

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2005 SPECIAL 301

SPECIAL MENTION

AZERBAIJAN

As the U.S. Trade Representative noted when Azerbaijan was placed on the Watch List in 2004, there are many steps remaining for Azerbaijan “to fully implement the 1995 U.S.-Azerbaijan Trade Agreement and address deficiencies in its IPR laws.” In fact, Azerbaijan obligated itself to fix these deficiencies over ten years ago in the bilateral agreement with the United States (after an April 1993 exchange of letters); that agreement entered into force on April 21, 1995. The current Azerbaijani Copyright Law, in force since October 23, 1996, has many deficiencies which need to be corrected in order to bring the country into compliance with the Berne Convention (to which it adhered in 1999) and the Geneva Phonograms Convention (which it joined in 2001). The long delay in the protection of sound recordings has allowed unprotected back-catalog material to flow into the marketplace.

Legal reform deficiencies: Azerbaijan does not clearly provide protection for pre-existing works or sound recordings as required by the obligations under the bilateral trade agreement, the Berne Convention, and the WTO TRIPS Agreement. Also unclear is whether Azerbaijani law provides civil *ex parte* search provisions as required by TRIPS.

Article 158 of the Azerbaijani Criminal Code (2000) provides liability and sanctions for copyright and neighboring rights infringements if they result in “significant damage” to the rightholder concerned. The “significant damage” standard creates an unwarranted threshold in the fight against copyright piracy because it sets a vague standard for police and prosecutors to commence action. The law should be amended to include a low and clear threshold to instigate a criminal action, for example, 50 times the minimum daily wage. There have been to date, no known convictions under this law.

Neither the Criminal Code nor the Criminal Procedures Code provides police with the proper *ex officio* authority to commence criminal copyright cases. These laws should be amended accordingly to provide the authority necessary for effective enforcement. It is not clear that the Azerbaijani Customs Code (last amended in 1997), which in Article 19 contains provisions relevant to the importation or export of intellectual property, provides *ex officio* authority for customs officials to seize material at the border as required by the WTO TRIPS Agreement. This authority must be clearly provided, and if needed, the Customs Code revised. Last, the Azerbaijani government should be encouraged to accede to and fully implement both the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Enforcement deficiencies: There is currently no “adequate and effective” enforcement in Azerbaijan. There is no meaningful police, customs, or prosecutorial activity, as required by the bilateral trade agreement and the WTO TRIPS Agreement. There are administrative sanctions (Article 186-1) providing for fines of 20 times the minimum monthly wages for copyright infringements. However, these fines are only imposed if the infringement causes damages that equal more than ten times the minimum monthly wage. For another year, the copyright

industries reported that there was not a single known case where either the administrative sanctions or any of the criminal penalties were levied. An estimated 11.8 million pirate copies of audio carriers including 8.6 million cassettes and 3.2 million CDs were available in the Azerbaijani market in 2004. Piracy rates for the music market writ large were an estimated 81.6%, and as for international repertoire — over 90%. Losses suffered by American rightholders amounted to US\$12 million and overall losses of international rightholders exceeded US\$17 million.

There were no reports on cases resulting in either administrative or criminal sanctions for neighboring rights infringements. Cases regarding copyright violations brought on behalf of Azerbaijani rightholders are usually considered in civil courts. There are no reports of any counterfeit audio products of international rightholders seized during the past several years.

There are no separate subdivisions or specially appointed officers dealing with the intellectual property infringements within the Azerbaijani law enforcement agencies.