

PRIORITY WATCH LIST

CHINA

China does not provide American copyright materials, inventions, brands, and trade secrets the intellectual property protection and enforcement to which they are entitled. China therefore remains a top intellectual property enforcement priority. China will remain on the Priority Watch List, and remain subject to Section 306 monitoring. Faced with only limited progress by China in addressing certain deficiencies in IPR protection and enforcement, the United States will step up consideration of its WTO dispute settlement options.

In addition, the United States will conduct a special provincial review in the coming year to examine the adequacy and effectiveness of IPR protection and enforcement at the provincial level. The goal of this review will be to spotlight strengths, weaknesses, and inconsistencies in and among specific jurisdictions, and to inform next year's Special 301 review of China as a whole. USTR expects to seek public comments in connection with the special provincial review.

The United States is using this year's Special 301 Report to examine four "hot spots" – Guangdong Province, Beijing City, Zhejiang Province, and Fujian Province – where, it appears, there is an acute need for authorities to more effectively establish and sustain proactive, deterrent IPR enforcement.

The United States recognizes and appreciates the efforts of the many officials in China, led by President Hu Jintao and Vice Premier Wu Yi, who continue to give voice to China's commitment to protecting intellectual property rights and work hard to make it a reality. In spite of these efforts, the reality of IPR enforcement in China continues to lag far behind the commitment made by China's government at the Joint Commission on Commerce and Trade in 2004, and renewed in 2005 and 2006, to achieve a significant reduction in IPR infringement throughout China.

China has made welcome progress in some areas. Consistent with the plan laid out in last year's Special 301 Report, the United States has used the JCCT, including the IPR Working Group, to secure new, specific IPR commitments, and in a few instances, specific actions to implement existing commitments. Some of the key IPR results included:

- enforcement actions by China against plants that produce pirated optical discs;
- new rules that require computers to be pre-installed with licensed operating system software;
- an agreement to work on cooperation to combat pirated goods displayed at trade fairs in China;
- a commitment to intensify efforts to eliminate infringing products at major consumer markets in China, such as Silk Street Market in Beijing; and

- a commitment to ensure the legalization of software used in Chinese enterprises and to take up issues of government and enterprise software asset management in the JCCT IPR Working Group.

The two governments also agreed to step up cooperation on IPR law enforcement efforts, increase customs cooperation, and provide China with additional technical assistance to fully implement the WIPO Internet Treaties. Together with Japan and Switzerland, the United States has also used WTO tools in new ways to start an ongoing process of making China's whole IPR regime more transparent.

Apart from longstanding concerns over IPR enforcement, the United States is alert to U.S. industry concerns about the possibility that laws or policies in a variety of fields might be misused to favor domestic over foreign IPR. Such concerns are especially relevant in light of recently issued Chinese government policies establishing a procurement preference for domestically innovated products, statements and consideration of legal changes regarding such areas as compulsory licensing and the use of IPR in setting standards, and other emerging legal and policy developments that have the potential to affect IPR protection and market access for IPR-bearing goods and services. The United States will monitor these developments closely to ensure fair treatment for U.S. rights holders.

Infringement Levels Remain Unacceptably High

Despite anti-piracy campaigns in China and an increasing number of IPR cases in Chinese courts, overall piracy and counterfeiting levels in China remained unacceptably high in 2005. IPR infringement continued to affect products, brands and technologies from a wide range of industries, including films, music and sound recordings, publishing, business and entertainment software, pharmaceuticals, chemicals, information technology, apparel, athletic footwear, textile fabrics and floor coverings, consumer goods, electrical equipment, automotive parts and industrial products, among many others.

Industry sources in 2005 continued to estimate that levels of piracy in China across all lines of copyright business are 85 to 93 percent, indicating little to no improvement. For example, estimated business software losses fell to \$1.27 billion in 2005 from \$1.48 billion in 2004. However, the software industry reports that the level of government purchases does not support the conclusion that all software in government offices has been legalized, and notes that software end-user piracy outside the government remains rampant. Internet piracy is increasing and end-user piracy of business software and other copyright materials, such as books and journals, remains a key concern. The share of IPR infringing product seizures of Chinese origin at the U.S. border increased to 69 percent in 2005 from 63 percent in 2004, while the total value of the IPR infringing goods from China decreased to \$63.9 million in 2005 from \$87.2 million in 2004. China's share of infringing goods seized at the border is more than ten times greater than that of any other U.S. trading partner.

China's counterfeits include many products that pose a direct threat to the health and safety of consumers in the United States, China and elsewhere, such as pharmaceuticals, batteries, auto parts, industrial equipment, toys, and many other products. The harm from counterfeiting is not

limited to consumers and right holders; China has estimated its own tax losses due to counterfeiting at \$3.2-4 billion in 2002.

Some Progress, but Overall Enforcement Remains Inadequate

Inadequate IPR enforcement is one of China's greatest shortcomings as a trading partner. Rights holders report that enforcement efforts, particularly at the local level, are 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.

Most of all, China suffers from chronic over-reliance on toothless administrative enforcement and underutilization of criminal remedies. China's own 2004 data showed that it channeled more than 99 percent of copyright and trademark cases into its administrative systems and turned less than one percent of cases over to the police. The trademark and copyright industries continue to point out that administrative fines are too low to provide a deterrent, and as a result, infringers continue to consider administrative seizures and fines as a cost of doing business.

In 2005, the United States pressed China to address its over-reliance on administrative enforcement. At the 2005 JCCT, China agreed to increase the number of criminal prosecutions for IPR violations relative to the total number of IPR administrative cases.

Unfortunately, there has been no sign yet of a significant shift in emphasis toward criminal enforcement. China's reported absolute numbers of criminal cases have risen,¹ but China has not publicized corresponding administrative statistics that would reveal a shift. On the contrary, according to a trademark industry submission, officials of China's State Administration for Industry and Commerce recently indicated that the number of trademark cases transferred to the police during 2005 was expected to be less than 0.3% of the total. Right holders continued to express dissatisfaction with the number and substance of investigations, prosecutions, and convictions last year by local police.

In the 2005 Special 301 Report, the United States pledged to examine closely whether China's implementation of a December 2004 Judicial Interpretation on thresholds for criminal liability would address underlying deficiencies and actually deter counterfeiting and piracy. Following careful examination of available information, the United States has concluded that China's high thresholds for criminal liability (*i.e.*, the minimum values or volumes required to initiate criminal prosecution) continue to be a major reason for the lack of an effective criminal deterrent. The partial reforms reflected in the December 2004 measure did not go far enough; the mandated thresholds remain so high that they make it impossible as a matter of law to prosecute many commercial infringers, especially at the retail level. The problem is made worse by China's

¹ According to Chinese data provided in response to U.S. requests, China initiated no copyright retail cases under Article 218 of its Criminal Law in 2004 and six cases in 2005. Under Article 217 of the same law, covering copyright reproduction and distribution, the number of cases initiated rose from 13 to 28. China's self-reported numbers of trademark counterfeiting cases initiated also rose from 53 to 98 under Article 215 (sale of counterfeit trademark goods); from 163 to 221 under Article 213 (manufacture of counterfeit trademark goods), and from 100 to 134 under Article 215 (manufacture of counterfeit trademark labels).

reliance on values of infringing products, rather than genuine products, as the default rule for determining whether threshold values are met. China has thus maintained a legal “safe harbor” that protects a large group of commercial infringers and operates to deprive the criminal enforcement authorities of needed information regarding the sources of counterfeit and pirated goods.

Right holders have pointed to a number of other deficiencies that collectively highlight the need for China to reform its criminal IPR laws, which were not revised at the time of WTO accession. In addition to the thresholds, notable problems include the profit motive requirement in copyright cases; the requirement of identical trademarks in counterfeiting cases; the lack of criminal liability for certain acts of copyright infringement; and the need to establish minimum, proportional sentences and clear standards for initiation of police investigations in cases where there is a reasonable suspicion of criminal activity. The United States calls on China to address these issues by announcing an initiative to reform its criminal IPR laws and related criminal measures.

Trade in pirated optical discs continues to thrive, supplied by smugglers and by both licensed and unlicensed factories. Small retail shops continue to be the major commercial outlets for pirated movies and music, and roaming vendors offering cheap pirated discs continue to be very visible in major cities across China. China made a 2005 JCCT commitment to take aggressive action against movie piracy, including enhanced enforcement for titles not yet authorized for distribution. Right holders have monitored China’s efforts and report little meaningful improvement in piracy of pre-release titles. Right holder surveys showed progress in a limited number of retail outlets in Shanghai, one of four selected cities, but right holders reported that surveys of the three other major cities yielded disappointing results.

Piracy and counterfeiting are partly products of China’s market access restrictions, which artificially limit the availability of foreign content and thus lead consumers to the black market. Various U.S. right holders continue to be adversely impacted by restrictions on imports, including having to go through import monopolies, restrictions on foreign investment in distribution, and delays in regulatory approval. Examples include restrictions on the import and distribution of legitimate foreign movies and delays created by the censorship process. Efforts to speed up content review for entertainment software have also been unavailing.

There have been a few bright spots in the areas of enforcement. Industry has confirmed that some of China’s special campaigns, such as the continuing “Mountain Eagle” campaign against trademark infringement crimes, have in fact resulted in increased arrests and seizures of infringing materials, although the disposition of seized goods and the outcomes of cases remain largely obscured by lack of transparency.

China has announced a 2006 Action Plan on IPR Protection, including “special crackdown efforts” with respect to various IPR infringement problems. The United States looks to China to achieve real and transparent results for U.S. right holders through implementation of the Action Plan. In addition to stepping up action against trademark counterfeiting, the United States calls on China to launch and publicize significant criminal enforcement actions against optical media piracy, Internet piracy, and other forms of piracy afflicting U.S. copyright owners.

The United States is encouraged by China's recent adoption of amended rules governing transfer of administrative and customs cases to criminal authorities. These rules are not a complete solution and do not address the problem of thresholds, but they show a desire to address the issue and could help to overcome a certain amount of bureaucratic inertia and other institutional barriers to increasing criminal enforcement. The United States is also encouraged that administrative authorities in a few parts of China, notably Shanghai, appeared to show greater willingness to take *ex officio* enforcement action on behalf of U.S. right holders without the need for a complaint. The United States would welcome more such action, combined with higher, deterrent fines.

The United States is also encouraged that authorities in China started to take enforcement actions against Internet piracy in 2005, following China's 2005 JCCT commitment to carry out a "nationwide crack-down on Internet piracy, including through enforcement at Internet cafes." This included a temporary campaign from October 2005 through February 2006, the concrete results of which remain unclear. So far, enforcement against Internet piracy has largely been a localized, administrative enforcement effort in a few cities. The problems of Internet piracy call for a coordinated, national effort backed by appropriate resources.

The United States also hopes that China will use its implementation of the 2006 Action Plan as an opportunity to examine a variety of structural reforms that would contribute to improving IPR enforcement. In addition to reforming China's criminal laws as discussed above, other areas that China should explore include the positive results that could be achieved through specialized national IPR courts and prosecutors, providing faster trademark examination, and ensuring that the resources available to local administrative, police, and judicial authorities charged with protecting and enforcing IPR are adequate to the task.

Customs Enforcement: The export of infringing products from China is of grave concern worldwide. The statistics on seizures of Chinese-origin goods at the U.S. border, cited above, speak for themselves. China's infringing products dominate the black markets of the world, and the reputation of China's industry has suffered as a result. China is not doing enough to stop the outbound infringing products at its borders. Now that China has put rules in place for transfer of customs cases to criminal authorities, the United States calls on China to begin an aggressive campaign to prosecute exporters of infringing products.

The United States also remains concerned about various aspects of China's 2004 customs regulations and implementing rules, which were intended to strengthen border enforcement and to make it easier for rights holders to secure effective enforcement at the border. For example, these rules impose a deadline of only three days for a right holder to apply for seizure of suspected infringing goods held by Chinese customs. In addition, disposal of confiscated goods remains a problem under the implementing rules, which appear to mandate auction, rather than destruction, of infringing goods not purchased by the right holder or used for public welfare.

Civil Enforcement: In part because of the ineffectiveness of the administrative and criminal enforcement systems in China, there has been an increase in the number of civil actions seeking monetary damages or injunctive relief. Most of these actions have been brought by Chinese

rights holders, although foreign rights holders are increasingly turning to the civil system for redress. While seeing some success, the United States continues to hear complaints of a lack of consistent, uniform and fair enforcement of China's IPR laws and regulations in the civil courts. Litigants have found that most judges lack necessary technical training, court rules regarding evidence, expert witnesses, and protection of confidential information are vague or ineffective, and the costs of investigation and bringing cases are prohibitively high. In the patent area, where civil enforcement is of particular importance, the process is inefficient and unpredictable. A single case can take four to seven years to complete.

Key “Hot Spots” Require Increased Attention and Resources

Enforcement of intellectual property rights is inconsistent across China. Many locations in China require increased attention and resources to improve weak criminal, administrative, and/or civil enforcement for various forms of IPR. Some areas appear to have become focal points for IPR problems with respect to particular products. The recently increased attention to “hot spots” by national and local authorities in China is a welcome development if such efforts are sustained over time to deter infringing activity.

Based on information reviewed for this year's Special 301 Report, the U.S. government looks to China to take action in the following national “hot spots” where there appears to be an acute need to more effectively establish and sustain proactive, deterrent IPR enforcement:

Guangdong Province is the center of large-scale counterfeit and pirate manufacturing in China for a variety of goods, ranging from low-cost consumer goods, such as household items, clothing and optical media, to high-technology products, such as computer equipment, video game consoles (and game discs/cartridges), and other electronics. Guangdong's role as an export engine creates a need for more deterrent customs remedies. Availability of criminal remedies is also a problem; a notable example is the need for prosecutions to address optical media piracy. Localities and markets identified as problem areas by IPR owners include Guangzhou, Shenzhen, Shantou, Chaoyang, and Jieyang, as well as several markets in Baiyun District, Luowu Market at the border between Shenzhen and Hong Kong, and numerous other markets.

Beijing City is both the nation's capital and one of its most visible centers for retail counterfeiting and piracy. Rights holders report that protection varies in different parts of the city. Problem areas include major markets, such as the infamous Silk Street Market located near the U.S. Embassy; numerous CD/DVD shops operating with official permission in the Chaoyang District and elsewhere in the city (some of which have been the subject of raids); and several markets that reportedly permit consumers to order infringing software loaded onto computers. Efforts by copyright authorities to crack down on retail outlets have to date had very limited success. Beijing trademark officials have become increasingly active in addressing retail counterfeiting issues, but these efforts have been incomplete. For example, Beijing has a special list of protected brands that appears to include primarily European brands. Beijing's university campuses have also been cited by right holders as magnets for textbook piracy, and they offer a broadband environment that can support copyright infringement.

Zhejiang Province in eastern China has been identified over the years by right holders as a major distribution center for infringing goods. Right holders have repeatedly drawn attention to the City of Yiwu as an important distribution center for small commercial goods, including, for example, suspected counterfeit lighter fluid and yellow wristbands suspected of infringing the LIVESTRONG trademark of the Lance Armstrong Foundation. Many shipments of counterfeit goods to the developing world are suspected of having originated in Yiwu. Recent visits by U.S. officials indicated that enforcement efforts there have increased in recent years. For example, criminal trademark enforcement increased during the Mountain Eagle campaign. Other localities identified as problem areas by IPR owners include Ningbo, Cixi, Taizhou and Wenzhou.

Fujian Province is home to large-scale manufacturing, including athletic footwear companies in Jinjiang and Putian that have been the target of infringement allegations in long-running legal actions by U.S. trademark owners New Balance, Reebok, and Nike. The lack of prompt and complete action in these cases has allowed uninterrupted, long-term manufacturing of the subject goods. Other localities identified as problem areas by U.S. IPR owners include Quanzhou.

Progress Made – More Needed

Joint Commission on Commerce and Trade

On April 11, 2006, the third “elevated” meeting of the Joint Commission on Commerce and Trade (JCCT) was held in Washington, D.C. between U.S. Trade Representative Rob Portman, Secretary of Commerce Carlos Gutierrez and Chinese Vice Premier Wu Yi. Measured progress was made toward stepping up IPR enforcement efforts in China. The United States made clear that while China has made progress, the United States does not consider that China has met its 2004 JCCT commitment to significantly reduce IPR infringement levels.

Some of the key 2006 JCCT IPR results include actions by China against plants that produce pirated optical discs (however no plant operators have so far been criminally prosecuted); agreement to consider law enforcement cooperation to combat optical disc piracy; new rules issued by the Chinese government requiring computers to be pre-installed with licensed operating system software and government agencies to purchase only such computers; efforts to combat counterfeit and pirated goods displayed at trade fairs in China; ensure vigorous pursuit of individual IPR cases raised by the United States Government through the formal bilateral referral mechanism; and a commitment to intensify efforts to eliminate infringing products at major consumer markets in China, such as Silk Street Market in Beijing. The Chinese government further agreed to discuss Chinese production of active pharmaceutical ingredients (also known as bulk chemicals). U.S. industry is concerned that the uneven application of Chinese regulatory requirements can facilitate the production of counterfeit pharmaceutical products.

China has also made progress in implementing a number of IPR-related commitments made at the 2004 and 2005 JCCT meetings. At the 2006 JCCT China reaffirmed its commitment, made at previous JCCT meetings, to continue efforts to ensure use of legalized software at all levels of government, and to adopt procedures to ensure that enterprises use legal software, beginning with large enterprises and state-owned enterprises. As noted above, China recently fulfilled a 2005 JCCT commitment by adopting amended rules governing the transfer of administrative and

customs cases to criminal authorities, and has taken some steps to pursue administrative actions against end-user software piracy. China recently posted an IPR ombudsman to its Embassy in Washington, who has facilitated contacts between U.S. government officials and their counterparts in Beijing, and been a source of information for U.S. businesses, including small and medium-size companies.

China has also sought to expand enforcement cooperation as agreed at the 2004 and 2005 JCCT meetings. In response to a proposal from China's General Administration of Customs (GAC), U.S. Customs and Border Protection (CBP) is developing a plan under which CBP will cooperate with GAC to affect a four-part customs cooperation program aimed at improving administrative IPR border enforcement in both countries. A key element of the proposal is a possible data exchange process through which, on an initial trial basis, CBP and GAC will share information permissible by law, e.g., names of manufacturers, addresses, and descriptions of the goods relating to suspected violators. In addition, CBP and GAC plan to exchange statistical information on IPR border seizures within each country. Each country will appoint a contact to receive and act on information provided regarding IPR-infringing goods. CBP and GAC will also work to conduct technical exchanges on topics such as legislative/regulatory improvements, risk modeling and IPR recordation administration. U.S. Immigration and Customs Enforcement is also working to increase cooperation with China's Ministry of Public Security through the Joint Liaison Group.

China is also taking steps to meet its 2005 JCCT commitment to submit a legislative package to the National People's Congress in June 2006 for China to join the WIPO Internet Treaties. However, the U.S. government has numerous, serious concerns regarding the current draft regulations which would govern aspects of copyright protection over the Internet. For example:

- The draft only provides legal protections and remedies relating to technological protection measures (TPMs) that prevent or restrict the making available to the public of a work (e.g., passwords). It provides neither legal protections nor remedies to prevent circumvention of copy-control TPMs. Its exception to protection against circumvention remains overbroad. Without such protections and remedies, the United States is concerned that China will not provide effective protection against copyright infringement on the Internet.
- The United States has concerns about several broad limitations on rights. These provisions should be reconsidered in the light of the tests for limitations and exceptions to copyright prescribed by the WIPO Internet Treaties and TRIPS.
- The notice and take down measures for a copyright holder appear overly burdensome and rigid. As the Internet becomes a more popular means for distributing copyrighted material such as music, it is critical that these regulations include effective and efficient means of notifying Internet service providers and taking down infringing material.

China needs to address these concerns before finalizing its implementing measures. The United States is pleased that at the 2006 JCCT, China requested a strengthening of communication and cooperation on domestic measures that will enable China to join the WIPO Internet Treaties.

The U.S. government looks forward to providing further assistance to China, and believes that such cooperation is critical for China's full implementation of the treaties.

JCCT IPR Working Group

The JCCT IPR Working Group is an important vice-ministerial level vehicle to discuss IPR issues and problems, including those that are discussed at the JCCT. Since its creation in 2004, the group has met three times, and the United States is working toward holding a fourth meeting in upcoming months. In addition to vice-ministerial discussions, the group devotes a great deal of time to detailed expert-to-expert discussion of issues that impact IPR enforcement efforts within China, such as the clarifying the meaning and reviewing the application of China's various measures governing its administrative, criminal, and customs enforcement actions. Expert discussions have produced concrete outcomes. For example, after such expert discussions, China agreed at the 2005 JCCT – and the Supreme People's Court subsequently confirmed – that China would apply its 2004 judicial interpretation on criminal IPR infringements to sound recordings.

Transparency

Article 63 of the WTO TRIPS Agreement requires laws, regulations and final judicial decisions and administrative rulings of general application pertaining to IPR infringement be made publicly available to rights holders. Despite this requirement, lack of transparent information on IPR infringement levels and enforcement activities in China continues to be a problem.

In October 2005, the United States, along with Japan and Switzerland, requested that China provide additional IPR enforcement data pursuant to Article 63.3 of the TRIPS Agreement. After initial resistance, China invited the United States to Beijing in March 2006 for a full day of constructive discussions on improving transparency in the field of IPR enforcement. China provided previously unavailable IPR criminal prosecution data, and the two governments identified specific areas in which China will work toward greater transparency on IPR enforcement matters. China also stated that it would make a database of IPR enforcement statistics available to the public on the Internet in both Chinese and English to consolidate diverse IPR statistics and provide a consistent view for both governments and right holders. On the whole the two governments achieved progress, and the United States hopes to achieve further progress in obtaining information in such areas as criminal copyright cases, cases involving U.S. right holders, and cases involving exports. The United States does not consider, however, that China has provided a full response to the October 2005 Article 63.3 request. The United States continues to look forward to China's full response. The United States also continues to welcome and encourage increased efforts by U.S. industry to enhance transparency through monitoring of IPR enforcement in China and its results in the Chinese market.

Transparency in rulemaking is also a continuing problem. Government entities responsible for drafting rules often refuse to make drafts widely available for public comment, and instead limit their "consultations" to pre-selected industry and trade associations. The United States welcomed opportunities to comment on some administrative rules adopted by China in 2005 and 2006. For example, the United States provided comments to China on its draft measures on IPR

protection at trade fairs, and its draft rules to transfer cases from administrative to criminal authorities. U.S. industry commented extensively on China's draft regulations for the protection of copyrights on information networks. However, the United States also notes that China provided no opportunity to comment on, e.g., the customs transfer rules or the rules to strengthen crackdowns on trademark infringement crimes.

The United States has been urging China to adopt and regularize transparency requirements across all government agencies, including a mandatory public notice and comment requirement and a requirement that all trade-related measures be published in a single official journal. At the April 11, 2006 JCCT meeting, China announced that the General Office of the State Council had issued a notice requiring that all laws, regulations and other measures of all government ministries and agencies at all levels pertaining to or affecting trade in goods, services, TRIPS or the control of foreign exchange shall be published in a single official journal, *i.e.*, the China Foreign Trade and Economic Cooperation Gazette, issued by the Ministry of Commerce. The United States welcomes this announcement and looks forward to its strict implementation. In light of its WTO obligations, it is still important for China to allow public notice and a reasonable opportunity for comment before implementing any trade-related measure.

Patent and Data Protection Developments

While China's patent laws are largely compliant with the TRIPS Agreement, right holders have noted that the narrow scope of patentable subject matter under Chinese law makes patents for transgenic plants and animals virtually unobtainable. A lack of clarity in laws involving generic drug patent infringement is contributing to the continued growth of counterfeit drugs, with corresponding health and safety problems.

In addition, the United States has concerns about the extent to which China provides meaningful protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products.

RUSSIA

Russia will remain on the Priority Watch List in 2006. Despite some improvements in IPR enforcement this year, the United States continues to have serious concerns about the continued increase in optical disc pirate production in Russian plants and the growth of Internet piracy on Russian websites such as www.allofmp3.com. The United States is particularly concerned about piracy in optical disc factories located on government-owned facilities. In addition, the current draft of the proposed Part IV of the Civil Code, which would replace existing IPR laws, raises questions about its compliance with international norms and the possible adverse effect it could have, if passed, on IPR protection and enforcement in Russia. The Administration, U.S. industry, and the U.S. Congress share these concerns. The United States urges Russia to address these issues and to provide stronger IPR protection and enforcement—objectives which Russia's top leaders have identified as a priority.

Russia has made progress in some areas during the past year, such as increasing the number of raids on pirate optical disc facilities, including those located in government-controlled areas. Seizures of pirated goods and the equipment used to manufacture them have increased. Russia has also taken some steps, although unsuccessfully so far, to shut down the pirate website www.allofmp3.com. In addition, in the context of WTO accession negotiations, the United States expects Russia to commit to provide protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical and agricultural chemical companies seeking marketing approval for their products. The United States and Russia are consulting on other changes to Russia's laws and regulations that are necessary for purposes of TRIPS compliance, concerning, for example, well-known marks, geographical indications, and other issues.

The United States urges Russia to take immediate and effective steps to properly inspect all optical media plants, to shut down illegal plants and counterfeit product manufacturers; seize and destroy equipment used to make pirate and counterfeit goods; close illicit Internet sites; prosecute those responsible for piracy and counterfeiting, impose deterrent penalties on convicted infringers; strengthen border enforcement; ensure that any additions to the current Civil Code reinforce Russia's existing IPR regime and are TRIPS consistent; and address deficiencies in its IPR laws. The United States will continue to monitor closely Russia's progress in bringing its IPR regime in line with international standards through the ongoing review of whether to remove Russia's benefits under the Generalized System of Preferences (GSP) due to inadequate copyright enforcement, WTO accession discussions, and the United States-Russia Bilateral IPR Working Group.

ARGENTINA

Argentina will remain on the Priority Watch List in 2006. The United States notes that Argentina made some improvements in intellectual property protection throughout the past year, including recently implemented fast-track procedures for consideration of patent applications and the hiring of a significant number of patent examiners. However, despite these improvements, relatively few patents were granted in 2005 for commercially significant inventions. Further, Argentina still does not provide adequate protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. This important issue was not fully resolved in 2005. The United

States urges Argentina to implement an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products, as well as to address problems that rights holders encounter in attempting to obtain effective injunctions to stop such unfair commercial use. Copyright piracy also remains a significant problem in Argentina, with the U.S. copyright industry reporting that music piracy worsened in 2005, mainly in the areas of physical piracy (burned CD-Rs) and Internet piracy. Copyright piracy also continues in the areas of entertainment and business software and book publishing. Although the Argentine Government took some IPR enforcement actions during 2005, the United States encourages stronger IPR enforcement actions to combat the widespread availability of pirated and counterfeit products. The United States will continue to monitor Argentina's efforts to address these concerns.

BELIZE

Belize will be elevated from the Watch List to the Priority Watch List in 2006. Piracy and counterfeiting are widespread in Belize, and improvements need to be made by Belize's Government to strengthen IPR enforcement. Although cooperation between rights holders and government entities has improved in the past year, concerns remain about the ability and willingness of authorities to conduct inspections, seize counterfeit and pirated goods, complete prosecutions, and issue deterrent sentences. A continuing concern is the lack of IPR enforcement in Belize's Corozal Commercial Free Trade Zone, through which infringing products are transshipped from Mexico to the United States and elsewhere. The United States urges Belize to improve IPR enforcement efforts by: revising necessary laws and regulations to facilitate inspections, seizures, criminal investigations, and destruction of infringing products; increasing resources devoted to border enforcement and the number of investigations of counterfeiting and piracy; prosecuting and issuing deterrent sentences to counterfeiters and pirates; and implementing strong IPR enforcement actions in the Corozal Commercial Free Trade Zone.

BRAZIL

Brazil will remain on the Priority Watch List in 2006. The United States commends Brazil's progress on copyright enforcement this past year, including the formation of a public-private National Anti-Piracy Council, development of a national action plan by Brazil's National Council to combat piracy and IP crimes, and increased police actions. In January 2006, in recognition of these improvements, USTR terminated a review of whether to remove Brazil's benefits under GSP because of inadequate enforcement of copyright. Despite these improvements, however, high levels of piracy and counterfeiting still exist and criminal prosecutions remain minimal. The United States will continue to engage with Brazil on improving copyright enforcement. Unfortunately, commensurate progress has not been made in other areas. The United States is concerned about Brazil's lack of protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. In addition, concerns remain that Brazil has not significantly reduced its backlog of pending patent applications, due in part to a requirement that the health regulatory agency issue its approval before pharmaceutical patents are granted by the Brazilian patent office. The United States will continue to work with Brazil to address these important IPR issues.

EGYPT

Egypt will remain on the Priority Watch List in 2006. The United States is concerned about continuing deficiencies in Egypt's IPR enforcement regime, problems with its judicial system, the lack of protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, and Egypt's lack of an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products. Further, although in 2005 Egypt introduced implementing regulations for its copyright law and a customs regulation, deficiencies remain that need to be addressed. The United States encourages Egypt to accede to and implement the WIPO Internet Treaties. Improvements in IPR enforcement are needed, particularly in the areas of fighting copyright piracy for book publishing, entertainment software, and business software. In addition, the Egyptian court system continues to operate inefficiently, resulting in a lack of satisfactory resolutions of copyright and trademark cases, difficulty obtaining deterrent sentences, and a lack of transparency. The United States hopes to see improvements in Egypt's IPR regime that will significantly strengthen trade and investment ties between the two countries.

INDIA

India will remain on the Priority Watch List in 2006. India made some improvements to its IPR regime during the past year, but IPR protection concerns remain due to inadequate laws and ineffective enforcement. The United States urges India to improve its IPR regime by providing stronger protection for copyrights, trademarks, and patents, as well as protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. The United States also encourages India to join and implement the WIPO Internet Treaties. India improved its patent protection regime when it passed legislation in early 2005 to provide for product patents for pharmaceuticals and agricultural chemicals. While this was a positive step, the new legislation has important omissions that detract from India's patent regime. Additionally, India's copyright laws and enforcement system are weak. Piracy of copyrighted works remains rampant, particularly for software, films, popular fiction works, textbooks, and cable signals. Although the Government of India has pledged to improve its trademark regime, foreign trademark owners experience difficulties due to procedural barriers and delays. India's criminal IPR enforcement regime remains weak, with improvements most needed in the areas of border enforcement against counterfeit and pirated goods, police action against pirates and counterfeiters, judicial dispositions resulting in convictions for copyright and trademark infringement, and imposition of deterrent sentences. The United States urges India to address these issues during the coming year and thereby strengthen its IPR regime. To that end, the United States welcomes deeper cooperation with India, as envisioned in statements issued by our leaders to "work together to promote innovation, creativity and technological advancement by providing a vibrant intellectual property rights regime, and to cooperate in the field of intellectual property rights to include capacity building activities, human resource development and public awareness programs."

INDONESIA

Indonesia will remain on the Priority Watch List in 2006, but the United States will conduct an Out-of-Cycle Review to monitor Indonesia's progress on IPR issues. The United States commends Indonesia for its progress in strengthening its IPR enforcement regime in 2005,

particularly with respect to fighting retail piracy and taking steps to implement its optical disc regulations to combat pirate production in optical disc factories. The United States also commends Indonesia for the re-establishment earlier this year of a Ministerial-level National IP Task Force as a focal point for future work to coordinate protection and enforcement of IPR. The United States urges Indonesia to build on this momentum by enforcing its IPR laws effectively and in a deterrent manner against piracy and counterfeiting, including through raids on pirate optical disc factories; by conducting seizures of pirated goods and the machinery used to make them; by arresting and prosecuting IPR infringers; and by ensuring that courts impose jail sentences for IPR crimes and that offenders actually serve such sentences. The United States will assess Indonesia's progress on these issues during the Out-of-Cycle Review. In addition, the United States will continue to use the bilateral Trade and Investment Framework Agreement process to work with Indonesia to improve its IPR enforcement regime.

ISRAEL

Israel will remain on the Priority Watch List in 2006. In March 2005, Israel passed legislation that weakened protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, despite extensive efforts between the United States Government and the Israeli Government to bridge differences on this issue. Intensifying concerns of the United States, the Israeli Government passed legislation in December 2005 that significantly reduced the term of pharmaceutical patent extension granted to compensate for delays in obtaining regulatory approval of a drug. The United States is also monitoring the status of copyright legislation that would weaken protections for U.S. rights holders of sound recordings; the United States urges Israel to provide national treatment for U.S. rights holders in accordance with its international obligations, including those under the 1950 United States-Israel Bilateral Copyright Agreement. In addition, the United States continues to urge Israel to strengthen its data protection regime in order to promote increased bilateral trade and investment in the field of pharmaceuticals and other knowledge-based sectors.

LEBANON

Lebanon will remain on the Priority Watch List in 2006. Although the Lebanese Government issued some high-level statements in 2005 reflecting its commitment to fighting piracy and protecting IPR, there have been few concrete improvements in IPR protection and enforcement. Particular concern remains in the area of cable piracy, because according to the U.S. copyright industry, well over 80 percent of Lebanon's cable subscribers view pirated content, one of the highest rates in the world. Additional concerns exist with respect to copyright piracy, particularly on the Internet. The United States urges the Lebanese Government to continue its efforts to address these problems and to ratify and implement the WIPO Internet Treaties. With respect to enforcement activities, the United States recognizes Lebanon's establishment of a specialized IPR police unit which is authorized to take *ex officio* action against piracy and counterfeiting, and encourages further development of this new initiative. The United States also urges Lebanon to ensure that prosecutors and judges issue convictions and impose deterrent sentences for criminal IPR infringers, as well as strengthen its patent laws, provide protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, and provide an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals

for unauthorized patent-infringing copies of pharmaceutical products. The United States will monitor the IPR situation in Lebanon closely, particularly under the GSP petition for inadequate copyright protection.

TURKEY

Turkey will remain on the Priority Watch List in 2006. Turkey made some progress on copyright enforcement during 2005, including an increased number of raids against copyright pirates and seizures of pirated goods, as well as increased impositions of deterrent penalties by the courts. The United States encourages Turkey to build upon this progress and to address the following IPR concerns: continuing enforcement against book, retail, and optical disc piracy; increasing judicial efficiency and reducing backlogs of court cases; addressing the growing problem of Internet piracy; increasing customs' *ex officio* inspections and seizures of pirated and counterfeit goods; and ensuring the seizure and destruction at pirate optical disc plants of pirated goods and the equipment used to produce them. The United States also encourages Turkey to further strengthen data protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, particularly with respect to the start date of the period of protection and the inappropriate linkage of the term of data protection to the length of the patent term. The United States encourages Turkey to implement a system of coordination between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products. The United States hopes to see Turkey's continued progress on these issues during the coming year, and will continue to monitor Turkey's progress in strengthening its IPR regime.

UKRAINE

Ukraine will remain on the Priority Watch List. At the conclusion of an Out-of-Cycle Review in January 2006, the United States lowered Ukraine from the Priority Foreign Country list to the Priority Watch List and reinstated Ukraine's benefits under the GSP program based on Ukraine's implementation of its new OD amendments and improved enforcement efforts. The Government of Ukraine also agreed to establish a bi-monthly Enforcement Cooperation Group with the U.S. Embassy in Ukraine and U.S. industry representatives.

In March 2001, the United States designated Ukraine as a Priority Foreign Country and initiated a Section 301 investigation. The United States withdrew Ukraine's GSP benefits in August 2001 and imposed sanctions on Ukrainian imports worth \$75 million in January 2002. In August 2005, in response to Ukraine's passage of important amendments to its Laser-readable Disc Law ("OD amendments") to combat optical disc pirate production, the United States terminated the \$75 million trade sanctions.

The United States will continue to monitor Ukraine's progress on IPR enforcement through the Enforcement Cooperation Group and the Section 306 monitoring process. Although Ukraine is no longer a major producer of pirated optical discs, it remains a transshipment point and storage location for illegal optical media produced in Russia and elsewhere. The United States encourages Ukraine to further improve border enforcement efforts and to impose deterrent criminal penalties for unauthorized production and export of pirated products. In addition, as part of its bilateral negotiations with the United States for membership in the WTO, Ukraine has

agreed to provide protection from unfair commercial use for undisclosed test data submitted to obtain marketing approval for pharmaceutical and agricultural chemical products. Although the United States recognizes Ukraine's marked improvements in IPR protection, it will continue to monitor closely Ukraine's further progress on IPR protection and enforcement.

VENEZUELA

Venezuela will remain on the Priority Watch List in 2006. Venezuela made minimal progress in strengthening its weak IPR regime this past year. High levels of copyright piracy continue to rise, while proposed copyright legislation under consideration would severely undercut the existing Venezuelan copyright law, as well as bilateral and international standards of IP protection. Venezuela does not provide protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. Furthermore, Venezuela lacks a coordinated system between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products. The only progress on IPR issues came from the Customs and Tax Agency, which enacted a regulation to allow *ex officio* seizures of pirated and counterfeit goods. The United States urges the Venezuelan government to take immediate action to improve IPR protection, particularly by protecting undisclosed test data against unfair commercial use, addressing copyright piracy, amending inadequate legislative proposals, fighting trademark counterfeiting, and improving IPR enforcement.