

GREECE

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2010 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Greece remain on the Watch List in 2010.

Executive Summary: It is imperative that the new Greek government make copyright law and enforcement a priority which not only hurts industry and translates into job losses, but also represents a massive loss of tax revenue for the Greek State. However, because of several elections and other political challenges and financial crises in 2009, very little progress on copyright protection was made at a national level last year. Greek's comprehensive intellectual property rights (IPR) action plan, proposed in February 2009, basically went unnoticed and unimplemented for the rest of the year. Although the new Administration has decided to deal with the economic crisis by significantly increasing taxation of a number of legitimate goods and services, no new measures are planned to combat those intellectual property infringements which result in major losses to the industries and the State alike.

The level of copyright piracy in Greece remained high in 2009. Regarding business software piracy, the tax police (YPEE) drastically slowed down their efforts to issue software audit letters to small- and medium-sized companies, a sharp reversal from very active campaigns in prior years. Physical piracy of many copyrighted products remains a problem in the cities and on the streets. The amount of piracy of music and movies in physical format on the streets has been declining as Internet piracy is on the rise. The unauthorized photocopying of books and journals continues to occur on and near university campuses. Internet piracy really hit the Greek market about two years ago, and continues to grow. Attempts to combat Internet piracy are frustrated by data protection legislative complications that pose a huge hurdle to pursuing investigations and litigation against infringers, especially in the peer-to-peer (P2P) file-sharing environment. Discussions between the content industry and the Internet Service Providers (ISPs) have been underway under the auspices of the copyright office, however they have not led to any results and they need stronger political engagement by the government. Despite some good cooperation between the copyright industries and the police on physical piracy raids, the overall enforcement system in Greece fails to tackle the endemic piracy problems. The municipal police are unable to produce significant results, and the immigration service is overwhelmed, making it difficult to pursue prosecutions. Furthermore, lengthy court delays and a lack of deterrent sentences continue to frustrate rights holders. Defendants rarely receive sanctions, and those who do usually get suspended sentences. Poor illegal immigrants, who benefit from public sympathy given their plight, are frequently used by organized pirate rings as street vendors. If caught, such vendors equally benefit from sympathy in the courts.

We have reached a point where only proper legislation in conjunction with proper application by courts can provide a solution to piracy (physical and digital). Police and Customs know how to identify pirate product. Prosecutors and judges know the law and know what they are supposed to do with it. The public knows that buying a CD-R from a street vendor or downloading tracks from Rapidshare or through a peer-to-peer (P2P) file-sharing network are committing an economic and moral crime. The ISPs know that the majority of their bandwidth is consumed by illegal activities.

In addition, the copyright industries had worked with the Copyright Office to develop proposals to amend the copyright law that were to be issued to the public in 2009, but as of yet it has not been issued. On a positive note, Greece, along with the EU and 15 other member states, did accomplish its deposit of instruments to join the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, effective March 14, 2010. On the other hand, three years have passed since some promising legal reforms were adopted in 2007 yet are still not fully in force. For example, the ministerial decree permitting administrative fines for certain infringing acts (including software and sound recording piracy) has not yet been fully implemented. In sum, we hope that the new Greek government can swiftly rise to the challenge to improve the state of legal protection and effective copyright enforcement in Greece.



Priority actions requested to be taken in 2010: The copyright industries recommend that the following actions be taken in the near term in Greece in order to improve the adequate and effective protection of copyrighted materials there:

Enforcement

- Any national campaign for 2010 should involve rights holders and include raids, prosecutions and criminal non-suspended sentencing, in addition to public awareness and training.
- Continue enhancing cooperation with the police on inspections, raids and other anti-piracy activities, encouraging greater cooperation from the Immigration and Municipal police.
- Initiate greater involvement by the tax police (YPEE) in anti-piracy actions affecting all copyright sectors, expanding on the good work they are doing in the software sector. (1) It is important that YPEE re-engage its software sector project that it has begun by sending direct mails (letters) to all Greek companies with more than 10 employees. (2) YPEE should impose administrative fines for both sellers and buyers of pirate music and other pirated copyright products. (3) YPEE should continue its software audits when it does tax inspections and publicize any enforcement actions that result from such audits. (4) YPEE should make music and sound recording audits when inspecting commercial enterprises such as bars and restaurants. (5) YPEE should be obliged to perform specific numbers of audits per year and publicize all the results.
- Institutionalize a Special Operational Department for IPR issues within YPEE (which is in the Ministry of Economy and Finance).
- Support the soon-to-be created Financial and Cyber Crime Division in the Ministry of Public Order.
- Give law enforcement authorities the mandate and jurisdiction to pursue investigations on university campuses where Internet and hard goods piracy flourishes without significant threat.
- Take action against copy shops making illegal photocopies of books around university campuses, including Athens University of Business and Economics, Aristotle University of Thessaloniki, the University of Patras, the University of Piraeus and Deree College, among others, and coordinate campus policies to prohibit use of illegal materials on campus.
- Encourage Government ministries and agencies to legalize business software usage in public agencies.
- Direct prosecutors to bring cases more swiftly and aim for deterrent, non-suspended penalties.
- Courts should apply all possible procedural measures to guarantee defendants' presence at court hearings, and also should be instructed to issue deterrent sentences, including imprisonment and fines as provided by the law, and not to suspend sentences or fines.
- Judges serving on the new special IP (civil) courts in Athens, Piraeus, and Thessaloniki should be directed to work only on IPR cases and be relieved of their other duties and an IP court should be established in Patras.
- Expand these special IP courts' jurisdiction to criminal copyright cases. Improve IPR training and education for police, prosecutors, judges, and customs officials.

Legislation

- Develop legislation to provide Municipal Police with authority to arrest and prosecute street vendors for intellectual property infringements.
- Publicly circulate the government's proposal to amend the copyright law, which should, at the very least, include the following: (1) provide the same level of protection for technological protection measures (TPMs) utilized in software that is currently afforded to other classes of works, and (b) specifically exclude camcording from the scope of the private copy exception.
- Amend legislation to permit ISPs to reveal identities of copyright infringers consistent with the 2008 European Court of Justice (ECJ) *Telefonica* case decision, including appropriate steps to facilitate the ability of rights holders to obtain the necessary information to take civil actions to protect their rights.
- Maintain the civil procedural law provisions regarding *ex parte* search orders.

COPYRIGHT PIRACY IN GREECE¹

Hard goods piracy remains engrained in cities throughout the country, and presents a formidable enforcement challenge, despite many raids and good cooperation between enforcement authorities and rights holders. Internet piracy has become a serious problem, especially in the audiovisual and sound recording sector. Problems continue in combating end-user piracy of business software in corporate settings and unauthorized commercial photocopying on university campuses.

The Business Software Alliance (BSA) reports that end-user piracy continues to be the biggest piracy threat to its industry in Greece. The widespread use of unlicensed software and distribution of low quality pirated CDs across the country is another problem. There was a reduction of such piracy forms both in Athens and Thessaloniki, because of the rapid increase of the end-users' connections to the Internet. In other cities of Greece, where the end-users' access to the Internet is lower and the local authorities and the police show unwillingness to cooperate and act against IPR piracy, these forms of piracy remain in a high level. BSA's preliminary estimated 2009 losses due to piracy rose slightly to US\$141 million, at a 59% level, both up slightly from the \$131 million and 57% reported as final numbers for 2008.² The reason for this slight increase may be due to the lack action taken by YPEE for most of 2009. Within the EU, Greece has the third highest piracy rate (behind Bulgaria and Romania). With the exception of 2009, much of this progress in slowly reducing software piracy over the last few years may be attributable in part to the work of YPEE and their sending software audit letters to small- and medium-sized businesses in Greece. It remains imperative that these letters are accompanied by actual enforcement action, where warranted, in order to press for legal software use.³

The pirate music market is gradually migrating from physical product to the internet. The cities with the largest problems regarding music street piracy are Patra, Kalamata, Corfu, Crete and Thessaloniki, while the situation in the center of Athens has been substantially improved. Regarding physical piracy there is a clear network of illegal immigrants that operates at all levels from manufacturing to retail distribution of pirate music products, and this accounts for over 90% of the pirate physical market. Piracy of sound recordings and music in Greece represents around 60% for both international and local repertoire. To be clear, the legitimate market for physical copies of recorded music remains in disarray. However, there is a growth of internet-based piracy, with the forums/cyber-lockers being the major problem. and this is the primary area in which industry action requires government support, not least in ensuring ISP cooperation. As already reported before, a report compiled for the Greek music market by Deloitte, the total loss (state, social security, rights holders, industry, retailers, etc) due to physical piracy for the years 1996-2007 was over €1.15 billion (US\$2 billion). Losses to Internet/mobile piracy cannot be estimated.

The Motion Picture Association (MPA) reports that hard goods piracy, principally DVD-Rs and Internet piracy are almost on equal footing in Greece. Local representatives report that they have seen a slight decrease in street piracy of filmed entertainment products due, primarily, to the recent enforcement actions by the Greek government. It is evident that the Internet is the major source of illegal content for street vendors and video retailers. The major problem cities are Athens, Thessaloniki, Patras and some of the Greek islands, such as Zante, especially during the summer months.⁴ Furthermore,

¹ For information on Greece under Special 301, see Appendix D at <http://www.iipa.com/pdf/2010SPEC301USTRHISTORY.pdf> and Appendix E at <http://www.iipa.com/pdf/2010SPEC301HISTORICALSUMMARY.pdf> of this submission. To read IIPA's cover letter to this Special 301 submission, go to <http://www.iipa.com/pdf/2010SPEC301COVERLETTER.pdf>.

² BSA's 2009 statistics are preliminary, represent the U.S. software publishers' share of software piracy losses in Greece, and follow the methodology compiled in the Sixth Annual BSA and IDC Global Software Piracy Study (May 2009), available at www.bsa.org. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. Final 2009 statistics will be issued by BSA later in 2010. The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in Appendix B of IIPA's 2010 Special 301 submission at www.iipa.com/pdf/2010spec301methodology.pdf.

³ According to a 2008 report issued by BSA-IDC, the information technology sector's contribution to the Greek economy could be even bigger if Greece's PC software piracy rate were to be lowered 10 percentage points over the next four years. This would create an additional 1,035 jobs, \$385 million in local industry revenues and \$130 million in additional tax revenues for federal, regional, and local governments. See [The Economic Benefits of Reducing PC Software Piracy](http://www.bsa.org/idcstudy), released January 22, 2008, and is available online at <http://www.bsa.org/idcstudy>.

⁴ However, problems associated with a particular geographical location should be viewed within the context of other factors such as time of the year, availability of local law enforcement personnel dedicated to piracy enforcement as well as any local surge of other serious crimes at that time.

mod chips for consoles and region circumvention of DVD players are available in the Greek market. All mod chips are imported, mostly from the Far East.

Illegal commercial-scale photocopying of academic textbooks continues in Greece, causing significant damage to higher education textbook publishers.⁵ Photocopy shops near university and college campuses regularly process orders for entire classes of students. Photocopy shops make cover to cover, bound copies for distribution to students, and face no consequences. In fact, bulk discounts for students are common.⁶ Major universities all over Greece are affected though the bulk of the unauthorized copying activity occurs at either private colleges or among students pursuing MBA courses at both private and state institutions. The authorities should take more serious note of this issue and begin to tackle the copy shops through effective enforcement and encourage universities to implement policies that promote the use of legitimate materials on campus. The police do not have jurisdiction to pursue IPR cases on university campuses (academic asylum) where Internet and hard goods piracy flourish, and this poses a difficult political and enforcement problem. These enforcement problems are only exacerbated by the difficulty of collecting evidence of infringement due to the increasing "print to order" nature of the copy shops. One case still remains pending, three years after a successful 2007 raid from which the case arose. There have been numerous postponements, with the case, though calendared, not even being heard on the scheduled date. Law enforcement authorities should ensure that this case is adequately heard, and upon a favorable conclusion of the proceedings, the appropriate penalties meted out.

Internet piracy: There are now over 4.9 million Internet users in Greece, representing about 46% of the population (according to www.internetworldstats.com). According to EETT (the Greek National Regulating Authority for the Telecommunications), by the end of the third quarter of 2009 the broadband connections in Greece reached 1,794,295, up by 36.84% compared with the third quarter of 2008. The scope and depth of Internet piracy in Greece really took off in 2008. Peer-to-peer (P2P) file-sharing of infringing content and cyber-lockers (with relevant links offered through forums) became very popular. Leech sites and download sites are also a growing problem, and some illegal sites hosted in Russia (such as music-bazaar.com and legalsounds.com) remain frequently visited by Greek users. Mobile piracy is not a serious problem yet as most of the mobile companies control the downloadable copyrighted works and the exchange of such works (ringtones) between the mobile users.

The Entertainment Software Association (ESA) estimates there to have been approximately 127,445 infringing downloads⁷ made of select ESA members' computer and video games through P2P file sharing by ISP subscribers in Greece during December, 2009. This comprises approximately 1.32% of the total number of illegal copies made by P2P users globally during this period. These figures place Greece as number 15 in highest overall volume of P2P game downloads, and number 6 in highest volume of P2P game downloads per capita during the study period. Breakdowns by ISP show that subscribers of Ote, FORTHnet, and OTEnet were responsible for approximately 71% of this activity occurring in Greece--more than 91,000 downloads during the one-month period. These figures do not account for downloads that occur directly from hosted content, such as games found on "cyberlockers" or "one-click" hosting sites which continue to account each year for progressively greater volumes of infringing downloads.

The major legislative deficiency (discussed more, below) involves Greek legislation which prevents Internet Service Providers (ISPs) from disclosing information their subscribers' names or physical addresses in order for rights holders to continue investigations and pursue legal actions against suspected infringers. ISPs require a court or prosecutor's order to disclose the names of infringing subscribers. In general, Greek Internet Service Providers (ISPs) cooperate in the few cases involving hosted websites. In the file-sharing environment, the ISPs use the personal data protection legislation as an excuse for non-cooperation. There are several negotiations on Ministry level aimed at introducing graduated response legislation or something similar to address repeat infringement.

⁵ Reports indicate that for some books adopted by large classes, sales are less than one quarter of what they should be based on the numbers of students, due to the quick response by copyshops upon finalization of the adoption process.

⁶ Examples include "buy four photocopies, get one free" deals, advertised by flyers near major universities.

⁷ This figure is representative only of the number of downloads of a small selection of game titles. Consequently, this figure is under-representative of the overall number of infringing downloads of entertainment software made during the period.

COPYRIGHT ENFORCEMENT IN GREECE

Establishing copyright protection and enforcement as a priority in the new Administration is imperative. The copyright industries report that their working relationships with the Greek police authorities in 2009 continued to be good, however, industry relationships with YPEE were strained last year, a disturbing negative development. Overall, the principal challenges continue to be achieving tangible enforcement results through a difficult judicial system and affecting needed legislative/administrative reform.

Comprehensive Action Plan on the Protection of Intellectual Property Rights: The Interministerial Steering Committee, led by the Ministry of Foreign Affairs, was formed several years ago to ensure more efficient coordination of all intellectual property initiatives in order to prevent piracy and counterfeiting. Its first meeting, devoted primarily to organizational issues, was held in May 2008.⁸ Members of this "Coordination Committee for Monitoring and Coordinating IPR" include: the Ministries of Foreign Affairs, Economy and Finance, Interior, Public Administration and Decentralization, Development, Justice, Culture, Rural Development and Food, as well as the Hellenic Copyright Organization, the Hellenic Industrial Property Organization and the Municipality of Athens. The new Coordination Committee has been integrated into the Interministerial Committee.

In February 2009, the Coordination Committee issued Greek national IPR plan. This document provided a summary of piracy and counterfeiting issues, the Greek legal framework, and the work of the legal offices and enforcement agencies, among other issues. It also outlined a 7-point action plan, with the following objectives: (1) ameliorating the legal framework; (2) collecting and processing statistical data and forming a database; (3) enhancing IPR enforcement measures; (4) coordinating law enforcement authorities; (5) training; (6) raising public awareness; and (7) promoting a dialogue on intellectual property rights. Since the creation of this plan, there has been no progress, and no actions have been taken on a practical level. Unfortunately, there were no actions by the Interministerial Committee until the replacement of the Greek government. Since the government turnover in October 2009, the Interministerial Committee has shown some interest in information regarding IPR by collecting and processing present statistics relating to IPR issues. However, there has been no meeting of the Coordination Committee for Monitoring and Coordinating IPR since the replacement of the government in October 2009. Only recently a representative of the Ministry of Foreign Affairs spoke about the contents of the action plan in the American Chamber of Commerce, and indicated that the plan is not yet fulfilled. The OPI (Hellenic Copyright Organization) is currently does not even have its Board in place. OPI is always willing to organize or attend seminars but has not been at all effective in pressing the relevant ministries to enforce and enact effective legislation.

Significant drop in actions by the tax police on business software cases: In recent years, BSA reported continued good cooperation and communication with YPEE. For example, YPEE conducted raids and inspections and sent software audit letters and followed-up, in the appropriate cases, by (a) initiating raids against companies, (b) incorporating software audits in the tax controls, and (c) imposing the administrative penalty when illegal copies of software are found.

This software anti-piracy administrative efforts by YPEE all but stopped for most of 2009. The only action that was performed by YPEE was the issuance of letters to approximately 5,500 small companies at the beginning of the year (February 2009), asking them to provide YPEE with the relating software licenses and invoices. Taking into consideration the June and October elections, there was a significant delay in all planned actions. As far as BSA is aware, YPEE took no other software anti-piracy actions (such as raids, audits, further letters and posting of YPEE actions on their website) for the rest of 2009. YPEE should be obliged to perform specific numbers of audits per year and publicize all the results. Taking into consideration the current piracy rate, BSA had requested, and still urges, that YPEE should publish monthly statistics on

⁸ Unfortunately, none of the private sector organizations were allowed to participate in this new Interministerial Steering Committee at its first meeting in 2008. The copyright industries supported the Interministerial Steering Committee and urged it to develop a national IPR action plan, coordinate enforcement efforts at an operational level, including the effective implementation of the administrative fine regulation and the ministerial decree on street vendors, adopt procedures for ISPs to deal effectively with repeat infringers, and develop and fund public awareness and education efforts, all working with industry. The Committee should receive regular reports of statistics on numbers of actions, level of crime addressed and location of actions from each enforcement body, as well as court statistics from the justice ministry. The committee should publish an annual report of this data.

the number of such raids, including the resulting administrative fines imposed. BSA would like to see a more systematic follow-up of these warning letters and more raids against non-responsive companies. There was no other initiative or action whatsoever and this will have an adverse impact in the marketplace. Unfortunately yet not surprisingly, BSA's relationship with YPEE worsened during 2009. BSA believes it is crucial for the new government and new leadership at YPEE to give high priority to IPR enforcement.

Furthermore, BSA believes the Greek Government should publicly commit to fight software piracy; no such announcement occurred in 2008 or 2009. Such a public pronouncement by the government (perhaps coming from the Ministry of Finance) would greatly increase public awareness regarding the risks of using illegal unlicensed software and would codify the government's commitment to protect intellectual property.

New Financial and Cyber Crime Division and Special IPR department: In years past, the copyright industries have pointed out the need to institutionalize a Special Operational Department for IPR issues within YPEE. While nothing has been done in that regard, the Minister of Public Order (who also served in this capacity in a prior administration) has indicated his interest in creating a specialized IPR department.

In addition, a new Financial and Cyber Crime Division with responsibility for fighting Internet crime (including software piracy) is expected to be created. According to the Minister's of Public Order announcement in December 2009, this new cyber crime division will be established within the first months of 2010, within the Ministry of Public Order and will probably be independent to YPEE (which still exists under the Ministry of Economy and Finance). Further announcement regarding the official establishment of the new Division is expected by the Minister of Public Order by the end of February 2010.

Need to implement administrative fines in software and recording piracy cases: Although the Greek Government approved an innovative law amendment in January 2007 that introduced administrative fines for software infringements, the enforcement authorities have not yet implemented this law. The National Police and Tax Police (YPEE) have not issued Circulars to adopt the new legal framework on administrative fines nor have they mobilized their resources to inspect for software piracy. For the last several years, the only enforcement activity implemented by the government has been YPEE's audit letters. There was no official Circular issued to adopt the new legal framework. An industry proposal suggested that (a) administrative fines should act cumulatively with prosecutions⁹ and should be paid before legal proceedings, (b) DVDs should be included in the regulation, and (c) there should be authority to inspect establishments (café, restaurants, etc) where there may be illegal reproduction of phonograms for public performance.

The music industry also is very concerned with the lack of effective administrative enforcement and the lack of progress on this front. Suspects caught with infringing music and software simply refuse to pay the fine for pirated CDs. Pirates prefer to face a full trial, where the Judges issue light penalties, usually suspended, even though the law foresees fines of €1,000–10,000 (US\$1,335-\$13,350), depending on the quantities seized. The Ministry of Culture in its effort to issue a directive adjusting procedural details did not take the suggestions of the recording industry and the local collecting society for music rights (AEPI), two organizations that have a long-standing experience in fighting piracy. As a result, the new law is so vague and full of gaps that the police are reluctant to proceed on the basis of the administrative fine procedures.

Civil infringement actions on business software: BSA has no major issues to report regarding civil litigation during 2009. Search orders are normally granted without major difficulties and normally we settle the cases out of court. With respect to its civil actions in 2009, here are BSA's results (all against end users): 6 civil raids executed, 11 warning letters sent, 2 follow up letters sent, 1 lawsuit filed, 1 civil action heard and 3 settlements completed. BSA has not filed any civil lawsuits seeking damages, only applications for injunctions.

⁹ Regarding point (a) on administrative fines, this means that the offender, while brought to Court, would have to pay the administrative fine in the state cash desk before the trial. This would ensure that an illegal immigrant, with an unknown address, would pay at least the administrative fine for his offense, before potentially fleeing away to unknown location, which has often happened in the past. The point is that in addressing an economic crime, the approach should be related to damages for the infringer. Suspended sentences with no fine cause no economic harm (aside from the cost of the confiscated discs) to a person who earns illegal money from infringing activity.

Criminal actions (raids): The recording industry reports that its work and relationship with police authorities, especially in Athens, remained very good in 2008. The recording industry reports 588 cases in the first half of 2008 (full year statistics are not yet available). The recording industry reports that the police and customs authorities continue to take ex-officio actions. Criminal actions in 2009 were at about the same level as in 2008. There has been a slight increase in the number of raids (702 in 2009, 693 in 2008) where IFPI Greece has participated, with larger amount of confiscated products (505,806 discs in 2009 compared to 451,051 discs in 2008) and better statistics in "quality" targets such as burning places and distribution centers (322,706 discs in 34 raids in 2009, compared to 278,299 discs in 55 raids in 2008).

BSA reports that the Greek police cooperate positively in most areas of the country. There are some departments where the police show a noticeable unwillingness to cooperate, especially in northern Greece. The police, as well as the municipal police, although generally willing to cooperate, yet they too are disappointed with the lack of results and sanctions. BSA itself does not pursue criminal actions.

Earlier this month, arrests in a pay television fraud action were made during police operations in Athens, Thessaloniki, Irakleio, Rhodes, Syros, Drama and Corinth. The only digital pay television platform in Greece, Nova, filed a lawsuit charging that the suspects distributed its electronic subscriber codes via the Internet for a fee. The police electronic crime squad in Athens and Thessaloniki arrested eight Greek nationals and two foreign nationals (three more suspects will face the same charges) on charges of violating intellectual property and subscriber television services legislation.

Difficult problems with the courts--long delays, non deterrent sentences: A major hindrance to effective IP enforcement in Greek continues to be its judicial system.

Few prosecutions: The overwhelmed Greek judicial system and the lack of specialized IP courts means that there are very few intellectual property rights cases in the system. In years past, Greek prosecutors, especially at the local level, are often reluctant to pursue intellectual property cases and have largely ignored Supreme Court circulars directing them to give intellectual property cases a high priority. Although this aversion appears to be slowly changing in major Greek cities (such as Athens, Thessaloniki and Patras), more work needs to be done, at many levels, to improve criminal prosecutions.

As one way to address this situation, EPOE has had to utilize the criminal "flagrant crimes procedure" which helps to reduce the court load when a case is postponed indefinitely, but this can be invoked only where the defendant is taken into custody within 24 hours of the issuance of the complaint; otherwise the case is assigned to await its typical criminal court hearing, usually more than a year later.

Delays and time consuming procedures: Courts continue to deny to apply all possible procedural measures to guarantee the defendant's presence at the Court hearing and the result is that the Majority of the defendants are not present at the Court of appeals or at the First Instance Court for felonies. There are many differences between the courts from region to region in the way of decision-making and many times judges show lack of knowledge in sophisticated IPR issues.

Suspended sentences and non-deterrence: There is a public perception that Greek courts tend to be lenient and with respect to copyright, most cases result in suspended sentences.¹⁰ What usually happens is that the prosecutors bring thousands of cases at the First instance Court and aim for deterrent, non-suspended penalties, but the majority of the judges insist on leniency for first offenders and then they suspend the penalty and eliminate the fine. For example, the one-year imprisonment sentence provided by law usually becomes three to four months imprisonment, but suspended for three years,

¹⁰ First, at the Misdemeanour (All-Day) Courts for low-scale offenders, judges hand out very light sentences, which are often suspended. This is particularly the case for the courts outside Athens. However, when appeals are filed, no bail is set to guarantee the appearance of the defendant in the higher court and the sentences handed out in first instance are suspended. In addition, the appeal courts do not impose any fines. Second, at Felony Courts for large-scale offenders, the infringers are released until trial by the prosecutors without any bail and in many cases without any limitative clauses. As a result, when the case appears in front of the Felony Court after two to three years' time, the defendant usually does not turn up. Especially in cases where the felon is an immigrant and cannot be easily located and arrested, this tactic is equivalent to acquittal. As a result of this court policy, the recording industry reports that several offenders have been arrested and charged two to three or even five to ten times, and have returned to their music piracy business.

and the €3000 fine (US\$3,860) is simply stricken entirely. In the cases where the First Instance Court's decisions actually follow the Law (and issue a non-suspendable sentence), the defendants launch an appeal and Court of Appeals suspends the penalty and removes out the imposed fine. In the rare occasions of more severe penalties, the defendants file an appeal, managing to put their sentence on hold. Also, defendants often do not appear in court on the day of their scheduled hearing. The industry is seeing similar tactics in the felony courts which deal with major piracy cases where the hearings are set two to three years after the arrest, and in the meantime, the defendants are not kept in prison awaiting their trial.

Fortunately, some First Instance Courts, especially in Athens, Piraeus, and Thessaloniki, are no longer suspending fines – even when they find mitigating circumstances. Unfortunately, however, these fines are often annulled by the Appeals Court. The situation could be further improved if the Immigration Service and the Municipal Police, which appear either to be busy with other cases or to lack the legislative mandate to act, could be directed to assist in anti-piracy actions.

Special IP Courts: Special IP courts, which hear only civil IP cases, have been established in Athens, Piraeus and Thessaloniki. The copyright industries will continue efforts to expand such courts to Patras. In addition, it would be helpful if judges on the special IP courts could be relieved of their other (non-copyright) duties in order to focus on the IP docket. It also would be ideal if the scope of these courts' specialized court could be expanded to criminal copyright cases.

Actions against Internet piracy: Greek ISPs do cooperate in those case involving hosted websites. There are practically no cases of local hosting of infringing material.

Greek ISPs are currently not cooperating with rights holders on Internet piracy actions, except occasionally on P2P sites hosted in Greece. In the file-sharing environment, the ISPs use data protection legislation as an excuse for non-cooperation. Internet investigations in Greece can go only so far as identifying an infringing IP address. The relevant law for disclosure of personal data (Law 2225/1994) is very strict and limited to a specific range of crimes which, unfortunately, does not include copyright infringement, not even in the felony cases. This is the most serious obstacle for the Internet investigations and prosecutions. The now former Minister of Justice recognized this limitation and promised that the law will be reformed to include felony aspects of copyright infringement, but took no action on this matter. The release of the infringers' identity--among other targets--is necessary so that the affected rights holders can initiate criminal or civil actions. The new Government is still trying to shape up. There was finally (with a few months delay) a newly appointed Secretary of the Ministry of Culture, but OPI is still lacking its leadership board.

Cross-industry negotiations to address Internet piracy: Negotiations between the content community and the ISP community were taking place at the ministerial level, but there has been no progress. For two years, negotiations between copyright rights holders and ISPs have been underway, done under the auspices of the Hellenic Copyright Office (OPI). OPI was aiming to have ISPs adopt voluntary measures to decrease Internet piracy. Objectives for the copyright sectors are: (1) blocking access to illegal sites hosted in countries with poor or no IP protection; (2) adoption by ISPs of effective and fair 3-step procedures for terminating accounts of repeat P2P infringers; and (3) inclusion of felony aspects of copyright infringement in the provisions of the law regarding disclosure of personal data over telecommunications. The Ministry of Justice promised to act on the third prong, and the EETT can play a substantial role in the first two prongs.

The first and last meeting with the ISPs took place in EETT in March 2009, following IFPI's request in the presence of one OPI's representative that was invited by EETT. OPI prepared a proposal for the amendment of the EETT's regulation on general ISP licensing but nothing was done with that. The industries organized a press conference in November 2009 and series of meetings with authorities, OPI and the Ministry of Culture regarding Internet piracy. No further information yet regarding the results of the above actions.

COPYRIGHT LAW REFORM AND RELATED ISSUES

Copyright Act in general: Greece has revised its 1993 Copyright Act (Law 2121/93) a number of times over the past 15 years. In fact, Greece was the first of the EU member states to complete implementation of the directives in its copyright law, and the copyright industries have been generally pleased with that implementation. Greece also has

implemented the EU Enforcement Directive. But because of difficulties and gaps in measures necessary to strengthen anti-piracy enforcement, there have been a variety of legislative and administrative solutions offered by the copyright industries. Some of these have been implemented, and others are still under development (discussed further, below).

The Greek copyright law was amended in January 2007 (Law 3524/2007), which became part of the Copyright Act 2121/93, to give copyright infringers the option of paying an administrative fine in lieu of criminal prosecution. The law applies to several, but not all, copyrighted materials; it does apply to sound recordings and business software, with the support of those industries. The amendment provides that street vendors caught in possession of up to 500 music CDs and up to 50 software CDs will be given the opportunity to pay an administrative fine of €20 (US\$27) for each music CD and €1,000 (US\$1,285) for each software CD, but the total administrative fine will be not less than €1,000. MPA lobbied for the complete removal of audiovisual products from this law because of its concern that this would only exacerbate the level of audiovisual piracy because it would not be restricted to only first-time offender. A decision by the Ministers of Finance and Culture was issued in September 2007 to provide procedures for imposing the administrative sanctions found in the copyright law.

Possible reform of the Copyright Act: A Legislative Committee in the Hellenic Copyright Office under the Ministry of Culture completed its work to propose further reforms to the Greek Copyright Act at the end of 2008, as expected. During that process, the copyright sectors offered various proposals to this committee.¹¹ However, the Committee's release of its work for public review was delayed due to a cabinet reshuffle in late 2008, and during 2009, no progress was made to release this plan publicly. Given that there is a new government, it is not yet known what the next steps on this effort might be. At the very least, the copyright sector hopes that the expected consultation process to discuss this Committee's proposals will be open and transparent.

It is important to highlight that in implementing the WIPO Treaty requirements for technological protection measures (TPMs), Greece opted for a bifurcated approach under which TPMs used by the creators of computer programs (Articles 66(5)(a) and (c)) are afforded less protection than those utilized in other types of works (Article 66A). Unfortunately, the software provisions fall far short of the requirements mandated by the WIPO Treaties, failing to explicitly cover both copy- and access-controls or provide civil remedies. The software provisions also utilize an impermissible "sole purpose test" for assessing whether a circumvention device runs afoul of the law. To achieve compliance, Greece must afford the same level of protection for TPMs applied to software as that which is applied to other types of works.

Government software legalization: BSA reports no new developments or progress on government legalization efforts during 2009. Government should lead by example, stressing the importance of protecting intellectual property rights and legal software use within the Public Administration. By taking these positive steps and implementing policies that support legal software use, the government could raise significant awareness of the problem and help bring down the unacceptably high business software piracy rate.

Criminal law reform: The ex-Minister of Justice has promised to reform the criminal law (2225/1994) in which felony aspects of copyright infringement would be included. The bill was forwarded by the Hellenic Copyright Office to the Ministry of Justice, but because of cabinet reshuffling in late 2008, it was put on hold. The copyright sectors are seeking reforms here similar to those reforms they are seeking in discussions with OPI on the Copyright Act.

Civil procedure law reform on search orders: Last year, a legislative proposal to amend the Greek Civil Procedural Law was issued which would affect the procedures for granting search orders (Bill for the Reformation of the Greek Civil Procedural Law, issued at 27 August 2009 by Special Standing Committee of Ministry of Justice). The legislative committee proposed, in case of an ex parte search order, to summon the other party within the next three days after the

¹¹ For example, the copyright sector hoped that the non-suspension of court-imposed fines and/or stiffer sentences is somehow included in this package. Other proposals include an amendment that court-imposed fines must be paid immediately; establishment of special police units throughout the country to address exclusively copyright infringements; non-suspension of sentences pending appeal; and, ISP coordination on copyright infringement matters. In addition, a provision should be added that those sentenced for a copyright offense should be unconditionally obliged to immediate payment of the fine, failing which they should be kept in custody until the monetary penalty is paid.

issuance of the order. If this proposal is approved by the committee, this will cause a lot of problems to the issuing of *ex parte* search orders. Rights holders should always have the possibility to obtain a search order without summoning the defendant. This legislation remains pending and there is no estimate as to when it might pass.

Problems with obtaining access to personal data from ISPs: The problem of data protection as an obstacle to enforcement has already been discussed, above. This issue involves industries' efforts to amend Article 4 of Law 2225/1994 so that ISPs are required to disclose the identity of users suspected of copyright infringement. A standing committee was supposed to deal with the amendment of this Data Protection Law (2225/94), which lays down the principles applying to the disclosure of personal data of violators using telecommunication systems. (In fact, the former Minister of Justice recognized this limitation and promised that this law would be reformed so that the felony aspects of copyright infringement would be included).

The industries have supported amending Greek legislation to permit ISPs to reveal identities of copyright infringers consistent with the 2008 European Court of Justice (ECJ) *Telefonica* case decision, including appropriate steps to facilitate the ability of rights holders to obtain the necessary information to take civil actions to protect their rights. To this end, copyright holders strongly support amending Greek legislation to clarify the obligations of ISPs to reveal identities of copyright infringers. Both the former and current chief Prosecutors have issued circulars endorsing this view, and advising that internet protocol (IP) addresses comprise external data of the communication and should not be regarded as communication data protected by communications privacy. These Circulars express the view that IP addresses should not be regarded as personal data, since they reveal no personal information regarding the person and are not permanently assigned to a specific person. Both Prosecutors also suggested that measures should be taken so as not to turn internet to a criminal haven, where violators would exploit legislation on personal data protection which was designed for the protection of personal rights. Thus, the Prosecutors believe that when internet crimes are involved, there can be disclosure of personal data. However, given that such statements from the Prosecutor do not bear equal legal strength as a law and, while they are binding on Prosecutors, may not be adopted by Courts, it remains imperative that the government enact relevant legislation on this important issue that is a critical component of an effective challenge to internet piracy.

Administrative fine law: Unfortunately the Administrative Fine, Law 3524, issued in January 26, 2007, has been ineffective. As discussed above, this fine has not been applied in practice, despite numerous complaints from IP rights holders and trade organizations. The recording industry reports that suspects refuse to pay the fine, insisting on a trial, which will take years. The business software industry notes that neither the National Police and Tax Police (YPPE) have issued Circulars to adopt the new legal framework on administrative fines nor have they mobilized their resources to do inspections for software piracy.

Ineffective implementation against street vendors: Ministerial Decree No. K1-1178, was signed June 25, 2007 by the Minister of Public Order, and was intended to help remove street vendors from the streets by empowering the Municipal Police, the Tax Police and the regular Police to confiscate and destroy all items protected by the current intellectual property legislation when sold in the streets by street vendors. This 2007 decree, however, was never applied in practice due to the complexity of its content and the procedures necessary for its implementation. The decree itself did not mandate seizure and immediate destruction, but required boards comprised of municipal servants that would meet one or two times before they would come to a decision that would validate the destruction. As a result, the municipal police would rather pass the seized items to the Police. The Municipal Police, who are unarmed and have no authority to arrest people, refuse to go out without armed police escort because they are physically attacked by street vendors. Improved efforts are needed to get the three Ministries involved, that is, Internal Affairs, Public Order and Development, to considerably speed up the implementation process. The industries require fast and bureaucrat-free procedures, so as we will not waste time with court cases that lead to acquittals or lenient penalties. Greek Law 3731/2008 provides the general provisions of jurisdiction of the Municipal Police, but no provision regarding the arrest/prosecution of street vendors for IP infringements is included in the Law content. Reports also suggest that amendments have been proposed to amend this Decree in order to simplify the procedure for the seizure and destruction of pirate products. Given recent reorganizations within the Greek government, this issue is not at the forefront. Therefore, new legislation to provide Municipal Police with authority to arrest and prosecute street vendors for IP infringements needs to be issued.

IPR TRAINING AND PUBLIC AWARENESS

The industries believe that IPR training for judges must be organized by the Greek government. The industries consistently ask that such training be arranged, as it is a critical first step to lead to the proper application of the law which in turn will lead to effective enforcement against piracy. More IPR training and education for police, prosecutors, judges, and customs officials is urgently needed. A course of intellectual property was recently introduced in the Athens School of Judges and Prosecutors. Last year OPI organized some meetings and seminars among the legal departments of the IP organizations and that was it. With respect to trainings for police and customs officials, a good number of educational seminars have been organized on IPR infringement over the past years. However, there were no relevant seminars in 2009. The recording industry (IFPI) and the film industry (EPOE) held a few training seminars for police and custom authorities and they also participated in additional seminars for custom authorities that were organized by the government. With respect to trainings for YPEE, there were no relevant seminars in 2009, as YPEE did not proceed to any audits. BSA is always available to offer trainings regarding IPR infringement for police and customs officials.