

# 2009 Special 301 Report

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## **EXECUTIVE SUMMARY**

The “Special 301” Report is an annual review of the global state of intellectual property rights (IPR) protection and enforcement, conducted by the Office of the United States Trade Representative (USTR) pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994).

This Report reflects the Administration’s resolve to encourage and maintain effective IPR protection and enforcement worldwide:

- The report highlights positive accomplishments, such as sustained efforts by trading partners such as the Republic of Korea (Korea) and Taiwan, both of whom have been removed from the Watch List, and a positive outcome in a U.S. World Trade Organization (WTO) dispute settlement case against China.
- The report notes continuing serious concerns in countries such as China and Russia. But it also credits positive steps by those trading partners, such as Russia’s accession to the WIPO Internet Treaties.
- The report identifies growing concerns with some trading partners, such as Algeria, Canada, and Indonesia, and with some key challenges, such as Internet piracy.

In the year ahead, USTR looks forward to working with our trading partners to address emerging and continuing concerns and build on the positive results achieved thus far.

The Special 301 designations and actions announced in this Report are the result of close consultations with affected stakeholders, foreign governments, and Congressional leaders, as well as interagency discussions within the United States Government. USTR requested written submissions from the public through a notice published in the *Federal Register* on January 23, 2009. Submissions were made available to the public at [www.regulations.gov](http://www.regulations.gov), docket number USTR-2009-0001.

The 2009 Special 301 review process examined IPR protection and enforcement in 77 countries. Following extensive research and analysis, USTR designates the following 46 countries in this year’s Special 301 Report in the categories of Priority Watch List, Watch List, and/or Section 306 Monitoring status:

**Priority Watch List:** China, Russia, Algeria, Argentina, Canada, Chile, India, Indonesia, Israel, Pakistan, Thailand, Venezuela

**Watch List:** Belarus, Bolivia, Brazil, Brunei, Colombia, Costa Rica, Czech Republic, Dominican Republic, Ecuador, Egypt, Finland, Greece, Guatemala, Hungary, Italy, Jamaica, Kuwait, Lebanon, Malaysia, Mexico, Norway, Peru, Philippines, Poland, Romania, Saudi Arabia, Spain, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan, and Vietnam

**Section 306 Monitoring:** Paraguay

## Out-of-Cycle Reviews

In 2009, USTR will conduct a number of Out-of-Cycle Reviews (OCRs) to monitor progress on IPR protection and/or enforcement and to consider the placement of these trading partners in the Special 301 Report.

- *Fiji* – Several public submissions raised concerns regarding large-scale commercial enterprises engaged in retail distribution of pirated optical discs (CDs and DVDs). USTR will conduct an OCR to examine Fiji's efforts to address this problem.
- *Israel* – The United States will continue the OCR that was started last year, in order to continue positive discussions with Israel regarding potential amendments to Israel's laws that affect IPR protection for pharmaceutical products.
- *Philippines* – The United States will conduct an OCR to monitor the Philippines' progress on IPR protection and enforcement initiatives.
- *Poland* – The United States will conduct an OCR to examine whether Poland continues to make progress on IPR enforcement, including through implementation of its National IPR Action Plan.
- *Saudi Arabia* – To build on the successful launch of the United States-Saudi Arabia IPR Working Group, the United States will conduct an OCR to monitor progress by Saudi Arabia on IPR enforcement and transparency objectives.

## New Format of the Special 301 Report

USTR has restructured the Special 301 Report, which now has three main sections and two Annexes.

- **Section I: Developments in Intellectual Property Rights Protection and Enforcement** discusses broad global trends and issues in IPR protection and enforcement that USTR works to address on a daily basis.
- **Section II: Country Reports** includes narrative descriptions of issues of concern in particular countries.
- **Section III: Notorious Markets** is a listing of Internet markets and physical markets of concern.
- **Annex I** provides the statutory background for the Special 301 Report.
- **Annex II** provides a list of contracting parties to the World Intellectual Property Organization (WIPO) Performances and Phonograms Treaty (WPPT) and the WIPO Copyright Treaty (WCT) (*i.e.*, the WIPO Internet Treaties).

## **SECTION I. DEVELOPMENTS IN IPR PROTECTION AND ENFORCEMENT**

Innovation and creativity are pillars of global economic development. Key to any nation's economic success is the ability to trade intellectual property – including the goods and services that flow from new ideas – in a rules-based system around the world. An important part of the mission of the Office of the United States Trade Representative is to ensure that U.S. creators and innovators benefit from adequate and effective protection and enforcement of their IPR in markets around the world.

IPR infringement causes significant financial losses for rightsholders and legitimate businesses around the world. In its most pernicious forms, it can also endanger the public. Counterfeiting of some products, such as car parts and medicines, poses a real risk to health and safety. Trade in counterfeit and pirated products often fuels organized criminal networks and hinders sustainable economic development in many countries.

### **Initiatives to Strengthen IPR Internationally**

The United States has worked to promote adequate and effective protection and enforcement of IPR through a variety of mechanisms, including the following initiatives:

- **World Trade Organization (WTO):** The multilateral structure of WTO agreements provides opportunities for USTR to lead engagement with trading partners on IPR issues in several contexts, including accession processes for prospective members like Russia; the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS); and dispute settlement.
- **Bilateral and Regional Initiatives:** The United States is pleased to have worked together with many countries to strengthen IPR protection and enforcement through the provisions of bilateral and regional agreements, including free trade agreements (FTAs). In addition, Trade and Investment Framework Agreements (TIFAs) between the United States and several countries, including many in the Middle East and Asia, have facilitated discussions on enhancing IPR protection and enforcement.
- **Anti-Counterfeiting Trade Agreement (ACTA):** The goal of the ACTA initiative is to work with trading partners in favor of strong IPR enforcement to achieve an agreement that raises the international standard for the enforcement of IPR. On April 6, 2009, USTR and its ACTA partners released a detailed summary of the issues under negotiation.
- **Trade Preference Program Reviews:** USTR reviews IPR practices in connection with the implementation of trade preference programs such as the Generalized System of Preferences (GSP). USTR will continue to review IPR practices in Russia, Lebanon, and Uzbekistan under ongoing GSP reviews. As part of its bi-annual review of the operation of the Caribbean Basin Economic Recovery Act, USTR will review the IPR practices of beneficiaries, including The Bahamas, to assess compliance with the preference

program's eligibility criteria, which include the extent to which a country prohibits its nationals from broadcasting U.S. copyrighted materials without permission.

- **Asia-Pacific Economic Cooperation (APEC) forum:** The United States encourages APEC members – some of whom have significant IPR enforcement challenges – to put in place legal regimes and enforcement systems to better combat counterfeiting and piracy. In the past year, the United States led efforts to ensure effective implementation of previously agreed-upon initiatives on IPR protection and enforcement, including the APEC Anti-Counterfeiting and Piracy Initiative and the APEC Cooperation Initiative on Patent Acquisition Procedures. In 2008, APEC Leaders and Ministers underscored the importance of continuing and building upon this work in 2009 by addressing areas such as satellite and cable signal theft, and patent examination practices in the region. The United States will work with the other APEC economies on these efforts.
- **Expanded International Cooperation:** USTR, in coordination with other agencies, is looking forward to continuing engagement with trading partners in bilateral, regional, and multilateral fora to improve the global IPR environment. In addition to the work listed above, we anticipate engaging with our trading partners in initiatives such as the G-8, the U.S.-EU Summit, our trilateral cooperation with Canada and Mexico, the Organization for Economic Cooperation and Development (OECD), and other multilateral and regional fora.

### **Trends in Counterfeiting**

Counterfeiting has evolved in recent years from a localized industry concentrated on copying high-end designer goods to a sophisticated global business involving the mass production and sale of a vast array of fake goods, including items such as counterfeit toothpaste, shampoos, razors, electronics, batteries, food and beverages, chemicals, sporting goods, automobile and airplane parts, medicines, and health care products.

Counterfeiting affects the profits of legitimate producers and impacts consumers whose lives and safety are at risk when they purchase fake goods. It also damages the economies of the countries in which it occurs by decreasing tax revenue and deterring investment. Counterfeiters generally pay no taxes or duties, and they often disregard basic standards for worker health and safety, and product quality and performance. Industry reports trends in counterfeiting including:

- A greater diversification in the types of goods that are being counterfeited, as well as the production of labels and components for these fake products. Exploiting free trade zones (FTZs), counterfeiters are establishing a global trade in these items, shipping them separately to FTZs to be assembled and distributed in another country.
- Piracy of copyrighted products in virtually all formats, as well as counterfeiting of trademarked goods, has grown rapidly because these criminal enterprises offer enormous profits and little risk. Counterfeiters and pirates require little up-front capital investment, and even if caught and charged with a crime, the penalties imposed in many countries are so low that they offer little or no deterrence.



Stronger and more effective criminal and border enforcement is required to stop the manufacture, import, export, transit, and distribution of pirated and counterfeit goods. Through bilateral consultations, FTAs, and international organizations, USTR is working to maximize the deterrent effects of remedies, including stronger penalties and requirements for the seizure and destruction of pirated and counterfeit goods, and the equipment used in their production.

The manufacture and distribution of counterfeit pharmaceuticals is a growing problem that poses special concerns for consumer health and safety. The United States notes its concern with the proliferation of the manufacture of counterfeit pharmaceuticals in Brazil, China, India, Indonesia, and Russia, and the sale and distribution of counterfeit pharmaceuticals in many countries. A significant contributing factor in this problem is the unauthorized use of bulk active pharmaceutical ingredients (APIs) to manufacture counterfeit pharmaceuticals. For instance, in China, domestic chemical manufacturers that produce APIs can avoid regulatory oversight by not declaring that the bulk chemical is intended for use in pharmaceutical products. While China has acknowledged that this loophole must be addressed and has committed to expanding its regulations to control bulk chemicals used as the underlying source of many counterfeit drugs, we continue to urge China to adopt policies that will in fact reduce the manufacture and distribution of unauthorized APIs.

### **Internet and Digital Piracy**

The increased availability of broadband Internet connections around the world has made the Internet an extremely efficient vehicle for disseminating copyright-infringing products. Internet piracy is a significant concern in a number of trading partners, including Canada, China, Greece, Hungary, Korea, Poland, Romania, Russia, Spain, Taiwan, Ukraine, and Vietnam. Unauthorized retransmission of live sports telecasts over the Internet continues to be a problem in many countries, particularly in China. In addition, piracy using new technologies is an emerging problem internationally. For example, U.S. copyright industries report growing problems with piracy using cellular telephones, palm devices, flash drives, and other mobile technologies. In some countries these devices are being pre-loaded with illegal content before they are sold. In addition to piracy of music and films using these new technologies, piracy of ring tones, games, and scanned books also occurs. Countries with significant problems of piracy using these new technologies include China, India, Indonesia, Malaysia, and the Philippines. The United States will work with these governments to combat these increasing problems. The United States urges governments to ratify and implement the WIPO Internet Treaties, which provide for the tools necessary to protect copyrighted works in the digital environment.

Although Internet piracy is rapidly supplanting physical piracy in many markets around the world, production of and trade in pirated optical discs remains a major problem in many parts of the world. In recent years, some countries, such as Brazil, Pakistan, the Philippines, and Ukraine, have made progress toward implementing controls on optical media production. Other countries still need to adopt and implement legislation or improve existing measures to combat illegal optical disc production, including Bangladesh, China, India, Russia, and Thailand, which have not made sufficient progress in this area. The United States continues to urge its trading partners

who face illegal optical media production within their borders to pass effective legislation to counter this problem and aggressively enforce existing laws and regulations.

### **Government Use of Software**

Under Executive Order 13103 issued in September 1998, United States Government agencies maintain procedures to ensure the authorized and legitimate use of business software. Pursuant to the same directive, USTR has undertaken an initiative to work with other governments, particularly in countries that are modernizing their software asset management systems or where concerns have been raised, to stop governmental use of illegal software. Considerable progress has been made under this initiative, leading to numerous countries and territories mandating that only authorized, legitimate software may be used by government ministries. Further work on this issue remains with certain countries such as Belarus, China, Peru, Saudi Arabia, and Ukraine. The United States looks forward to the adoption by these governments of effective and transparent procedures to ensure legitimate use of software.

### **Intellectual Property and Health Policy**

As affirmed in the 2001 WTO Doha Declaration on the TRIPS Agreement and Public Health, the United States respects a country's right to protect public health, in particular, to promote access to medicines for all and supports the vital role of the patent system in promoting the development and creation of new and innovative lifesaving drugs.

Consistent with these views, the United States respects our trading partners' rights to grant compulsory licenses in a manner consistent with the provisions of the TRIPS Agreement, and encourages our trading partners to consider ways of addressing their public health challenges while maintaining stable intellectual property systems that promote investment, research, and innovation.

The United States is firmly of the view that international obligations such as those in the TRIPS Agreement have sufficient flexibility to allow countries to address the serious public health problems that they may face. We strongly support the TRIPS/health solution concluded in August 2003, in which members are permitted, in accordance with specified procedures, to issue compulsory licenses to export pharmaceutical products to countries that cannot produce drugs for themselves. The General Council adopted a Decision in December 2005 that incorporated this solution into an amendment to the TRIPS Agreement, and later that month the United States became the first WTO member to formally accept this amendment. The United States hopes to see at least two-thirds of the WTO membership accept this amendment by the December 31, 2009 deadline, at which point the amendment will go into effect for those members that accept it. The August 2003 waiver will remain in place and available until the amendment takes effect.

The United States will work to ensure that the provisions of our bilateral and regional trade agreements are consistent with these views, and do not impede the taking of measures necessary to protect public health. In addition, USTR will continue its close cooperation with the Department of Health and Human Services, which contributed to the negotiation of the recently adopted *Global Strategy on Public Health, Innovation and Intellectual Property* and the agreed

parts of its *Plan of Action* at the World Health Organization, to ensure that public health challenges are addressed and the patent system is supported as a mechanism to promote research and innovation.

### **Supporting Pharmaceutical Innovation**

USTR has sought to eliminate market access barriers faced by U.S. pharmaceutical companies in many countries and to provide for both affordable health care today and support for the innovation that assures improved health care tomorrow. For example, this year's Special 301 Report highlights concerns regarding market access barriers affecting pharmaceuticals in Algeria and Indonesia.

Other types of measures have the potential to affect market access in this sector, even where a country's IPR regime is adequate. For example, price controls and regulatory and other barriers can discourage the development of new drugs. These barriers may include unreasonable regulatory approval delays, linkages between dispensing and prescribing, and reference pricing or other potentially unfair reimbursement policies. The criteria, rationale, and operation of such measures are often nontransparent, or not fully disclosed to patients or the pharmaceutical companies seeking to market their drugs.

The United States also is seeking to establish or continue dialogues with Organization for Economic Cooperation and Development (OECD) members and other developed economies to address concerns and encourage a common understanding on questions related to innovation in the pharmaceutical sector. For example, the United States-Korea Free Trade Agreement, once in force, would improve access to innovative products and ensure the transparent, predictable, and non-discriminatory pricing and reimbursement of innovative and generic pharmaceutical products, medical devices, and biologics. U.S. industry has expressed concerns regarding the policies of several industrialized trading partners, including Canada, France, Germany, Italy, Japan, New Zealand, and Taiwan, on issues related to innovation in the pharmaceutical sector and other aspects of health care goods and services.

With respect to Japan, pharmaceutical and medical device issues are an integral part of the bilateral regulatory reform discussions. While progress has been made, the United States continues to press for improved transparency, including by ensuring meaningful opportunities for interested stakeholders to provide input into important regulatory, reimbursement, and pricing matters, facilitating the introduction of innovative new pharmaceuticals and medical devices into Japan's market.

The United States remains concerned about Poland's enactment in 2006 of a regulation establishing wholesale and retail processes for drugs, which appears to reduce the official maximum wholesale and retail prices for imported drugs by 13 percent while generally leaving unchanged the prices for drugs of Polish origin. The U.S. pharmaceutical industry reports that this regulation has had a significant impact by reducing prices for numerous products manufactured outside Poland. Poland is in the process of drafting such implementing legislation. The United States shares the EC's concerns over this regulation and will continue to monitor the situation in Poland throughout the coming year.

The United States continues to urge China to add, on a regular basis, new drugs to its national formulary, which controls access to medicines for China. The United States also urges China to adopt regulatory and reimbursement policies for medical devices that support innovation and increase transparency and predictability in that market.

The United States shares policy goals and concerns related to health care with other industrialized countries, including challenges surrounding aging populations and rising health care costs. The United States also shares the objective of continued improvement in the health and quality of life of its citizens and delivering care in the most efficient and responsive way possible. The United States hopes these dialogues will help to address specific concerns related to price controls and regulatory and transparency issues, as well as to develop a constructive dialogue with these countries on health policy issues of mutual concern.

### **Implementation of the WTO TRIPS Agreement**

The TRIPS Agreement requires all WTO members to provide certain minimum standards of IPR protection and enforcement, and was one of the most significant achievements of the Uruguay Round. The TRIPS Agreement is the first broadly-subscribed multilateral IPR agreement that is subject to mandatory dispute settlement provisions.

Developed country members were required to implement TRIPS fully as of January 1, 1996. Developing countries were given a transition period for many obligations until January 1, 2000, and in some cases, until January 1, 2005. Nevertheless, certain members are still in the process of finalizing implementing legislation and many are still engaged in establishing adequate IPR enforcement mechanisms.

The United States will continue to work with WTO members and expects further progress in the near term towards completing their TRIPS implementation process. However, in those instances in which additional progress is not achieved, the United States will consider other means of encouraging implementation, including the possibility of recourse to dispute settlement consultations.

Recognizing the particular challenges faced by least-developed countries, in 2005 the United States worked closely with them and other WTO members to extend the implementation date for these countries from January 2006 to July 2013. The least-developed country members in turn pledged to preserve the progress that some have already made toward TRIPS compliance. In addition, the least-developed country members have until 2016 to implement their TRIPS obligations for patent and data protection for pharmaceutical products, as proposed by the United States at the Doha Ministerial conference of the WTO. The United States looks forward to the successful completion of this transition.

The United States participates actively in the WTO TRIPS Council's scheduled reviews of WTO members' implementation of the TRIPS Agreement, and also uses the WTO's Trade Policy Review mechanism to pose questions and seek constructive engagement on issues related to TRIPS implementation. Additionally, the United States continues to work with other WTO

members, including the European Communities, Japan, and Switzerland, to encourage a discussion within the WTO TRIPS Council on implementation of the enforcement-related provisions of the TRIPS Agreement. The United States hopes that the TRIPS Council can generate a useful sharing of experiences related to IPR enforcement, in the interest of ensuring effective implementation of enforcement obligations.

### **WTO Dispute Settlement**

The United States will continue pursuing the resolution of WTO-related disputes announced in previous Special 301 reviews and determinations. The most efficient and therefore preferred manner of resolving our concerns is through bilateral dialogue. Where these efforts are unsuccessful, the United States will consider utilizing the dispute settlement process.

In April 2007, the United States requested WTO dispute settlement consultations with China over deficiencies in China's legal regime for protecting and enforcing copyrights and trademarks on a wide range of products. After those consultations failed to resolve the matter, the United States requested the establishment of a WTO panel. A WTO panel was established to examine this matter on September 25, 2007.

On March 20, 2009, the WTO Dispute Settlement Body ("DSB") adopted a panel report ruling in favor of the United States that (1) China's denial of copyright protection to works that do not meet China's content review standards is impermissible under the TRIPS Agreement; and (2) China's customs rules cannot allow seized counterfeit goods to be publicly auctioned after only removing the infringing mark. With respect to the third claim concerning China's thresholds for criminal prosecution and conviction of counterfeiting and piracy, while the United States prevailed on the interpretation of the important legal standards in Article 61 of the TRIPS Agreement, including the finding that criminal enforcement measures must reflect and respond to the realities of the commercial marketplace, the panel found that it needed additional evidence before it could uphold the overall U.S. claim that China's criminal thresholds are too high. The United States looks forward to working with China to implement the Dispute Settlement Body's (DSB) recommendations and rulings in this dispute.

In addition, the United States requested WTO dispute settlement consultations with China concerning certain other Chinese measures affecting market access. These measures appear to be inconsistent with various WTO obligations of China. This consultation request focuses on a Chinese legal structure that denies foreign companies the right to import publications, movies, music, and videos, that severely impedes the efficient and effective distribution of publications, music, and videos within China, and that disadvantages imported publications, movies, and music *vis-à-vis* their domestic counterparts in their distribution. As the United States and China were unable to resolve this dispute in these consultations, the United States filed a request for the establishment of a WTO panel. A WTO panel was established to examine this matter on November 27, 2007, and was composed on March 27, 2008. The panel proceedings are currently underway.

Following the 1999 Special 301 review, the United States initiated dispute settlement consultations concerning the European Union's (EU) regulation on food-related geographical

indications (GIs), which appeared to discriminate against foreign products and persons – notably by requiring that EU trading partners adopt an “EU-style” system of GI protection – and appeared to provide insufficient protections to trademark owners. On April 20, 2005, the DSB adopted a panel report ruling in favor of the United States that the EU GI regulation is inconsistent with the EU’s obligations under the TRIPS Agreement and the General Agreement on Tariffs and Trade 1994. The DSB found that the EU’s GI regulation impermissibly discriminates against non-EU products and persons and that Europe could not, consistent with WTO rules, deny U.S. trademark owners their rights. The DSB ruled that, under the regulation, any exceptions to trademark rights for the use of registered GIs were narrow, and limited to the actual GI name as registered. On March 31, 2006, the EC published a revised GI Regulation that is intended to comply with the DSB recommendations and rulings. There remain some concerns, however, with respect to this revised GI Regulation, which the United States has asked the EC to address, and the United States intends to continue monitoring this situation.

### **Positive Developments**

Several countries made significant positive progress on IPR protection and enforcement in 2008 and early 2009. For example:

- **Korea** – USTR is pleased to announce that Korea is being removed from the Special 301 Watch List in recognition of the significant improvements it has made during the past year, and the Korean Government’s policy direction of continuing to place a priority on improving its IPR regime. This marks the first time in the history of the report that Korea has not appeared on either the Watch List or the Priority Watch List. USTR will, however, continue to monitor closely the ongoing problem of Internet piracy in Korea, and will be prepared to consider returning Korea to the Watch List in the future if it does not respond effectively to this challenge through its implementation of newly enacted legislation and other steps.
- **Taiwan** – In January 2009, USTR announced the removal of Taiwan from the Watch List following an OCR. During this period of review, Taiwan established a Specialized IPR Court and made progress implementing the Ministry of Education Action Plan for Protecting IPR on School Campuses, and, in April 2009, Taiwan prosecutors initiated a significant prosecution involving a peer-to-peer (P2P) network under the 2007 amendments to Taiwan’s copyright law. On April 21, 2009, Taiwan’s Legislative Yuan enacted a new law to provide limitations on Internet Service Provider (ISP) liability if ISPs establish and follow certain procedures, including an expeditious notice-and-takedown regime.
- **China** – During the Beijing Olympics, the Chinese Government went to unprecedented lengths to launch a coordinated crackdown on the unauthorized retransmission of sporting events as well as online activities related to the Olympic Games. These efforts reportedly resulted in 453 online infringement cases, through which 192 sites were shut down, 173 sites were required to remove infringing content, 88 sites received administrative punishment, and infringing activities related to 10 sites were transferred

for criminal prosecution. This experience shows that when the Chinese Government chooses to exercise its political will to deal with an IPR problem, it can yield results.

- **Russia** – Russia acceded to the WIPO Internet Treaties, and has made progress combating software piracy. In addition, the Moscow City Government banned DVD/CD kiosks in the public transport system and pedestrian spaces, thus eliminating one major nexus of retail trade in pirated videos and music.
- **Chile** – Chile acceded to the Patent Cooperation Treaty. Chile also created a specialized brigade within the Chilean police force to handle IPR crimes.
- **Egypt** – In 2008, Egyptian courts issued the first jail sentences for IPR, in several criminal cases against defendants for software piracy.
- **India** – Due to the serious problem posed by counterfeit medicines, India passed the Drugs and Cosmetics (Amendment) Act 2008 that will increase penalties for spurious and adulterated pharmaceuticals. Additionally, India introduced an e-filing system for trademark and patent applications.
- **Indonesia** – A longstanding trademark dispute was resolved in 2008 after years of litigation.
- **Lebanon** – In 2008, Lebanon made significant progress on the long-standing problem of cable signal piracy, resulting in at least 80 percent of the 600-800 pirate cable operators signing licenses to become legitimate cable providers.
- **Saudi Arabia** – In 2008, Saudi Arabia established a website for its Violations Review Committee that provides information about copyright prosecutions and court cases and increases transparency for rightsholders.
- **Sweden** – In April 2009, a Swedish court convicted four defendants in connection with the PirateBay website, which was previously listed in the 2008 Special 301 Report as a notorious virtual market on the Internet. In addition, a new measure in Sweden permitting rightsholders in civil proceedings to obtain the identities of individuals implicated in the unauthorized exchange of digital content from ISPs entered into force.
- **Vietnam** – As part of its efforts to meet its obligations under the TRIPS Agreement, Vietnam passed a circular in 2008 to criminalize commercial scale copyright and trademark infringement.

The United States commends this positive progress by our trading partners. The United States will continue to work with these and other countries to achieve further improvements in IPR protection and enforcement during the coming year.





## SECTION II. COUNTRY REPORTS

### PRIORITY WATCH LIST

#### **CHINA**

China will remain on the Priority Watch List in 2009 and will remain subject to Section 306 monitoring. China's enforcement of IPR and compliance with its TRIPS Agreement obligations remain top priorities for the United States. The United States looks forward to working with China to implement the WTO Dispute Settlement Body's recommendations and rulings in the *China – Measures Related to the Protection and Enforcement of Intellectual Property Rights* dispute.

While the Chinese Government continues to provide increased attention to the IPR environment, the shared goal of significantly reducing IPR infringement throughout China has not yet been achieved. China's IPR enforcement regime remains largely ineffective and non-deterrent.

The United States also remains concerned by reports that officials, apparently motivated by the financial crisis and the need to maintain jobs, are urging more lenient enforcement of IPR laws. The United States believes that, consistent with the rule of law, IPR enforcement actions should be initiated, cases should be decided, and remedies should be granted based on the merits of the case and in accordance with the law. Moreover, a strengthened approach to IPR protection and enforcement in China would contribute to a more robust and innovative economy in the longer term.

Of particular concern is the rise of Internet piracy in China, especially given its emergence as a leading nation in terms of the number of Internet, broadband and mobile device users. Strong action to curb trademark counterfeiting and copyright piracy on the Internet is critical to the future of IPR protection in China. China should significantly increase criminal prosecutions and other enforcement actions against Internet-based piracy and counterfeiting operations through a coordinated, national effort backed by appropriate resources. During the Beijing Olympics, the Chinese Government went to unprecedented lengths to launch a coordinated crackdown on the unauthorized retransmission of sporting events as well as online activities related to the Olympic Games. These efforts reportedly resulted in 453 online infringement cases, through which 192 sites were shut down, 173 sites were required to remove infringing content, 88 sites received administrative punishment, and infringing activities related to 10 sites were transferred for criminal prosecution. This experience shows that when the Chinese Government chooses to exercise its political will to deal with an IPR problem, it can yield results. We urge the Chinese Government to demonstrate this resolve generally when fighting piracy and counterfeiting on the Internet.

Retail and wholesale trademark counterfeiting in China continues to be a major source of frustration for international brand owners. In spite of significant attention and resources from brand owners, administrative supervision, civil lawsuits, agreements with landlords, and attention from China's central Government and foreign governments, counterfeiting remains pervasive in many retail and wholesale markets. It appears that additional measures, including

criminal sanctions, will be necessary to bring this problem under control. While rightsholders reported that they were encouraged by the innovative protocol brokered by the Beijing municipal courts between brand-owners and the landlord of the notorious Silk Market, they are disappointed that the settlement protocol is not being enforced. We encourage the appropriate authorities to take the actions necessary to ensure that this protocol can be adequately enforced.

Despite the crackdowns during the Olympics and an increasing number of IPR cases in Chinese courts, overall piracy and counterfeiting levels in China remained unacceptably high in 2008. The share of IPR-infringing product seizures at the U.S. border that were of Chinese origin was 81 percent in 2008, and that share rose in terms of value by 40 percent over 2007. Chinese counterfeit products include pharmaceuticals, electronics, batteries, auto parts, industrial equipment, toys, and many other products that pose a direct threat to the health and safety of consumers in the United States, China and elsewhere. The U.S. copyright industries estimate that losses due to piracy in China were approximately \$3.5 billion for the music recording and business software industries alone. While Internet piracy continues to grow, trade in illegal optical discs also continues to thrive, supplied by both licensed and unlicensed factories and by smugglers. Small retail shops continue to be the major commercial outlets for pirated movies and music and a wide variety of counterfeit goods. Piracy of books and journals and end-user piracy of business software also remain key concerns.

Inadequate IPR enforcement is a key factor contributing to these shortcomings, and there are a number of legal obstacles to effective enforcement that result in limited deterrence provided by Chinese law. These impediments include high value and volume thresholds that must be met before criminal prosecution of IPR infringement is possible as well as difficulties in initiating or transferring cases to the criminal authorities that do meet China's thresholds for criminal prosecution. Rules designed to promote the transfer of cases to criminal authorities do not appear to have solved the problem. Moreover, the vast majority of enforcement is channeled to administrative authorities. U.S. trademark and copyright industries continue to point out that administrative fines are too low and irregularly awarded to provide an effective deterrent, and as a result infringers continue to consider administrative seizures and fines as a cost of doing business. Civil damages for infringement are also low. IPR enforcement at the local level is hampered by poor coordination among Chinese Government ministries and agencies, local protectionism and corruption, high thresholds for initiating investigations and prosecuting criminal cases, lack of training, and inadequate and non-transparent processes. In addition, rightsholders report that in the eight years since China's current Copyright Law was adopted, China has yet to set a rate under Article 42 of that law for the remuneration of rightsholders for the use of their works by radio or television broadcasters.

As in the past, the United States will continue to review the policies and enforcement situation in China at the sub-national levels of Government. In 2009, USTR will conduct a review to assess the strengths, as well as weaknesses and inconsistencies, in and among the specific jurisdictions of provincial and municipal Governments' IPR protection and enforcement regimes.

Apart from longstanding concerns over IPR enforcement, the United States recognizes U.S. industry concerns about the possibility that laws or policies in a variety of fields might be used to unfairly favor domestic intellectual property (IP) over foreign IP. Such concerns are especially

acute in light of Chinese Government policies that appear to establish a procurement preference for domestically innovated products. The Chinese Government is currently considering legal and/or policy changes in areas such as the scope of compulsory licensing of patented inventions, the treatment of IPR in setting standards, and other areas that have the potential to affect IPR protection and market access for IPR-reliant goods and services. The United States will monitor these developments closely to ensure fair and equitable treatment for U.S. rightsholders.

China also maintains market access barriers, such as import restrictions and restrictions on wholesale and retail distribution, which can discourage and delay the introduction of a number of legitimate foreign products that rely on IPR into China's market. These barriers create additional incentives for infringement of products like movies, video games, and books, and inevitably lead consumers to the black market, again compounding the severe problems already faced by China's enforcement authorities. The United States has initiated WTO dispute settlement on several market access barriers affecting U.S. copyright industries.

The treatment of IPR in standards-setting processes has garnered continuing attention in China and elsewhere. The United States understands that the Standards Administration of China is expected to issue revised draft regulations regarding the treatment of patents and other IPR in national standards. Earlier draft regulations, issued in 2005, prohibited the incorporation of patents in mandatory national standards. U.S. stakeholders continue to have concerns about these issues, due in part to recent Chinese Government officials' public comments suggesting that patent holders might be required to share their patented technologies on a royalty-free basis or meet other mandatory requirements such as participation in patent pools, in order to participate in the standards development process.

China enacted the Third Amendment to its Patent Law in 2008. These changes will go into effect on October 1, 2009. While many areas of the Patent Law were clarified and improved, rightsholders have raised a number of concerns about the new law. For example, the requirement to disclose the origins of genetic resources has led to concerns regarding whether a patent application can be rejected or whether the validity of a patent can be challenged if the disclosure requirements are not met. Also, there are concerns regarding the inadequacy of a two year statute of limitation for filing a patent infringement case and about the scope and role of compulsory licensing under the new law. In addition, while the United States welcomes proposals in China's 2008 Action Plan on IPR Protection to more closely coordinate patent grants with pharmaceutical marketing approval, the United States continues to have concerns about the extent to which China provides effective protection against unfair commercial use for undisclosed test or other data generated to obtain marketing approval for pharmaceutical products.

The United States believes that continued bilateral dialogue and cooperation can lead to further progress in these and other areas. The United States will continue to put serious efforts into its joint work with China on IPR enforcement and protection strategies, innovation policies, and the range of other important IPR-related matters in our bilateral economic relationship, including through the Joint Commission on Commerce and Trade (JCCT) and other fora.

## **RUSSIA**

Russia will remain on the Priority Watch List in 2009. While Russia has made some progress in improving IPR protection and enacting necessary legislation, concerns remain, particularly with respect to Russia's slow implementation of some of its commitments in the November 2006 bilateral agreement on IPR ("IPR Bilateral Agreement").

The United States urges Russia to provide stronger enforcement against piracy and counterfeiting, which remain major concerns. The U.S. copyright industries estimate a loss in excess of \$2.7 billion in 2008 due to copyright infringement, especially through online piracy, which has become an acute problem. Despite having closed down some illegal websites offering pirated music, many more have sprung up in their place. Complicating this situation are certain rogue "collecting societies" that negotiate "licenses" with these Internet sites, despite not having any authority to issue such licenses. We continue to urge the Russian Government, as part of its efforts to reform the legitimate collecting societies, to shut down those that are fraudulent. In addition, to help combat Internet piracy, we have urged the Russian Government to fully empower the Computer Crimes Unit of the Ministry of the Interior ("Department K") to combat copyright infringement that occurs on the Internet by providing investigation and prosecution guidelines for these crimes.

In the IPR Bilateral Agreement, Russia committed to fight optical disc and Internet piracy, protect against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, deter piracy and counterfeiting through criminal penalties, strengthen border enforcement, and bring its laws into compliance with WTO and international IPR norms. Russia's implementation of these IPR commitments will be essential to completing the final WTO accession process. While Russia has made some progress in implementation, additional work remains for Russia to fully implement its commitments under the IPR Bilateral Agreement. Specifically, the United States looks to Russia to make further progress by ensuring that the Russian Customs Code, Civil Code and Law on Medicines comply with the IPR Bilateral Agreement and the relevant TRIPS Agreement obligations that will take effect upon Russia's accession to the WTO.

On the positive side, Russia recently acceded to the WIPO Internet Treaties, and has made progress combating software piracy. In addition, the Moscow City Government has recently banned DVD/CD kiosks in the public transport system and pedestrian spaces, thus eliminating one major nexus of retail trade in pirated videos and music. Amendments to the Civil Code and Customs Code have been introduced into the Duma and are under active consideration. The United States-Russia Bilateral Working Group on IPR met in March 2009. The United States Government looks forward to future collaborative meetings to discuss how both governments can work to strengthen the protection and enforcement of IPR.

## **ALGERIA**

Algeria will be added to the Priority Watch List in 2009. The United States is troubled by a law that took effect in Algeria on January 1, 2009 that bans numerous imported pharmaceutical products and medical devices in favor of local production in Algeria. This import ban prevents

market access by U.S. companies that rely on intellectual property, and is a serious concern. In addition, the United States remains concerned about the lack of protection in Algeria against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. Industry has also noted concern over the granting of marketing approval in recent years to unauthorized copies of drugs protected by Algerian patents, and the lack of effective judicial remedies to enable rightsholders to challenge in court the granting of such marketing approvals. Enforcement against piracy and counterfeiting is weak. The United States looks forward to working with Algeria to address these IPR concerns, including through Algeria's bid for accession to the WTO, the bilateral Trade and Investment Framework Agreement, and other bilateral mechanisms.

## **ARGENTINA**

Argentina will remain on the Priority Watch List in 2009. Although cooperation between Argentina's enforcement authorities and U.S. copyright industries remains positive, and the Argentine Customs authority and law enforcement have taken steps to improve enforcement at the border and Argentina's most significant illegal market, respectively, the United States encourages stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products. Copyright piracy remains a significant problem in numerous industry sectors. Civil damages are ineffective and the judiciary is apparently reluctant to impose deterrent-level penalties in criminal cases. The United States notes that Argentina continues to make progress in decreasing its backlog of patent applications and commends their implementation of a patent recordation and alert system. However, Argentina still does not provide adequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. The United States also urges Argentina to implement an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. The United States will continue to monitor Argentina's efforts to address these IPR concerns.

## **CANADA**

Canada will be added to the Priority Watch List in 2009. The United States appreciates the high level of cooperation between our two governments in many important bilateral and multilateral IPR initiatives. The United States also welcomed the Government of Canada's reaffirmation earlier this year of its 2007 and 2008 commitments to improve IPR protection and enforcement. However, the Government of Canada has not delivered on these commitments by promptly and effectively implementing key copyright reforms. The United States continues to have serious concerns with Canada's failure to accede to and implement the WIPO Internet Treaties, which Canada signed in 1997. We urge Canada to enact legislation in the near term to strengthen its copyright laws and implement these treaties. The United States also continues to urge Canada to improve its IPR enforcement system to enable authorities to take effective action against the trade in counterfeit and pirated products within Canada, as well as curb the volume of infringing products transshipped and transiting through Canada. Canada's weak border measures continue to be a serious concern for IP owners. The United States hopes that Canada will implement legislative changes to provide a stronger border enforcement system by giving its customs officers the authority to seize products suspected of being pirated or counterfeit without the need

for a court order. The provision of additional resources and training to customs officers and domestic law enforcement personnel would enhance IPR enforcement. The United States will continue to follow Canada's progress toward providing an adequate and effective IPR protection and enforcement regime, including near term accession to and implementation of the WIPO Internet Treaties and improved border enforcement.

## **CHILE**

Chile will remain on the Priority Watch List in 2009. Chile has made some positive efforts to improve its IPR regime, including the creation of a specialized brigade within the Chilean police force to handle IPR crimes. In addition, Chile recently opened a National Institute for Industrial Property to oversee administrative actions related to industrial property, including patents and trademarks. Chile also acceded to the Patent Cooperation Treaty, thus fulfilling a commitment under the U.S.-Chile Free Trade Agreement (FTA). Nevertheless, Chile's IPR performance continues to fall well below expectations of a U.S. free trade agreement partner. The United States remains concerned about inadequate enforcement against copyright piracy and trademark counterfeiting. Chile's Congress continues to consider legislation to implement various provisions of the FTA regarding Internet service provider liability, limitations and exceptions to copyright protection, and enforcement and penalties against copyright infringement. However, certain modifications to the pending legislation should be made in order to bring Chile's IPR regime into line with its multilateral and bilateral commitments. Several other bills pending before Congress are intended to implement provisions of the FTA, including laws that would ratify the International Convention for the Protection of New Varieties of Plants (UPOV 91) and a law to ratify the Trademark Law Treaty. The United States also remains concerned about inadequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products, and urges Chile to provide an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. While some U.S. pharmaceutical companies have reported positive outcomes in patent infringement cases, the underlying weaknesses in Chile's legal regime require resolution in order for Chile to fully implement its obligations under the FTA. The United States will continue to work with Chile on the implementation of its IPR commitments in the FTA.

## **INDIA**

India will remain on the Priority Watch List in 2009. India has made progress on improving its IPR infrastructure, including through the modernization of its IP offices and the introduction of an e-filing system for trademark and patent applications. Further, the IP offices have started the process of digitization of intellectual property files. In addition, the Indian ministerial committee on IPR enforcement has supported the creation of specialized IPR police units. Customs enforcement has also improved through the implementation of the 2007 IPR (Imported Goods) Enforcement Rules as well as by seizures of unlicensed copyrighted goods intended for export. However, the United States remains concerned about weak IPR protection and enforcement in India. The United States continues to urge India to improve its IPR regime by providing stronger protection for copyrights and patents, as well as effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical

and agrochemical products. The United States encourages India to enact legislation in the near term to strengthen its copyright laws and implement the provisions of the WIPO Internet Treaties. The United States also encourages India to improve its IPR enforcement system by enacting effective optical disc legislation to combat optical disc piracy. Piracy and counterfeiting, including of pharmaceuticals, remain a serious problem in India. India's criminal IPR enforcement regime remains weak. Police action against those engaged in manufacturing, distributing, or selling pirated and counterfeit goods, and expeditious judicial dispositions for IPR infringement and imposition of deterrent-level sentences, is needed. As counterfeit medicines are a serious problem in India, the United States is encouraged by the recent passage of the Drugs and Cosmetics (Amendment) Act 2008 that will increase penalties for spurious and adulterated pharmaceuticals. The United States urges India to strengthen its IPR regime and stands ready to work with India on these issues during the coming year.

## **INDONESIA**

Indonesia will be added to the Priority Watch List in 2009. There has been little progress on IPR protection and enforcement since 2006, when Indonesia's status in the Special 301 report improved following promising steps taken by the Government. That trend has not continued, and the Government appears to be moving backward from some previous advances. The Optical Disc Regulations are not being implemented effectively; problems include issuance of licenses for suspect production lines and failure to permanently revoke licenses and seize equipment and materials after convictions. One of the key weaknesses in the Indonesian IPR enforcement regime has been in the prosecution of IPR crimes: cases move slowly, few cases result in successful convictions, and convictions often result in small fines that do not deter repeat infringers. Overall, raids appear to have decreased. Implementing regulations for the Customs Law Amendment that passed in 2006 have not yet been completed. Reports indicate that the National IP Task Force, created in 2006 to coordinate IPR protection and enforcement efforts, is ineffective. On the pharmaceutical front, counterfeit medicines continue to be a major problem. In addition, Indonesia should provide effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products. Indonesia introduced a law last year on the operation of foreign pharmaceutical companies that raise significant market access concerns. Despite the overall decline in IPR enforcement, some parts of the Government remain interested in improving the IPR regime, as reflected by the recent resolution of a longstanding trademark dispute. The United States urges Indonesia to recapture the momentum created in 2006 and to rebuild on that promising start.

## **ISRAEL**

Israel will remain on the Priority Watch List in 2009. The United States is encouraged by the high level of constructive engagement between the United States and Israel over the past year, which has included positive dialogue among the United States, Israel, and the affected industries in both countries. Consequently, the United States will continue to conduct the OCR that began last year as a positive step to encourage progress in Israel on IPR issues. The United States remains committed to reaching a resolution to the IPR issues that have been under discussion with Israel for many years. Recent progress on certain IPR issues in Israel over the past few years has included: the passage of copyright legislation and issuance of a decree in 2007 that

ensures national treatment for U.S. rightsholders in accordance with the 1950 exchange of letters between the United States and Israel; the issuance of regulations in 2007 and policy clarifications in 2008 by the Ministry of Health on the manufacturing of pharmaceutical products for export; and the announcement by the Government of Israel in its recent Special 301 submission that the Israeli Ministry of Justice has commenced preparatory work for a bill that will require the publication of patent applications following the expiration of a period of eighteen months from the determining date for patent applications filed in the Israeli Patent Office.

Despite this progress, the United States remains seriously concerned with two key matters: Israel's inadequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products, and measures that adversely affect the length of patent term extension granted to compensate for delays in obtaining regulatory approval of a pharmaceutical product. These policies result in an unfair disadvantage to innovative pharmaceutical companies who receive comparatively weak protection for innovative pharmaceutical products under Israel's current laws.

The United States has encouraged Israel to amend its laws to provide an appropriate term of data protection to innovative pharmaceutical companies, commensurate with Israel's advanced level of development. For example, due to the significant amount of time it takes for the Ministry of Health to complete its regulatory approval process for pharmaceutical products, Israel only provides an effective period of approximately three and a half to four years of data protection under its current laws. The United States continues to request that Israel amend its laws to provide at least five years of effective data protection to innovative pharmaceutical companies, which is equivalent to the term of data protection provided by the United States.

We have also asked that Israel amend its laws to increase the effective patent term extension given to pharmaceutical products to compensate for delays in the regulatory approval process. Both U.S. innovative pharmaceutical companies and Israeli generic pharmaceutical companies have raised concerns about the significant amount of time it takes for the Israeli Ministry of Health to complete its regulatory approval process, which delays public access to both innovative and generic medicines in Israel. We appreciate that the Ministry of Health has established a goal of completing its marketing approval reviews within six months, and we encourage the Israeli Government to provide the necessary resources and funding to the Ministry to achieve this goal. We also note that U.S. pharmaceutical companies have raised concerns with procedures issued by Israel's Ministry of Health in late 2008, which are intended to clarify how the Ministry handles confidential information.

The United States hopes that Israel will accede to and implement the WIPO Internet Treaties in order to address the growing problem of Internet piracy in Israel. As noted in past reports, the United States continues to expect Israel to provide an appropriately high level of IP protection that reflects its status as a partner in the U.S.-Israel FTA and its objective of becoming a member of the OECD. The United States will continue to work closely together with Israel during the OCR to ensure the strengthening of Israel's IPR regime.



## **PAKISTAN**

Pakistan will remain on the Priority Watch List in 2009. In 2005, Pakistan conducted a number of raids of optical disc plants and shut down many of them. While these actions appear to have reduced the production and export of pirated optical discs in and from Pakistan, only some of those arrested were prosecuted and the few verdicts that were issued resulted in imposition of only minimal sentences. Pakistan's Federal Investigation Agency continues to conduct large scale raids, but the lack of successful prosecutions provides little deterrent effect. Moreover, Pakistan has not made progress to provide effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products, nor has it provided an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. The United States encourages Pakistan to strengthen enforcement against book and optical disc piracy, aggressively prosecute IPR crimes, and seek deterrent-level sentences for IPR infringers, especially against those connected with the optical disc pirate plants that were shut down in 2005. The United States will continue to monitor closely the IPR situation and work with Pakistan to achieve further improvements in its IPR protection and enforcement regimes.

## **THAILAND**

Thailand will remain on the Priority Watch List in 2009 due to a broad range of continuing concerns surrounding IPR protection and enforcement. The Thai Government made little progress over the past year in addressing the widespread problems of piracy and counterfeiting. The United States is encouraged, however, by the positive statements made by senior Thai officials in Prime Minister Abhisit's Administration, which has been in office since mid-December 2008, on the new Government's intentions to make IPR protection and enforcement a higher priority and to address the longstanding deficiencies in IPR protection in Thailand. We welcome the Thai Government's message that stronger IPR protection and enforcement is a national priority, reflected by the creation of the National Task Force and the participation of the Prime Minister in this group. The United States hopes that the Thai Government will quickly translate these commitments into concrete actions to reduce large-scale entertainment and business software piracy, cable and signal theft, and organized book piracy, as well as actions to address delays in granting patents. The United States is also encouraged by Thailand's expressed intentions to reduce the uncertainty created by the previous Government's policies concerning the issuance of compulsory licenses on patented pharmaceutical products. We further encourage Thailand to ensure that the patent system promotes the development and creation of new lifesaving drugs. As affirmed in the 2001 WTO Doha Declaration on the TRIPS Agreement and Public Health, the United States respects a country's right to protect public health and, in particular, to promote access to medicines for all. In this regard, the United States respects a country's right to grant compulsory licenses in a manner consistent with the provisions of the TRIPS Agreement. Consistent with these views, we urge Thailand to consider ways of addressing its public health challenges while maintaining a stable patent system that promotes investment, research, and innovation.

## **VENEZUELA**

Venezuela will remain on the Priority Watch List in 2009. Protection and enforcement of IPR deteriorated in Venezuela in 2008. Copyright piracy continues to worsen, while proposed copyright legislation, if re-introduced, would severely undercut the existing Venezuelan copyright law, as well as bilateral and international standards of IP protection. The U.S. pharmaceutical industry reports that Venezuela has not issued a patent to a foreign pharmaceutical product since 2003. Further, in 2008, Venezuela reinstated a 1955 law that prevents the patenting of medicines and food. Venezuela also does not provide sufficient protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. In April 2006, Venezuela withdrew from the Andean Community. This raises questions about Venezuela's ability to fulfill its international IPR obligations since the Andean Community Decisions establish basic IP law for the region. The United States urges the Venezuelan Government to take immediate action to improve IPR protection, particularly by amending unsatisfactory legislative proposals or laws and by protecting against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products, and to improve IPR enforcement, particularly by addressing piracy and counterfeiting.

## **WATCH LIST**

### **BELARUS**

Belarus will remain on the Watch List in 2009. In the 2008 Special 301 Report, the United States reiterated its concern about Belarus' delayed implementation of its IPR commitments under the United States-Belarus Trade Agreement. There has been no apparent progress since that time. The Belorussian market is dominated by illegal optical disc, with pirated DVDs of films sometimes making it to the market before they are released in U.S. cinemas. The Government reportedly misuses software licenses openly. Enforcement officials have no *ex officio* authority to investigate, seize or prosecute IPR cases. Reports indicate that IPR enforcement is virtually non-existent.

The United States continues to urge Belarus to strengthen its IPR laws and to enforce against piracy and counterfeiting. In 2008, there were reports that Belarus planned to amend its copyright law; Belarus is urged to move forward with this plan including the proper implementation of the WIPO Internet Treaties, which Belarus ratified in 1998. We also encourage Belarus to amend its IPR laws to provide much needed *ex officio* authority to its enforcement officials for cases of piracy and counterfeiting.

### **BOLIVIA**

Bolivia will remain on the Watch List in 2009. Rampant piracy and counterfeiting, including counterfeiting of medicines, persist in Bolivia. In particular, concerns remain about the erosion of IP protection for pharmaceutical products. There were no notable improvements to Bolivia's IPR regime during 2008. As a WTO member, Bolivia committed to increase its levels of IPR

protection substantially. The United States encourages Bolivia to accede to and implement the WIPO Internet Treaties. The United States encourages Bolivia to improve its IPR protection regime in 2009, as well as increase its IPR enforcement efforts to combat piracy and counterfeiting.

## **BRAZIL**

Brazil will remain on the Watch List in 2009. Brazil has illustrated a commitment to anti-piracy and anti-counterfeiting policies by public awareness and education campaigns. Enforcement actions, including investigations into IPR violations, raids, and seizures of pirated and counterfeit products, have continued. The United States encourages Brazil to continue these actions as well as strengthen its IPR enforcement legislation, take more vigorous action to address book and Internet piracy, and accede to and implement the WIPO Internet Treaties. Concerns remain regarding patent protection for pharmaceuticals and medical devices, including with respect to: the decision against granting patents for polymorphs and second-use inventions; and the role of Brazil's health authority, ANVISA, in the patent application process. In addition, the United States continues to urge Brazil to provide effective protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products. The United States will continue to engage with Brazil bilaterally on these IPR issues, including through the U.S.-Brazil Bilateral Consultative Mechanism and other means.

## **BRUNEI**

Brunei will be added to the Watch List in 2009. The sale of illegal optical discs including unlicensed software is open and pervasive in Brunei and the Government's record on enforcement is weak. Additionally, industry reports that locally burned pirate DVD-Rs and VCDs are ubiquitous. Despite increased bilateral engagement on this issue, Brunei has made little progress on IPR issues over the past year. The Government has been slow in responding to the concerns of rightsholders, including with respect to raids and prosecutions. The United States urges Brunei to make a concerted effort to address these problems.

## **COLOMBIA**

Colombia will remain on the Watch List in 2009. The United States commends Colombia for its continued efforts to combat IPR violations, including through conducting raids seizing counterfeit and pirated products and deterring the counterfeiting of pharmaceuticals. The United States remains concerned, however, that further IPR improvements are needed, including actions to reduce book and optical media piracy. The United States encourages Colombia to develop an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. The United States will work with Colombia to achieve progress on these issues. The pending United States-Colombia Trade Promotion Agreement (CTPA), once in force, would establish high standards of IPR protection and enforcement in Colombia.

## **COSTA RICA**

Costa Rica will remain on the Watch List in 2009. During the implementation process of the United States–Central America–Dominican Republic Free Trade Agreement (CAFTA-DR), Costa Rica passed legislation providing for stronger IPR protection and enforcement. The United States remains concerned, however, about weak IPR enforcement in Costa Rica, particularly with respect to copyright piracy and trademark counterfeiting. The United States encourages the Government of Costa Rica to address the shortcomings in its IPR enforcement system by assigning higher priority and greater resources to combating piracy and counterfeiting, including to the Special IPR Prosecutor, and by seeking deterrent penalties. The United States will continue to monitor Costa Rica’s compliance with IPR commitments made in connection with implementation of CAFTA-DR.

## **CZECH REPUBLIC**

The Czech Republic will remain on the Watch List in 2009, where it was placed as the result of an OCR in January 2008. The United States remains concerned about the significant quantity of pirated and counterfeit goods sold in retail markets on the Czech Republic’s borders with Germany and Austria, particularly as some of these markets are located on government-owned property. We note progress by the Czech Customs Administration and Trade Inspectorate officials in patrolling these markets frequently, increasing raids and confiscations, and heightening attention to this problem by Czech IPR officials. Despite this progress, however, further enforcement action is needed, especially by revoking the licenses of businesses involved in illegal IPR activities. The United States urges the Czech Republic to continue efforts to implement its IPR Action Plan and to take concrete enforcement actions, including prosecutions and deterrent-level sentencing of IPR infringers, to reduce substantially the sale of pirated and counterfeit goods at these border markets. The Czech Republic passed a new criminal law in January 2009, which will hopefully result in higher criminal penalties and stronger IPR enforcement when it takes effect on January 1, 2010. The United States will continue to monitor this situation and work with the Czech Republic to address the border market and other IPR problems.

## **DOMINICAN REPUBLIC**

The Dominican Republic will remain on the Watch List in 2009. While the Dominican Republic undertook legislative reforms to implement its commitments under CAFTA-DR that provided for stronger IPR protection and enforcement, the United States is concerned about weak enforcement of these laws. The United States encourages the Dominican Republic to enhance its enforcement efforts by providing resources for and greater coordination between law enforcement entities. The United States will continue to monitor the Dominican Republic’s compliance with its bilateral and multilateral obligations to protect against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and encourages the Dominican Republic to provide an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. The United States will also continue to monitor the Dominican Republic’s compliance with its IPR obligations under CAFTA-DR.

## **ECUADOR**

Ecuador will remain on the Watch List in 2009. Ecuador's Intellectual Property Institute continued to make progress in 2008 towards eliminating its backlog of pending patent applications. Further, Ecuador has established special IPR units for investigations and seizures of pirated and counterfeit products. Despite these achievements, overall IPR enforcement in Ecuador remains a serious problem, resulting in high piracy levels in the software, publishing, recording, and film industries. Concerns also remain regarding Ecuador's lack of effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, as well as Ecuador's lack of an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. The United States urges Ecuador to strengthen its IPR regime and to enhance its IPR enforcement efforts and will monitor Ecuador's efforts to address these concerns.

## **EGYPT**

Egypt will remain on the Watch List in 2009. Egypt stated in its Special 301 submission that it will be amending its laws and joining several international IPR conventions to increase IPR protection in Egypt, which the United States views as positive steps. In 2008, Egypt passed a law establishing new economic courts that will provide specialized training to judges and will have jurisdiction over civil and criminal IPR cases. We note some improvements in IPR protection and enforcement over the past year, particularly in the area of enforcement against entertainment and business software piracy by Egypt's Information Technology Industry Development Agency (ITIDA). Specifically, ITIDA reported on an increased number of raids, improved cooperation between ITIDA and U.S. industries on enforcement, and several IPR court cases that resulted in criminal convictions with sentences of imprisonment for IPR offenders, a new trend in Egypt for IPR cases. Serious concerns remain, however, about weak copyright enforcement by the Ministry of Culture against piracy of books, music, and films, which the U.S. copyright industries describe as virtually unchecked. The United States urges Egypt to take strong action against piracy of books, music, and films, comparable with the commendable enforcement actions taken against software piracy. U.S. industries report the recent growth in Internet piracy, which needs to be effectively addressed by law enforcement officials and courts. With respect to pharmaceutical products, the United States recognizes the Ministry of Health's efforts to combat counterfeit pharmaceuticals, streamline its regulatory processes for pharmaceutical products, and to establish a website to increase transparency. We continue to urge the Ministry of Health, however, to clarify its commitment to protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to provide an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. We intend to continue our in-depth IPR discussions with Egypt and will continue to work closely with Egypt on improving its IPR regime.

## **FINLAND**

Finland will be added to the Watch List in 2009. The United States is concerned about the lack of product patent protection for certain pharmaceutical products. U.S. industry has expressed concern that the regulatory framework in Finland regarding process patents filed prior to 1995 and pending in 1996 will deny adequate protection to many of the top-selling U.S. pharmaceutical products currently on the Finnish market. The United States will continue to encourage Finland to resolve this issue.

## **GREECE**

Greece will remain on the Watch List in 2009. Greece made some progress last year, including establishing the Interministerial Coordinating Committee on IPR. This committee led by the Ministry of Foreign Affairs published a National Action Plan for IPR in February 2009 to address IPR protection and enforcement. We encourage Greece to continue its efforts to implement its National Action Plan for IPR and to include private stakeholders in its discussions and efforts. The U.S. copyright industries report that Greek law enforcement officials improved cooperation with the private sector in 2008. IPR enforcement in Greece, however, remains weak and uneven. The United States continues to urge Greece to improve its IPR enforcement regime, including undertaking sustained enforcement actions against street vendors, more effective raids and seizures, investigations and legal actions against on-line infringers, increased prosecutions, deterrent-level penalties, and strengthened border enforcement. An emerging problem for the Greek Government to address is the rise in Internet piracy. The United States will continue to work cooperatively with Greece on the measures outlined in its National Action Plan to improve IPR protection and enforcement.

## **GUATEMALA**

Guatemala will remain on the Watch List in 2009. Through the implementation of Guatemala's IPR obligations under the CAFTA-DR, Guatemala's laws provide for stronger IPR protection and enforcement. Nevertheless, IPR enforcement remains a problem. The United States encourages the Government of Guatemala to provide higher priority to and greater resources for combating piracy and counterfeiting in order to ensure effective and consistent IPR enforcement. In this regard, the United States urges the Government of Guatemala to extend its efforts to pursue raids and prosecutions, not just against small-scale sellers, but also against manufacturers of pirated and counterfeit goods. The United States will continue to monitor Guatemala's compliance with its IPR obligations under CAFTA-DR.

## **HUNGARY**

Hungary will remain on the Watch List in 2009. Hungary's National Board Against Counterfeiting and Piracy, established in January 2008, has promoted collaboration on IPR issues between the Government and the private sector, and issued a two-year IPR strategy to combat counterfeiting and piracy. The United States urges Hungary to take concrete steps to implement its IPR strategy and to improve its IPR enforcement regime. Further improvements are needed to ensure that prosecutors follow through with cases against IP infringers, and that

judges are encouraged to impose deterrent-level sentences for civil and criminal IP infringement. U.S. copyright industries also report that Internet piracy in Hungary is a major problem, and note that the Hungarian Government should provide adequate resources to its law enforcement authorities to combat IPR crime, especially on the Internet. The United States will continue to work with the Hungarian Government to address these IPR concerns.

## **ITALY**

Italy will remain on the Watch List in 2009. Italy's Economic Development Ministry established a General Directorate for Intellectual Property in 2008, which appears committed to raising public awareness of the value of IPR. We hope that this office will strive to make much-needed progress on IPR protection and enforcement in Italy, especially after an apparent lag in high-profile government attention to IPR last year. In early 2009, the Prime Minister's Office created an interministerial task force to combat Internet piracy. This appears to be a positive step, and we urge the Italian Government to create an IPR action plan and use the new task force to guide prompt and significant action against Internet piracy. The Finance Police and Customs police have carried out investigations and seizures throughout Italy. However, notable concerns last year included a lack of deterrent-level sentences for IPR crimes imposed by Italian courts. The U.S. copyright industries continue to report that Italy has one of the highest overall piracy rates in Western Europe, with Internet piracy remaining a significant problem. The United States urges Italy to make IPR enforcement a top priority, including encouraging judges to impose deterrent-level sentences and establishing a national action plan to address commercial-scale piracy, with a focus on Internet piracy. The United States will continue to work with Italy, with the goal of improving IPR protection and enforcement.

## **JAMAICA**

Jamaica will remain on the Watch List in 2009. The United States remains concerned over Jamaica's continued delay in enacting the Patents and Designs Act, which is intended to implement Jamaica's obligations under the TRIPS Agreement and to comply with the United States-Jamaica Bilateral Intellectual Property Agreement. The United States urges the Government of Jamaica to reform its patent law as soon as possible in accordance with international standards for patent protection.

## **KUWAIT**

Kuwait will remain on the Watch List in 2009. Although Kuwait customs, police, and Ministry of Interior officials continued to make progress on IPR enforcement in 2008, Kuwait failed to make similar progress on amending its outdated IPR laws. The United States remains concerned that several key pieces of IPR legislation have been pending for many years, including legislation regarding copyrights, protection of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, geographical indications, trademarks, patents, and customs, and urges Kuwait to enact and implement this legislation in the near term. In the United States-Kuwait Trade and Investment Framework Agreement, Kuwait recognized the importance of membership in and adherence to IPR conventions, but has not yet joined many important conventions, such as the Paris Convention and the Patent Cooperation Treaty. The

United States encourages Kuwait to pass this IPR legislation, accede to these conventions, and improve IPR enforcement.

## **LEBANON**

Lebanon will remain on the Watch List in 2009. Lebanon made significant progress in 2008 in addressing the long-standing issue of cable piracy through the efforts of several IPR ministries and law enforcement cooperating with the private sector. These efforts led to cable operators signing licenses with rightsholders, resulting in at least 80 percent of the estimated 600 to 800 illegal cable providers in Lebanon securing licenses. The United States commends Lebanon's success in combating this cable piracy. The U.S. copyright industries cite continued cooperation with the Cyber Crime and Intellectual Property Rights Bureau within Lebanon's police department. The United States remains concerned, however, about weak enforcement against piracy of books, music, films, and software. It is imperative that Lebanon provide opportunities for IPR training to its prosecutors and judges, and encourage its courts to issue deterrent-level sentences for IPR crimes; pending legislation to increase penalties for IPR crimes may help to address this problem. The United States remains concerned about inadequate protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, as well as a growing problem with counterfeit pharmaceutical products in Lebanon. The United States urges Lebanon to improve IPR protection and enforcement in the coming year. We will work together with Lebanon on strengthening its IPR laws and improving its enforcement regime through Lebanon's WTO accession process, a pending review under the U.S. Generalized System of Preferences, and other bilateral fora.

## **MALAYSIA**

Malaysia will remain on the Watch List in 2009. Malaysia continues to recognize the importance of a strong IPR regime to its economic development, but we are concerned that its enforcement efforts appear to have declined in the past year. The U.S. copyright industries note a decrease in the level of attention copyright piracy received in Malaysia in 2008, particularly reflected in the markedly fewer enforcement actions taken by the Ministry of Domestic Trade and Consumer Affairs (MDTCA) than had been taken in previous years. Of particular concern is MDTCA's reported reluctance to initiate *ex officio* IPR raids, which are authorized under Malaysian law and had taken place frequently under prior MDTCA leadership. The United States urges Malaysian authorities to step up enforcement actions against piracy and counterfeiting as they have in the past. Also, the U.S. copyright industries reported backlogs in the adjudication of cases in the specialized IPR courts. The United States has welcomed Malaysia's establishment of these specialized courts, but strongly encourages that the Malaysian Government to provide the requisite training and resources to its prosecutors and judges to enable these courts to adjudicate cases effectively and efficiently. In addition to these enforcement issues, the United States urges Malaysia to continue its efforts to update its IPR laws, including by acceding to and fully implementing the WIPO Internet Treaties. The United States also encourages Malaysia to provide effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and to create an effective system to prevent the issuance of marketing approvals for



unauthorized copies of patented pharmaceutical products. The United States will continue to work with Malaysia to make progress on these pressing IPR issues.

## **MEXICO**

Mexico will remain on the Watch List in 2009. While overall IPR enforcement efforts improved in Mexico in 2008, particularly at the federal level, the United States encourages Mexico to increase further its enforcement efforts. The United States urges Mexico to devote greater resources to its enforcement agencies, enhance coordination among enforcement agencies—particularly between the federal, state and municipal authorities—and continue to build a consistent record of aggressive prosecutions and deterrent-level penalties imposed by courts. The United States also urges Mexico to strengthen its IPR regime by enacting legislation to: provide *ex officio* authority to law enforcement and customs authorities; criminalize camcording in theaters; and implement fully the WIPO Internet Treaties. The United States encourages Mexico to provide effective protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products, and provide an effective system to prevent the issuance of marketing approvals for unauthorized copies of patented pharmaceutical products. The United States will continue to work with Mexico to address and resolve these IPR concerns.

## **NORWAY**

Norway will remain on the Watch List in 2009. The United States continues to be concerned about the lack of product patent protection for certain pharmaceutical products. U.S. industry has expressed concern that the regulatory framework in Norway regarding process patents filed prior to 1992 and pending in 1996 denies adequate patent protection for a number of pharmaceutical products currently on the Norwegian market. The United States will continue to encourage Norway to resolve this issue.

## **PERU**

Peru will remain on the Watch List in 2009. As a result of the U.S.-Peru Trade Promotion Agreement (PTPA), Peru enhanced its IPR legal framework significantly to strengthen IPR protection and enforcement. Nevertheless, there is inadequate enforcement carried out by enforcement agencies, due in part to the lack of resources provided to agencies. As a result, piracy rates are high and counterfeit clothing and toys continue to be easily found throughout the country at markets, street corners, and beach areas.

As part of the PTPA implementation process, Peru amended its laws and regulations to provide procedures and remedies for improved enforcement of IPR. For example, the Government reorganized the Intellectual Property Office, INDECOPI, to help expedite the hearing and granting of precautionary measures; revised its customs law and regulations to strengthen the procedures for suspending IPR infringing goods and ensuring that infringing goods are seized and destroyed absent the allowable exceptions; and put in place deterrent-level penalties for copyright and trademark infringement both in civil and criminal violations. The United States will work closely with Peru ensure the effective enforcement of its obligations under the PTPA.

## **PHILIPPINES**

The Philippines will remain on the Watch List in 2009 with an OCR review to be conducted this year. The United States is troubled by the amendments to the patent provisions in the Philippines Intellectual Property Law only as they apply to pharmaceuticals. The amendment significantly weakens patent protection for pharmaceutical products. Unfortunately, despite the continuing efforts of some Philippine officials – notably, in the Intellectual Property Office, Optical Media Board, and Customs – to improve enforcement there is no true deterrent mechanism in place to dissuade IPR infringers from their illegal activities. Additionally, the digital environment has created more challenges that the Government has not addressed, such as peer-to-peer piracy, mobile device piracy, and illegal camcording. The United States urges the Government to put in place mechanisms and laws that will address the weaknesses in its current system, such as specialized IP courts and legislation to implement the WIPO Internet Treaties and to address illegal camcording.

## **POLAND**

Poland will remain on the Watch List in 2009 and the United States will conduct an OCR to monitor progress on IPR protection and enforcement. The OCR will focus in particular on Poland's implementation of the National IPR Action Plan for 2008-2010 issued by Poland's Team for Counteracting Infringements of Copyright and Related Rights. The development of this plan may reflect a renewed Polish Government commitment to addressing persistent IPR problems. The United States recognizes: the police closure in early 2009 of one of the largest pirated optical disc distribution operations in Europe; the Government closure in 2007 of the notorious Warsaw Stadium market, where large quantities of counterfeit and pirated goods were being sold; and the efforts by law enforcement agencies to combat hard goods piracy. Poland has yet to make adequate progress against Internet piracy and the trade in pirated and counterfeit goods in markets on Poland's border with Germany. The U.S. copyright industries report that raids conducted at these border markets in early 2008 by Poland's Border Guard have begun to have a positive effect, but sustained enforcement actions are needed. In addition, Poland should take concrete steps to achieve its goal of increasing the effectiveness of criminal proceedings and prosecutions of IPR crimes, including encouraging its prosecutors and judges to seek and impose deterrent-level sentences. The United States encourages Poland to commit additional resources and attention to addressing these IPR protection and enforcement issues. We will monitor Poland's implementation of its National IPR Action Plan through the OCR.

## **ROMANIA**

Romania will remain on the Watch List in 2009. Romania took some positive steps in 2008, including establishing an electronic IPR database to facilitate the sharing of information between its law enforcement and customs authorities, as well as improving the speed at which Internet piracy cases were processed for prosecution. There was a decrease in illegal optical discs sold by street vendors, but Internet piracy continued to grow in 2008. The ability to prosecute successfully IPR crimes remains weak. Although some courts imposed jail sentences for IPR violations in 2008, Romanian judges often dismiss IPR cases due to a perceived "lack of social

harm.” The United States urges Romania to encourage its prosecutors to prosecute IPR cases vigorously as well as encourage its judges to impose deterrent-level sentences against IPR infringers, and to remove delays and obstacles in criminal investigations. The United States will work with Romania to improve its IPR enforcement efforts.

## **SAUDI ARABIA**

Saudi Arabia will remain on the Watch List in 2009, and the United States will conduct an OCR to monitor further progress on IPR enforcement. In March 2009, the first United States – Saudi Arabia Intellectual Property Rights Working Group was held, which resulted in progress on certain IPR issues and facilitated improved cooperation between the governments and the private sector. Saudi Arabia has made progress in IPR enforcement, including an increased number of IPR raids, the disposition of numerous cases by the copyright enforcement Violations Review Committee, and improved transparency through the Ministry of Culture and Information website. Saudi Arabia needs to make further IPR improvements to its IPR enforcement system by sustaining raids and inspections to combat piracy and counterfeiting; encouraging courts to impose deterrent-level sentences, including jail sentences for serious IPR offenses; completing its efforts on the Ministry of Culture and Information website; ensuring that Saudi Government ministries are utilizing legal software; and improving border enforcement. The United States welcomes the renewed IPR dialogue and will work closely with Saudi Arabia to address the outstanding IPR issues during the coming year through the IPR Working Group, the U.S.-Saudi Arabia Trade and Investment Framework Agreement, and the OCR.

## **SPAIN**

Spain will be maintained on the Watch List in 2009. The United States strongly urges that the Spanish Government take prompt and significant action to address the serious problem of Internet piracy. The Spanish Government has expended minimal effort to change the widespread misperception in Spain that peer-to-peer file sharing is legal. Further, while Spanish law enforcement authorities have taken some positive measures against pirate Internet websites, prosecutors have failed to pursue IPR cases, judges have failed to impose deterrent-level sentences against IPR infringers, and rightsholders do not have access to important legal tools needed to bring meaningful civil infringement suits. The United States urges Spain to make it clear that unauthorized peer-to-peer file sharing is illegal, and to rescind problematic IPR policies such as the May 2006 Circular from the Office of the Prosecutor-General, which appears to legitimize such illicit activity. The United States will continue to work closely with Spain to address these IPR enforcement issues during the next year.

## **TAJIKISTAN**

Tajikistan will remain on the Watch List in 2009. Tajikistan has been on the Watch List since 2000, as it has yet to fully implement its IPR commitments under the 1993 U.S.-Tajikistan Trade Agreement (Bilateral Trade Agreement). There has been some positive movement; however, in that Tajikistan became a contracting party to the WCT as of April 5, 2009, ratified the Rome Convention, and applied for accession to the WTO; however, significant issues remain. Tajikistan does not provide protection for U.S. and other foreign sound recordings and does not

clearly provide protection for pre-existing works or sound recordings under its Copyright Law. Tajikistan's IPR enforcement regime remains weak. Criminal penalties for IPR violations are insufficient to deter infringers, and officials lack proper *ex officio* authority to commence criminal cases. Further, the Tajik Customs Code does not provide customs officials with *ex officio* authority to interdict suspected infringing materials at the border.

## **TURKEY**

Turkey will remain on the Watch List in 2009. Enforcement efforts including notable seizures of pirated materials have increased; however, there have been significant setbacks. Applications for marketing approvals of generic pharmaceuticals have been pending before Turkish authorities for more than two years, creating uncertainty as to the status of protection of the undisclosed test or other data generated to obtain marketing approval for the pharmaceutical products involved. Additionally, following a Constitutional Court ruling in July 2008 that effectively eliminated the criminal sanctions provisions of the Trademark Law, the Government passed new legislation reinstating the penalties, but failed to meet the Court's six month deadline for doing so, thus nullifying sentences handed out in over 9,000 criminal trademark cases. The Government has vowed to retry the 9,000 cases under a different law, though this would involve lesser penalties. Book piracy also continues to be a major problem in Turkey as it is well-organized and prevalent throughout the country, and particularly acute on university campuses. Piracy of business and entertainment software continues to be significant. Turkey reportedly remains a significant source of counterfeit goods seized at the borders of nearby countries.

## **TURKMENISTAN**

Turkmenistan will remain on the Watch List in 2009. Turkmenistan has been on the Watch List since 2000, and it has yet to fully implement its IPR commitments under the 1993 bilateral U.S.-Turkmenistan Trade Agreement (BTA). Turkmenistan is neither a member of the Berne Convention nor of the Geneva Phonograms Convention, and it has not yet signed the WIPO Internet Treaties. Although the Civil and Criminal Codes provide some degree of protection against IPR infringement, Turkmenistan has yet to adopt comprehensive procedures and penalties for IPR infringement as required under the BTA. Turkmenistan has not adopted a separate Copyright Law and consequently does not provide any protection to foreign sound recordings or preexisting works. Additionally, IPR enforcement is inadequate because the Customs Code does not provide *ex officio* authority to interdict suspected infringing material at the border. The United States urges Turkmenistan to join appropriate international agreements and adopt the national legal reforms that will fully implement Turkmenistan's BTA IPR commitments and to undertake enforcement activities that will help strengthen its IPR regime.

## **UKRAINE**

Ukraine will remain on the Watch List in 2009. While Ukraine continues to make progress on IPR protection and enforcement, enforcement overall remains weak, piracy levels remain high and piracy on the Internet is growing. The transshipment of pirated and counterfeit goods, particularly optical discs produced in Russia, is a major challenge for Customs officials. Ukraine is also a major transshipment route for counterfeit products bound for other markets and

counterfeit goods, particularly apparel, are readily available in Ukraine. Industry reports that many Ukraine-based websites offer pirated material for download, and add that nearly 100 percent of downloads of music, movies, and software are from illegal websites. However, there are signs that the Government is trying to adapt its enforcement strategies to address this new challenge. The Ministry launched the first ever criminal case involving unauthorized file sharing in 2008. The United States urges Ukraine to continue raids and arrests of IPR infringers; follow through with vigorous prosecutions and imposition of deterrent-level sentences by courts; continue its efforts to combat the growing problem of Internet piracy in Ukraine; ensure that Government ministries use only legal software; curb the production and distribution of pirated and counterfeit products throughout Ukraine, including in notorious markets in Ukraine; and effectively address the flow of pirated and counterfeit goods transshipped through Ukraine.

## **UZBEKISTAN**

Uzbekistan will remain on the Watch List in 2009. Uzbekistan has been on the Watch List since 2000 and it has yet to fully implement its commitments under the 1994 U.S.-Uzbekistan Trade Agreement. Uzbekistan's 2006 Copyright and Related Rights Law is weak in that it does not protect pre-existing works nor does it provide any protection or rights to U.S. and other foreign sound recordings. Additionally, the Government has taken only modest steps to implement the law. Uzbekistan has not joined the Geneva Phonograms Convention. The Uzbek enforcement regime is weak: criminal penalties for IPR violations are low and its enforcement officials do not have *ex officio* authority necessary for effective enforcement by police and customs authorities.

## **VIETNAM**

Vietnam will remain on the Watch List in 2009. Piracy rates remain high in the country, and in some categories, rates appear to be increasing. Also, growing Internet penetration has been accompanied by greater online piracy. Vietnamese enforcement authorities have achieved some success in increasing enforcement capacity over the past year; however, in some areas, particularly with respect to copyright enforcement, additional enforcement efforts have not kept pace with rising piracy levels. To date, administrative enforcement actions and penalties have not been sufficient to deter infringing activities. The United States recognizes the strides Vietnam has made in IPR protection and enforcement over the past several years. The Government of Vietnam took substantial steps to address deficiencies cited in last year's Special 301 Report including: initiating the revision of the Criminal Code to include updated IPR provisions; and increasing administrative fines and strengthening capacity in enforcement agencies. Over the past year, Vietnamese agencies took steps for the first time to address concerns raised by rightsholders regarding Internet-based piracy and the United States looks forward to increased cooperation with Vietnamese agencies in this area of growing concern. The Vietnamese Government also took steps to improve the capacity of its agencies and to conduct outreach to its domestic rightsholders and private sector. The United States continues to watch with interest the positive developments in Vietnam, in particular, improvements in enforcement for copyrighted products in both physical and digital form, and the revisions under consideration on the Criminal Code with respect to remedies for copyright piracy and trademark infringement. We look forward to continuing our engagement under the U.S.-Vietnam Trade and Investment Framework Agreement IPR working group and through cooperative capacity-building programs.

## **SECTION 306**

### **PARAGUAY**

In 2009, the United States will continue to monitor Paraguay under Section 306, specifically with respect to Paraguay's implementation of bilateral agreement regarding IPR protection and enforcement. In 2008, the United States and Paraguay signed an extension and revision of a previous Memorandum of Understanding, which will remain in effect through 2009. There have been continued strong efforts by Paraguay to improve IPR enforcement, particularly by increasing the number of raids and seizures of pirated and counterfeit goods (by the IPR investigative unit in particular). However, Paraguay continues to have problems providing effective IPR protection due to porous borders, ineffective prosecutions of IPR infringers, and the lack of deterrent-level sentences in court cases being issued. A new penal code, approved in 2008, provides minimum sentences for counterfeiting and piracy. The United States urges effective prosecutions under this new law, which goes into effect in July 2009. The United States has concerns about the inadequate protection against unfair commercial use of undisclosed test or other data generated to obtain marketing approval for pharmaceutical products as well as shortcomings in Paraguay's patent regime. The United States will continue to work with Paraguay to address these IPR concerns during the coming year, including through the Joint Commission on Trade and Investment.

### SECTION III. NOTORIOUS MARKETS

Global piracy and counterfeiting continue to thrive due in part to marketplaces that deal in infringing goods. This year's Special 301 Report notes the following markets, including those on the Internet, as examples of marketplaces that have been the subject of enforcement action, or may merit further investigation for possible IPR infringements, or both. The list represents a selective summary of information reviewed during the Special 301 process; it is not a finding of violations of law. The United States encourages the responsible authorities to step up efforts to combat piracy and counterfeiting in these and similar markets.

#### *Markets on the Internet*

- **Baidu (China).** Baidu continues to be identified by industry as the largest China-based MP3 search engine. The U.S. music industry reports that the vast majority (between 50 percent to 75 percent) of all illegal downloads of music in China are associated with this site. Baidu is the target of ongoing infringement actions by both domestic and foreign rightsholders. Baidu executives continue to deny responsibility for content hosted by other websites. Several rightsholders are pursuing legal action in Chinese courts.
- **Business-to-business (B2B) and business-to-consumer (B2C) websites (China).** A large number of these Chinese websites, such as Alibaba and Taobao, have been cited by industry as offering infringing products to consumers and businesses. The Internet traders who use these online markets to offer counterfeit goods are difficult to investigate and contribute to the growth of global counterfeiting.
- **Allofmp3 clones (Russia).** Although allofmp3 (formerly the world's largest server-based pirate music website) was shut down in 2007, a nearly identical site has taken its place and continues to provide for the illegal distribution of copyrighted material. Several other sites provide similar services. In addition, Russia is host to several major BitTorrent indexing sites that are popular channels for illegal peer-to-peer downloading.

#### *Physical Markets*

- **Silk Street Market (Beijing, China).** Industry has cited Beijing's Silk Street Market as an egregious example of the counterfeiting of consumer and industrial products that is endemic in many retail and wholesale markets throughout China. In 2005, authorities began to pressure the landlords of Silk Street Market and other major retail and wholesale markets in Beijing to improve compliance with IPR laws. The intervening years have brought limited progress. In 2006, rightsholders prevailed in several court actions related to the market and executed a Memorandum of Understanding with the landlords in June 2006. A January 2007 industry survey of the market showed that counterfeiting had worsened. A January 2008 report from industry maintained that the situation remained serious, with a survey of the market revealing piracy levels that increased in most categories from 2007 to 2008. In December 2008, a coalition of brands reached a settlement agreement with the market's management company in which the managers agreed to suspend vendors caught selling infringing goods. In February 2009 some stalls

were shut down, but suspensions and further evidence-gathering were delayed by angry responses from vendors.

- **China Small Commodities Market (Yiwu, China).** The China Small Commodities Market in Yiwu reportedly sells approximately 410,000 different items, mostly small consumer goods. Industry has cited the market as a center for wholesaling of infringing goods. Officials in Yiwu have met repeatedly with U.S. Government officials and stressed their work to improve IPR enforcement. Industry confirms that enforcement in Yiwu has improved. Continued improvement is needed, particularly in the area of criminal enforcement.
- **Gorbushka and Rubín Trade Center and Savelovskiy Market (Moscow, Russia).** Industry representatives report that piracy problems persist in these markets, though the situation has improved at the Gorbushka and Rubín Trade Center. In Moscow, illegal optical discs are still available, but less overtly displayed than in previous years, at the upscale Gorbushka consumer electronics market. Pirated goods are more widely and openly available at the Savelovskiy electronics market in Moscow.
- **Tri-Border Region (Paraguay, Argentina, and Brazil).** The Tri-Border Region of Paraguay, Argentina, and Brazil has a longstanding reputation as a hotbed of piracy and counterfeiting of many products. The U.S. Government is funding a training project through which U.S. Department of Justice and U.S. Department of Homeland Security officials will train prosecutors, police, and customs officials from the Tri-Border Region to combat intellectual property crime. In Paraguay, Ciudad del Este remains a hub for pirate activities, with the majority of the optical disc manufacturing plants in the country located in this city. The amount of optical media produced in Paraguay significantly exceeds possible local use, and most of the production is legally exported or smuggled into Brazil. While the use of new surveillance tactics, like the use of helicopters, have somewhat improved enforcement efforts in this region, smugglers have reacted by shifting their activities to more vulnerable entry points into Brazil.
- **Tepito, Plaza Meave, Eje Central, Lomas Verdes, and Pericoapa Bazaar (Mexico City); Simitrio-La Cuchilla (Puebla, Mexico); San Juan de Dios (Guadalajara); and Las Pulgas (Monterrey).** Informal markets selling pirated audio-visual materials and counterfeit name-brand goods are widespread and well-entrenched in Mexico. By some estimates, there are at least 80 such markets located throughout Mexico. In Mexico City, Tepito remains the main warehousing and distribution center for infringing products and hosts scores of retail stalls. Past police raids on such markets are often conducted only at night to avoid violent confrontations that are common during daylight raids. The Office of the Attorney General (PGR) is sometimes accompanied by other enforcement agencies on these raids, allowing for charges of IPR infringement, safety violations, or tax evasion to be added to the criminal charges brought by the PGR.
- **Czech Border Markets (Czech Republic).** Hundreds of open air market stalls are notorious for selling pirated and counterfeit products near the Czech borders with Germany and Austria, including at the notorious Asia Dragon Bazaar in Cheb City.



Czech Customs officials adopted an organized enforcement approach in 2008, including targeting the markets for repeated raids, leaving its officers on site for several weeks, and informing the market vendors about what items can be sold legally and what constitutes IPR piracy. Pirated goods are retrieved for customers often from locked containers, warehouses, cars, or homes outside of the market, in order to escape detection from law enforcement authorities. The United States has urged the Czech Government to take sustained IPR enforcement actions, revoke business licenses from market operators who sell IPR infringing goods, and follow up with prosecutions of IPR violators.

- **Polish Markets (Silesia, Krakow, and Wroclaw, Poland, and Poland/Germany border).** Markets at Poland's border with Germany and bazaars at Silesia, Krakow, and Wroclaw sell pirated and counterfeit goods. Although Poland made some progress when border authorities conducted raids this past year at the border markets, further enforcement actions are needed to curb the piracy and counterfeiting in these areas.
- **La Salada (Buenos Aires, Argentina).** This is the largest of more than 40 well-established markets in Buenos Aires that have been cited as being heavily involved in the sale of counterfeit goods. An estimated 6,000 vendors sell to 20,000 customers daily. The market is reputed to be a haven for organized criminal gangs that operate from within it, resulting in little to no IPR enforcement. Raids by local police on flea markets where counterfeit merchandise is openly sold have not been frequent or widespread enough to lessen the availability of pirated goods. The most notable enforcement actions of 2008 were three raids conducted in the notorious street fair La Salada. These enforcement actions follow two 2007 raids which are thought to be the first such actions in La Salada. Buenos Aires provincial tax authorities indicated that a number of high-profile tax and IPR enforcement actions in the La Salada market are being planned for the 2009 calendar year.
- **Neighborhood of Quiapo (Manila, Philippines).** Street stalls in this neighborhood are notorious for selling counterfeit and pirated merchandise. Other notorious markets in Manila include Binondo, Greenhills, Makati Cinema Square, and Metrowalk. An Executive Order of November 17, 2006 establishes landlord liability for tenants who sell pirated merchandise. Reports indicate, however, that no landlords have yet been prosecuted for IPR violations.
- **Harco Glodok (Jakarta, Indonesia).** This is reported to be one of the largest markets in Indonesia for counterfeit and pirated goods, particularly well-known for pirated optical discs. Enforcement officials are reportedly reluctant to conduct regular enforcement actions because of the presence of organized criminal gangs. Indonesian law enforcement authorities have successfully utilized some U.S. assistance. However, overall lack of coordination at the national level continues to undermine Indonesia's efforts to substantially and measurably improve its IPR regime.
- **Panthip Plaza, Mah Boon Krong (MBK) Center, Klong Thom, Patpong, and Sukhumvit Road (Bangkok, Thailand).** These locations are notorious for openly selling pirated and counterfeit goods, and are all designated as "red zones" by Thai

authorities, which are markets targeted for increased raids due to their high piracy and counterfeiting rates. Though Thai authorities know these places are where infringing products are most readily available, the authorities have yet to implement a long-term effort to rid the red zones of piracy and counterfeiting. Moreover, rightsholders and authorities appear to have found little or no legal basis to hold landlords responsible for tenants' infringing activities, so there is little incentive for landlords in the red zones to cooperate in terminating the leases of infringing tenants.

- **Nehru Place and Palika Bazaar in New Dehli, Richie Street, and Burma Bazaar in Chennai, Manish Market, Heera Panna, Lamington Road, and the Fort District in Mumbai, and Chandni Chowk in Kolkata (India).** These locations are particularly well-known for the high volume of pirated software, DVDs, and CDs offered for sale.

## **ANNEX 1. STATUTORY BACKGROUND ON SPECIAL 301**

Pursuant to Section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competitiveness Act of 1988 and the Uruguay Round Agreements Act (enacted in 1994) (“Special 301”), under Special 301 provisions, USTR must identify those countries that deny adequate and effective protection for IPR or deny fair and equitable market access for persons that rely on intellectual property protection. Countries that have the most onerous or egregious acts, policies, or practices and whose acts, policies, or practices have the greatest adverse impact (actual or potential) on the relevant U.S. products must be designated as “Priority Foreign Countries.”

Priority Foreign Countries are potentially subject to an investigation under the Section 301 provisions of the Trade Act of 1974. USTR may not designate a country as a Priority Foreign Country if it is entering into good faith negotiations or making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection of IPR.

USTR must decide whether to identify countries within 30 days after issuance of the annual National Trade Estimate Report. In addition, USTR may identify a trading partner as a Priority Foreign Country or remove such identification whenever warranted.

USTR has created a “Priority Watch List” and “Watch List” under Special 301 provisions. Placement of a trading partner on the Priority Watch List or Watch List indicates that particular problems exist in that country with respect to IPR protection, enforcement, or market access for persons relying on intellectual property. Countries placed on the Priority Watch List are the focus of increased bilateral attention concerning the problem areas.

Additionally, under Section 306, USTR monitors a country’s compliance with bilateral intellectual property agreements that are the basis for resolving an investigation under Section 301. USTR may apply sanctions if a country fails to satisfactorily implement an agreement.

The interagency Trade Policy Staff Committee, in advising USTR on the implementation of Special 301, obtains information from and holds consultations with the private sector, U.S. embassies, foreign governments, and the U.S. Congress, among other sources.

**THE WIPO PERFORMANCE AND PHONOGRAMS TREATY (WPPT)**  
**AND THE WIPO COPYRIGHT TREATY (WCT)**

The United States continues to work with other governments, in consultation with U.S. copyright industries and other affected sectors, to develop strategies to address global IPR issues. In 1996, the WIPO concluded two copyright treaties, the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. Following their entry into force in 2002, these treaties have raised the standard of IPR protection around the world, particularly with regard to Internet-based delivery of copyrighted works. The WIPO Internet Treaties have clarified exclusive rights and require signatories to provide effective legal remedies against the circumvention of certain technological measures that protect copyrighted works in on-line environments. A growing number of countries are implementing the WIPO Internet Treaties to create a legal environment conducive to investment and growth in Internet-related businesses and technologies.

As of April 2009, there are 68 contracting parties of the WPPT and 70 contracting parties of the WCT. Membership will rise significantly when the various EU Member States join. Other countries have implemented key provisions of these treaties in their national laws without formally ratifying them. The United States urges other governments to ratify and implement the provisions of the WIPO Internet Treaties.

The following six countries became parties to the WPPT during May 2008-April 2009. Currently the WPPT has 68 contracting parties.

<b><u>Country</u></b>	<b><u>Date of Entry Into Force</u></b>
Uruguay	August 2008
Trinidad and Tobago	November 2008
Turkey	November 2008
Switzerland	July 2008
Russian Federation	February 2009
Republic of Korea	March 2009

The following five countries became parties to the WCT during May 2008-April 2009. Currently the WCT has 70 contracting parties.

<b><u>Country</u></b>	<b><u>Date of Entry Into Force</u></b>
Switzerland	July 2008
Trinidad and Tobago	November 2008
Turkey	November 2008
Russian Federation	February 2009
Tajikistan	April 2009