

The Congressional International Anti-Piracy Caucus



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International Anti-Piracy Caucus Country Watch List

The Congressional International Anti-Piracy Caucus calls attention in 2012 to copyright piracy problems in China, Russia, Italy, Switzerland, and Ukraine. The lack of enforcement of intellectual property rights in these countries causes grave harm to American creators and to our economy as a whole. China, Russia, and Ukraine were highlighted in 2011 by the Caucus and continue to lag in efforts to combat piracy. Italy and Switzerland make their first appearance on the watch list, though insufficient protections for copyright are a longstanding problem in both nations.

We also note tentative progress in two nations that have been highlighted in past watch lists – Canada and Spain. Both Canada and Spain have taken positive steps towards putting in place a stronger legal framework for the protection of copyright, and as such we have included them this year as countries in transition to acknowledge the progress made, while urging both to follow through strongly on their commitments.

In this watch list, we detail steps each country must take to protect intellectual property sufficiently in the future. The American music, film, software, gaming, and publishing industries are among America's top exporters, and millions of jobs depend on their continued international leadership. Americans must not be forced to subsidize the content that others steal. Likewise American businesses should not be forced to compete with foreign companies that cut production costs by using pirated software or scientific articles.

Addressing online piracy is an essential component of stopping the wholesale theft of American intellectual property, and it requires a collaborative approach between governments and the private sector. At last year's watch list event, the Caucus highlighted the important role of private sector players in reducing copyright infringement, particularly in the online advertising sector. The Caucus called on all actors in the online advertising ecosystem, including advertisers, advertising agencies, and online ad networks to develop mechanisms to prevent online pirates from profiting from their theft.

We are pleased that in June 2012 the Association of National Advertisers and the American Association of Advertising Agencies, in consultation with the Interactive Advertising Bureau, released a statement of "best practices." These principles call on members to each commit to take affirmative steps to avoid placement of their ads on sites dedicated to infringement of intellectual property rights.

This is a very positive step that can have a significant impact on reducing online piracy and counterfeiting. Over the coming year, the Caucus will be monitoring the impact of this announcement and working with stakeholders to encourage widespread adoption by advertisers

of the ANA/AAAA “best practices” and to work with advertising networks to operationalize the commitments by advertisers.

The 2012 International Anti-Piracy Country Watch List contains five countries: China, Russia, Italy, Switzerland, and Ukraine.

China

Piracy in China continues to inflict severe harm on American and Chinese creators. While China has committed to addressing this continuing problem, piracy rates remain high in many sectors. For example, the entire recorded music market was \$82.8 million in 2011, the result of high piracy rates and market access barriers. In comparison, revenue was \$68.9 million in the troubled and much smaller market in Thailand. Similarly, piracy rates for software are estimated at 77 percent, with unlicensed software reaching a commercial value of nearly \$9 billion annually. We also note that certain commercial entities continue to provide unauthorized access to electronic copies of scientific and medical journal articles published by U.S. publishers. Additionally, prohibitions on the sale of imported game consoles and the wide availability of circumvention devices, prevents the development of a healthy, legal market for video game products. China must meet this minimal level of protection for copyrighted works and move toward a functioning legitimate marketplace for music, movies, software, video games, and written works.

Though the overall situation remains troubling, we note with approval that China has committed to improving the business environment and encouraging legitimate consumption and that it appears to be in the process of taking steps to create more accountability in the online space. We recognize the progress made regarding specific websites, including an agreement between content rights holders and Baidu, China’s leading search engine, resulting in the removal of Baidu from the United States Trade Representatives Notorious Markets list. We also are aware of a commitment by leading online retailer Taobao to strengthen measures to prevent pirated music, movies, software, books, and games from being sold on their site.

Russia

Russia’s lack of appropriate IP protection continues to allow for rampant Internet piracy affecting the global market. Existing laws fail to provide adequate protections for American intellectual property and enforcement against known rogue sites has been inadequate. In light of Russia’s World Trade Organization accession, we consider it particularly important that the Russian Government takes prompt action against the notorious sites identified by USTR, in particular vKontakte which was again named as a Notorious Market while remaining one of the most highly trafficked websites in Russia. Russia must address the problems of websites hosting infringing material and of services that are intended to promote the infringement of copyright by enacting legislation that includes appropriate liability standards. The Civil Code reform is an opportunity to put in place a framework for dealing with rogue sites and balanced liability provisions in line with international standards, and in particular ensuring that services that knowingly provide access to infringing materials do not enjoy the benefit of any safe harbor.

Italy

Piracy in Italy continues to hurt both Italian and American creators. To date, there has not been a sufficient legislative framework for addressing the problem, or clear leadership in developing

one. Italy's Regulatory Communications Authority (AGCOM) was unable to pass much-needed reforms to combat piracy, leaving rights holders without the tools to efficiently and effectively enforce their rights. Without substantial reforms, the piracy problem will continue unabated in Italy and the widespread perception will endure that illegal downloading is not harmful.

Switzerland

Switzerland's copyright law is inadequate, making it a home for rogue sites whose clear purpose is to facilitate and enable massive unauthorized making available of pirated material. It must be updated to provide for meaningful enforcement efforts against digital piracy. Until these changes are made, Switzerland will continue to be a magnet for rogue sites. Switzerland must ensure basic accountability for enterprises that profit from widespread infringement and clarify that copying from illegal sources is illegal. In doing so, Switzerland will fulfill its obligations under the WIPO Internet Treaties and other international copyright norms.

Ukraine

Ukraine is a hub for infringing content through peer-to-peer networks and hosted websites, and is home to one of the world's most notorious pirate markets, EX.ua. The situation appears to be worsening. Industry-supported efforts to build a legitimate online market have been challenged by government authorities and the limited enforcement efforts against rogue websites have lacked any substantial effect. The takedown of EX.ua, for example, was only temporary as government authorities quickly allowed it to re-open following public protest. Ukraine must take action to expand enforcement and update its laws, both with respect to criminal enforcement and to ensuring that copyright and telecommunications laws are adequate for the digital environment, and to ensure that rights holders have the ability to determine how their rights are exercised.

Countries in Transition

Canada and Spain, two countries from last year's watch list, took important steps forward in improving protection of intellectual property. However, their progress is incomplete.

Canada

Canada has taken important steps to improve the copyright regime with Bill C-11. The Bill has now been passed, following a multiyear effort to modernize Canada's legal framework. We are aware of additional that remain to be addressed, and we urge Canadian authorities to bring its laws in line with international norms. We will monitor the implementation of Bill C-11 and encourage Canada to increase enforcement of copyright laws and make further improvements to their protections for intellectual property.

Spain

Spain has issued regulations to implement recent legal reforms. The reforms and resulting regulations were important steps. A thorough implementation of these regulations is now needed to address the problem of Internet piracy in Spain. We hope to see continued progress towards improving the legal regime in Spain and reducing the rate of piracy for movies, music, games, software, and published works.