



## Legal Highlights

# GrayZone Digest

## March 1997

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### 'SPECIAL 301' REPORT

#### Washington

As the U.S Trade Office (USTR) prepares its annual "Special 301" review of unfair international trade practices, organizations such as the International Intellectual Property Alliance (IIPA) and the Software Publishers Association (SPA) are making their recommendations. According to the IIPA, \$10.6 billion has been lost to copyright piracy in more than 50 countries. The IIPA asked U.S. trade officials to put three countries--Greece, Paraguay and Russia--on a high priority list of possible trade sanctions if they fail to improve copyright protection. "The magnitude of the global copyright piracy problems demands a decisive response from the U.S. government under our trade laws," IIPA President Eric Smith said in a statement.

Paraguay, a major trans-shipment center for counterfeit goods made in China and Taiwan, accounted for about \$117 million in losses last year. Russia, where copyright protection is non-existent and pirated goods are 70 to 90 percent of the market, accounted for \$1 billion in losses. U.S. industries, particularly motion picture companies, have been hurt by the inadequate copyright enforcement in Greece. The IIPA also said that Mexico had failed to live up to intellectual property rights provisions of the North American Free Trade Agreement.

Nintendo of America Inc. urged Acting U.S. Trade Representative Charlene Barshefsky to take action against China, Hong Kong, Taiwan, Paraguay and Venezuela for their failure to end the rampant counterfeiting of Nintendo game products. Three countries--China, Hong Kong and Taiwan--remain the largest sources of counterfeit video game products in the world. These cartels accounted for most of the \$810 million in losses to the U.S. Nintendo video game industry last year.

In its recommendations to the USTR, The Software Publishers Association has recommended Argentina, China and Russia as Priority Watch List countries. The SPA identified a total of 16 nations, including five which have 1996 software piracy rates of over 90 percent. Indonesia and Vietnam, each with piracy rates of 98 percent, are this year's "one-copy" countries, where virtually a single legitimate copy of software could be reproduced to satisfy the entire country's demand.

The Trade Act of 1974 requires the USTR to identify foreign countries that deny adequate and effective protection of intellectual property rights or that deny fair and equitable market access to U.S. intellectual property companies for possible investigation and trade sanctions.

(Reuters, February 20, 1997 / PR Newswire, February 18, 1997)

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## Worldwide Update

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### Argentina

In Argentina, an appellate court overturned a 1995 decision in favor of AutoDesk, an American business software publisher seeking compensation for alleged software piracy. Despite many decisions to the contrary, the court decided that computer programs are not protected by the Argentine copyright law. The decision startled the software industry and left it wondering whether it has any legal recourse to successfully prosecute software pirates in Argentina.

(PR Newswire, February 18, 1997)

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### Australia

Internet archives of song lyrics and MIDI (Musical Instrument Digital Interface) files were shut down by attorneys for the Australian Mechanical Copyright Owners Society (AMCOS) and the Australian Music Publishers Association Limited (AMPAL). The archives were located at two Australian Universities (Monash University and the University of Western Sydney).

(CU Digest, Vol.9, Issue 09; David Loundy, February 13, 1997)

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### China

#### Beijing

New regulations take effect in China to boost the powers of government departments to punish copyright pirates, the Xinhua news agency said. The rules, effective from February 1, define the power and functions of government departments to fight theft of intellectual property rights, Xinhua said. The announcement came a day after a court in the southern province of Guangdong sentenced six people to jail terms for selling pornographic video compact discs (VCDs) and violating intellectual property rights, Xinhua said. The court in Chaoyang sentenced Hu Muxi to 13 years and Chen Yiliang to 12 years for trafficking hundreds of pornographic VCDs to Shanghai, and Chen Xigui was sentenced to two years in prison for running an underground factory manufacturing pirated audiotapes worth 648,000 yuan (\$78,000) while Guo Yugeng, former vice-director of the cultural bureau of the Chaoyang municipal government, was sentenced to six years for accepting a bribe of 42,000 yuan (\$5,000) to help the accused, according to the agency.

China says it is committed to stamping out copyright theft, but officials acknowledge they have been hampered in their battle by their lack of powers to take action against copyright pirates. A spokesman for the State Copyright

Administration said promulgation of the regulations would help fight copyright infringements more effectively, while ensuring honesty among administrators. U.S. officials said last month there were indications China was doing a better job of enforcing the Sino-U.S. copyright accord, citing plant closures and tougher controls on importing illegal equipment. China said it closed 26 production lines producing pirated compact discs in 1996 and would push ahead this year with a fiercer crackdown on copyright thieves.

### **Beijing**

China closed 26 production lines producing pirate compact discs in 1996 and will push ahead this year with a fiercer crackdown on copyright thieves, officials said Thursday. The price of legal compact discs (CDs) declined in 1996, the Xinhua news agency quoted Shen Rengan, deputy director of the State Copyright Administration, as saying, meaning smaller profits for pirates. China plans to revise its 6-year-old copyright law to meet changing needs, particularly with the development of the electronic information era, he said. Xinhua quoted Wang Huapeng, head of the administration's Copyright Department as saying that most illegal CDs seized last year were pirate products. As for illegal products confiscated by the authorities, "Only 10 percent were pornographic materials. The rest were mainly pirated ones," he said. A lot of cases would be handled this year, and a copyright protection center would be created, Wang said, adding that the administration would oversee the work of foreign copyright agencies in China. China would develop a new regulation on increasing writers' profits this year, he added.

(Reuters, January 30-31, 1997)

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## **Russia**

While anti-piracy initiatives have been taken, the piracy rate remains above 90 percent and 1996 trade losses have increased approximately \$115 million. Enforcement is impeded by a police and court system which are nearly impossible to utilize, and criminal penalties for commercial software piracy remain low despite a new criminal code. According to the Software Publishers Association (SPA), there is a huge "installed base" of pirate software that cannot be rooted out because software created by U.S. authors before 1993 is unprotected by copyright. (PR Newswire, February 18, 1997)

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## **Internet**

A final decision has been reached in the case of the bulletin board service operator who ran a pirate bulletin board for the distribution of video games. The operator was found guilty of contributory copyright, federal trademark infringement, California trade name infringement, and state unfair competition. (Sega v. Maphia) (CU Digest, Vol. 9, Issue 09; David Loundy; February 13, 1997)



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