

## WATCH LIST

### **BAHAMAS**

The Bahamas will remain on the Watch List in 2006. The United States remains concerned over the Bahamas' failure to implement an amendment to the Copyright Act enacted by the Bahamian Government in 2004. The amendment narrowed the scope of the compulsory licensing regime for the reception and transmission of copyright works broadcast free over the air. Although last year's Special 301 Report noted that the copyright amendment reflected a positive step towards compliance with commitments under an agreement reached between the Bahamas and the United States in 2000, the amendment has not yet been implemented. In the absence of such implementation, 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 copyrighted works under the compulsory licensing program includes less than fair market value rates for hotels and other commercial enterprises. The United States also urges 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 will remain on the Watch List in 2006. Concerns continue about overdue implementation of Belarus' intellectual property regime, including adherence to commitments under the U.S.-Belarus Trade Agreement. Belarus made no significant progress during 2005 on needed legislative reforms or enforcement efforts. The United States is concerned that IPR enforcement in Belarus remains weak, that piracy levels remain high, and that Belarus needs to take strong enforcement action against optical media plants that are producing pirated goods. The Belarus copyright law needs to be amended to provide adequate protection for sound recordings and pre-existing works, as well as to implement the WIPO Internet Treaties, which Belarus joined in 1998. Despite amendments to its Criminal Code to adopt deterrent penalties for IPR violations, the Criminal Code still does not provide *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' law does not provide for civil *ex parte* search procedures necessary to protect against end-user software piracy. The United States encourages Belarus to improve its IPR regime and to enforce its IPR laws more aggressively. In addition, the United States urges Belarus to fulfill its obligations under the United States-Belarus Trade Agreement and will continue to monitor its progress in strengthening its IPR regime, especially in the context of Belarus' bid for accession to the WTO.

### **BOLIVIA**

Bolivia will remain on the Watch List in 2006. Despite an increase in public education on IPR and ongoing efforts to institutionalize the National Intellectual Property Rights Service, there were no notable improvements to Bolivia's IPR regime. Under the TRIPS Agreement and the WIPO Internet Treaties, the latter of which were signed but have not yet been ratified, Bolivia should have increased its level of IPR protection years ago. Bolivia has inadequate copyright laws, significant copyright piracy and trademark counterfeiting, and weak overall IPR

enforcement. The United States encourages Bolivia to strengthen its copyright laws and ratify and implement the WIPO Internet Treaties. The United States also urges Bolivia to increase its IPR enforcement efforts, including providing for civil *ex parte* searches, preventing unwarranted delays in civil enforcement, providing adequate civil and criminal damages in copyright cases, and strengthening border measures. The U.S. copyright industry continues to report that music piracy in Bolivia is 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 entertainment software piracy. The United States encourages Bolivia to improve its IPR legislative regime in 2006, as well as increase its IPR enforcement efforts to combat piracy and counterfeiting.

## **BULGARIA**

Bulgaria will remain on the Watch List in 2006. The United States notes that Bulgaria has made some improvements this past year in improving IPR legislation, coordinating among intergovernmental agencies, strengthening enforcement measures against optical disc piracy, and raising public awareness of IPR. For example, in February 2006, the newly formed interagency Council of Intellectual Property Protection approved amendments to the penal code criminalizing the possession of counterfeit products. The United States encourages Bulgaria's Government to make further IPR improvements by engaging in sustained and consistent enforcement activities, devoting sufficient resources to combat piracy and counterfeiting, improving IPR legislation, and attacking the growing problem of Internet piracy. In particular, Bulgaria's Government should make judicial enforcement in the courts a priority, including providing IPR training to prosecutors and judges, urging courts and prosecutors to make IPR infringement a priority, encouraging the completion of prosecutions and civil court cases on a timely basis, and seeking deterrent penalties for IPR violations. The United States also remains concerned with patent issues, namely the apparent lack of injunctive relief in patent infringement cases, and the requirement of a valid patent as a prerequisite for receiving protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. There also remain trademark infringement problems in Bulgaria, including continuing problems with counterfeit distilled spirits. The United States hopes that Bulgaria will continue its efforts to combat piracy and counterfeiting and to improve its overall IPR regime.

## **CANADA**

Canada is being retained on the Watch List in 2006, and the United States will conduct an Out-of-Cycle Review to monitor Canada's progress on IPR issues under the leadership of its new government. Due to the dissolution of Canada's Parliament in late 2005 and elections in early 2006, Canada's legislative progress on IP issues in 2005 was interrupted. The United States looks to the new government to make progress on IPR issues a priority in the coming year. Key areas for action include the ratification and implementation of the WIPO Internet Treaties, amendment of the copyright law to provide adequate and effective protection of copyrighted works in the digital environment, and the enactment of legislation to protect against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. The United States also calls on Canada to improve its IPR enforcement system so that it can take effective action against the trade in counterfeit and pirated products within Canada, as well as curb the amount of infringing products

transshipped and transiting through Canada. Canada's weak border measures continue to be a serious concern for IP owners. The United States notes the progress made by Canadian authorities this past year in IPR enforcement, particularly with respect to engaging with the United States and its industry on several IPR initiatives, including active participation in Operation Site Down, an international cooperative law enforcement effort to suppress online piracy. Canada needs to implement legislative changes to provide a stronger border enforcement system by giving its customs officers the authority to seize products suspected of being pirated or counterfeit without the need of a court order. Greater cooperation between Canadian Customs and the Royal Canadian Mounted Police would enhance enforcement, as would the provision of additional resources and training to its customs officers and domestic law enforcement personnel. 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 its advanced level of economic development, including improved border enforcement, ratification and implementation of the WIPO Internet Treaties, and strong data protection.

## **CHILE**

Chile will remain on the Watch List, and the United States will conduct an Out-of-Cycle Review to monitor progress on IPR issues. Issues of substantial concern include the inadequate protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, insufficient coordination between its health and patent authorities to prevent the issuance of marketing approvals for unauthorized patent-infringing copies of pharmaceutical products, continuing copyright piracy and trademark counterfeiting, and the need for greater efforts to meet standards set in the TRIPS Agreement, the United States-Chile Free Trade Agreement (FTA) and other international agreements. The United States notes in particular that Chile has not fully implemented legislation to comply with FTA obligations where the transition periods expired as of January 1, 2006, such as patent term adjustment. The United States is very concerned that Chile continues to grant marketing approval via sanitary approvals to unauthorized copies of patent-infringing pharmaceutical products. In addition, copyright and trademark enforcement must be improved, including the imposition of deterrent penalties in criminal IPR cases. The copyright piracy situation in Chile has not improved since last year, and digital piracy is a growing problem. Significant amendments to Chile's IPR legislation are needed to bring Chile's IPR regime in line with its international and bilateral commitments. The United States will continue to work with Chile, with the expectation of rapid progress on these pressing IPR issues through the implementation of its IPR commitments in the FTA, and will monitor Chile's progress in meeting its commitments through the Out-of-Cycle Review.

## **COLOMBIA**

Colombia will remain on the Watch List in 2006. The United States notes some progress made by Colombia toward strengthening its IPR regime, but Colombia still needs to make further improvements by addressing copyright piracy, conducting effective prosecutions, imposing deterrent sentences by courts, and completing other IPR enforcement initiatives. Copyright piracy remains high, with problems reported by the U.S. copyright industry in the areas of optical disc piracy (both CD-R and DVD-R), illegal photocopying of academic textbooks, business software piracy, and entertainment software piracy. Efforts to combat piracy through raids and

other enforcement measures are hampered by a judicial system that fails to prosecute cases actively or to issue deterrent criminal sentences. Border enforcement continues to be weak, and administrative enforcement against signal theft piracy needs improvement. The United States will work with Colombia to make progress on these pressing IPR issues through the implementation of its IPR commitments in the United States-Colombia Trade Promotion Agreement, which was concluded in February 2006, and the United States expects to see continued progress from Colombia in the near term.

### **COSTA RICA**

Costa Rica will remain on the Watch List in 2006. Concerns include problems with its IPR legislation and enforcement, particularly with respect to copyright piracy and trademark counterfeiting. The United States encourages the Government of Costa Rica to take immediate action in 2006 to improve the shortcomings in its IPR enforcement system by assigning high priority and resources to enforcement efforts against piracy and counterfeiting. Costa Rica signed the United States-Dominican Republic-Central American Free Trade Agreement (CAFTA-DR) in 2004, and is the only partner which has not yet ratified it. The United States urges Costa Rica to ratify CAFTA-DR – and to do so in the near term. Areas of concern include the inadequate protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, patents, copyrights, trademarks, criminal and civil enforcement; and border enforcement. The United States will work with Costa Rica to make progress on these pressing IPR issues through the implementation of its IPR obligations under CAFTA-DR, and the United States hopes to see continued progress from the Government of Costa Rica in the near term.

### **CROATIA**

Croatia will remain on the Watch List in 2006 due to limited progress on IPR issues. The United States is concerned about difficulties with obtaining injunctive relief and expeditious resolutions in patent cases. As reported in the 2005 Special 301 Report, Croatia passed legislation in December 2004 that provided protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, but Croatia fails to provide coordination between its national patent authority and its central health regulatory authority to prevent marketing registrations for patent-infringing pharmaceutical products. As a result, the U.S. pharmaceutical industry reports that companies are easily able to register patent-infringing pharmaceuticals in Croatia. Inadequate border enforcement also contributes to the growing importation of pirated goods into Croatia. The United States will continue to monitor Croatia's progress on these issues in 2006.

### **DOMINICAN REPUBLIC**

The Dominican Republic will remain on the Watch List in 2006, due to slow progress on a range of IPR issues. The United States encourages the Dominican Republic to focus its efforts on combating broadcast piracy, deterring copyright and trademark infringement, and ensuring an expeditious resolution of pending civil and criminal IPR cases. The United States also is concerned about reported deficiencies in the protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. On the positive side, the Dominican Republic took steps in January 2006 to ratify the WIPO Internet Treaties and has taken some IPR enforcement actions,

including the confiscation and destruction of pirated goods. In September 2005, the Dominican Republic ratified the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), which requires the Dominican Republic to strengthen IPR protection, including enforcement. The United States will continue to work with the Dominican Republic on the implementation of its IPR obligations to ensure that it meets its international and CAFTA-DR commitments.

## **ECUADOR**

Ecuador will remain on the Watch List in 2006. Despite some enforcement activities to seize pirated CDs and DVDs, overall enforcement of IPR remains problematic, resulting in high piracy levels for the business software and recording industries. Music piracy has become so severe in Ecuador that the majority of international record companies have closed their local offices. Ecuador has not yet established a specialized IP court, as it was required to do under its 1998 intellectual property law, and many Ecuadorian courts appear unwilling to enforce the IP law. Concerns also remain over Ecuador's lack of effective protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, as well as reports that Ecuador lacks 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 urges Ecuador to strengthen IPR enforcement and will closely monitor Ecuador's efforts to address IPR concerns, particularly through the U.S.-Andean Trade Promotion Agreement negotiations.

## **EUROPEAN UNION**

The European Union (EU) will remain on the Watch List in 2006 because of concerns over EU rules concerning geographical indications (GIs). For instance, following an adverse ruling by the WTO Dispute Settlement Body in April 2005, the EU published a new regulation concerning GIs on March 31, 2006, and claimed full compliance with the WTO recommendations and rulings. But concerns remain with respect to this new regulation's impact on the rights of trademark owners, which the United States continues to analyze; the United States looks forward to continued cooperation with the EU on this and other intellectual property matters.

## **GUATEMALA**

Guatemala will remain on the Watch List in 2006, although the United States notes that Guatemala has been working closely together with it to implement the IPR obligations under the U.S.-Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), which requires Guatemala to strengthen IPR protection. The United States hopes that the continuing implementation of CAFTA-DR will result in a stronger IPR legislative regime in Guatemala, an effective enforcement system, and a significant reduction of piracy and counterfeiting. In addition, the United States hopes to see increased 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 will continue to work with Guatemala to ensure that its IPR legal regime implements the TRIPS Agreement and CAFTA-DR.

## **HUNGARY**

Hungary will remain on the Watch List in 2006. Hungary has improved its IPR regime over the past several years, including the recent passage of IPR enforcement legislation, but additional improvements are necessary. The United States notes, however, that copyright piracy in Hungary continues to grow, due in large part to copyright piracy on the Internet. Enforcement deficiencies include prosecutorial delays, judicial imposition of low fines or weak sentences, and weak border enforcement. Hungary does not 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 urges the Hungarian Government to address these issues and to continue to improve its IPR enforcement efforts.

## **ITALY**

Italy will remain on the Watch List for 2006. Despite Italy's passage of strong copyright laws, increased enforcement actions, and the decline of piracy rates in the sectors of business software, music, and entertainment software, U.S. industry reports that Italy continues to possess one of the highest overall piracy rates in Western Europe and chronic problems with copyright piracy on the Internet. Although Italy has made some progress through increased raids, seizures, and arrests of IPR infringers, there is inadequate judicial enforcement and a lack of judicial imposition of deterrent fines and jail sentences for criminal copyright and trademark infringers. The United States continues to observe wide variations in the effectiveness of IPR enforcement activities within Italy. The United States will continue to work with Italy to improve its IPR awareness and to improve IPR protection and enforcement.

## **JAMAICA**

Jamaica will remain on the Watch List in 2006. The United States remains concerned over Jamaica's continued delay in enacting the Patents and Designs Act, which is intended to implement Jamaica's obligations under the TRIPS Agreement and to comply with the United States-Jamaica bilateral Intellectual Property Agreement. The United States urges the Government of Jamaica to reform its patent law as soon as possible to comply fully with international standards for patent protection.

## **KUWAIT**

Kuwait will be downgraded from the Priority Watch List to the Watch List due to significant improvements in its IPR regime this past year, particularly in the area of IPR enforcement actions. This year, Kuwaiti Customs and the Ministry of Commerce and Industry improved their IPR enforcement efforts. A new IPR committee was formed that includes the Ministries of Justice, Interior, Information, and Commerce and Industry, and Kuwait is in the process of establishing a new IPR court. The Ministry of Education initiated a program to combat book piracy, and the Ministry of Information conducted numerous raids on pirates and counterfeiters. The United States hopes that Kuwait will continue to improve its IPR regime by ensuring, for example, that law enforcement officials are engaged in combating piracy and counterfeiting, that judicial authorities impose deterrent penalties for IPR violations, and that necessary legislation is passed to strengthen its IPR regime. The United States is concerned that several key pieces of IPR legislation (including amendments in the areas of copyrights, trademarks, geographical indications, patents, data protection, and enforcement) have been pending for many years, and hopes that Kuwait will expeditiously enact and implement such legislation in the near term. The

U.S. copyright industry reports that Kuwait continues to have high levels of retail optical disc piracy, as well as problems with business software piracy, cable piracy, and Internet piracy. The United States hopes that key ministries with IPR enforcement responsibilities will continue to build upon the progress of 2005, in order to reduce piracy and counterfeiting rates. The United States will continue to address these issues under the United States-Kuwait Trade and Investment Framework Agreement signed in February 2004.

## **LATVIA**

Latvia will remain on the Watch List in 2006, and the United States will conduct an Out-of-Cycle Review to monitor further progress on Latvia's enforcement activities. Latvia has improved IPR enforcement during the past year by promoting coordination among ministries responsible for IPR enforcement, increasing resources to combat IPR piracy and counterfeiting, forming a high-level IPR working groups to focus on enforcement, and adopting a new criminal procedure code on IPR enforcement issues, among other initiatives. In addition, the Ministry of Interior established an IPR crime unit that has conducted numerous raids, seized infringing products, and referred cases for prosecution. There has been an increase in the number of IPR infringers who have been prosecuted and sentenced, although the United States encourages Latvia to ensure that its courts issue stronger penalties for IPR infringers that include deterrent fines and jail sentences. However, some key IPR issues remain in need of attention, including copyright piracy, especially on the Internet, and the lack of effective border enforcement. The United States encourages Latvian customs officials to take increased action to inspect and seize transshipped pirated and counterfeit goods coming into Latvia from Russia and exported to Lithuania, Poland, and other EU countries. The United States notes that Latvian Customs officials have increasingly used their *ex officio* authority this past year to combat the flow of pirated and counterfeit goods into Latvia. Through the Out-of-Cycle Review, the United States will work together with Latvia to build upon its recent progress to improve its IPR regime.

## **LITHUANIA**

Lithuania will remain on the Watch List in 2006. Despite some IPR improvements this past year, numerous IPR issues remain, including copyright piracy on the Internet and transshipment of pirated optical media through Lithuania. The United States encourages Lithuania to implement optical media rules that effectively regulate the production, distribution, and export of optical media, particularly as border enforcement remains a serious problem, with Lithuania serving as a central transshipment point in the Baltic region for mostly Russian-produced optical media to the rest of Europe. The United States urges Lithuanian customs officials to make more frequent use of their *ex officio* authority to inspect and seize infringing goods at the border. The United States also encourages Lithuania to direct its attention and resources to increasing its anti-piracy and anti-counterfeiting efforts by coordinating IPR enforcement efforts among relevant government ministries, police, and customs officials.

## **MALAYSIA**

Malaysia will remain on the Watch List in 2006 to monitor its efforts to improve its IPR regime. Malaysia made some significant improvements in IPR protection and enforcement this past year, but still has some serious deficiencies. IPR enforcement improvements during the past year have included: conducting raids against pirate optical disc production facilities; seizing pirate goods and machinery used to produce pirate materials; arresting IPR infringers; and revoking or

declining to renew licenses for pirate optical disc facilities. The United States appreciates these steps as well as the Government's statements that it is in the process of establishing a specialized IP court to more effectively handle civil and criminal copyright cases. The United States urges Malaysia to continue its enforcement efforts, particularly with respect to closing licensed and unlicensed optical disc plants that are producing pirated products, stopping the export of pirated goods, and combating the growing problem of piracy and counterfeiting on the Internet. In addition, the United States notes that Malaysia should address several deficiencies in its copyright law to fully implement the WIPO Internet Treaties, and should join the WCT and WPPT. Trademark counterfeiting, including of pharmaceuticals that pose a health and safety risk to the public, is rampant in Malaysia due to poor enforcement. The United States is also concerned that Malaysia has enacted neither protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, nor a coordination mechanism between the health authorities and patent office to prevent the registration of unauthorized copies of patent-infringing products. The United States will work with Malaysia to make progress on these pressing IPR issues through the upcoming U.S.-Malaysia Free Trade Agreement negotiations.

## **MEXICO**

Mexico will remain on the Watch List in 2006. The last year has seen some improvements in IPR enforcement, including the formation of a specialized IPR customs unit, as well as increased raids and seizures of counterfeit and pirated goods. However, significant problems remain. Although the IP unit of the Prosecutor General's Office (PGR) has again increased the number and scope of raids against sellers of counterfeit and pirate goods, convictions and terms of incarceration for the pirates and counterfeiters have not kept pace. The United States encourages Mexico to follow its commendable raids with aggressive prosecutions and deterrent penalties, to improve domestic cooperation efforts on enforcement, and also to encourage cooperation between Mexican Customs and the PGR to stem the flow of infringing items before they reach the markets. The United States notes that Mexico made progress by drafting IPR legislation this past year, including efforts to criminalize the circumvention of technological protection measures, to give *ex officio* authority to the police, and to subject businesses engaged in counterfeiting to administrative sanctions and to closure. The United States encourages Mexico to enact and implement these laws, as well as strengthen other IPR laws, including amending the copyright law to implement fully the WIPO Internet Treaties. The United States encourages Mexico to make further efforts to provide protections for patents and against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, and notes concern over the lack of an effective coordination system between its health and patent authorities to prevent the issuance of marketing approvals for patent-infringing copies of pharmaceutical products. The United States will continue to work with Mexico to address and resolve these IPR concerns in an effective manner.

## **PAKISTAN**

Pakistan will be lowered to the Watch List in 2006. Pakistan made notable progress on IPR issues during the past year, particularly with respect to the closure of numerous pirate optical disc factories and improved enforcement efforts, including the establishment of the Intellectual Property Organization of Pakistan (IPOP) to centralize and coordinate IPR enforcement. In January 2006, in recognition of these improvements, USTR terminated a review in which the

United States Government was considering whether to remove Pakistan's benefits under the Generalized System of Preferences because of inadequate enforcement of copyright laws. Despite improvements, piracy rates remain a concern. The United States is encouraged that Pakistan has established in practice a system to avoid granting marketing approvals to unauthorized copies of drugs protected by a patent. The United States is also encouraged that Pakistan has committed to move forward with implementing protection to effectively protect test and other data submitted by pharmaceutical companies seeking marketing approval for their products against unfair commercial use. The United States will monitor the situation closely as it develops, and will work together with Pakistan to achieve further improvements in its IPR protection and enforcement regimes.

## **PERU**

Peru will remain on the Watch List in 2006. Despite high-profile raids and a public anti-piracy campaign, Peru still has numerous IPR problems. Peru's Government took some steps toward improving copyright enforcement through its "Anti-Piracy Crusade" initiated in 2002. The U.S. industry reports that copyright piracy remains high in the sectors of sound recordings and business software. The United States encourages the Government of Peru to continue its efforts to combat IPR piracy by coordinating with the private sector, conducting an increased number of raids and seizures, ensuring that arrests of IPR infringers result in convictions and the imposition of deterrent sentences that include imprisonment, and giving increasing attention to IPR enforcement measures at its borders. The United States is pleased at the signing on April 12, 2006 of the United States-Peru Trade Promotion Agreement (PTPA) and looks forward to stronger IPR protection and enforcement in Peru. Under the PTPA, Peru has committed itself to effective protection of copyrights, trademarks, and patents; enforcement against piracy and counterfeiting; and effective protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical and agricultural chemical companies seeking marketing approval for their products, among other obligations. The United States also is concerned over reports that Peru lacks 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 continue to work with Peru to strengthen IPR protection and enforcement and to ensure that Peru implements its IPR obligations to meet its international and PTPA commitments.

## **PHILIPPINES**

The Philippines was lowered from the Priority Watch List to the Watch List at the conclusion of an Out-of-Cycle review in February 2006, due to substantial improvements in IPR protection. The Philippines remains on the Watch List in this Report. Throughout 2005, the Philippines took steps to bolster implementation of its Optical Media Act, including increasing the number of raids against pirate optical disc production facilities and retail establishments. The Philippines' Intellectual Property Office coordinated among IPR enforcement agencies, which resulted in an increased number of raids and enforcement actions. While recognizing these improvements, the United States strongly urges the Philippines to sustain and broaden progress on IPR issues in order to avoid a potential return to the Priority Watch List in the future. Remaining IPR issues include: enforcing the Optical Media Act through continued inspections and raids of optical disc plants; increasing the number of seizures of pirate and counterfeit products and the machinery used to produce such infringing products; increasing the numbers of

arrests and convictions of pirates and counterfeiters arising out of the optical disc plant inspections, to achieve deterrence and avoid recidivism; imposing deterrent sentences against criminal IPR infringers (i.e. significant fines or prison sentences that are actually served); ensuring destruction of pirate and counterfeit goods and equipment used to make them; addressing the problem of illegal copying of textbooks; improving customs enforcement; taking actions against television signal theft by pirate cable TV operators; addressing the growing problem of counterfeit pharmaceuticals; bringing domestic IPR laws in line with the Philippines' commitment to implement the WIPO Internet Treaties, including addressing Internet piracy; and increasing the capacity of courts to address IPR cases effectively. The United States will use the bilateral Trade and Investment Framework Agreement to engage the Government of Philippines on strengthening its IPR regime. The United States commends the Philippines for its progress to date and hopes to see continued improvement on these important IPR issues in the future.

## **POLAND**

Poland will remain on the Watch List in 2006. Despite some progress on IPR protection this past year, including an increased number of raids and seizures of pirated goods at retail establishments and improved coordination with private industry, IPR enforcement problems still exist. For example, concerns exist regarding a lack of judicially imposed deterrent sentences for criminal IPR infringers that include imprisonment, continued sale and distribution of pirated products in and around the Warsaw Stadium, and weak border enforcement, among other IPR issues. The United States encourages Poland to strengthen enforcement measures to combat IPR piracy and counterfeiting. In addition, Internet piracy presents a growing problem in Poland. There also remain deficiencies in the protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. The United States commends Poland for its heightened efforts over the past year to improve its IPR regime, and the United States encourages Poland to continue this progress by committing its resources and attention to IPR enforcement, combating piracy and counterfeiting, and issues related to pharmaceuticals as outlined above.

## **REPUBLIC OF KOREA**

The Republic of Korea (Korea) will remain on the Watch List in 2006. The United States is pleased that Korea established the Copyright Protection Center and increased enforcement against institutions using illegal software by establishing a Standing Inspection Team. The United States hopes to see further efforts to update Korea's IPR regime to keep pace with the digitization of Korea's economy and prevent the proliferation of unauthorized copying of copyrighted material, especially on the Internet. The United States looks to Korea to extend the exclusive reproduction right to cover temporary copies, such as those made in the temporary memory of a computer. Korea's National Assembly is considering legislation that would enhance protection for sound recordings transmitted over the Internet. The United States calls on Korea to further strengthen the relevant provisions of its Copyright Act and Computer Programs Protection Act related to technological protection measures and Internet Service Provider liability, to clarify the scope of the private copy exception and of the rights of sound recording producers over digital dissemination of recordings, and to extend the term of copyright protection for works and sound recordings. Although there has been some progress on IPR enforcement, including a series of court decisions against businesses that facilitate illegal file-sharing, the United States urges Korea to accelerate its efforts to combat piracy of DVDs,

computer software, and books, as well as to decrease street vendor sales of pirated and counterfeit goods and infringing activities on university campuses. The United States encourages Korea to address its 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. The United States will work with Korea to make progress on these and other IPR issues through the upcoming Free Trade Agreement negotiations.

## **ROMANIA**

Romania will remain on the Watch List in 2006. The United States will continue to monitor further progress on IPR enforcement, including high piracy rates in the sectors of business software, music, and entertainment software, due to weak enforcement and deficiencies in the judicial system. Some IPR improvements were made by Romania this year, including the designation of the General Prosecutor's Office of the Supreme Court as the national coordinator for IPR enforcement, the provision of *ex officio* authority to law enforcement authorities, the requirement of Source Identification Codes for optical disc manufacturing, and increased dedication of resources for IPR enforcement. Despite these positive steps, however, copyright piracy continues to thrive, including on the Internet. In addition, law enforcement agencies and the judiciary continue to place a low priority on IPR enforcement. For example, prosecutors are reluctant to prosecute criminal IPR cases, courts are reluctant to convict and issue deterrent sentences against IPR infringers, and 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 its IPR enforcement activities in order to combat piracy effectively.

## **SAUDI ARABIA**

Saudi Arabia will remain on the Watch List in 2006, and the United States will conduct an Out-of-Cycle review to monitor Saudi Arabia's continued progress on IPR issues. The United States recognizes that Saudi Arabia has improved its IPR regime as part of its becoming a WTO member in 2005. Progress has been notable in several areas, including an increased number of raids and seizures of pirated and counterfeit goods, positive legislative amendments to strengthen IPR protection, and increased cooperation with private industry. The United States commends Saudi Arabia for these improvements and encourages further progress on a number of IPR issues. To build on the positive cooperation established between Saudi Arabia and the U.S. copyright industry, the United States looks to Saudi Arabia to complete recent IPR actions that it has initiated. For example, the United States looks to Saudi Arabia to increase transparency of its IPR enforcement regime, continue sustained raids and inspections to combat piracy and counterfeiting, ensure transparency in the judicial system and imposition of deterrent sentences (including jail terms for serious offenses) against criminal IPR infringers, and improve border enforcement measures, among other IPR issues. The United States will work together with Saudi Arabia on a specific plan of action, and the United States encourages Saudi Arabia to continue with its already strong efforts to improve its IPR regime. The United States will continue our IPR discussions with Saudi Arabia through the Trade and Investment Agreement and the Out-of-Cycle review.

## **TAIWAN**

Taiwan will remain on the Watch List in 2006. The United States recognizes Taiwan's efforts to improve its IPR regime, including increasing the number of raids and seizures of pirated optical media, counterfeit pharmaceuticals, and counterfeit luxury goods. The United States notes the successful prosecution of the peer-to-peer Internet service Kuro and commends Taiwan for its passage in 2005 of amendments to its pharmaceutical law to provide a five-year term of protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products. The United States recognizes the efforts of Taiwan's Department of Health to consult with private industry concerning draft data protection implementing regulations, which are expected to be finalized by June 2006. The United States looks to Taiwan to sustain the current level of commitment to making progress on IPR issues, and will continue to monitor further improvements, including Taiwan's efforts to combat the production of pirated optical media and proliferation of Internet piracy, to deal more effectively with unauthorized use of copyright materials on government and university computer networks, strengthen IPR enforcement actions against piracy and counterfeiting, to establish a specialized IP court, and to devote more resources and coordinated high-level government attention to combating IPR infringement. The United States also calls on Taiwan to strengthen border enforcement against transshipment of pirated and counterfeit goods, consider legislative amendments to address ISP liability, implement stronger criminal penalties for IPR infringement, and extend the term of copyright protection for works and sound recordings. The United States continues to look to Taiwan to address these remaining IPR concerns and the United States will work together with Taiwan to achieve further progress.

## **TAJIKISTAN**

Tajikistan will remain on the Watch List in 2006. The United States remains concerned that Tajikistan has not yet fulfilled its IPR obligations under the U.S.-Tajikistan Bilateral Agreement, and encourages Tajikistan to take necessary steps to bring its IPR regime into conformity with the TRIPS Agreement as part of its ongoing efforts to join the WTO. In addition, Tajikistan has a weak enforcement regime that lacks criminal penalties for IPR violations, *ex officio* authority to commence criminal cases, and civil *ex parte* search procedures necessary for effective enforcement against end-user pirates, among other important enforcement measures. 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. Legal reforms are needed, for example, in Tajikistan's copyright law, which does not provide protection for sound recordings or pre-existing works, despite its obligation to do so under the Berne Convention. The United States also encourages Tajikistan to join and implement the WIPO Internet Treaties. The United States will work with Tajikistan through the Trade and Investment Framework Agreement signed in 2004 and the ongoing WTO accession negotiations to address deficiencies in its IPR laws and strengthen IPR protection and enforcement.

## **THAILAND**

Thailand will remain on the Watch List in 2006. Thailand made some progress in strengthening its IPR regime during 2005, including some enforcement efforts to combat piracy and counterfeiting. Despite these encouraging signs, however, piracy and counterfeiting rates remain high and enforcement actions need to be further strengthened and sustained. The U.S. Government remains concerned about the proliferation of optical disc pirate production at plants

in Thailand, especially in light of comparatively weak optical disc legislation that Thailand passed in 2005. Piracy is also widespread in the areas of photocopying of books, cable signals, entertainment and business software, and music on the Internet. The production, distribution, sale, and export or transshipment of pirated and counterfeit products continues to be a serious concern. The United States also is concerned about the weak protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical and agricultural chemical companies seeking marketing approval for their products, as well as delays in pharmaceutical patent approvals by the Thai Department of Intellectual Property. The United States will continue to work with Thailand to address these significant concerns regarding its intellectual property laws and enforcement.

### **TURKMENISTAN**

Turkmenistan will remain on the Watch List in 2006. The United States is concerned about Turkmenistan's lack of progress on IPR issues during the past year and its lack of fulfillment of its IPR obligations under the United States-Turkmenistan Trade Agreement. For example, Turkmenistan has not joined the Berne Convention, the Geneva Phonograms Convention, or the WIPO Internet Treaties. Turkmenistan does not have a separate copyright law and does not provide clear criminal procedures or penalties for IPR infringement as required by the U.S.-Turkmenistan Trade Agreement. Its Customs Code does not provide *ex officio* authority to seize suspected infringing material at the border, and 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 United States-Turkmenistan Trade Agreement and to undertake enforcement activities that will help to strengthen its IPR regime.

### **UZBEKISTAN**

Uzbekistan will remain on the Watch List in 2006. The United States is concerned about the lack of significant progress on IPR issues this past year. For example, Uzbekistan did not move forward with several IPR-related amendments that had been contemplated. 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 United States-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 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 address these deficiencies in its IPR laws and to take immediate and effective measures to improve IPR enforcement. The United States will continue to work together with Uzbekistan on these outstanding IPR issues through discussions related to Uzbekistan's bid for WTO accession.

### **VIETNAM**

Vietnam will remain on the Watch List in 2006. The United States commends Vietnam for its improvements in IPR protection, including Vietnam's passage of a comprehensive IPR law in

November 2005, but notes some remaining deficiencies and ambiguities. The United States looks forward to seeing regulations that provide clear, strong guidance for implementation in accordance with the United States-Vietnam Bilateral Trade Agreement (BTA) and the TRIPS Agreement. The United States encourages further progress on IPR enforcement initiatives and continued implementation of the intellectual property provisions of the BTA, under which Vietnam agreed to provide high standards of IPR protection. Despite these improvements, however, IPR infringement remains rampant in Vietnam, with reports from the U.S. copyright industry that in some cities, 100 percent of the CDs, VCDs, and DVDs sold are pirated. Responsible authorities have considerable work to do with respect to IPR enforcement. The United States looks to Vietnam to continue to build upon its public commitment to IPR protection by successful implementation of the new IPR law, including measures that result in the imposition of deterrent penalties for criminal IPR infringement and the seizure and destruction of infringing goods and the equipment and materials used to make them. Vietnam also passed new legislation to provide protection against unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeking marketing approval for their products, and the United States looks forward to seeing this new law implemented successfully. The United States and Vietnam have been working together to address IPR issues during WTO accession discussions, and continued progress is anticipated this year.