

## WATCH LIST

### **AZERBAIJAN**

Azerbaijan remains on the Watch List in 2005 because it has not addressed deficiencies in its IPR laws or fulfilled its IPR commitments under the 1995 U.S.-Azerbaijan Trade Agreement. For example, Azerbaijan's copyright law does not explicitly provide protection for pre-existing works or sound recordings. Neither the Criminal Code nor the Customs Code appear to provide for ex officio authority to commence criminal copyright cases and suspend the release of suspected infringing material at the border, and the Civil Code contains no explicit provision for civil ex parte search procedures. Further, while Azerbaijani law does provide criminal penalties for IPR violations, the U.S. copyright industry reports that there have been no criminal penalties or administrative sanctions imposed for copyright infringement in Azerbaijan this year. We encourage Azerbaijan to meet its obligations under the 1995 U.S.-Azerbaijan Trade Agreement, to accede to and fully implement the WIPO Internet Treaties, and to improve its enforcement efforts by providing for ex officio raids and seizures as well as civil ex parte searches. The United States will continue to monitor Azerbaijan's progress on IPR issues and notes that Azerbaijan will be expected to fully implement the TRIPS Agreement upon accession to the WTO.

### **BAHAMAS**

The Bahamas is being lowered from the Priority Watch List to the Watch List in 2005. During the past year, the Bahamas' legislature passed an amendment to its Copyright Act, which narrows the scope of the compulsory licensing regime for the reception and transmission of copyright works broadcast free over-the-air. The copyright amendment reflects a positive step towards compliance with commitments under an agreement reached between the Bahamas and the United States in 2000. The United States notes its serious concern, however, that this copyright amendment has not yet been enacted or implemented. In addition, the amendment and proposed implementing regulations contain certain deficiencies that we urge the Bahamas to address in the near term. Until this copyright amendment is properly put into effect, problems continue to persist in the area of copyright protection for U.S. cable programs and motion pictures. In particular, in the absence of implementation of the copyright amendments, the compulsory licensing plan contains provisions that allow Bahamian cable operators to retransmit any copyrighted television programming, including for-pay programming, whether or not transmitted from the Bahamas or outside of the Bahamas, and whether or not encrypted. Moreover, until existing regulations are changed, the remuneration system for copyright works under the compulsory licensing program remains inadequate and arbitrarily includes even lower, special rates for hotels and other commercial enterprises. The United States urges the Bahamas to enact promptly these necessary amendments to the copyright law and regulations. In addition, the United States continues to encourage all interested parties, including U.S. cable operators and copyrights holders, to seek commercial solutions that would facilitate the legal transmission of cable programming by cable operators in the Bahamas.

### **BELARUS**

Belarus remains on the Watch List in 2005 because it appears to have not fulfilled its intellectual property commitments under the 1993 U.S.-Belarus Trade Agreement and it continues to have deficiencies in its IPR regime. With respect to its copyright law, Belarus does not provide

appropriate protection for pre-existing works and sound recordings. In addition, it appears that further amendments are needed to bring Belarusian copyright law into compliance with the WIPO Internet Treaties. Enforcement of intellectual property laws in Belarus remains extremely weak and piracy levels remain high. Belarus did not make significant progress during the past year regarding needed legislative reforms or enforcement efforts, although the Government of Belarus is in the process of establishing a national academy to train enforcement officials in IPR protection. In the past, optical media production facilities have migrated into Belarus from neighboring countries, namely the Armita plant in Brest that relocated from Ukraine. The U.S. copyright industry is concerned that unless Belarus takes enforcement actions against illegal optical media plants, additional illegal plants may relocate to Belarus in the future. Belarus has amended its Criminal Code to adopt deterrent penalties for IPR violations, but the Criminal Code still does not provide for ex officio authority to allow police officials to initiate criminal copyright cases or for customs officials to seize illegal products at the border. Furthermore, Belarus' Civil Code does not provide for ex parte searches necessary to protect effectively against end-user software piracy. The United States encourages Belarus to enforce its IPR laws more aggressively and to take actions to deter future illegal operations. In addition, we urge Belarus to fulfill its obligations under the U.S.-Belarus Trade Agreement and will continue to monitor its progress in strengthening its IPR regime.

#### **BELIZE**

We are maintaining Belize on the Watch List in 2005. Although IPR legislation in Belize generally is consistent with international standards, the Government of Belize continued to make only minimal IPR enforcement efforts, which has led to the widespread availability of counterfeit and pirated goods. Furthermore, there has been insufficient cooperation between rights holders and government entities and less than satisfactory responses to concerns raised by such rights holders. A continuing concern is the lack of IPR enforcement in Belize's Corozal Commercial Free Trade Zone, which has led to the proliferation of infringement, transshipment of infringing merchandise, and related criminal activities. We encourage Belize to improve IPR enforcement efforts by increasing the number of investigations of counterfeiting and piracy, prosecuting and sentencing counterfeiters and pirates after successful seizures of illegal goods, and implementing strong IPR enforcement actions in the Corozal Commercial Free Trade Zone.

#### **BOLIVIA**

Bolivia remains on the Watch List in 2005 due to lack of improvements to its IPR regime. Under its bilateral and multilateral commitments, Bolivia should have increased its level of IPR protection years ago. Bolivia's IPR system continues to be deficient with respect to inadequate copyright laws, significant copyright piracy and trademark counterfeiting, and weak IPR enforcement efforts overall. The United States looks to Bolivia to strengthen its copyright law, improve its IPR enforcement mechanisms, and ratify and implement the WIPO Internet Treaties. In addition to these legal reforms, we urge Bolivia to increase its enforcement efforts. Specifically, we recommend that Bolivia provide for civil ex parte searches, prevent unwarranted delays in civil enforcement, provide adequate civil and criminal damages in copyright cases, and strengthen border measures. The U.S. copyright industry reports that Bolivia conducted no raids last year in response to music piracy, which has become so rampant that all international recording companies have closed their offices in Bolivia. Other copyright problems include commercial photocopying of books, unauthorized translations of books, video piracy, and

business and entertainment software piracy. The United States encourages Bolivia to increase its anti-piracy and anti-counterfeiting activities and to institute IPR legislative reforms during 2005.

## **BULGARIA**

Bulgaria is being retained on the Watch List in 2005 due to the dire need for improvements in its IPR regime, particularly with respect to anti-piracy and anti-counterfeiting enforcement efforts. Copyright piracy has increased in the past few years, after a period of dramatic decline in the mid- to late-1990's. The Bulgarian Government has not taken effective steps to stop the increase in piracy and counterfeiting activity. The U.S. copyright industry reports that this past year Bulgaria had high rates of optical disc piracy, estimating that approximately 70 percent of all foreign sound recordings produced in Bulgaria were illegal copies. Pirated CDs and DVDs are increasingly available throughout the country. We are encouraged by recent reports that the Bulgarian Government is taking steps to implement a new optical media licensing system, including current efforts by Bulgaria's Parliament to pass its optical disc legislation. However, the U.S. copyright industry reports that the proposed optical disc legislation needs to be amended in certain respects prior to its adoption. We will continue to closely watch these legislative developments in Bulgaria. In addition, we recommend that Bulgaria amend its criminal code and criminal procedure code to correct severe shortcomings which undercut the possibility of effective enforcement. For example, we hope that Bulgaria will improve its polycarbonate import registration scheme, an important tool for addressing optical disc piracy. With respect to IPR enforcement, Bulgarian police authorities have increased their cooperation with rights holders. However, despite some progress in the area of enforcement, enforcement of the current optical disc licensing regime is ineffective. Judicial trials are replete with extensive delays and convicted pirates and counterfeiters usually receive only minimal sentences. There are currently eight known operational optical disc plants in Bulgaria, with the output of those plants far exceeding the country's legitimate demand. In addition, production and smuggling of counterfeit distilled spirits has continued to grow. While Bulgaria has increased its investigations into the sources of counterfeit production and distribution, no criminal charges have been filed as a result of these inquiries. We remain concerned with the increases in copyright piracy and trademark counterfeiting, and the United States will continue to monitor Bulgaria's near-term progress in combating these illegal activities.

## **CANADA**

Canada is being maintained on the Special 301 Watch List in 2005, and the United States will conduct an out-of-cycle review to monitor Canada's progress on IPR issues during the upcoming year. We urge Canada to ratify and implement the WIPO Internet Treaties as soon as possible, and to reform its copyright law so that it provides adequate and effective protection of copyrighted works in the digital environment. The Canadian court decision finding that making files available for copying on a peer-to-peer file sharing service cannot give rise to liability for infringement under existing Canadian copyright law underscores the need for Canada to join nearly all other developed countries in implementing the WIPO Internet Treaties. The U.S. copyright industry is concerned about proposed copyright legislation regarding technological protection measures and internet service provider (ISP) liability, which if passed, would appear to be a departure from the requirements of the WIPO Internet Treaties as well as the international standards adopted by most OECD countries in the world. The United States urges Canada to adopt legislation that is consistent with the WIPO Internet Treaties and is in line with the

international standards of most developed countries. Specifically, we encourage Canada to join the strong international consensus by adopting copyright legislation that provides comprehensive protection to copyrighted works in the digital environment, by outlawing trafficking in devices to circumvent technological protection measures, and by establishing a “notice-and-takedown” system to encourage cooperation by ISPs in combating online infringements. It also is imperative that Canada improve its enforcement system so that it can stop the extensive trade in counterfeit and pirated products, as well as curb the amount of transshipped and transiting goods in Canada. The United States also urges Canada to enact legislation that would provide a stronger border enforcement system by giving its customs officers greater authority to seize products suspected of being pirated or counterfeit. We also encourage greater cooperation between Customs and the Royal Canadian Mounted Police in enforcement matters, and encourage Canada to provide additional resources and training to its customs officers and domestic law enforcement personnel. Canada's border measures continue to be a serious concern for IP owners. With respect to data protection, we recognize that Canada has taken positive steps to improve its data protection regime. The U.S. pharmaceutical industry is concerned about certain aspects of the proposed regulations. The United States will use the out-of-cycle review to monitor Canada's progress in providing an adequate and effective IPR protection regime that is consistent with its international obligations and advanced level of economic development, including improved border enforcement and full implementation of data protection.

## **CHILE**

Chile will remain on the Watch List in 2005. We note Chile's efforts to bring its IPR regime into compliance with the TRIPS Agreement and the U.S.-Chile Free Trade Agreement (FTA). Chile's Congress approved in December 2003 legislation intended to bring the country into compliance with a number of TRIPS commitments. Chile still needs significant reforms, however, in a number of areas. Copyright and trademark enforcement must be improved, including the imposition of deterrent penalties. Copyright piracy is still a serious problem in Chile, and the U.S. copyright industry indicates that digital piracy has contributed to a dramatic rise in piracy in Chile. Concerns remain over pending additional copyright legislation introduced in 2004 which, while making some improvements in enforcement mechanisms, appears to fall short of providing deterrent penalties. Regarding protection for pharmaceutical products, we are concerned that Chile has yet to implement effective regimes to protect test data against unfair commercial use, as well as provide coordination between its health authorities and patent office to prevent marketing registrations of patent-infringing products. We hope that these issues will be resolved through Chile's full implementation of the FTA and we will monitor Chile's progress in meeting its commitments.

## **COLOMBIA**

Despite Colombia's progress in certain areas toward strengthening its IPR regime, Colombia still needs to make further improvements and therefore will remain on the Watch List for 2005. Colombia is the only Andean country to provide a full five years of data protection for pharmaceuticals. In the copyright context, Colombia has increased criminal penalties for copyright infringement and has established a specialized IPR unit in the Prosecutor General's office. Notwithstanding these improvements, however, high levels of piracy continue to dominate the Colombian market. The U.S. copyright industry estimates its losses in 2004 due to music piracy alone at \$51 million in Colombia, and reports that 71 percent of the music sold in

Colombia is pirated product; the U.S. copyright industry estimates losses across all copyright sectors at \$131 million last year. Other areas of copyright piracy are on the rise, including optical disc piracy (both CD-Rs and DVD-Rs), illegal photocopying of academic textbooks, business software piracy, and entertainment software piracy. These high piracy levels plus a lack of successful prosecutions for IPR infringement remain problematic. Efforts to combat piracy through raids and other enforcement measures are hindered by a judicial system that fails to actively prosecute cases or issue deterrent criminal sentences. Border enforcement is weak, administrative enforcement against signal theft piracy needs improvement, and it can take as long as six months to carry out inspections after requesting civil ex parte search orders. The United States urges Colombia to ensure that its criminal, administrative, civil and border enforcement procedures meet its longstanding bilateral and multilateral intellectual property enforcement obligations and are implemented effectively in the near future.

### **COSTA RICA**

In August 2004, Costa Rica signed the United States-Dominican Republic-Central American Free Trade Agreement (CAFTA-DR). The United States commends Costa Rica's commitment to ensuring that its IPR legislation conforms to the TRIPS Agreement and CAFTA-DR. However, Costa Rica still faces significant IPR enforcement problems that warrant keeping Costa Rica on the Watch List in 2005. We urge the Government of Costa Rica to modify its data protection law to provide the requisite level of protection, as well as amend its patent law to meet international standards and Costa Rica's international and CAFTA-DR obligations. We urge the Government of Costa Rica to not adopt proposed legislation that would weaken the criminal procedure code for IPR enforcement, but recommend that companion legislation which continues strong criminal sanctions be considered instead. We encourage the Government of Costa Rica to take immediate action in 2005 to improve the shortcomings in its IPR enforcement system by assigning priority and resources to enforcement efforts against piracy and counterfeiting. In light of CAFTA-DR, we also urge the Government of Costa Rica to ensure that its local IPR legislation conforms fully to its CAFTA-DR obligations.

### **CROATIA**

Croatia will remain on the Watch List in 2005 due to limited progress on IPR issues. Although Croatia passed an amendment to its drug registration law in December 2004 that provided protection for test and other data from unfair commercial use, Croatia still fails to provide coordination between its national patent authority and its central health regulatory authority to prevent marketing registrations for patent-infringing products. As a result, the U.S. pharmaceutical industry reports that companies are easily able to register patent-infringing pharmaceuticals in Croatia. We will continue to monitor Croatia's progress on this issue in 2005.

### **DOMINICAN REPUBLIC**

IPR protection has not improved significantly in the Dominican Republic during the past year, and thus it will remain on the Watch List in 2005. The Dominican Republic signed the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) with the United States in August 2004 that will require the Dominican Republic to upgrade considerably its IPR protections. Concerns still remain regarding the protection and enforcement of intellectual property, particularly with respect to ongoing broadcast piracy and ineffective prosecution of

copyright and trademark infringement cases. We encourage the Dominican Republic to improve its enforcement regime to solve the broadcast piracy problem and deter other copyright infringements more effectively in the near future, as well as to focus its efforts on ensuring an expeditious resolution of pending criminal cases. Finally, we urge the Dominican Republic to be vigilant in submitting legislation, enhancing IPR enforcement, providing training, and making other necessary preparations to meet its FTA obligations. The United States will continue to work with the Dominican Republic to strengthen its IPR regime, particularly in the context of CAFTA-DR.

## **ECUADOR**

Ecuador has made minimal progress in improving its IPR regime over the last year, and it will remain on the Watch List in 2005. Although Ecuador generally has an adequate IPR law, enforcement of the law remains a central problem. Enforcement of copyrights is a significant problem, especially with respect to sound recordings, computer software, and illegal commercial photocopying of books. The U.S. copyright industry reports high piracy levels due to insufficient IPR enforcement by Ecuador, including poor border controls, infrequent ex officio raids, and limited government resources dedicated to anti-piracy and anti-counterfeiting activities. Music piracy has become so severe that the majority of international record companies have closed their offices in Ecuador. Even though Ecuador's current substantive copyright legislation has been modernized in line with its international obligations, Ecuador's judicial system remains deficient because the courts appear unwilling to enforce the law. The Ecuadorian Government has not yet established the specialized intellectual property courts required by its IPR law. Petitions for civil ex parte actions are brought before civil courts, delaying or preventing seizure orders for pirated or counterfeit products. Concerns also remain over Ecuador's current lack of effective protection for undisclosed test data submitted for marketing approval of pharmaceutical and agricultural chemical products. The United States urges Ecuador to strengthen enforcement of IPR and will closely monitor Ecuador's efforts to address IPR-related concerns.

## **EUROPEAN UNION**

For several years, including in 2004, the EU was on the Priority Watch List primarily because of its lack of willingness to address deficiencies in EU Regulation 2081/92 ("EU GI Regulation"), which governs the protection of geographical indications (GIs) for agricultural products and foodstuffs in the EU, as well as lack of full implementation of the EU Biotech Directive by EU member states. In 1999, the United States initiated dispute settlement consultations with the EU, on the grounds that the EU GI Regulation was inconsistent with the EU's obligations under TRIPS. After consultations failed to resolve the dispute, it was referred to a WTO dispute settlement panel in 2003. The resulting panel report, finding in favor of the United States that the EU GI Regulation impermissibly discriminates against U.S. products and producers, was adopted by the WTO dispute settlement body on April 20, 2005. The United States expects that the EU will now implement the recommendations and rulings of the dispute settlement panel, consistent with WTO rules. We are lowering the EU from the Priority Watch List to the Watch List in 2005, with the expectation that the EU will now implement these recommendations and rulings. However, the United States plans to initiate an out-of-cycle review to monitor developments in connection with the EU's application of the EU GI Regulation and the EU's implementation of the WTO dispute settlement panel's recommendation and rulings. In

addition, lack of full implementation of the EU Biotech Directive (98/44/EC) by EU member States continues to be a concern. We look forward to continued cooperation between the United States and the EU on intellectual property matters.

### **GUATEMALA**

Guatemala remains on the Watch List in 2005 due to continuing concerns with its IPR regime. The principle IPR concerns currently facing Guatemala include high levels of piracy and counterfeiting. Guatemala signed the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) with the United States that will require Guatemala to upgrade considerably its IPR protections. The United States commends Guatemala's commitment to ensuring that its IPR legislation conforms to the TRIPS Agreement and CAFTA-DR, including its recent reinstatement of protection of proprietary data against unfair commercial use for pharmaceutical and agricultural chemical products.

### **HUNGARY**

Hungary has made improvements to its IPR regime in the past several years, but still needs additional improvement in certain areas. Thus, Hungary will be maintained on the Watch List in 2005 to monitor its progress. The key issues facing the U.S. copyright industry include prosecutorial delays, low fines or weak sentences, and weak border enforcement. We commend Hungary for modernizing its copyright code, but urge Hungary to enforce these laws in order to curb piracy within its borders. Problems exist with piracy of sound recordings (CDs and CD-Rs) and motion pictures (DVD-Rs), unauthorized optical disc plants, channels of marketing and distribution of pirated discs through the Internet, business and entertainment software piracy, and unauthorized photocopying of books. In the pharmaceutical context, Hungary does not provide any coordination between its health regulatory agency and its patent authority to prevent the marketing registrations of patent-infringing products. We urge the Hungarian Government to address these issues and to continue to improve IPR enforcement efforts in all intellectual property areas.

### **ITALY**

Despite Italy's continued implementation of the 2000 Copyright Law and its subsequent amendments, increased enforcement actions in 2004 and decreased piracy rates for selected products, Italy continues to possess one of the highest overall piracy rates in Western Europe. Counterfeiting remains a concern as well. For these reasons, Italy will remain on the Watch List for 2005. The United States has reached out to Italy to express our concern over its IPR regime, but we have not seen sufficient improvements to warrant removal from the Watch List.

Widespread piracy exists, primarily due to chronic problems with the piracy of business and entertainment software, piracy of video forms of motion pictures, music piracy, and widespread book piracy. Implementation of Italy's Copyright Law amendments is resulting in more active enforcement efforts and more frequent imposition of deterrent penalties by the Italian judiciary. However, the U.S. copyright industry is concerned that Italy may be amending its anti-piracy legislation in a manner that will undermine ongoing IPR enforcement efforts. In most sectors, the U.S. copyright industry reports that the number of raids, product seizures, and arrests rose in 2004. We continue to observe wide variations in the effectiveness of IPR enforcement activities within Italy. The United States will continue to work with Italy to raise awareness regarding intellectual property issues and to improve IPR protection across all sectors.

## **JAMAICA**

Jamaica remains on the Watch List in 2005. Jamaica's trademark and copyright laws are generally in line with international standards, although we remain concerned over continued problems with Jamaica's delay in enacting the Patents and Designs Act to meet its obligations under the TRIPS Agreement and the U.S.-Jamaica bilateral IP Agreement. We urge the Government of Jamaica to reform its patent law as soon as possible to comply fully with international standards for patent protection.

## **KAZAKHSTAN**

Kazakhstan remains on the Watch List in 2005 so we can monitor further progress on IPR protection and enforcement. Although Kazakhstan has fulfilled a number of its IPR obligations under the 1992 U.S.-Kazakhstan Trade Agreement, some additional steps are required. In particular, Kazakhstan needs to toughen penalties and further empower law enforcement officers to pursue IPR cases. Kazakhstan ratified the WIPO Internet Treaties in 2004 and amended its Copyright Law to provide protection for pre-existing works and sound recordings. In October 2004, the Kazakh Government submitted to Parliament amendments to the Criminal Code that would lower the monetary threshold for commencement of a criminal IPR prosecution and would provide law enforcement agencies with ex officio authority to seize suspected infringing material. Kazakhstan's Civil Procedure Law still does not appear, however, to provide for civil ex parte search procedures needed to provide enforcement against end-user software pirates. In addition, there are few convictions, and those who are convicted receive only minimal penalties. As a result, piracy is still a major problem. We urge the Government of Kazakhstan to continue strengthening its IPR provisions and creating a tighter enforcement regime.

## **KOREA**

Over the past year, Korea has taken significant steps to strengthen its intellectual property regime. We are lowering Korea from the Priority Watch List in 2004 to the Watch List this year to recognize Korea's efforts. Meaningful improvements made by Korea include: introducing legislation that will create protection for sound recordings transmitted over the Internet (using both peer-to-peer and web casting services); implementing regulations that restore the ability of the Korea Media Rating Board to take necessary steps to stop film piracy; and increasing enforcement activities by the Standing Inspection Team against institutions using illegal software. Notwithstanding these improvements, more needs to be done to further update Korea's intellectual property regime to keep pace with the digitization of Korea's economy, and to prevent the proliferation of unauthorized copying of copyrighted material. In particular, we look to Korea to join other economically advanced countries by extending the exclusive reproduction right to cover temporary copies, such as those made in the temporary memory of a computer -- an enormous and still growing manner of using copyrighted works. In addition, we call on Korea to further strengthen the relevant provisions of its Copyright Act and Computer Programs Protection Act related to technological protection measures and ISP liability, to clarify the scope of the private copy exception, and to join the global trend to extend the term of copyright protection for works and sound recordings. The United States has urged Korea to continue accelerating efforts to combat piracy of DVDs, computer software, and university textbooks, as well as to decrease street vendor sales of pirated and counterfeit goods. The United States also has emphasized the importance of Korea continuing to fulfill its WTO TRIPS obligations in the



near term to provide adequate protection of pharmaceutical test data from unfair commercial use. We encourage Korea to improve coordination between the Korean health and patent authorities to prevent marketing authorizations of patent-infringing products. We welcome the progress that Korea has made, will closely monitor to ensure that the pending copyright legislation is implemented with appropriate safeguards to prevent the erosion of these or other rights, and look forward to future improvements to Korea's IPR regime.

## **LATVIA**

Latvia made improvements to its IPR legislative framework in 2004, but needs to follow through with its commitments to strengthen IPR enforcement. Latvia will be maintained on the Watch List in 2005 to monitor its enforcement activities. Latvia continues to be a significant consumer of and transshipment market for pirated goods, especially from Russia. Piracy levels for motion pictures, records, music, and entertainment software remain high, and Internet piracy is growing in the areas of music hosting, entertainment software, and pirated video games. The lack of effective border enforcement continues to be a key problem in Latvia. Customs officials are not taking sufficient action to inspect or seize shipments of pirated audio CDs, CD-ROMS containing business software, videos, and audio cassettes coming into Latvia from Lithuania, Russia and elsewhere. Such goods are then transshipped to the rest of the European Union. We recommend that Latvia coordinate with neighboring customs officials, provide training for Latvian customs officials, and increase its commitment of resources to address the enforcement problem effectively. Latvia improved its IPR protection during the past year, passing Latvian Copyright Law amendments that implemented the WIPO Internet Treaties. Substantive problems remain, however, such as the lack of civil ex parte searches. The United States encourages Latvia to demonstrate its commitment to IPR enforcement by strengthening and investing adequate resources in its customs border enforcement activities.

## **LITHUANIA**

Despite Lithuania's progress in improving its legal framework for protecting IPR and fighting software piracy, we are maintaining Lithuania on the Watch List in 2005 to monitor some key issues. Optical media piracy levels remain high in Lithuania, which is a central transshipment point in the Baltic region for mostly Russian-produced optical media to the rest of Europe. The lack of IPR enforcement by customs officials remains troubling, along with the lack of deterrent sentences imposed by courts. The U.S. copyright industry reports significant copyright problems in the areas of border enforcement, optical media piracy, and Internet piracy (particularly with the sale of pre-recorded CDs and CD-Rs over the Internet). High rates of piracy also are reported in the sectors of music (pirated CDs and CD-Rs), entertainment and business software, and motion pictures (pirate videocassettes, home-burned optical discs, and television and local cable piracy). While we commend Lithuania for its IPR legislative progress, we note that some deficiencies remain in its copyright law. The United States also urges Lithuania to implement optical media rules that regulate the production, distribution, and export of optical media effectively. In addition, we urge Lithuania to implement its regulation on government use of legitimate software. The United States also encourages Lithuania to direct its attention and resources to increasing its anti-piracy and anti-counterfeiting efforts by coordinating among relevant government ministries, police, and customs officials.

## **MALAYSIA**

Malaysia is publicly committed to strong IPR protection and enforcement, but nonetheless has high piracy rates for optical media and is a substantial exporter of counterfeit and pirated products. Malaysia also does not protect pharmaceutical and agricultural chemical test data from unfair commercial use. For these reasons, the United States will keep Malaysia on the Watch List in 2005 to monitor additional progress on improving its IPR regime. The Government of Malaysia increased its enforcement efforts during the past year, including: conducting raids against pirate optical disc production facilities, retail stores, copy shops, and companies suspected of using illegal software; seizing pirate goods; and ensuring that judicial proceedings meted out some severe criminal penalties. However, despite these improvements, the U.S. copyright industry reports that Malaysia has become the most significant producer/exporter of pirated optical disc entertainment software in the world. The U.S. copyright industry estimated its losses in Malaysia at approximately \$188 million in 2004. The United States urges Malaysia to continue its enforcement efforts and to focus on the closing of licensed and unlicensed optical disc plants that are producing pirated products, and stopping the export of such pirated goods. In addition, the United States notes that Malaysia should address several deficiencies in its Copyright Law, particularly with respect to allowing copyright owners to enforce their rights in civil or criminal cases. Trademark counterfeiting is rampant in Malaysia due to poor enforcement, including in regard to optical media, apparel and luxury goods, tobacco, mobile phone batteries, and toys. According to the U.S. pharmaceutical industry, drug counterfeiting is a growing problem in Malaysia, but we are concerned about Malaysia's new "solution" that requires pharmaceuticals to carry a mandatory hologram security sticker to curb counterfeits. The stickers themselves are vulnerable to copying and may in fact make it easier for counterfeiters to pass pirated product as genuine. Malaysia has enacted neither protection for confidential test data nor a coordination mechanism between the health authorities and patent office to prevent unauthorized registrations of patent-infringing products. The United States will work with Malaysia to make progress on these pressing IPR issues through the Trade and Investment Framework Agreement (TIFA) discussions, and we hope to see continued progress from the Government of Malaysia in the near future.

## **MEXICO**

Mexico will be retained on the Watch List in 2005 due to increasing copyright piracy and trademark counterfeiting rates. Despite an increase in the number of searches and seizures of counterfeit and pirated goods, the scope of IPR violations continues to outpace the Government of Mexico's IPR enforcement efforts, with U.S. copyright industry loss estimates increasing in 2004 to \$870 million. Pirated sound recordings and motion pictures are widely available throughout Mexico, crippling legitimate copyright-related businesses. As noted in last year's Special 301 Report, concerns remain over the 2003 amendments to Mexico's copyright law, which failed to address the comprehensive reforms needed by Mexico to implement effectively the obligations of the WIPO Internet Treaties and to erase doubts concerning inconsistencies in Mexico's copyright law with its obligations under NAFTA and the TRIPS Agreement; regulations to implement these amendments still have not been issued. The United States urges Mexico to expand its public education campaigns and take the necessary steps to resolve the current legislative copyright deficiencies. Enforcement in Mexico remains weak, and raids by Mexican authorities infrequently result in convictions of or deterrent penalties against pirates or counterfeiters. To strengthen enforcement, the United States urges Mexico to expand anti-piracy and anti-counterfeiting efforts against commercial distribution, street piracy and counterfeiting;

impose strong criminal penalties and destroy seized products; and increase the speed of administrative and judicial actions. Companies continue to report widespread counterfeiting of trademarked products. Despite continuing to raise long-standing concerns over these issues, many trademarks owners in Mexico still have problems with enforcement and case administration. When counterfeit items are discovered, injunctive relief measures issued against trademark infringers are often unenforceable. The United States commends Mexico for its effort to provide protections for patents and confidential test data, but the U.S. pharmaceutical industry reports that the Ministry of Health has provided marketing registrations for unauthorized copies of patent-infringing pharmaceutical products. The United States will work with Mexico to address and resolve these IPR concerns in an effective manner.

## **PERU**

Peru will be kept on the Watch List in 2005. Both the United States Government and U.S. industry remain concerned with Peru's current lack of protection for undisclosed test data submitted for marketing approval of pharmaceutical and agricultural chemical products. Peru also does not provide second use patents, and no coordination mechanism exists between its health authorities and patent office to prevent registrations of unauthorized patent-infringing products. Regarding copyright protection, the Peruvian Government took some steps toward improving enforcement through its "Anti-Piracy Crusade" initiated in 2002; however, piracy remains high for sound recordings, business and entertainment software, books, and motion pictures. According to the U.S. copyright industry, piracy of sound recordings has been on the increase in the last several years and is so severe now (98% of the market was estimated to be pirated goods in 2004) that it has virtually eliminated any legitimate market and caused the remaining legitimate sound recording businesses to shut down. Optical media piracy is on the rise in all sectors, particularly with respect to the audiovisual industry due to a tremendous growth in pirate optical discs. The Government of Peru, in coordination with the private sector, has conducted numerous raids over the last few years on large-scale distributors and users of pirated goods and has increased enforcement activities. However, piracy and weak IPR border enforcement measures continue to be significant problems for copyright owners. The United States urges Peru to strengthen IPR protection and enforcement and will continue to monitor Peru's efforts in addressing these concerns.

## **POLAND**

Poland will remain on the Watch List in 2005 in order to monitor its progress in improving IPR protection. The United States conducted an out-of-cycle review for Poland in late 2004 to evaluate whether Poland was continuing its efforts to strengthen anti-piracy and anti-counterfeiting measures at the Warsaw Stadium and continue effective raids and prosecutions against piracy and counterfeiting activities across the country, strengthen border enforcement, adopt and implement copyright law amendments and optical disc regulations, and take concrete, effective steps to strengthen domestic enforcement of IPR. Poland demonstrated some progress on most elements of IPR protection that were outlined in last year's Special 301 Report, but deficiencies remain in patent protection for pharmaceuticals, especially the lack of coordination between the Health Ministry and the Polish patent agency that would prevent the registration of unauthorized patent-infringing products. The Polish Parliament passed copyright legislation and optical disc licensing regulations this year. Poland has increased anti-piracy efforts, improved enforcement of most (but not all) copyright products at the Warsaw Stadium, and has closed two

illegal CD production facilities that were supplying the Warsaw Stadium. The Ministry of Culture has instituted new reporting and inspection requirements concerning optical disc production and the equipment used to produce optical disc media. Despite these notable improvements in Poland, a significant volume of pirated optical media products (CDs, DVDs, and CD-ROMS), including illegal sound recordings, audiovisual products, videogames, and business software applications, continue to enter Poland. Large amounts of pirated music imports enter Poland from Ukraine, Lithuania, Belarus, and Russia, while pirate movie DVDs enter from Russia, and pirate software enters from Russia, Ukraine, Malaysia, and China. Significant amounts of pirate cartridge-based videogames arrive in Poland from the Greater China region. In addition, Internet piracy, including piracy at Internet cafés, presents a growing problem in Poland. The United States commends Poland for its heightened efforts over the past year to improve its IPR regime, and we encourage Poland to continue this progress by committing its resources and attention to IPR enforcement and issues related to pharmaceuticals as outlined above.

### **ROMANIA**

Romania will remain on the Watch List in 2005, and we will continue monitoring several IPR enforcement-related issues. Although Romania improved its IPR regime in 2004 by amending its Copyright Law to include civil ex parte search authority, IPR enforcement did not improve in Romania in 2004. The U.S. copyright industry continued to experience high piracy rates and significant losses in Romania in 2004 due to weak enforcement and judicial deficiencies. The U.S. copyright industry remains frustrated with an apparent lack of appreciation for the importance of IPR protection and the significant social and economic effects that piracy has on industry. While domestic IPR laws provide for adequate substantive protection, enforcement efforts remain weak and ineffective. It appears that law enforcement agencies and the judiciary place a low priority on IPR enforcement. For example, the Romanian judiciary has dismissed a large number of cases on the grounds that there is a “lack of social harm.” The United States urges Romania to improve and adequately fund its enforcement activities in order to combat piracy. In 2004, Romania implemented data protection legislation. Romania recently stated its intention to strengthen its IPR laws to reflect international standards. The United States encourages this approach and looks forward to seeing further improvements in Romania’s IPR regime.

### **SAUDI ARABIA**

The United States commends Saudi Arabia for improving its legal protections in laws to protect intellectual property as part of its ongoing efforts to join the WTO, where Saudi Arabia will be required to comply fully with the TRIPS Agreement upon the date of accession to the WTO. Saudi Arabia will remain on the Watch List in 2005, and the United States will conduct an out-of-cycle review to monitor Saudi Arabia’s progress on IPR issues during the coming year. Saudi Arabia still needs to resolve a number of IPR issues. For example, Saudi Arabia’s newly amended copyright law offers greater protection for IPR through strengthened penalties, but still lacks some basic minimum standards that are required by the WIPO Internet Treaties and TRIPS, including providing for destruction of seized goods, materials, and machinery, and failure to provide for recovery of litigation costs. Implementing regulations also need to be finalized for the copyright law. The United States urges Saudi Arabia to continue improving its enforcement efforts, and commends Saudi Arabia for its recent accomplishment of conducting a large-scale

raid in Riyadh in March 2005 that led to the seizure of 1.2 million audio-visual materials and the arrests of more than 250 individuals. Despite improvements made by Saudi Arabia on IPR legislation, the U.S. copyright industry reports that piracy rates remain high due to the absence of deterrent penalties and the lack of transparency in Saudi Arabia's enforcement system. We urge Saudi Arabia to improve its enforcement efforts by continuing to conduct raids, introducing a robust customs enforcement program, allow rights holders to send experts to cooperate with customs authorities, provide reports to rights holders, impose deterrent sentences, continue to enforce the software usage directive, continue sustained raids to prevent unauthorized redistribution of pay television services, and work with universities to use legal textbooks and stop illegal copying of books. With respect to the pharmaceutical industry, Saudi Arabia has protected IPR related to pharmaceutical products, and there have not been major incidences of patent infringement. We note, however, that Saudi Arabia has a continued backlog of pending patent applications, which it intends to clear by the end of 2006. The United States will continue to work with Saudi Arabia on these IPR issues through the Trade and Investment Agreement (TIFA) and WTO accession process, as well as the out-of-cycle review.

### **SLOVAKIA**

Slovakia remains on the Watch List in 2005 to monitor progress on IPR issues. The situation has not improved over the past year, although Slovakia has expressed its interest in taking steps to address inadequacies in its IPR regime. Slovakia currently does not provide a coordination mechanism between its health regulatory agency and its patent authority to prevent the registration of unauthorized patent-infringing products, and the U.S. pharmaceutical industry reports that Slovakia continues to store sensitive registration data on the premises of a generic drug manufacturer. We urge Slovakia to provide coordination between its health and patent authorities and to resolve these related issues.

### **TAIWAN**

The United States lowered Taiwan at the end of 2004 from the Priority Watch List (where it had been since 2001) to the Watch List as part of the out-of-cycle review, in recognition of Taiwan's successful passage of strengthened copyright legislation and improved IPR enforcement. However, Taiwan will remain on the Watch List in 2005 as we continue to monitor Taiwan's efforts to combat Internet piracy, enact judicial reforms, implement the new data protection law, prevent illegal copying of textbooks, abolish the Export Monitoring System (EMS), and prevent unauthorized cable operations in South and Central Taiwan. In August 2004, Taiwan's legislature approved a number of amendments to its copyright law that provide greater protection for copyrighted works and increase penalties for infringers. In addition, Taiwan authorities made permanent an IPR-specific task force that has increased the frequency and effectiveness of raids against manufacturers, distributors, and sellers of pirated product. In January 2005, Taiwan's legislature amended its pharmaceutical law to provide a five-year term of protection for pharmaceutical test data. Implementing regulations are currently being drafted in consultation with rights holders and the law is scheduled to go into effect by July 2005. With respect to the judicial process, Taiwan authorities continue to conduct regular training seminars for judges and prosecutors on IPR matters and plan to establish a specialized IPR court. During the past year, Taiwan's IPR task force increased inspections of optical media factories and retail distribution centers, and the number of raids and inspections conducted by the National Police also increased sharply. The U.S. copyright industry reports that Taiwan's increased enforcement efforts

resulted in a significant drop in estimated trade losses from a high of \$847.9 million in 2002 to \$315.5 million in 2004. The United States commends Taiwan for its accomplishments on these important issues. However, we continue to look to Taiwan to improve its efforts in such areas as effectively combating increasing levels of Internet piracy of copyrighted works, further reducing corporate end-user business software piracy, and halting the illegal copying of textbooks. Other issues that require monitoring include transshipment of counterfeit and pirated goods to third areas, ensuring that changes to Taiwan's export monitoring system do not result in a resurgence of counterfeit exports, effectively halting the spread of counterfeit pharmaceuticals, and stopping unauthorized cable operations in central and southern Taiwan. We urge Taiwan to continue making progress by addressing these remaining IPR concerns, and we will work together with Taiwan to achieve further progress.

### **TAJIKISTAN**

The United States is concerned that Tajikistan still needs to fulfill its IPR obligations under the 1993 bilateral agreement. Tajikistan, therefore, will remain on the Watch List in 2005, where it has been since 2000. Specifically, Tajikistan is not yet a member of the Geneva Phonograms Convention, and Tajikistan's Copyright Law does not clearly provide protection for pre-existing works or sound recordings. In addition, Tajikistan has a weak enforcement regime, since it does not provide criminal penalties for IPR violations, does not provide ex officio authority to commence criminal cases, and does not provide for civil ex parte search procedures necessary to provide effective enforcement against end-user pirates. The Tajik Customs Code also fails to provide customs officials with ex officio authority to suspend the release of suspected infringing materials at the border. The United States urges Tajikistan to address deficiencies in its IPR laws and strengthen IPR protection and enforcement.

### **THAILAND**

Thailand has made some efforts to strengthen its IPR regime during 2004. We are keeping Thailand on the Watch List in 2005 to monitor further progress. The Thai authorities conducted a number of inspections and raids in July 2004, and in late 2004 they cooperated with rights holders to conduct an enforcement campaign called "Operation Eradicate," which raided dozens of factories and warehouses, yielded seizures of millions of pirated discs, and decommissioned several replication machines used for copyright infringement. We note Thailand's efforts, and encourage Thailand to continue with activities such as this on a frequent and sustained basis to achieve a decrease in piracy and counterfeiting and strengthening of its IPR system. The U.S. Government and U.S. copyright industry remain concerned, however, over the growing problem of optical disc piracy at plants in Thailand, as well as deficiencies in Thailand's optical disc legislation. Piracy also remains high in the areas of photocopying of books, cable piracy, videogame piracy, business software end-user piracy, Internet piracy of music, and unauthorized public performances of motion pictures and television programs in hotels, bars, and restaurants. The United States urges Thailand to establish an effective system to license and regulate broadcast and cablecasting facilities, including having the authority to take actions that will deter illegal broadcasters. The production, distribution, sale, and export or transshipment of pirate and counterfeit products continues to be a serious concern to the U.S. copyright and trademark industries. The U.S. pharmaceutical industry also is concerned about Thailand's failure to date to enact implementing regulations for the Trade Secrets Act to provide effective data protection in line with Thailand's existing international commitments. Additional concerns include delays

in pharmaceutical patent approvals from the Thai Department of Intellectual Property, lack of coordination between the Thai health authorities and patent authorities, and the proliferation of manufacturing, packaging, and distribution of counterfeit drugs. The United States will continue to work with Thailand to address our significant concerns regarding its intellectual property laws and enforcement, and to urge the Thai Government to take swift action to implement specific elements of the IPR Action Plan. The Thai Government's prompt and full implementation of the IPR Action Plan will provide an essential foundation for the successful conclusion of the U.S.-Thailand Free Trade Agreement between our two governments.

### **TURKMENISTAN**

Turkmenistan has been on the Watch List since 2000, and it will remain on the Watch List in 2005 due to its lack of progress on IPR issues during the past year. Turkmenistan has numerous remaining steps to take in order to fulfill its IPR obligations under the 1993 U.S.-Turkmenistan Trade Agreement. Specifically, Turkmenistan is a member of neither the Berne Convention nor the Geneva Phonograms Convention, and it has not yet signed the WIPO Internet Treaties. Turkmenistan has not modernized its Copyright Law and consequently does not provide any protection to foreign sound recordings. IPR enforcement is inadequate, since Turkmenistan has not adopted criminal penalties for IPR violations, and the Turkmen Customs Code does not provide ex officio authority to seize suspected infringing material at the border. There are no known civil ex parte search procedures. The United States urges Turkmenistan to adopt the legal reforms that will bring Turkmenistan into compliance with its obligations under the bilateral 1993 U.S.-Turkmenistan Agreement, and to undertake enforcement activities that will help strengthen its IPR regime.

### **URUGUAY**

The Government of Uruguay has made some IPR improvements during 2004, and we are keeping Uruguay on the Watch List to monitor further IPR progress. We commend Uruguay for approving in 2004 the implementing regulations for its new copyright legislation, which have been largely put into effect and appear to be contributing to the strengthening of Uruguay's copyright regime. Despite this progress, however, we note that Uruguay has not yet ratified the WIPO Internet Treaties. Piracy of copyrighted works still proliferates and IPR enforcement remains ineffective. Uruguay also fails to provide adequate protect confidential test data from unfair commercial use as required by TRIPS. We urge the Uruguayan Government to ratify the WIPO Internet Treaties, address its deficiencies in IPR enforcement against piracy and counterfeiting, and provide protection for confidential test data.

### **UZBEKISTAN**

Uzbekistan is currently contemplating amendments to several IPR-related laws, and the United States is keeping Uzbekistan on the Watch List in 2005 with the hope that additional progress will be made on IPR protection and enforcement in the near future. While Uzbekistan recently joined the Berne Convention, the United States notes with concern Uzbekistan's reservation to Article 18, which provides protection for pre-existing works. Furthermore, Uzbekistan appears to be out of compliance with its intellectual property commitments under the 1994 U.S.-Uzbekistan Trade Agreement, particularly with respect to copyright protection and enforcement. Uzbekistan does not provide protection for sound recordings or pre-existing works, and is not a member of the Geneva Phonograms Convention or the WIPO Internet Treaties. In addition, IPR

enforcement in Uzbekistan remains very weak due to a lack of ex officio authority that would allow customs officials to seize infringing materials at the border, a lack of civil ex parte search procedures, and inadequate criminal penalties for IPR violations. The United States urges Uzbekistan to remedy these deficiencies in its IPR laws and to take immediate and effective measures to improve enforcement.

## **VIETNAM**

Vietnam will remain on the Watch List in 2005 to encourage further progress on IPR issues, especially continued implementation of the intellectual property provisions of the U.S.-Vietnam Bilateral Trade Agreement (BTA). The United States and Vietnam have been working together to address IPR issues during WTO accession discussions, and we hope to see continued progress this year. Vietnam is obligated to provide high standards of IPR protection pursuant to the U.S.-Vietnam BTA. Vietnam has amended some of its IPR legislation this year, although a considerable amount of work is still necessary in the legislative arena, particularly with respect to copyright, data protection, and patents. IPR infringement remains rampant in Vietnam, and enforcement continues to be ineffective despite some improvement in laws and regulations. Judges in Vietnam have been reluctant to impose penalties or fines at levels sufficient to deter future infringements, and ex officio raids are sporadic at best. Piracy of copyrighted works and trademark counterfeiting remains rampant throughout Vietnam. Despite an extension of patent protection to 20 years, the U.S. pharmaceutical industry is concerned that there are no provisions in Vietnamese law to protect test data against unfair commercial use, which is a requirement under TRIPS and the BTA. Counterfeit pharmaceuticals are common in the marketplace. We encourage Vietnam to continue to build upon its public commitment to IPR protection by enacting strong IPR laws and providing effective enforcement against IPR infringement.