



September 11, 2000

Gloria Blue
Executive Secretary
Trade Policy Staff Committee
Office of the U.S. Trade Representative
600 17th Street NW, Room 122
Washington, DC 20508

Re: Request for Comments on the Report on the
Andean Trade Preference Act, 65 Fed. Reg.
48041 (August 4, 2000)

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) takes this opportunity to respond to the Trade Policy Staff Committee's request for comments regarding the Report on the Andean Trade Preference Act (ATPA) which President Clinton must submit to Congress before the ninth anniversary of the date of enactment of the ATPA, December 4, 2000. IIPA also filed comments with USTR in the preparation of its last triennial report on the ATPA.¹

The ATPA program will expire on December 4, 2001, and renewal of this program will be considered next year. The ATPA requires that each beneficiary country (Bolivia, Colombia, Ecuador and Peru) provide "adequate and effective" copyright protection and enforcement in order to qualify for, and to remain eligible to receive, preferential duty treatment. This submission will summarize the status of copyright protection and enforcement in this region and more specifically in several of these countries.

Description of the IIPA and its Member Associations

The International Intellectual Property Alliance (the "IIPA" or "Alliance") is a coalition consisting of seven trade associations, each representing a significant segment of the copyright industry in the United States. Formed in 1984, the IIPA consists of AFMA (formerly the American Film Marketing Association), the Association of American Publishers (AAP), the Business Software Alliance (BSA), the Interactive Digital Software Association (IDSA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA) and the Recording Industry Association of America (RIAA). The IIPA represents more than 1,450 U.S. companies producing and distributing materials protected by copyright laws throughout the world: all types of computer software, including business

¹ See October 17, 1997 comments of the IIPA, in response to Request for Comments on the Report on the Andean Trade Preference Act, 62 Fed. Reg. 46792 (Sept. 4, 1997).

software and entertainment software (such as videogame CD-ROMs and cartridges, personal computer CD-ROMs, and multimedia products); motion pictures, television programs and home videocassettes, video CDs and DVDs; music; records, CDs and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in electronic and print media).

The U.S. copyright-based companies are the leading edge of the world's high technology, entertainment, and publishing industries. According to Copyright Industries in the U.S. Economy: The 1999 Report, prepared for IIPA by Economists, Inc., the core copyright industries accounted for \$348.4 billion in value added to the U.S. economy, or approximately 4.3% of the Gross Domestic Product (GDP) in 1997 (the last year for which complete data is available). In 1997, the total copyright industries accounted for \$529.3 billion in value added, or approximately 6.53% of GDP. The "total" copyright industries include the "core" industries plus those that, under conservative assumptions, distribute such products or other products that depend wholly or principally on copyrighted materials. The "core" copyright industries are those which create copyrighted materials as their primary product.

The U.S. copyright industries are also among the nation's most dynamic and fast-growing economic sectors. The core copyright industries' share of the GDP grew more than twice as fast as the remainder of the U.S. economy between 1977 and 1997 (6.3% vs. 2.7%). Employment in the core copyright industries grew three times the rate of national employment growth between 1977 and 1997 (4.8% vs. 1.6%). More than 6.9 million workers were employed by the total copyright industries, about 5.3% of the total U.S. work force, in 1997. The core copyright industries generated an estimated \$66.85 billion in foreign sales and exports in 1997, an 11.1% gain over 1996 and larger than the foreign sales and exports of the food, tobacco, apparel, textile, and aircraft industries combined. Preliminary estimates for foreign sales and exports for 1998 are \$71.0 billion. For more detailed information on the IIPA and its members, visit www.iipa.com.

The ATPA and its Explicit Provisions on Copyright Protection

The development of the "Andean Regional Trade Initiative" began in late 1989 and was aimed at expanding economic trade, supporting economic reform and developing alternatives to the drug problems in the Andean region. The Andean Trade Preference Act² contains provisions for the protection of intellectual property rights similar to those in the Caribbean Basin Initiative³ and the Generalized System of Preferences.⁴ Bolivia and Colombia became eligible to receive ATPA preferential duty treatment on July 2, 1992, Ecuador on April 13, 1993, and Peru on August 11, 1993.

The August 4, 2000 Federal Register notice invites comment on any aspect of the program's operation, including the status of beneficiary countries--Bolivia, Colombia, Ecuador, and Peru--under the criteria described in subsections 203(c) and (d) of the ATPA, 19 U.S.C. 3202(c) and (d). Issues to be examined in the report to be issued by USTR will include:

the program's effect on the volume and composition of trade and investment between the United States and the Andean beneficiary countries; its effect on the economic growth and development of the beneficiary countries; the extent to which the program has advanced narcotics eradication through sustainable alternative development efforts in

² Andean Trade Preferences Act of 1990, Pub. L. No. 102-182 (codified at 19 U.S.C. § 3201 et seq.).

³ The Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, Section 212 (codified at 19 U.S.C. § 2701 et seq.) (CBERA or the Caribbean Basin Initiative or CBI).

⁴ See the Generalized System of Preferences Renewal Act of 1984, Pub. L. No. 98-573, as amended (codified at 19 U.S.C. § 2462(c)).

coca-growing areas; and the degree to which the program has encouraged the trade and investment policies cited in the ATPA.”

Strong and comprehensive copyright protection and enforcement is a key ingredient to robust economic growth and development. Copyright gives creators the basic property rights that enable them to authorize and control the copying, distribution, performance and display of the works they create. Exercising these exclusive rights themselves, or licensing someone else to exercise them, is the main way that creators earn a living and generate revenue. That revenue is needed to underwrite the skyrocketing costs of producing and distributing motion pictures; developing, testing and maintaining computer software; scouting, recording, and promoting musical talent; and all the other activities that are indispensable to bringing creative works to the public. Copyright also makes possible the paychecks for the millions of jobs the creative industries generate worldwide.

The ATPA contains two mandatory criteria embedded in Section 3202(c)(5) which state that the President shall not designate a country as an ATPA beneficiary country

if a government-owned entity in such country engages in the broadcast of copyrighted material, including films or television material, belonging to the United States copyright owners without their express consent or such country fails to work toward the provision of adequate and effective protection of intellectual property rights.

19 U.S.C. § 3202(c)(5) (emphasis added). In addition, in determining whether to designate a country as a beneficiary country, the President shall take into account the following two discretionary IPR criteria:

the extent to which such country provides under its law adequate and effective means for foreign national to secure, exercise, and enforce exclusive rights in intellectual property, including patent, trademark and copyright rights;

the extent to which such country prohibits its nationals from engaging in the broadcast of copyrighted material, including films or television materials, belonging to United States copyright owners without their express consent;...

19 U.S.C. §§ 3202(d)(9) and 3202(d)(10).

The leverage provided by the prospect of the U.S. halting or limiting ATPA privileges to those beneficiary countries which refuse to stop illegal piracy or provide equitable and reasonable market access to U.S. copyrighted products and services should be viewed as an important means to achieve the goals of this program. Under the ATPA, the President has the authority to

(A) withdraw or suspend the designation of any country as a beneficiary country, or
(B) withdraw, suspend, or limit the application of duty-free treatment under this chapter to any article of any country,
if, after such designation, the President determines that as a result of changed circumstances such a country should be barred from designation as a beneficiary country.

19 U.S.C. §3202(e). To date, such ATPA leverage has not yet been used directly with respect to intellectual property rights.⁵

⁵ IIPA notes that the ATPA, like the CBI program (but unlike the GSP program), does not by statute provide for any specific, formal, review procedures for the Executive Branch to receive and act upon petitions from the public to withdraw or suspend

Impact on U.S. Copyright Industries due to Piracy in ATPA Countries

Inadequate and ineffective copyright enforcement continues to inflict significant trade distortions in the Andean region. Copyright piracy -- the theft of copyrighted materials -- remains a major problem in the Andean region. High levels of piracy of films, television programs, home videocassettes, music, audiocassettes and compact discs, textbooks, tradebooks, reference and professional publications and journals, and business, entertainment and multimedia software on all platforms hurt U.S. creators throughout the Andean region. Piracy also harms Andean creators and related industries. IIPA estimates that trade losses due to copyright piracy in 1999 were at least \$281million in four ATPA-eligible countries.

ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1999

	Motion Pictures		Records & Music		Business Applications ⁶		Entertainment Software		Books	TOTAL LOSSES
	Loss	Video Piracy Level	Loss	Piracy Level	Loss	Piracy Level	Loss	Piracy Level	Loss	
PERU	4.0	65%	50.0	85%	22.2	63%	NA	NA	10.0	86.2
COLOMBIA	40.0	55%	60.0	60%	50.5	58%	7.0	75%	6.0	163.5
ECUADOR	NA	95%	NA	NA	20.5	71%	NA	NA	NA	20.5
BOLIVIA	2.0	100%	NA	NA	4.1	85%	NA	NA	5.0	11.1

The following summary provides an overview of the kinds of piracy found in the Andean region. Also, attached to this letter are two country reports on Peru and Colombia from IIPA’s February 2000 Special 301 submission to USTR.

- The unauthorized reception and retransmission of U.S. domestic satellite signals is a key concern to the U.S. motion picture industry. This problem is particularly acute in Colombia, which falls within the footprint of U.S. satellites. Without authorization from copyright owners, cable system operators, hotels, resorts, bars and homeowners have erected satellite dishes to intercept programming intended for reception with the U.S. This signal theft harms the theatrical exhibition of motion pictures in these markets and slows the development of a legitimate home video market as well. Furthermore, video piracy remains a consistent problem in this region, with well over half of each national market blanketed with pirate videos.
- Business software piracy involves counterfeiting, resellers, mail order houses, bulletin boards, and end-user piracy. The greatest threat comes from end-user piracy, where typically a corporate or institutional use copies software onto the hard disks of many more computers than the number authorized. End-user piracy occurs in government, education, and business enterprises throughout this region. The Business Software Alliance (BSA) released an April 1999 study by PricewaterhouseCoopers updating an 1997 study which projected the following: if the level of piracy in Latin America were reduced to the

ATPA beneficiary status or product eligibility. Once eligibility has been conferred, it appears that the standard of “changed circumstances” must be met.

⁶ This 1999 business software estimate reflects the BSA’s final numbers for 1999. In IIPA’s 2000 Special 301 submission, BSA had provided preliminary statistics for both Peru and Colombia.

benchmark level of 27% -- knowing that the average piracy rate in Latin America for personal computer business software is 68%, then an additional 67,062 could have been employed in 1996, and an additional \$679.7 million in tax revenues could have been generated that same year to local Latin economies.⁷ The study projected that the packaged software market in Latin America would grow by 35% per year in 1997 and 1998, and by 34% annually in 1999 and 2000. According to BSA's most recent survey, 1999 Global Software Piracy Report, the average level of business software piracy in Latin America was 59%.⁸

- Piracy of sound recordings (*fonogramas*) and music remains high in the Andean region. While audiocassette piracy has been the preferred business of pirates for years, the levels of music CD piracy are starting to rise rapidly.
- The U.S. videogame industry suffers from inadequate enforcement by governmental and judicial authorities in the region. Pirated and counterfeit videogame products are found on all platforms, including cartridges, personal computer CD-ROMs and multimedia products.
- The major forms of piracy afflicting the U.S. book publishing industry in the region are commercial and photocopying piracy. Photocopying shops near universities often fill requests for illegal reproductions of entire textbooks.

As the forms of piracy shift from hard-goods and more toward digital media, the copyright industries and national governments' challenges to enforce copyright laws grow exponentially. Fundamentally, the Internet transforms copyright piracy from a mostly local phenomenon to a global plague. It makes it cheaper and easier than ever for thieves to distribute unauthorized copies of copyrighted materials around the globe. Modern copyright laws must respond to this fundamental change by providing that creators have the basic property right to control distribution of copies of their creations. Copyright owners must be able to control delivery of their works, regardless of the specific technological means employed. The challenge to legislators in each country is to make whatever changes to current law are necessary to realize this goal.

CONCLUSION

We appreciate the opportunity to remind both USTR and Congress about the important copyright criteria found in the Andean Trade Preferences Act. The ATPA is not solely an anti-narcotics program. It is a trade program that is aimed at promoting investment in this region. The IPR criteria of the ATPA should be used to provide incentives for substantial improvements in the copyright laws and enforcement practices throughout the Andean region.

Sincerely,

Maria Strong
Vice President and Associate General Counsel
International Intellectual Property Alliance

⁷ See Contributions of the Packaged Software Industry to the Global Economy, a study conducted by PricewaterhouseCoopers, commissioned by the Business Software Alliance, April 1999, page 25.

⁸ See Press Release, The Business Software Alliance, "Software Industry Suffers From 5-year Cumulative Impact of Global Software Piracy, Estimated at \$59.2 Billion," May, 24, 2000. This study was jointly commissioned by BSA and SIIA, and conducted by International Planning & Research (IPR). For more information, see <http://www.bsa.org/pressbox/enforcement/959190119.html>.