



February 12, 2007

Ms. Victoria Espinel
Assistant U.S. Trade Representative
for Intellectual Property and Innovation
Office of the United States
Trade Representative
600 17th Street, N.W.
Washington, D.C. 20508

Re: Request for Public Comment on the Identification of
Countries under Section 182 of the Trade Act of
1974 (as amended) ("Special 301"), 72 Fed. Reg.
1033 (Jan. 9, 2007)

Dear Ms. Espinel:

This filing responds to the Request for Written Submissions appearing on January 9, 2007 in the Federal Register. The request invites submissions from the public on policies and practices that should be considered in connection with designating countries as Priority Foreign Countries pursuant to Section 182 of the Omnibus Trade and Competitiveness Act of 1988, 19 U.S.C. § 2242 ("Special 301"). The Special 301 provisions call upon the United States Trade Representative to identify countries which, *inter alia*, "deny adequate and effective protection" to U.S. intellectual property or deny "fair and equitable market access" to U.S. persons who rely on intellectual property protection.

This filing is with respect to the Czech Republic. Despite copyright industry filings in 2005 and 2006 highlighting growing piracy problems, the Czech Republic currently is not on any Special 301 lists. As a result of years of government complacency and insufficient or ineffective intervention from law enforcement agencies, music piracy in the Czech Republic has now reached unprecedented levels inflicting very serious and ever growing losses on the US and international recording industry. As a result, the Recording Industry Association of America recommends that USTR place the Czech Republic on the Special 301 Priority Watch List.

EXECUTIVE SUMMARY

The Czech Republic once was a viable market for legitimate music in the center of Europe. However, our industry is today confronted with increasing Internet and mobile piracy, widespread illegal CD burning and, most significantly, the presence of the biggest pirate outdoor markets in Europe. As a result, in the Czech Republic today the music industry is struggling to

survive. Optical disc piracy is not only devastating the Czech market, but, with millions of pirated music CDs on sale at huge open air markets along the border, Czech piracy is now seriously disrupting our markets in neighboring countries such as Germany and Austria. The number one problem is the sale of illegally burned music on CD-Rs at the more than 50 open air markets along the Czech-German and –Austrian border, as well as at other street and flea markets. Some of the border markets are bigger than the infamous Warsaw Stadium Market in Poland at its peak. Pirate trade at the border markets is run by highly organized groups.

In addition to physical piracy and as a result of a generalized sense of impunity, Internet and mobile piracy of recorded music is also growing rapidly in the Czech Republic. While industry cooperation with some Czech enforcement agencies, in particular Customs, is good, effective criminal actions are undercut by slow criminal processes which usually result in non-deterrent sentences. The Czech Government, as well as the Parliament, should publicly announce that piracy and counterfeiting are considered serious crimes that will no longer be tolerated. In this context, they should explicitly single out the border markets that have, over the last years, become a haven for copyright pirates and the number one pirate black spot in the heart of Europe.

PIRACY AND TRADE LOSSES

We estimate that as a result of such piracy, recording industry in 2006 lost \$35 million with respect to their American repertoire and that the piracy rate in the Czech Republic was 60%.

PRIORITY ACTIONS IN 2007

Enforcement:

- Czech law enforcement agencies should take repeated and sustained action against pirate retailers at the many markets along the Austrian and German border, as well as at any other markets in the Czech Republic;
- The Czech government should urgently adopt and implement legislation introducing civil and criminal liability for contributory infringement of intellectual property rights by owners/exploiters/landowners of markets that condone and profit from pirate activity taking place at their markets.;
- Stall holders should be required to obtain an operating license, which includes the obligation to refrain from offering pirated goods for sale, subject to an immediate and definitive withdrawal of the license and a deterrent punishment in case of breach of this requirement;;
- All relevant law enforcement authorities should receive a standing mandate to access and inspect all premises related to suspected pirate activity, including warehouses, storage facilities, irrespective of whether these are locked or publicly accessible.
- The Interior Ministry should take swift action against internet piracy.
- Border enforcement should be strengthened to stop importation, transshipment and distribution of pirated goods, including optical media product.
- The speed and efficiency of criminal enforcement should be substantially improved (at the police investigation, prosecutorial and judicial levels), leading to swift, deterrent punishment of all persons involved in the pirate trade, closure of premises used in the course of pirate activity and unconditional destruction/disposal of infringing goods and equipment used in the process of manufacturing these goods.

MUSIC PIRACY IN THE CZECH REPUBLIC

There are between 50 and 70 open air mega-markets in the Czech Republic along the 700 km border with Germany and Austria selling large quantities of pirate and counterfeit products to consumers from both sides of the border. The phenomenon is not new, but since the accession of the Czech Republic to the EU, due to endemic government complacency and inaction (despite ongoing warnings by the private sector), these markets have grown exponentially and are evolving from temporary stalls to brick buildings. Thousands of German and Austrian consumers are bussed in daily by dedicated coach services; there are even travel companies specializing in this cross-border "piracy tourism." The goods for sale are predominantly pirate and counterfeit.

Almost all these markets are controlled or managed by highly organized groups and condoned by local authorities. The markets themselves vary in size, with around four-hundred stalls found at some sites. The border area is isolated at some 2 or 3 hours drive from the capital Prague, out of the Government's eye.

It is estimated that at least one third of the stalls operating in the markets around the borders trade in pirate and counterfeit goods. Local town councils or the State own the land and a majority of the sites on which these markets operate. The stands are subsequently leased by traders from the State for sums in the region of 17,000 Euros (US\$22,000) per year. Over the years, some traders have purchased the stands from the State, and in other cases the entire markets are leased by one person who sub-leases the stands.

These pirate/counterfeit markets are condoned by the local Czech authorities and are largely ignored by the central government in Prague. There are numerous occasions when local law enforcement agencies have been unwilling to take action or, in the case of an otherwise very cooperative Czech Customs, not equipped to cope with the sheer number of pirate outlets and the scope of the infringing activity. This sets a highly unwelcome and detrimental precedent within the EU Internal Market. In addition to the obvious law enforcement element, involving raids on the markets themselves, the Czech Government should take all necessary steps, both operational and legislative, to ensure these markets are either closed down or cleaned up.

One of the most serious problem areas can be found around city of Cheb. Despite promises from various elements of the Czech enforcement system and a series of major raids involving several hundred enforcement officers against pirate operators in November and December, the massive piracy problem in Cheb persists. Within hours after the raids occurred on the pirate markets, the pirate stalls were again filled with illegal product. Large-scale and sustained deterrent action, including immediate closure of market stalls where pirate materials have been found and swift prosecution of the sellers and market exploiters (for contributory infringement), is urgently required. If this comprehensive and strong action fails to materialize soon, the recording industry's business operations in the Czech Republic risk being destroyed and neighbouring markets, especially near the border in Germany and Austria significantly eroded.

To its credit, the Government recently passed new legislation which requires the registration of these market traders and obliges market managers to ensure they know which individual is in control of each stall in the market. However, these new rules, while helpful, have not been adequate to end the massive and highly organized illegal business at the markets. Farther-reaching regulation is urgently required to bring the illegal trade fully under control.

MUSIC AND RECORD PIRACY LEVELS

Music and record piracy in the Czech Republic remains at high levels. At the border markets alone, an average of over a million illegal sound carriers are on sale every day. The recording industry conservatively estimates that at least 20 million pirate CDs are sold per year at these markets. Overall, more than one in two sound recordings sold is an illegal copy and record companies and performers are suffering millions of dollars in damages. We estimate the piracy rate for recorded music in the Czech Republic to be 60 percent.

The last six years have seen a sharp drop in legitimate sales of recorded music in the Czech Republic. The market was worth around \$77.7 million in 2000 but fell to below \$26 million by in 2005. Although the drop in sales was less significant in 2006, the market for recorded music continues to contract in the Czech Republic. This is due to a surge in physical (predominantly CD-R), as well as Internet piracy.

At the border markets (discussed above), evidence has been recovered suggesting that one trader can expect to earn up to \$1,300 per day.

Annual losses inflicted by these pirate border markets to US rightholders alone are conservatively estimated at around \$25.0 million, and could be much higher. Adding the losses suffered by trademark owners, the damage inflicted on rightholders runs in the hundreds of millions.

INADEQUATE ENFORCEMENT

Non-deterrent sentencing in criminal copyright infringement cases is a major problem in the Czech Republic. In addition, the Czech police are unwilling and/or unable to investigate organized pirate groups as organized crime.

The recording industry reports that despite an increase nationwide in the number of investigations, and a few major raids, there has been little political interest or central or sustained enforcement effort to address the growing music piracy problem described above. The criminal enforcement apparatus remains so slow (especially at the investigative, prosecutorial and judicial levels) in music cases that there is no deterrent effect.

In November and December 2006, Czech Customs, which has been willing to cooperate with rightholders, along with other law enforcement agencies carried out a series of major raids on a number of the afore-mentioned border markets. These raids resulted in the seizure of hundreds of millions of dollars worth of pirate and counterfeit goods. During the raid at the infamous "Dragon Market" in the Plzen area, which is the largest marketplace of pirate traders in the region, enforcement authorities seized pirate CDs, counterfeit brand name clothing and accessories worth \$4.5 million. In action against another market in Cheb, West Bohemia, a total of 250 Customs officers found pirate or counterfeit goods in almost all of the 130 stalls in the market. In total, the weekend raids netted pirate and counterfeit items worth millions of dollars, including 54,000 illegal CDs, showing the unprecedented scale of the problem. Unfortunately, these raids have sadly done nothing to discourage the highly organized gangs who control these markets. Due to the early hour of the raids, very few sellers were present and arrested, and, within hours after the raids, the stalls were once more bustling with pirate product. A substantially more comprehensive, sustained and structured approach is required to bring this mass pirate and counterfeit trade to a definitive end.

LEGAL ISSUES

Criminal code and other laws: Under the Czech Criminal Code, copyright infringement can be penalized with up to five years imprisonment and a fine of five million koruna (US\$125,000). Amendments to the Consumer Protection Act and the Trade Inspection Act that took effect on May 29, 2006, returned enforcement authority to customs. Thus, the Czech Trade Inspection Bureau and Customs are now authorized to fight copyright and trademark infringement. Fines of up to fifty million koruna (US\$1,250,000) can also be imposed. In addition, the amended Copyright Act (above) includes higher penalties for copyright infringement handled out of criminal prosecution (from 15,000 koruna to 150,000 koruna). Despite this good legal framework, there has been no effective use of it to impose deterrence in the marketplace.

Civil Procedural Code amendments: Together with the amendment to the Copyright Act, an amendment to the Civil Procedural Code was adopted in 2006. Industries report that the amendment identified the items of evidence which may be obtained before the commencement of the trial on the merits, upon a motion filed by a person whose right to intellectual property has been breached, such as merchandise, or an adequate sample of merchandise, the production of which may have breached a right to intellectual property, materials and tools, which have been used for the production or distribution of merchandise mentioned above.

Future criminal code amendments: In 2005, a new Criminal Code was prepared. In 2006, the draft was rejected by the Parliament. The Code should be redrafted and returned to Parliament probably in 2007 or 2008. This development will require monitoring.

Future legislation on corporate criminal liability: In 2005, a proposed Act on Corporate Criminal Liability was drafted. The draft of the act was rejected by the Czech Parliament. Implementation of the corporate criminal liability system in Czech legislation would significantly strengthen position of copyright holders.

CONCLUSION

In conclusion, we ask the U.S. government to more vigorously engage the government of the Czech Republic on the issues identified in this submission. In addition we request that the Czech Republic be placed on the Special 301 Priority Watch List.

Respectfully submitted,

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Recording Industry Association of America