation is not available). IIPA and our colleagues look forward to Estonia's full and effective implementation of the WIPO Internet treaties' obligations.

The Rome Convention reservation must be withdrawn. On November 6, 2002, the Parliament adopted an amendment to change their full reservation to Article 12 of the Rome Convention. The Estonian Ministry of Foreign Affairs deposited the relevant instruments in the U.N. Secretariat on January 9, 2003, and the amendment entered into force on October 9, 2003. However, Estonia did not withdraw the full reservation, but changed it to a "reciprocal treatment reservation," which gives foreign repertoire the same protection as other member states of the convention that protect Estonian repertoire in their territories. This means that the broadcasting and public performance rights of the U.S. nationals are still not protected. Therefore, the Estonian government should be urged to withdraw its other reservation to Article 5(3) of the Rome Convention and apply the simultaneous publication criteria. This would enable protection of U.S. sound recordings, released within 30 days after the first release date in the U.S. in any of the Member States of the Rome Convention.

The 2002 Penal Code and Misdemeanor Act: The Penal Code of 2002 abolished the old administrative procedure and replaced it with a modern misdemeanor procedure for primary offenses of distribution of pirated copies. There is now a distinction between categories of offenses along a "felony/misdemeanor" model. Industry reports indicate that, under Article 14 of the Penal Code, non-natural legal entities (such as companies) will face criminal liability for, among other things, piracy offenses, which will attract fines in the range of 50,000 to 250 million kroons (US\$4,102 to \$20.5 million), with the additional potential penalty of the liquidation of the company concerned. Additionally, the code provides for a maximum of three years' imprisonment. Some industry groups are consulting with the Ministry of Culture over gaps with respect to the penalties applied to software piracy cases. Misdemeanors are likely to attract penalties of 200 to 18,000 kroons (US\$16 to \$1,477) for living, natural persons, and 50,000 up to 500,000 kroons (US\$4,102 to \$41,018) for legal entities. It should be highlighted that the penalties imposed are far from deterrent and completely disproportional with the damage done.

The recording industry is very dissatisfied with the penalties in the Misdemeanor Act because they are far from deterrent when cases involve large-scale distribution. For example, it is not yet clear whether the pending Tartu case (where 22,000 pirate units were seized) will qualify as a criminal case or a misdemeanor. The criteria for a criminal case involves proof of manufacture of the infringing materials. If reproduction is not proved, then case will be process as a misdemeanor (with a maximum of 18,000 kroons' fine).

Enforcement efforts for the business software industry continue to be hindered by the fact that penalties for software piracy are too low to have any deterrent effect and no statutory damages are available.

Criminal Procedural Code: The Estonian Parliament has adopted a new Criminal Procedure Code which comes into effect on July 1, 2004. The new code enables the legal entity to be a plaintiff in the court proceedings. The Parliament is also discussing the new draft Civil Procedural Code.