

From: svcsmartmfi
Sent: 8/10/2009 10:13:53 AM
To: SMART Core
Subject: Film Piracy: Austrian Distributors Detail Enforcement Problems, German-Language Piracy Platform "KINO.TO"

RELEASE IN PART
B5,B6

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MRN: 09 VIENNA 1018
Date/DTG: Aug 10, 2009 / 101358Z AUG 09
From: AMEMBASSY VIENNA
Action: WASHDC, SECSTATE, ROUTINE
E.O.: 12958
TAGS: ECON, EINT, ETRD, KIPR, AU
Captions: SENSITIVE, SIPDIS
Sensitivity: Sensitive
Reference: Prague 113
Pass Line:
Subject: Film Piracy: Austrian Distributors Detail Enforcement Problems, German-Language Piracy Platform "KINO.TO"

REVIEW AUTHORITY: Clarke Ellis,
Senior Reviewer

UNCLAS VIENNA 001018

SENSITIVE, SIPDIS

E.O. 12958: N/A
TAGS: ECON, EINT, ETRD, KIPR, AU
SUBJECT: Film Piracy: Austrian Distributors Detail Enforcement Problems, German-Language Piracy Platform "KINO.TO"

REF: Prague 113

Sensitive but unclassified: Protect accordingly.

1. SUMMARY: Austrian film producers and distributors, in cooperation with the music industry, founded an anti piracy association (VAP) to fight illegal distribution of DVDs and CDs via pirated disks and Internet downloads. VAP estimates yearly film piracy losses in Austria of \$4.5 million. The biggest problems are

– pirated disks produced in the Czech Republic and distributed by small traders (mainly Chinese and Vietnamese) in Vienna, and -- downloads from the Internet platform KINO.TO where most international films with German translations are stored (NOTE: "Kino" is German for "cinema").

A VAP lawyer told us Austria's anti-piracy laws are strong in principle, but implementation challenges and legal snafus undermine enforcement. END SUMMARY.

CLASSIFICATION: UNCLASSIFIED

Page 2 of 3

2. (U) Embassy representatives recently met with industry representatives including VAP (Verein für Anti-Piraterie der Film- und Videobranche = Organization for Anti-Piracy in the Film and Video Industries) [REDACTED]

B6

[REDACTED] In June 2009, VAP drew local attention by publicly destroying 30,000 pirated copies of movies in Vienna worth nearly \$300,000. VAP blame Chinese and Vietnamese "Mafioso" networks who distribute the disks, which are mainly sourced in the Czech Republic.

3. (U) Although film profits in Austria have grown in recent years, losses remain significant particularly from Internet piracy, say interlocutors. In Austria and elsewhere in the German speaking world, the "streaming video" website KINO.TO is the biggest problem as the origin downloads of films and television series with German dubbing. Apparently the KINO.TO server is located in Russia; the internet service provider (ISP) is unknown, and VAP assumes that the site's "masterminds" are in Germany. Since the domain registration authority for Tonga refuses to provide data about the domain name holders, film right holders have no leverage against the site.

4. (U) [REDACTED] argued the governments should press ISPs to be more cooperative in cases of alleged copyright infringement and to carry out aggressive campaigns against illegal downloads. It was regrettable that illegal downloads are still viewed as a "peccadillo" rather than a true crime. [REDACTED] portrayed the verdict against the "Pirate Bay" activists in Sweden as a model and praised new French anti-piracy legislation. [REDACTED] noted though that Internet platforms can sometimes promote sales (if consumers like downloaded content, they often buy the DVD or go to a cinema.

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5. (U) With regard to pirated disks, VAP representatives said that the laboratories for optical disks sold in Austria are mostly located in the Czech Republic and operated there by Vietnamese immigrants. The police often carry out raids at the Czech-Austrian border and in illegal warehouses in Vienna (even using sniffer dogs) but they are only able to catch "smalltime sellers" -- mostly Chinese. Those caught tend to have strong "clan ties" and never cooperate with police to send their bosses (who ultimately profit) to jail. Our interlocutors are aware that the Czech Republic is on the U.S. Special 301 Watch List and say that nothing has improved there in recent years. VAP representatives expressed frustration that Austrian authorities can do little to stop the inflow, since the Czech Republic belongs to the Schengen area and EU single market.

6. (U) The enforcement of Austrian copyright law is in line with "satisfactory" EU directives in this field, but has problems in practice according to [REDACTED] praised the Austrian system of "private prosecution" in copyright cases (criminal proceedings can be initiated by individuals or private organizations), he sees three serious problems in pursuing police investigations where prosecution is privately initiated:

- the police cannot investigate against unknown perpetrators (only named persons/organizations);
- it is practically impossible to execute search warrants in private cases, since defendants must be notified in advance (unlike in investigations initiated by prosecutors/police);
- in most private cases, police are not entitled to seize pirated copies in private houses, nor to clarify identities.

In some private IPR enforcement cases, police have been accused of breaching the rights of defendants. [REDACTED] opined that these

B6

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Page 2 of 3

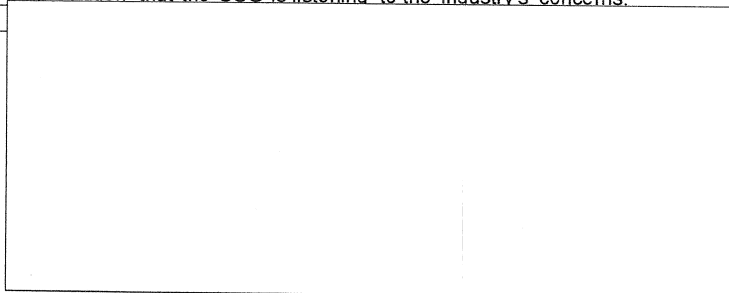
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Page 3 of 3

B6

problems could be addressed by introducing slight changes to the Austrian Code of Criminal Procedure — or perhaps even through a different interpretation of current laws by the Ministry of the Interior.

7. (SBU) COMMENT: Austria's anti-film-piracy representatives express appreciation that the USG is listening to the industry's concerns.



HOH

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Info: WASHDC, USDOC, *ROUTINE* ; DEPT OF HOMELAND SECURITY CENTER WASHINGTON DC, *ROUTINE* ;
US CUSTOMS AND BORDER PROTECTION WASHINGTON DC, *ROUTINE* ; PRAGUE, AMEMBASSY, *ROUTINE* ;
BERLIN, AMEMBASSY, *ROUTINE* ; MOSCOW, AMEMBASSY, *ROUTINE*

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Page 3 of 3

UNCLASSIFIED U.S. Department of State Case No. F-2014-23140 Doc No. C06021375 Date: 07/05/2017

ACTION EEB-00

RELEASE IN PART B6

INFO LOG-00 AF-00 AID-00 AMAD-00 CIAE-00 COME-00 INL-00
DNI-00 DODE-00 DOTE-00 DS-00 EUR-00 E-00 FAAE-00
UTED-00 VCI-00 DIAS-00 H-00 TEDE-00 INR-00 IO-00
JUSE-00 LAB-01 LOC-01 L-00 ARMY-00 MOFM-00 MOF-00
VCIE-00 NSAE-00 NSCE-00 OES-00 NIMA-00 EPAU-00 GIWI-00
MA-00 SP-00 IRM-00 SSO-00 SS-00 STR-00 TRSE-00
NCTC-00 CRYE-00 FMP-00 CBP-00 EPAE-00 DSCC-00 PRM-00
DRL-00 NFAT-00 SAS-00 FA-00 SWCI-00 PESU-00 SEEE-00
SANA-00 /002W

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P 241231Z NOV 09
FM AMEMBASSY STOCKHOLM
TO SECSTATE WASHDC PRIORITY 4936
INFO EUROPEAN POLITICAL COLLECTIVE PRIORITY

UNCLAS STOCKHOLM 000736

REVIEW AUTHORITY: Clarke Ellis,
Senior Reviewer

STATE FOR JOELLEN URBAN

STATE PASS TO USTR FOR DAVID WEINER AND KIRA ALVAREZ

SIPDIS

E.O. 12958: N/A

TAGS: KIPR, EINT, ETRD, ECON, PGOV, SW

SUBJECT: CONCERNS ABOUT ACTA NEGOTIATIONS AND IPR UPDATE: IPRED,
PIRATE BAY, AND VODDLER

Ref: A) STOCKHOLM 733, B) STOCKHOLM 676

1. (SBU) Summary: Swedish media and the usual blogger-circles have expressed similar concerns about the on-going ACTA (Anti-Counterfeiting Trade Agreement) negotiations as we have seen in many other countries, mostly focusing on the secrecy and the internet chapter with its reported demands for graduated response systems. As the Swedish Justice Ministry has negotiating for the EU during the second half of this year, this has led to domestic criticism of the government. Media reporting has forced the Swedish Government to go public saying that Sweden will not agree to ACTA provisions requiring revised Swedish laws. Meanwhile, The Pirate Bay website, no longer based in Sweden, is moving towards complying with its court injunction by removing its tracker. An identical tracker shortly thereafter appeared on another site. We are now beginning to hear criticism that the IPRED (Intellectual Property Rights Enforcement Directive) legislation makes investigating and solving crimes more difficult in Sweden as Internet Service Providers tend to destroy their records as soon as legally possible. And, some good news: There has been an overwhelming positive response to the Voddler launch. End summary.

ACTA

2. (SBU) Post contacted [REDACTED]

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told us that the secrecy issue has been very damaging to the negotiating climate in Sweden. All political parties have vocal minorities challenging the steps the government has taken to step up its IPR enforcement. For those groups, the refusal to make ACTA documents public has been an excellent political tool around which to build speculation about the political intent behind the negotiations. If the instrument for example had been negotiated within the World Intellectual Property Organization (WIPO) critics say, WIPO's Secretariat would have made public initial draft proposals.

3. (SBU) In [] opinion, the secrecy around the negotiations has led to that the legitimacy of the whole process being questioned. This, combined with the leaked European Commission document summarizing an oral account of the U.S. internet chapter proposal, forced Justice Ministry State Secretary Magnus Graner to go public earlier this month to appease the storm of critics by assuring them that the Swedish government will not agree to any ACTA provision that would require changes to current Swedish laws.

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4. (SBU) [] said that in his opinion, there is strong support within the negotiating group for the position that a negotiated text coming out of the ACTA discussions must be made public while there is still scope to influence the final outcome. He further told us that the European Commission is concerned that the USG has close consultation with U.S. industry, while the EU does not have the same possibility to share the content under discussion in the negotiations.

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5. (SBU) EU Member states' representatives will meet around November 25-26 to further discuss the U.S. internet chapter proposal, and to coordinate its position going forward. []

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[] told us he hopes the negotiations might be concluded during 2010, maybe during the second half of the year. He said that we need to get to a point soon where we start separating out linguistic differences from the principal issues that need to be negotiated. Thus far, the negotiations have not been effective at separating out the core issues.

IPRED legislation

6. (U) Swedish Police Enforcement officials are complaining that implementation of the IPRED has made it more difficult to solve crimes. Swedish Internet Service Providers are saving user information related to IP-numbers for a shorter period of time following the IPRED legislation.

7. (U) Also, as previously reported (Ref A) the IPRED legislation might be doing little to stop the problem of illegal file-sharing as internet users now are using services which allow them to hide their IP-addresses.

IPR-issues discussed in Swedish Parliament

8. (U) U.S. Professor Lawrence Lessing lectured at the Swedish Parliament on November 18. Following the discussion he told Swedish media he hopes to shift the focus from illegal file-sharing to means of enabling "remix and creativity." Lessing maintains that it is important to both compensate right-holders, but also allow remix of certain intellectual property without compensation.

Pirate Bay tracker removed

9. (U) The Pirate Bay has removed its tracker, to comply with a previous court injunction delivered in October. According to one of the founders of The Pirate Bay, the tracker is not needed for the website to function. Monique Wadsted, legal representative of the U.S. movie industry, says that the removal is not enough for The Pirate Bay to be in compliance with the USD 72,000 injunction.

10. (U) The founders of The Pirate Bay have appealed the injunction on grounds that the Stockholm District Court lacks jurisdiction because the Pirate Bay founders no longer live in Sweden. Moreover, the founders oppose the decision, arguing that they no longer have control over the website, which is located outside Sweden as well.

11. (U) Following removal of the tracker from The Pirate Bay's website, an identical tracker surfaced on a Swedish website. Monique Wadsted, representing the U.S. movie industry, on November 18 filed a claim in court, asking ISP Portlane to shut off bandwidth to the tracker which allows for file-sharers to connect with each other.

Swedes excited over Voddler launch

12. (U) The new service Voddler for legally watching movies over the internet for free has attracted more than a quarter of a million Swedes since its launch two weeks ago (Ref B). In addition to signing up tens of thousands of subscribers in a matter of days, Voddler recently inked licensing deals with two major Hollywood studios, Walt Disney Company and Paramount, giving its users access to thousands of film titles.

13. (U) Founded in Stockholm in 2005, Voddler offers users legal streaming on-demand videos free of charge. When it released a beta version of its technology in July 2009, the service attracted 16,000 users on the first day. As previously reported, Voddler launched an updated version of the service in late October, inviting customers of Swedish ISP Bredbandsbolaget to sign up.

14. (U) Voddler's executive vice president Zoran Slav calls "the launch very, very successful, both in terms of how the service has been received in the press and in terms of the response from the public". He said Voddler now has 70,000 registered users, as well as a waiting-list of more than 200,000 people who have requested an invitation to join the service. "We're adding about 3,000 users a day," Slav said. Voddler is not the only company in Sweden offering legal streaming of movies over the internet, however, they are the

only entertainment service provider that offers access to movies for free.

15. (U) Voddler's service is currently only available in Sweden. Voddler plans to expand service to Norway, Denmark, and Finland in 2010. According to the executive vice president, Voddler is looking to bigger markets in other parts of Europe and North America -- however, the company is taking a measured approach to its expansion plans. Voddler also recently launched a version of its service for Mac users, and Slavic said that an iPhone application is in the works.

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Page 1 of 6

From: svcsmartmfi

Sent: 12/2/2009 7:05:12 AM

To: SMART Core

Subject: MADRID IPR CONFERENCE: GOS MOVES TOWARDS ANTI-INTERNET PIRACY MEASURES

RELEASE IN PART B6

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Sensitive

REVIEW AUTHORITY: Clarke Ellis, Senior
Reviewer

MRN: 09 MADRID 1152
Date/DTG: Dec 02, 2009 / 021200Z DEC 09
From: AMEMBASSY MADRID
Action: WASHDC, SECSTATE ROUTINE
E.O.: 12958
TAGS: KIPR, ETRD, ECPS, SP
Captions: SENSITIVE, SIPDIS
Sensitivity: Sensitive
Reference: A. MADRID 1137 B. MADRID 1096 C. MADRID 1075 D. MADRID 1052 E. MADRID 982
Pass Line: STATE FOR EUR/WE AND EEB/TPP/IPE
STATE PASS USTR FOR D.WEINER AND J.GROVES
STATE PASS U.S. COPYRIGHT OFFICE FOR M.WOODS AND M.PALLANTE
COMMERCE FOR 4212/DON CALVERT
COMMERCE ALSO FOR USPTO
Subject: MADRID IPR CONFERENCE: GOS MOVES TOWARDS ANTI-INTERNET PIRACY MEASURES

UNCLAS MADRID 001152

SENSITIVE
SIPDIS

STATE FOR EUR/WE AND EEB/TPP/IPE
STATE PASS USTR FOR D.WEINER AND J.GROVES
STATE PASS U.S. COPYRIGHT OFFICE FOR M.WOODS AND M.PALLANTE
COMMERCE FOR 4212/DON CALVERT
COMMERCE ALSO FOR USPTO

E.O. 12958: N/A
TAGS: KIPR, ETRD, ECPS, SP
SUBJECT: MADRID IPR CONFERENCE: GOS MOVES TOWARDS
ANTI-INTERNET PIRACY MEASURES

REF: A. MADRID 1137
B. MADRID 1096
C. MADRID 1075
D. MADRID 1052
E. MADRID 982

SUMMARY

CLASSIFICATION: UNCLASSIFIED

Page 1 of 6

UNCLASSIFIED U.S. Department of State Case No. F-2014-23140 Doc No. C06021377 Date: 07/05/2017

CLASSIFICATION: UNCLASSIFIED

Page 2 of 6

1. (U) As part of FICOD 2009 (see ref A), on November 18 the Spanish government hosted a Conference on IPR in the Digital Environment. The Conference featured several speeches and a series of roundtables on different aspects of online IPR protection. Michele Woods of the U.S. Copyright Office was a panelist in a roundtable on policies and legislative measures. MPAA CEO Dan Glickman delivered remarks outlining the rights-holders' point of view. The Conference was informative, with high-quality presentations. The roundtable discussions helped shed light on efforts underway in various countries to address the problem of Internet piracy; the Conference was thus particularly timely as the GOS is expected to unveil a series of measures to combat piracy-promoting websites by the end of the year.

2. (SBU) MPAA CEO Glickman told the Charge that his meetings with [redacted] Ministers most responsible for combating Internet piracy were encouraging. [redacted]

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[redacted] told Glickman unambiguously that the Inter-Ministerial Commission's recommendations will include an administrative course of action to block or take down pirate websites. MITYC had heretofore been believed to oppose such an approach, and [redacted] embrace of it may be a sign that the GOS is preparing to implement measures with teeth, though not as much as rights-holders would like to see. End Summary.

3. (U) MITYC's Secretariat of State for Telecommunications and the Information Society (SETSI) organized the conference as part of the third annual FICOD. It opened with an address by Paul Brown, Vice-President of Spotify, a free, legal online music service that has recently become available in Spain and that was also featured recently in Economist articles about successes in reducing online music piracy. Spotify is supported by advertising revenue or, for those who wish to avoid the ads, paid subscriptions. The increased prevalence of legitimate vehicles for making content available, and the need for much more legal content online as a means of reducing the temptation to pirate, were major recurring themes of the conference.

LEGISLATIVE ISSUES

4. (U) The roundtable on policies and legislative measures included government officials from the U.S., the UK, Germany, Sweden, and France, and a WIPO representative. Michele Woods, Senior Counsel for Policy and International Affairs at the U.S. Copyright Office, discussed the Google Books case, its Revised Settlement Agreement, and implications for orphan works. Steve Rowan of the UK Intellectual Property Office (IPO), reported on recent developments in that country, including new draft legislation adopting a "three strikes" approach, which involves cutting Internet service to those who repeatedly download illegally. Representatives of the German and Swiss Justice Ministries addressed various enforcement issues, including implementation of the EU Enforcement Directive and prosecution of the Pirate Bay principals. A French Culture Ministry official updated the audience on the HADOPI law, which after many setbacks is to take effect at the beginning of the year with the promulgation of implementing regulations. It is evident that in the United States and many European countries, there is a great deal of activity taking place on a variety of fronts.

CLASSIFICATION: UNCLASSIFIED

Page 2 of 6

CLASSIFICATION: UNCLASSIFIED

Page 3 of 6

APPROACHES TO COMBATING ONLINE PIRACY

5. (U) The roundtable on The Fight Against IPR-Infringing Activities on the Internet was moderated by Guillermo Corral, Director General for Policy and Cultural Industries at the Ministry of Culture, who spoke about GOS efforts to encourage negotiations between the Coalition of Creators and Content Industries and the Internet Service Providers' (ISP) association (Redtel). He also alluded to the Inter-Ministerial Commission formed October 9 (ref D) to make

recommendations to the government. The first panelist, Aldo Olcese, spoke of changes that have taken place in his first year as president of the Coalition, which previously consisted of copyright management entities and various film and music producers and distributors and audiovisual groups. The Spanish Association of Video Game Publishers and Distributors (aDeSe) joined the Coalition in January, and Spain's major book publishing industry association joined later in the year. Awareness on the part of the government and the general public has grown, Olcese said, and the content providers don't feel as isolated as they did before. He characterized continuing efforts to finalize an agreement between the Coalition and Redtel as "difficult" and predicted that such an agreement will only be realized "at the last minute."

6. (U) Olcese outlined what he called the "Spanish model" for combating piracy, a model which he characterized as "more democratic" than the approach in other countries, as it seeks to reduce online availability of pirated material while leaving the end user alone. The Spanish model is focused on the producers and distributors of pirated content, the pirates' "supermarket." Per ref D, on October 19 the Coalition delivered a list of 200 alleged commercial-scale pirate websites to the MITYC to be passed to the Prosecutor General's Office (Fiscalia) for investigation and prosecution, and also urged MITYC to take independent action against the sites. (Comment: It remains unclear what authority MITYC may have beyond the ability to levy modest fines, nor are we aware whether the any GOS entity is contemplating action against any of the listed websites. End Comment.) At the same time, the Coalition has been actively developing a "business model" approach and plans to launch a "macro website" to help users in Spain gain access to legal content online so that they will be less inclined to download it without authorization. Both MITYC and the Ministry of Culture have expressed the intention to provide financial support to the macroweb. Olcese noted that identifying the right mix of incentives and sanctions to deter Internet piracy is still a matter of trial and error; nobody knows which model will work best.

7. (U) Maria Teresa Arcos, Executive Director for ISP association Redtel, hailed the creation of the Inter-Ministerial Commission and said the ISPs seek the continued growth of a legal online market and an end to the dichotomy between technology and culture. She also cited the European Parliament's recent approval of the telecom package" and the importance of finding a balance between competing rights. While acknowledging the importance of dissuasive measures, Arcos focused on the need for attractive legal

CLASSIFICATION: UNCLASSIFIED

Page 3 of 6

CLASSIFICATION: UNCLASSIFIED

Page 4 of 6

offer with flexible prices and said Redtel looks forward to the launching of the Coalition's macroweb.

8. (U) Jesus Rubi of the Spanish Data Protection Agency (AEPD) stated that data protection is not inimical to intellectual property protection. He noted, however, that under Spanish law, Internet Protocol addresses and their association with individual users are personal data and thus protected from disclosure in most circumstances. Under the European Court of Justice's January 2008 ruling in *Promusicae v. Telefonica*, ISPs are not required to disclose users' identities in civil litigation, and governments are not obliged to compel them to do so. Governments are only required to seek a balance between privacy and property rights. Rubi noted that the Congressional Sub-committee on Intellectual Property had recently sent a questionnaire to AEPD, which had replied by suggesting several points to be taken into account if Congress wishes to consider amending existing legislation.

RIGHTS-HOLDERS' CONCERNS

9. (U) Juan Junquera, Chief of Staff to Secretary of State for Telecommunications and the Information Society Francisco Ros, moderated the panel on the rights-holders' point of view. Olivia Regnier of the International Federation of Phonographic Industries (IFPI) cited figures showing that 95 percent of peer-to-peer (P2P) downloads of music are unauthorized and thus illegal. She also pointed to figures showing a steady decline in traditional music sales in Spain since 2001 and said called for more cooperation on the part

of ISPs in combating illicit downloads.

10. (U) Dan Glickman, Chairman and CEO of the Motion Picture Association of America (MPAA), referred to President Zapatero's October 21 speech to the American Business Council (ref D) in which he outlined the concerns of both the USG and the GOS over IPR protection in Spain. Calling piracy a "dagger through the heart" of creators, Glickman noted that great quality works of art require both a conduit and an artist. The Internet can be a powerful tool for the dissemination of culture but also poses unique challenges for which there is no magic solution. Voluntary agreements with ISPs are welcome but are not enough in themselves; government has a necessary role to play. The digital environment will continue to grow as a medium for cultural transmission, but the physical environment should not be overlooked. The notion of "free content," while seductive to some, is an invitation to anarchy. Legal online offers of content will not work unless they are well-implemented within an adequate legal infrastructure. Glickman stressed the importance of a constructive, balanced solution and said MPAA looks forward to the GOS announcement of concrete measures by year's end.

11. (U) Antonio Guisasola of the Music Producers of Spain (Promusicae), in an oblique reference to State Secretary Ros's characterization (ref E) of Spain's Internet piracy problem as an "urban legend," sought to dispel two urban legends of his own. The first is that the music industry wants to do away with the Internet; the second is that a lack of legal online alternatives is the reason piracy flourishes

CLASSIFICATION: UNCLASSIFIED

Page 4 of 6

CLASSIFICATION: UNCLASSIFIED

Page 5 of 6

in Spain. There are, he said, 370 legal music services in Europe, with more appearing all the time. Consumers are able to choose from among a range of options and are increasingly getting better deals. Guisasola announced the launch of Promusicae's own portal, www.elportaldemusica.es, to link Spanish users to prominent legal sites. But legal offer, he said, is not enough. He cited a Jupiter Research Study showing that 32% of users in Spain frequently use P2P facilities, compared to an average of 15% for Europe. Of those, 52% say that free downloading has reduced their purchases of original music. Also, only 32% of Spaniards surveyed said they thought P2P activity was illegal, compared to 64% in France, 79% in Germany, and 70% in Europe as a whole. Guisasola said more cooperation is needed from ISPs, and there must be a credible risk of real punishment to deter wrongdoers. Carrots can help, but sticks are needed as well. Responding to Junquera's reminder that P2P is not illegal per se, but is a technology that can be put to legal or illegal uses, Guisasola countered that almost all P2P downloads of music are illegal.

12. (U) During the question-and-answer period, one questioner asked whether the Inter-Ministerial Commission will recommend dissuasive action only against websites that house infringing material, or also against P2P portals. Junquera replied that the GOS is constrained from going after P2P activity by the basic Constitutional principle protecting private communications from government interference. IFPL's Olivia Regnier demurred, pointing out that P2P activity is a form of public, not private, communication. Junquera, however, reiterated that the focus of GOS enforcement efforts will be on websites that host or provide links to infringing content. He also sought to clarify State Secretary Ros's "urban legend" remark, which has been much-criticized by content providers. The GOS, he said, does not deny that Internet piracy is a serious problem in Spain, deserving of government attention. The GOS does, however, take issue with assertions that Spain has significantly higher rates of Internet piracy than its European neighbors, and that it is among the worst in the world in this regard.

13. (U) The Conference included one final roundtable, on implications for IPR of online social networks, and a speech by Duke University Law Professor James Boyle.

COMMENT

14. (SBU) Though 2009 has been a frustrating year for right-holders, there is a good chance it will end on a positive note. In a meeting with Charge, MPAA CEO Dan Glickman expressed satisfaction with his meetings with

[redacted] he said, was quite forthright and specific about the Commission's work: It will deliver its recommendations by year's end; these will include amending the law to give government more tools to combat piracy; and one component will be "an administrative course of action" to block offending websites. According to various sources, [redacted] and was present at his meeting with Glickman) and his staffers had been opposing such an administrative remedy in the Commission's discussions

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Page 5 of 6

(refs B-C), but have apparently been brought around by the other Ministries represented. Rights-holders, however, remain concerned that the government may implement only half-measures. Promusicae staged a demonstration in front of MITYC on December 1 and presented Minister Sebastian with a petition signed by 2,500 music professionals calling on the government to take "valiant measures, as the French and British governments have already done, to protect their culture and jobs." End Comment.
CHACON

Signature: CHACON

Info: BARCELONA, AMCONSUL ROUTINE ; NSC WASHDC ROUTINE ;
DEPT OF COMMERCE WASHDC ROUTINE ; EU MEMBER STATES COLLECTIVE ROUTINE

Attachments: metadata.dat

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Page 1 of 5

From: svcsmartmfi
 Sent: 3/1/2010 11:55:17 AM
 To: SMART Core
 Subject: SPECIAL 301 ITALY INPUT: [REDACTED]

RELEASE IN PART B1,B5,1.4(D)

UNCLASSIFIED
 Sensitive

B5



MRN: 10 ROME 224
 Date/DTG: Mar 01, 2010 / 011651Z MAR 10
 From: AMEMBASSY ROME
 Action: WASHDC, SECSTATE ROUTINE
 E.O.: 12958
 TAGS: ETRD, KIPR, ECON, EINT, IT
 Captions: SENSITIVE, SIPDIS
 Sensitivity: Sensitive
 Reference: STATE 3361
 Pass Line: STATE PLEASE PASS TO USTR FOR JENNIFER CHOE GROVES, ERIN
 MCCONAHA AND CHRISTOPHER WILSON
 STATE PLEASE PASS TO EEB/TPP/IPE FOR THOMAS O'KEEFE,
 JOELLEN URBAN
 DEPT OF COMMERCE FOR SUSAN WILSON
 DHS PLEASE PASS TO ICE
 Subject: SPECIAL 301 ITALY INPUT [REDACTED]

Classified by Director A/GIS/IPS, DoS on
 06/09/2017 ~ Class: UNCLASSIFIED ~ Reason:
 1.4(D), B1 ~ Declassify on: 03/01/2030

B5

UNCLAS ROME 000224

SENSITIVE
 SIPDIS

STATE PLEASE PASS TO USTR FOR JENNIFER CHOE GROVES, ERIN
 MCCONAHA AND CHRISTOPHER WILSON
 STATE PLEASE PASS TO EEB/TPP/IPE FOR THOMAS O'KEEFE,
 JOELLEN URBAN
 DEPT OF COMMERCE FOR SUSAN WILSON
 DHS PLEASE PASS TO ICE

REVIEW AUTHORITY: Clarke Ellis,
 Senior Reviewer

E.O. 12958: N/A
 TAGS: ETRD, KIPR, ECON, EINT, IT
 SUBJECT: SPECIAL 301 ITALY INPUT: [REDACTED]

B5

REF: STATE 3361

1. (SBU) Summary: Italy has been cooperative on IPR issues
 in international fora and has adequate IPR laws, but problems
 with enforcement and lack of action on Internet piracy mean
 U.S. IP losses in Italy are still far too high. Despite
 indications in early 2009 of a renewed executive branch

CLASSIFICATION: UNCLASSIFIED
 Page 1 of 5

UNCLASSIFIED U.S. Department of State Case No. F-2014-23140 Doc No. C06021388 Date: 07/05/2017

CLASSIFICATION: UNCLASSIFIED

Page 2 of 5

determination to tackle IPR issues, many of the initiatives fell short and little progress was seen. Key problems remain a lack of "notice and take down" procedures and a failure to strike a balance between privacy concerns and the protection of IPR.

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End Summary.

Overview of IPR in Italy

2. (SBU) Italy has adequate IPR laws in place, but relatively few IPR cases are brought to trial. Judges still regard IPR violations (particularly copyright violations) as petty offenses, and the magistracy can be said to be the weak link in combating IPR theft in Italy. (One notable exception is the Pirate Bay case, discussed in paragraph 5.) The Italian Finance Police (GDF) and Italy's Customs police (Dogana) are active and skilled investigators, but they are frustrated by the fact that few cases reach final sentencing. Historically there has been a reluctance by judicial officials to impose deterrent penalties, however a new bill approved in 2009 increased penalties for counterfeiting and piracy. Though some judges are still reluctant to view IP infringement as a serious crime, the GOI has made IP instruction part of the regular training that all judges must receive, and some high ranking members of the judiciary have publicly supported the view that IPR crimes should be treated seriously.

3. (U) Historically, the Italian government viewed trademark infringement more seriously than crimes against copyright and focused on getting illegal vendors off the streets. GOI officials assert that their focus has shifted to distributors, rather than vendors. While copyright theft is moving increasingly online, Italy remains a significant market for optical media piracy. Prosecutors in southern Italy say the sale of counterfeit items, including CDs, DVDs, software, and clothing funds Mafia groups (especially the Neapolitan Camorra) and they see combating counterfeiting as a part of the fight against organized crime. They also say that these counterfeit distribution networks are large and sophisticated, with branches in other European countries and networks spreading to Australia and the United States.

4. (U) Prior to last year's 301 Report, a new GOI IP directorate was formed, with responsibility for coordination of domestic IPR protection efforts. In addition, an interministerial committee was formed to tackle the problem of Internet piracy. While the new IP Director is energetic and focused, the thrust of that office's efforts remains patent and trademark protection, and no additional progress has been made on copyright protection. In addition, there have been no results from the interministerial committee.

Examples of additional IPR Enforcement Action

CLASSIFICATION: UNCLASSIFIED

Page 2 of 5

UNCLASSIFIED U.S. Department of State Case No. F-2014-23140 Doc No. C06021388 Date: 07/05/2017

CLASSIFICATION: UNCLASSIFIED

Page 3 of 5

5. (U) One notable success in IPR protection in Italy has been the blocking of The Pirate Bay, a Sweden-based file-sharing Web site. In 2008 an Italian judge ordered Italian Internet Service Providers to block the site, but another court decision found the blocking of the site illegal. In late 2009, the Italian Supreme Court ruled that blocking of illegal file-sharing sites such as The Pirate Bay is legal, and the GDF has notified ISPs that The Pirate Bay should be blocked. The decision is seen as a major victory

in combating Internet piracy in Italy.

6. (U) The prosecutor's office of Milan recently decided to create a group of prosecutors specializing in IPR crimes. The prosecutors will have a squad of police officers to work with them and will focus on audiovisual piracy and industrial counterfeiting as well as other IPR violations. They intend to look at a range of offenders, from producers to street vendors.

7. (U) On December 22, police arrested 26 people, including two Customs officers, in a crackdown on organized crime ('Ndrangheta) activities at the port of Gioia Tauro in southern Calabria. Gioia Tauro – Europe's busiest transshipment port and the continent's fourth-largest container port – was being used to import enormous quantities of Chinese-made counterfeit goods (among them fake Nike sneakers). This case is an example of the ongoing cooperation between Italian and Chinese organized crime groups, with the involvement of corrupt port officials. Some 50 million euros worth of assets were seized; in addition to the forged products, police confiscated a five-star hotel near Rome that some of the detainees had bought as part of a money-laundering investment.

Struggles Over Copyright Protection

8. (U) Italy's lack of established notice and takedown procedures is a continuing roadblock in the fight against Internet piracy. IP industry representatives say they seek cooperation with ISPs to establish a system, but ISPs are reluctant, and IP industry contacts say that such collaboration is unlikely unless the government steps in to mediate.

9. (U) In 2009, a Rome judge ruled against YouTube and Google Video for allowing clips of the program "Big Brother" on the site. The judge ordered the removal of all such images because they are copyrighted material not owned by Google. While IP industries have applauded the ruling, others are concerned that this confers liability to Internet hosting sites for content uploaded by viewers. Hosting sites have generally not been held liable for such content, and protection of copyrighted material on these sites is usually handled with notice and takedown procedures or through collaboration between the rights holder and the site.

10. (U) Italian Data Privacy Authority rulings continue to prevent IP rights holders from monitoring peer-to-peer networks. FAPAV, the Italian Film Anti-Piracy Federation, recently filed a lawsuit against Telecom Italia in an attempt to force cooperation in preventing illegal downloading.

CLASSIFICATION: UNCLASSIFIED

Page 3 of 5

CLASSIFICATION: UNCLASSIFIED

Page 4 of 5

Rights owners have long claimed that service providers should communicate information on illegal downloading to the judiciary and that, in addition, they should block peer-to-peer sites, where files are shared illegally, and send out notices to users who are illegally up/downloading. Service providers have claimed that EU directives and Italian Privacy laws prevent them from performing this activity. Italy's Privacy Authority agrees and has de facto set the legislative interpretation on this matter so far. This interpretation of the law has been repeatedly disputed by rights holders. A judge is considering the case, but there is no decision yet.

 Interministerial Committee Goes Nowhere

11. (SBU) In early 2009, the GOI created an interministerial committee tasked with coming up with a workable action plan for tackling on-line piracy. Committee hearings were held in the spring, but the committee has been largely dormant since that time and has not produced any plan. [REDACTED]

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 An IPR Advocate in International Fora

12. (U) Italy is an active ally in IPR protection in international fora. Italy is active in World Intellectual Property Organization (WIPO) and has been supportive of the Innovation Agenda in the Heiligendam process. As host of the G8 in 2009, Italy led the drafting of an IPR protection statement coming out of the Intellectual Property Experts Group.

 Additional Responses to Reftel A Points

13. (SBU) Enforcement Statistics: The lack of coordinated enforcement statistics is still a problem in Italy. Each enforcement agency keeps its own data, and cases that pass from one agency to another may even be counted twice. In addition, there is very limited information available concerning judicial action related to IPR enforcement. The IP Directorate tells post they are working on this issue, but Post has not yet seen any results. GOI contacts assert that Italian customs enforcement is particularly strong and that 25% of EU seizures of counterfeit goods happen in Italy, but agree that the fragmented nature of data collection in Italy prevents them from providing comprehensive data on enforcement. (Of course, the high seizure rate may simply be a function of a high level of IP criminal activity.)

14. (U) Use/Procurement of Government Software: National government offices contain mostly legal software, though problems still exist at the local and regional level. In 2009, a major municipality in Italy came to an agreement with Microsoft and is in the process of moving to fully-licensed software.

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Page 4 of 5

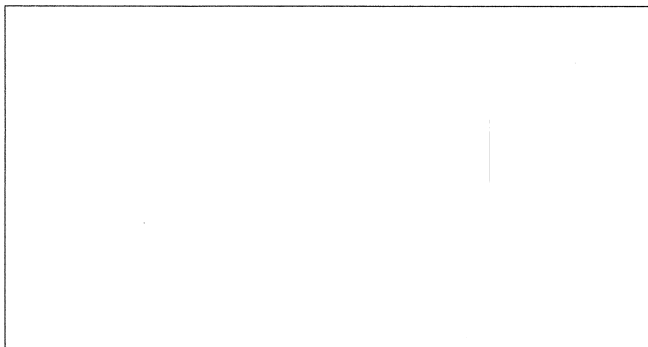
CLASSIFICATION: UNCLASSIFIED

Page 5 of 5

15. (U) Treaties and TRIPS: As an EU member, Italy was included in the EU's ratification this year of the WIPO Copyright Treaty and the Performances and Phonograms Treaty. Italy's de jure IPR regime is compliant with the TRIPS agreement.

Continued Mission Efforts

16. (U) Officers at the Embassy and Consulates continue to meet regularly with government officials to push for policy changes that will improve IPR protection, as well as with members of the investigative services and representatives of IP industries. The Intellectual Property Directorate has expressed interest in collaboration with the USG on some long-term IPR protection projects and on exchange of information and best practices. Post is working with the office of the United States Trade Representative and with the United States Patent and Trademark Office to explore possibilities for this collaboration.



B5

THORNE

Signature: THORNE

Info: FLORENCE, AMCONSUL *ROUTINE* ; MILAN, AMCONSUL *ROUTINE* ; NAPLES, AMCONSUL *ROUTINE* ; DEPT OF HOMELAND SECURITY WASHINGTON DC *ROUTINE* ;
DEPT OF COMMERCE WASHDC *ROUTINE*

Attachments: metadata.dat

Dissemination Rule: Archive Copy

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Page 5 of 5

UNCLASSIFIED U.S. Department of State Case No. F-2014-23140 Doc No. C06021388 Date: 07/05/2017

CLASSIFICATION: UNCLASSIFIED

Page 1 of 6

From: svcsmartmfi
 Sent: 3/1/2010 7:36:04 AM
 To: SMART Core
 Subject: SPECIAL 301 SWEDEN INPUT

RELEASE IN PART B5,B6

UNCLASSIFIED

Sensitive



REVIEW AUTHORITY: Clarke Ellis,
 Senior Reviewer

MRN: 10 STOCKHOLM 94
 Date/DTG: Mar 01, 2010 / 011028Z MAR 10
 From: AMEMBASSY STOCKHOLM
 Action: WASHDC, SECSTATE IMMEDIATE
 E.O.: 12958
 TAGS: KIPR, ECON, ETRD, PGOV, SW
 Captions: SENSITIVE, SIPDIS
 Sensitivity: Sensitive
 Reference: STATE 3361
 Pass Line: STATE FOR EEB/TPP/IPE:TIMOTHY R MCGOWAN
 STATE PLEASE PASS TO USTR FOR JENNIFER CHOE GROVES
 Subject: SPECIAL 301 SWEDEN INPUT

UNCLAS STOCKHOLM 000094

STATE FOR EEB/TPP/IPE:TIMOTHY R MCGOWAN

STATE PLEASE PASS TO USTR FOR JENNIFER CHOE GROVES

SENSITIVE

SIPDIS

E.O. 12958: N/A

TAGS: KIPR, ECON, ETRD, PGOV, SW

SUBJECT: SPECIAL 301 SWEDEN INPUT

REF: STATE 3361

1. (SBU) Summary.

As a result of several measures to improve the IPR regime in Sweden, many which came into effect during the last 12 months, the International Intellectual Property Alliance (IIPA) did not call for a watch listing of Sweden this year. The Sports Coalition has requested Sweden be put on the watch list in 2010, arguing that some of the sites for live sports telecast piracy are located in Sweden. Post recommendation is based on:

– The progress made by the Government of Sweden over the last 12 months, which has strengthened the legislative framework by

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Page 1 of 6

UNCLASSIFIED U.S. Department of State Case No. F-2014-23140 Doc No. C06021390 Date: 07/05/2017

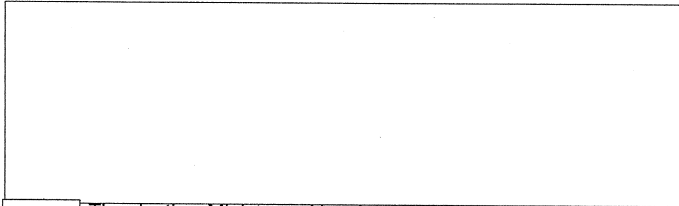
CLASSIFICATION: UNCLASSIFIED

Page 2 of 6

implementation of the EU Enforcement Directive (allowing for civil action by rights-holders); and strengthened the enforcement capabilities of police and prosecutors. As a result, all copyright-protected material is protected, and must not be made available to the public without the consent of the rights-holder. Rights-holders who have their copyrights infringed now have both penal code and civil code remedies at their disposal. On the enforcement side, the new organization with two specialist IPR-prosecutors with national competence and a national coordinator for IPR investigations at the Swedish Police, allows for better coordination and further signals the Government's desire to step up enforcement.

— The sensitive domestic politics the Swedish government must manage in order to step up internet piracy enforcement in Sweden. The government, with good intentions, struggles against a very negative media climate and vocal youth movement strongly opposed to government action against illegal file-sharing. For example, in large part due to the attention surrounding the Pirate Bay trial and IPRED law coming into effect, the newly-formed Pirate Party won two seats in the European Parliament. The Party received 7.1 percent of the vote in June 2009, which was quite embarrassing for the ruling Alliance government, and a stark reminder of the sentiments these issues stir up, particularly among young voters. Securing the youth vote is critical to securing a win in the September 19 General Elections this year. Given the rather unbalanced media climate regarding the file sharing issue, politicians would like to keep this issue off the election campaign as much as possible. Current opinion polls do not give the Pirate Party anywhere near the support they received in the European Parliamentary elections, but some unhelpful media coverage could quickly change that.

2. (SBU) This cable reviews the progress Sweden has made over the last year to step up its enforcement efforts. This has been, by far, the most active and successful year since our more intensive engagement with Sweden started in 2005. As two illustrations, our industry contacts tell us that many of the Bit Torrent sites that previously operated out of Sweden now have moved elsewhere. Also, they tell us that an informal phone call from them is now often enough to make someone remove pirated content from sites on the internet — in stark contrast to how they were received previously when they warned about infringements. Post continues to engage very constructively with the Swedish government, and has good access and a good working relationship with key senior and working level Swedish officials.



The Justice Ministry, with primary responsibility for this issue, is fully on board with improving enforcement and IPR protection, and well aware of what is at stake. It is currently battling with the Ministry of Enterprise, Energy, and Communication about the next appropriate steps to curb internet piracy, including how to involve ISP's in the effort. File sharing is also a divisive issue between the two major blocks in the upcoming general elections. The four parties in the ruling Alliance government all stand behind the IPRED legislation, and all three parties in the Social-democratic dominated Red-Green opposition have committed

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CLASSIFICATION: UNCLASSIFIED

Page 2 of 6

CLASSIFICATION: UNCLASSIFIED

Page 3 of 6

publicly to modify IPRED if voted into power.

End summary.

Background

4. (U) The Sports Coalition, in its yearly Special 301 submission to USTR, identified live sports telecast piracy, including the unauthorized live retransmission of sports telecasts over the internet, as a growing problem for its members (Major League Baseball, National Basketball Association, National Collegiate Athletic Association, National Football League, NHL Enterprises, the licensing arm of National Hockey League, and United States Tennis Association). Its submission references a hearing in the House of Representatives Committee on the Judiciary on December 16, 2009, as well as an OECD report, Piracy of Digital Content, and argues for the inclusion of a number of countries on the Priority Watch List (Israel, the Netherlands, and China) and four others on the Watch List (Sweden, Korea, India, and Russia).

5. (U) The Sports Coalition cover letter directs to an Appendix A, where a fuller explanation is to be given. However, the Appendix A text on Sweden merely reads, in full: "During 2009, services operating either in whole or in part in Sweden pirated a material number of Sports Coalition game and event telecasts, including atdhe.net. Recommendation: Watch List."

6. (U) The International Intellectual Property Alliance (IIPA) on the other hand, has not nominated Sweden for watch listing in 2010. This is contrary to its practices over the last several years -- a sure indication of an improved situation.

Implementation of IPRED

7. (U) Sweden's implementing legislation of EU's Enforcement Directive entered into force on April 1, 2009. The political sensitivities made the final handling of the bill very delicate for the Alliance government. Much of the debate and negotiations have been done in public, and there has been tremendous pressure put on individual Members of Parliament. The passage of the implementing legislation was therefore a significant, and difficult, accomplishment for the Swedish government.

8. (U) Immediately after the legislation had come into effect, there was a sharp decline in piracy rates in Sweden. Many BitTorrent tracker sites and DC-hubs moved away from Sweden, and legal alternatives such as Spotify, Film2Home, and Voddler generated a lot of interest. Over the months since the law came into effect, there have been diverging views as to the real effects on piracy rates, and pirates have developed tools to allow users to hide their IP-number. On the whole, however, it is clear that the law has had a rather dramatic effect on public awareness and that many "regular" users have moved to legal alternatives.

9. (U) The same day the IPRED law came into effect, five audiobook companies used the law to demand information about the identity behind an IP-number of an FTP-server that made more than 2,000 copyright-protected audiobooks available to the public. ISP Portlane objected to the demands, and the case is now moving through the courts. In the first instance, the audiobook companies won, but a divided appellate court over-threw the ruling later in the year. The audiobook companies have appealed to the Supreme Court, and the

CLASSIFICATION: UNCLASSIFIED

Page 3 of 6

CLASSIFICATION: UNCLASSIFIED

Page 4 of 6

court announced in January that it will hear the case. The Supreme Court only hears cases to set a legal precedence, and when there is a new legal angle to determine. As this is the first test of the IPRD-legislation to move up through the courts, it was fully expected that the Supreme Court would take the case.

Strengthened enforcement capabilities

10. (U) Both the music and the film industry have also started to test the new legislation, resulting in a number of cases moving up through the courts. Although both the music and film industry welcome the opportunity to file civil cases against infringers, they attribute more importance to other measures to strengthen Sweden's IPR regime. They attach particular importance to the new organization set up on the prosecutors' side, and the increase in investigative officials and coordination of efforts among the Police authorities.

11. (U) There are now two full-time specialist prosecutors, dedicated to IPR/copyright issues. They have national competence, and organizationally they belong to the International Prosecutors Chamber in Stockholm. As of the beginning of 2010, their work will be supported by a National Coordinator for the Swedish Police. Mr. Paul Pinter has assumed the position as the national coordinator. He will channel cases to dedicated investigative officials, three each in the Police authorities in Stockholm, Gothenburg, and Malmo.

Participation in USPTO workshop in Tallinn

12. (U) These extra resources puts Sweden in a better position to deal with reports from entities who have had their copyrights infringed. The prosecutors can also initiate their own cases. Post has established a good working relationship with the prosecutors and the National Coordinator. They will participate in a March 23-24 workshop in Tallinn, Estonia, hosted by the USPTO and Embassy Tallinn -- to share their experiences with other Nordic, Baltic, Russian, and U.S. counterparts.

Pirate Bay

13. (U) After the raid on Pirate Bay on May 31, 2006, the issue of internet piracy was fiercely debated in Sweden. Press coverage was largely, and still is, unfavorable to the positions taken by rights-holders and the USG. The Pirate Bay raid was portrayed as the Swedish government caving to USG pressure. The delicate situation made it difficult, if not counter-productive, for the Embassy to play a public role on IPR issues. Behind the scenes, the Embassy has worked well with all stakeholders. After 18 months of investigation, the prosecutor filed indictments against four individuals for contribution to copyright infringement because of their activities administrating the Pirate Bay bit torrent webpage. The district court in Stockholm announced its ruling on April 17, 2009, sentencing the four individuals to one year in prison each and to pay total damages of SEK 30 Million (USD 4.2 Million, very high by Swedish standards).

14. (U) The discussion came to center upon whether the judge was indeed impartial or if he, through membership of an organization supporting IPR, could be deemed to be partial. He was freed from all such allegations, and the court ruling itself was appealed by the defendants. The case is currently scheduled to be heard in the

CLASSIFICATION: UNCLASSIFIED

Page 4 of 6

CLASSIFICATION: UNCLASSIFIED

Page 5 of 6

appellate court in the September-October time-frame 2010. Regardless of the outcome, it is likely that the case will be appealed to the Supreme Court. It will thus take some time until we have a final determination about whether administering a site without any pirated content, but with BitTorrent files enabling users to get to copyright protected material, will be considered a crime.

Injunctive relief

15. (U) The Swedish provisions allowing for injunctive relief have been tried in court for the first time in the last twelve months. The cases came following the Pirate Bay ruling, and are a way for rights-holder organizations to test if ISP's can be ordered to shut off capacity for sites required for operations of the Pirate Bay and similar BitTorrent tracker sites. The district court issued an injunction against ISP Black Internet, resulting in the ISP turning off Pirate Bay's internet connection. Black Internet later appealed the ruling. This case is also being appealed through the courts. In a similar case, thirteen U.S. film producers filed to have ISP Portlane's customer Openbittorrent turned off. The district court ruled against the film producers, and this case is scheduled to be heard in the appellate court.

Piracy of live sports telecasts

16. (U) The issue of pirated live sports telecasts has started to get some attention in Sweden. One of the specialist prosecutors is representing television distributor Canal Digital in a case against an individual who made streamed webcasts of two ice hockey games available to the public on his site on the internet. The case is scheduled to be heard in the district court of Hudiksvall in northern Sweden on April 20, 2010.

17. (SBU) The same tools available to rights-holders in the case of music and film are also available to owners of sports productions; both using the penal code, working through police and prosecutors, as well as the civil route, through the IPRED-legislation. [redacted] told Post that television distributors and rights-owners in the live sports area have not been active in reporting cases for prosecution. He would welcome such reports.

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18. (SBU) Comment: After a very successful year, with many helpful steps on the way towards a better IPR climate in Sweden, [redacted]

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[redacted] There are several legal processes underway in Sweden, including one that will address the concerns expressed by the Sporting Coalition, the only entity which called for watch listing of Sweden this year.

19. (SBU) Comment continued: Sweden is now in full compliance with its international obligations. The government has strengthened enforcement capabilities. [redacted]

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Page 5 of 6

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Page 6 of 6

End comment.

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BARZUN

Signature: BARZUN

Info: EUROPEAN POLITICAL COLLECTIVE *ROUTINE*

Attachments: metadata.dat

Dissemination Rule: Archive Copy

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Sensitive

CLASSIFICATION: UNCLASSIFIED

Page 6 of 6

From: svcsmartmfi
Sent: 3/12/2010 9:33:14 AM
To: SMART Core
Subject: NETHERLANDS: SPECIAL 301 INPUT

RELEASE IN PART B5

UNCLASSIFIED
Sensitive



MRN: 10 THE HAGUE 159
Date/DTG: Mar 12, 2010 / 121434Z MAR 10
From: AMEMBASSY THE HAGUE
Action: WASHDC, SECSTATE ROUTINE
E.O.: 12958
TAGS: ECON, KIPR, ETRD, NL
Captions: SENSITIVE, SIPDIS
Sensitivity: Sensitive
Reference: A) STATE 3361 B) 09 THE HAGUE 598
Subject: NETHERLANDS: SPECIAL 301 INPUT

UNCLAS THE HAGUE 000159

SENSITIVE
SIPDIS

REVIEW AUTHORITY: Clarke Ellis,
Senior Reviewer

E.O. 12958: N/A
TAGS: ECON, KIPR, ETRD, NL
SUBJECT: NETHERLANDS: SPECIAL 301 INPUT

REF: A) STATE 3361 B) 09 THE HAGUE 598

1. (SBU) SUMMARY: [REDACTED]
[REDACTED] The Government of the Netherlands
(GONL) made significant progress in the past year in taking down
BitTorrent sites with illegal links to copyright material (ref B).
[REDACTED]
[REDACTED] END SUMMARY.

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PhRMA's Concerns

2. (SBU) The Government of the Netherlands (GONL) has historically pursued cost containment in its pharmaceutical policy through price capping, prescription restrictions, and other means. By 2005, however, the GONL realized its single-minded pursuit of cost containment stifled creativity and began introducing measures to provide incentives for quality improvement. Most importantly, the GONL and the pharmaceutical industry reached a 2007 agreement (referenced in PhRMA's submission) to introduce greater price

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Page 2 of 3

flexibility for innovative products in return for price decreases on off-patent products. Drugs receive a fixed refund price based on an average list price for "therapeutically interchangeable drugs" belonging to the same group. A new drug that does not fit into an existing group must demonstrate a clinical benefit compared to standard therapy and be reviewed for cost-effectiveness.

3. (SBU) PhRMA's submission contains several issues of concern about how the Dutch health care system reimburses pharmaceuticals and manages the introduction of new drugs into the market. The complaints appear to reflect industry frustration with how the Netherlands has chosen to foster innovation in its health care system rather than specific instances of IPR violations or denial of market access to U.S. firms. Market access and reimbursement for innovative drugs are slower than industry would like, but Dutch health care legislation does not discriminate between foreign and domestic drug firms. Nor does it violate any international IPR law or treaty. PhRMA's submission does not include an estimate of damages incurred by PhRMA members.

4. (SBU) The 2007 agreement was clinched with input from many stakeholders, including PhRMA members. Whether the GONL continues the agreement in 2010 and beyond depends to some extent on the next government, to be determined some time after national elections scheduled for June 9, 2010. Against this unsettled political background, Special 301 designation is unlikely to be a determining factor in whether the GONL continues the agreement. Furthermore, the Administration has studied closely aspects of the Dutch health care system as a possible model for U.S. health care reform. The Dutch system consistently ranks at or near the top of international rankings in terms of both outcomes and cost efficiency. The GONL and Dutch public would not view criticism of their pharmaceutical policy as credible.

Digital Piracy in the Netherlands

5. (SBU) The Netherlands is a popular web-hosting center because it is situated close to major Internet exchanges and has excellent broadband penetration. This speed of service is an attraction for both legitimate and illegitimate web-sites. Uploading is an offense in the Netherlands, but downloading is not. The Office of Cyber Crime within the Dutch Ministries of Justice and Interior, which is responsible for Internet copyright enforcement, is proactive. It goes after botnets and major content uploaders in coordination with Qgoes after botnets and major content uploaders in coordination with Internet Service Providers (ISPs). The Netherlands has set up a "platform for Internet security" with representatives from the Justice Ministry, Economic Affairs Ministry, industry (including Microsoft and Warner Brothers), and leading ISPs. Also, the Dutch parliament has brought together consumers, rights holders, and industry into a commission on "copyrights in the digital age." (Note: As of March 2010, the fate of this commission is uncertain due to new national elections to be held June 9, 2010. End note.)

6. (SBU) Post consults regularly with leading Dutch IPR watchdog BREIN. The organization represents the entertainment industry broadly -- film/video, music, non-business software, e-books -- including several U.S. content firms. BREIN consistently tells us the industries it represents do not advocate placing the Netherlands on the Special 301 list, even though their content appears on illegal sites hosted in the Netherlands. The companies prefer that BREIN negotiate behind the scenes with the GONL, ISPs, and IPR

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Page 2 of 3

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Page 3 of 3

violators to resolve digital piracy problems. They are working constructively on a range of issues, such as "temporary limitation of services" to the heaviest downloaders of illegal content.

7. (SBU) The Netherlands enjoyed success in 2009 in using the judiciary to curb Internet piracy. Thanks to the GONL and BREIN's aggressive legal strategy, a Dutch court ruled in August 2009 that Mininova (previously one of the world's largest BitTorrent sites) had to remove all links to copyright-protected material. This effectively shut down the site (ref B). A Dutch court also issued verdicts against The Pirate Bay and imposed huge fines against it. The action against Mininova was easier to implement because the site's founders were located in the Netherlands, whereas The Pirate Bay's are in Sweden, outside Dutch jurisdiction. Furthermore, GONL IPR contacts tell us that LeaseWeb -- a major Dutch-based player in web-hosting -- has been increasingly cooperative in taking down illegal sites. LeaseWeb no longer requires a court order to do so; the company is willing to take action based on direct notification from injured parties.

Sports Coalition's Concerns

8. (SBU) The submission of the Sports Coalition (via Major League Baseball Advanced Media) states that peer-to-peer (P2P) sites hosted in the Netherlands contain unauthorized streaming of live sports webcasts. The submission does not include an estimate of damages incurred by the sports leagues. When EmbOfs brought the complaint to the attention of GONL IPR contacts, they professed no prior knowledge of the issue. They cautioned that P2P sites change locations frequently (every few weeks) to avoid legal action, but underscored that organizations suffering from copyright infringement from P2P sites hosted in the Netherlands can seek redress. They advised the Sports Coalition to contact the GONL's Cyber Crime Office, BREIN, or Dutch ISPs directly.

9. (SBU) Given the size of the Dutch web-hosting industry, there is an unfathomable quantity of legal and illegal IPR content available. Taking down illegal linking and file-sharing sites is a constant exercise for Dutch authorities and service providers.

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LEVIN

Signature: LEVIN

Info: AMSTERDAM, AMCONSUL ROUTINE ; EU MEMBER STATES COLLECTIVE ROUTINE

Attachments: metadata.dat

Dissemination Rule: Archive Copy

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Page 3 of 3

From: Olsen, Briana L
Sent: 8/4/2010 8:38:20 AM
To: svcSMARTHBTSP05
Subject: Wikileaks: The Pirate Party's White Horse Into Sweden's Parliament?
Attachments: Metadata.dat

RELEASE IN PART
B1,1.4(D)

CONFIDENTIAL



Classification Extended on : 04/25/2017 ~
Class: CONFIDENTIAL ~ Authority: DSCG 11-1
~ Declassify on: 12/31/2027

MRN: 10 STOCKHOLM 255
Date/DTG: Aug 04, 2010 / 041238Z AUG 10
From: AMEMBASSY STOCKHOLM
Action: WASHDC, SECSTATE ROUTINE
E.O.: 13526
TAGS: PGOV, PREL, EINT, IC, SW
Captions: SIPDIS
Reference: A) REYKJAVIK 13
B) 08 STOCKHOLM 450
C) 09 STOCKHOLM 546

REVIEW AUTHORITY: Clarke Ellis,
Senior Reviewer

Pass Line: AMEMBASSY ASTANA PASS TO AMCONSUL ALMATY
AMEMBASSY ANKARA PASS TO AMCONSUL ADANA
AMEMBASSY MOSCOW PASS TO AMCONSUL VLADIVOSTOK
AMEMBASSY VILNIUS PASS TO AMEMBASSY MINSK
AMEMBASSY BERLIN PASS TO AMCONSUL DUSSELDORF
AMEMBASSY MOSCOW PASS TO AMCONSUL YEKATERINBURG
AMEMBASSY BERLIN PASS TO AMCONSUL LEIPZIG
AMEMBASSY MOSCOW PASS TO AMCONSUL ST PETERSBURG
Subject: Wikileaks: The Pirate Party's White Horse Into Sweden's Parliament?

1. (C) Summary: On June 29, poloff met with three members of the Pirate Party: [REDACTED] 1.4(D)
[REDACTED] They discussed the September 19 general elections and B1
issues that might influence the Pirate Party's standing. Main points include:

-- The average Pirate Party staff are well-salaried professionals, independent from the party for income;
-- Escalated media and Swedish government attention to Wikileaks is the "White Horse" for the Pirate Party to enter parliament.

Given the connection between Wikileaks and the Pirate Party (ref A), Post believes there is a chance Wikileaks may release classified U.S. documents regarding Sweden prior to the September 19 general elections. End Summary.

Who are the Pirates?

2. (C) The Pirate Party platform is a mixture between communism and libertarianism, said [REDACTED] 1.4(D)
The party attracts members with differing political views, who are held together by the desire to protect individual B1
privacy and freedom of speech. [REDACTED] said most Pirate Party staff are well-salaried professionals, often in

CLASSIFICATION: CONFIDENTIAL

Page 2 of 3

the technological sector. They are "savvy businessmen" who are unafraid of standing up to other politicians, and have the financial freedom to do so. (Comment: According to Pirate Party leader Rickard Falkvinge's personal website, he is dependent on public donations for his "food and rent." While some Pirates might be self-financed, the main spokesperson does not appear to have the freedom [] mentioned. End Comment.) Prior to becoming Pirates, two of the three interlocutors were active in the Moderate Youth Party, the youth branch of the conservative party currently leading government. Falkvinge also is a former Moderate Youth member.

1.4(D)
B1

3. (C) The Pirate Party does not care who wins the election: "We don't care about healthcare," [] said; what matters is which side will best protect personal freedom on the internet. He said in the next few weeks Falkvinge will submit to each political party a "score sheet" of items that are essential to Pirate Party ideology. The party that scores closest ideologically to the Pirates will be offered the opportunity to "partner" with the Pirate Party.

1.4(D)
B1

Grim Electoral Outlook for Pirates...

4. (C) [] said he gives his party a 20% chance of getting into Parliament this year, but in 2014 the odds will be much better. He gives the xenophobic Sweden Democrats a 50/50 chance of getting in, mostly due to what he believes is over-coverage in the media. If his party had the same media coverage, he opined, they would be polling much better than the 1-2% support shown in only the most favorable polls.

1.4(D)
B1

5. (C) Nonetheless, the Pirates feel that they have been able to affect Swedish politics. All nine youth parties are for full legalization of file sharing, [] said. Since the party's creation in 2006, mainstream parties have become more cautious about laws affecting internet freedom and personal privacy. In 2006, newly-elected PM Reinfeldt said in an address that we "cannot criminalize a whole generation," [] offered. In October 2009, the sitting Alliance government experienced its largest political controversy (and ensuing dip in the polls) surrounding the passage of the FRA law to monitor all cable traffic sent through Sweden (ref B). The Pirate Party is also proud to have served as a role model for other pirate parties, such as in Germany and the Czech Republic, said []

1.4(D)
B11.4(D)
B1

...Unless Wikileaks Saves the Day

6. (C) [] said the "U.S. request to the Swedish government to shut down Pirate Bay backfired" for the Swedes. Therefore, he thinks it unlikely the Swedish government will take any action against Wikileaks (such as shutting down its host server PRK) prior to the September 19 elections because of the "hell" that would be unleashed by internet freedom supporters, including his party. Nonetheless, [] said the Pirates would relish such action, as the public outcry would create a surge in support for the Pirate Party at a crucial time and "take the Pirates into parliament on a White Horse." Since its founding, the Party has enjoyed membership surges whenever the government of Sweden has acted in a manner that affects internet freedom, e.g. the May 2006 police confiscation of Pirate Bay servers (ref C), the October 2009 passage of the FRA surveillance law, and the April 2009 guilty verdict for the founders of Pirate Bay.

1.4(D)
B1

Comment

7.

1.4(D)
B1

Signature:

STEWART

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Page 2 of 3

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Page 3 of 3

Classified By: WR Stewart, CDA
Reason: 1.4 (b), (d)
Declassify on: 2020/08/04
Drafted By: STOCKHOLM:Olsen, Briana L
Approved By: Exec:Stewart, William R
Released By: STOCKHOLM:Olsen, Briana L
Info: EUROPEAN POLITICAL COLLECTIVE *ROUTINE* ; ZEN/AMCONSUL ALMATY ;
ZEN/AMCONSUL ADANA ; ZEN/AMCONSUL VLADIVOSTOK ; ZEN/AMEMBASSY MINSK ;
ZEN/AMCONSUL DUSSELDORF ; ZEN/AMCONSUL YEKATERINBURG ;
ZEN/AMCONSUL LEIPZIG ; ZEN/AMCONSUL ST PETERSBURG
Attachments: Metadata.dat

Action Post:

Dissemination Rule: Archive Copy

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Page 3 of 3

CLASSIFICATION: UNCLASSIFIED

Page 1 of 6

From: Kirkconnell, Laura J
 Sent: 2/23/2011 10:40:39 AM
 To: SMART Core
 Subject: Special 301 Embassy Stockholm input

RELEASE IN PART
 B5,B6

UNCLASSIFIED

MRN: 11 STOCKHOLM 88
 Date/DTG: Feb 23, 2011 / 231539Z FEB 11
 From: AMEMBASSY STOCKHOLM
 Action: WASHDC, SECSTATE ROUTINE
 E.O.: 13526
 TAGS: ECON, KIPR, ETRD, PGOV, SW
 Captions: SENSITIVE
 Reference: A) 10 STOCKHOLM 94
 B) 11 STATE 4306
 Pass Line: DEPT PLEASE PASS USTR FOR PAULA PINHA AND DAVID WEINER
 EEB/TPP/IPE FOR DAVID DRINKARD
 Subject: Special 301 Embassy Stockholm input

REVIEW AUTHORITY: Clarke Ellis,
 Senior Reviewer

SENSITIVE BUT UNCLASSIFIED. PROTECT ACCORDINGLY.

1. (SBU) Summary. [REDACTED]

[REDACTED] As a result of several measures to improve the IPR regime in Sweden, many which came into effect during the last 2 years, the International Intellectual Property Alliance (IIPA) did not call for a watch listing of Sweden this year. The Sports Coalition has requested Sweden be put on the Priority Watch list in 2011, arguing that some of the sites for live sports telecast piracy are located in Sweden.

[REDACTED] As a result, all copyright-protected material is protected and must not be made available to the public without the consent of the rights-holder. Rights-holders who have their copyrights infringed now have both penal code and civil code remedies at their disposal. On the enforcement side, the new organization with two specialist IPR-prosecutors with national competence and a national coordinator for IPR investigations at the Swedish Police, with dedicated investigative police officers at his disposal, has improved coordination. As a result, the prosecutors tell us that they have seen a rather dramatic increase in the number of cases reported for investigation.

2. (SBU) Summary continued: [REDACTED]

[REDACTED] Another route for the Sports Coalition to consider would be to become a member of an industry organization, in the same way that the MPA is a member of the Swedish Anti-Piracy Bureau. One such organization is STOP Nordic Content Protection,

CLASSIFICATION: UNCLASSIFIED

Page 1 of 6

CLASSIFICATION: UNCLASSIFIED

Page 2 of 6

www.stoppirat.se. The English Premier League works with STOP, as do most TV-industry distributors and rights-holders in the Nordic countries.

3. (SBU) Summary continued: [REDACTED]

B5

[REDACTED] Using REF A and other alleged Embassy cables, the press has claimed that Swedish government enforcement against file sharing sites is illegal because it was done in response to USG threats of trade sanctions under Special 301 rather than an independent investigation by a prosecutor responding to a properly filed legal complaint. (The Swedish Constitution prohibits Ministries from ordering actions like prosecutions and investigations by Swedish government agencies.) End Summary.

4. (SBU) This cable reviews progress Sweden has made over the last two years to step up its enforcement efforts. Post continues to engage very constructively with the Swedish government, and has good access and a good working relationship with key senior and working level Swedish officials.

B5

[REDACTED] Our informal contacts received public attention late 2010 and early 2011, as Swedish press reviewed and reported on cables provided to them by Wikileaks. We expect more to come out in the months to come, when suitable events occur -- such as the next steps in the Pirate Bay trial.

Background

5. (U) The Sports Coalition, in its yearly Special 301 submission to USTR, identified live sports telecast piracy, including the unauthorized live retransmission of sports telecasts over the internet, as a growing problems for its members (Major League Baseball, National Basketball Association, National Collegiate Athletic Association, National Football League, NHL Enterprises, the licensing arm of National Hockey League, and United States Tennis Association). Its submission argues for the inclusion of a number of countries on the Priority Watch List, including Sweden.

6. (U) The Sports Coalition cover letter directs to an Appendix A, where a fuller explanation is to be given. However, the Appendix A text on Sweden merely reads, in full: "During 2010, services operating either in whole or in part in Sweden pirated a material number of Sports Coalition game and event telecasts, including atdhe.net and firstrow.net. Recommendation: Priority Watch List."

7. (U) The International Intellectual Property Alliance (IIPA) on the other hand, like in 2010, has not nominated Sweden for watch listing in 2011. This is contrary to its practices over the last several years -- a sure indication of an improved situation.

Implementation of IPRED

8. (SBU) Sweden's implementing legislation of EU's Enforcement Directive entered into force on April 1, 2009. The political sensitivities made the final handling of the bill very delicate for the Alliance government. Much of the debate and negotiations have been done in public, and there has been tremendous pressure put on individual Members of Parliament. The passage of the implementing legislation was therefore a significant, and difficult, accomplishment for the Swedish government.

9. (U) Immediately after the legislation had come into effect, there was a sharp decline in piracy rates

CLASSIFICATION: UNCLASSIFIED

Page 2 of 6

CLASSIFICATION: UNCLASSIFIED

Page 3 of 6

in Sweden. Many Bit Torrent tracker sites and DC-hubs moved away from Sweden, and legal alternatives such as Spotify, Film2Home, and Voddler generated a lot of interest. Over the nearly two years since the law came into effect, there have been diverging views as to the real effects on piracy rates, and pirates have developed tools to allow users to hide their IP-number. On the whole, however, it is clear that the law has had a rather dramatic effect on public awareness and that many "regular" users have moved to legal alternatives.

10. (U) The same day the IPRED law came into effect, five audio book companies used the law to demand information about the identity behind an IP-number of an FTP-server that made more than 2,000 copyright-protected audio books available to the public. ISP Portlane objected to the demands, and the case is now moving through the courts. In the first instance, the audio book companies won, but a divided appellate court over-threw the ruling later in the year. The audio book companies appealed to the Supreme Court, and the court announced in January 2010 that it would hear the case (the Supreme Court only hears cases to set a legal precedence, and when there is a new legal angle to determine). However, in September 2010, the Supreme Court announced that it will send the case to the European Court of Justice (ECJ). This means that the process of getting a first, precedence-setting, case will be delayed by several years, since the average time to get a case heard in the ECJ is around one and a half years.

11. (U) The Supreme Court asked the ECJ to rule on whether the EU Data Retention Directive is in conflict with the provisions of the IPRED law, and if so – whether it matters that Sweden is delayed its implementation of the Data Retention Directive, even though the deadline for implementation had already passed. With this delay in the practical use of the civil route of combating internet piracy, the increased capabilities of police and prosecutors will become increasingly important.

Strengthened enforcement capabilities

12. (U) Both the music and the film industry have also started to test the new legislation, resulting in a number of cases moving up through the courts. Although both the music and film industry welcome the opportunity to file civil cases against infringers, they attribute more importance to other measures to strengthen Sweden's IPR regime. They attach particular importance to the new organization set up on the prosecutors' side, and the increase in investigative officials and coordination of efforts among the Police authorities.

13. (U) There are now two full-time specialist prosecutors, dedicated to IPR/copyright issues. They have national competence, and organizationally they belong to the International Prosecutors Chamber in Stockholm. Their work is supported by a National Coordinator for the Swedish Police, Mr. Paul Pinter. He channels cases to dedicated investigative officials in groups that are being built up inside the Police authorities in Stockholm, Gothenburg, and Malmo.

14. (SBU) In 2010, 20 police officers received intensive IPR training. Three of them now operate out of Paul Pinter's center at the Stockholm police, and there are five respectively in Gothenburg and Malmo. In addition, 5-10 police officers based in police districts all over Sweden have received training. They are supporting the work of the dedicated IPR investigative officials. As a result, specialist prosecutor Henrik Rasmusson told us that the prosecuting side gets a lot more cases reported for prosecution. In 2008, Sweden had 50 cases reported for prosecution; in 2009 the figure had gone up to 70 cases. Last year, another 55 cases were reported in the first six months, and Rasmusson estimates that the full-year figure will land at around 120 cases. In addition, the cases tend to get bigger as well.

Participation in international conferences

15. (SBU) In 2010, Swedish officials participated in several international conferences and training sessions, to share best practices and build up their networks. One of the specialist prosecutors, the national coordinator within the Swedish police, and an Embassy official participated in a March 23-24

CLASSIFICATION: UNCLASSIFIED

Page 3 of 6

CLASSIFICATION: UNCLASSIFIED

Page 4 of 6

workshop in Tallinn, Estonia, hosted by the USPTO and Embassy Tallinn. The workshop provided an excellent opportunity to share their experiences with other Nordic, Baltic, Russian, and U.S. counterparts. The other specialist prosecutor trained Russian police officers and prosecutors, in the context of a TAIEX (Technical Assistance and Information Exchange Instrument) project. (Note. TAIEX is managed by the EU Commission's Enlargement Directorate, and it is a mechanism which enables experts to provide training in the "approximation, application, and enforcement of EU legislation" in partner countries).

Elections and the Pirate Party

16. (SBU) In large part due to the attention surrounding the Pirate Bay trial and the IPRED law coming into effect, Sweden's newly-formed Pirate Party won two seats in the European Parliament in the June 2009 elections. The Party received 7.1 percent of the vote -- quite embarrassing for the ruling Alliance coalition and a stark reminder of the sentiments these issues stir up, particularly among young voters.

17. (SBU) However, despite the Pirate Party's intense efforts to make file sharing a hot election campaign issue, it never figured prominently in the Swedish general election campaign over the summer and early fall of 2010. The Pirate Party even took over responsibility for operating Swedish servers hosting one or several Wikileaks mirror sites -- likely in a desperate hope that U.S. authorities would exert pressure on Sweden to close down the site. All the Party's attempts were futile, and the Pirate Party earned 0.65 % of the votes in the September 19 general elections (very close to the 2006 result of 0.63 %, and very far from the 4-percent threshold needed to get representation in Parliament).

Public outreach/ Information activities

18. (U) Rights-holders organizations have, for the last two years, come together to host events during the so-called Almedalen political week on the island of Gotland. The Almedalen week brings the whole political, cultural, and media elite together for a week of seminars, debates, press spinning, and mingling -- every year in July. In 2010, 13 rights-holders organizations hosted a project "Culture for everyone", including seminars that were very well attended.

19. (SBU) An investigative TV program, Uppdrag Granskning, made an in-depth program about the Scene (the top of the file-sharing pyramid) and the Anti-Piracy Bureau. The program often sets the agenda in Sweden, and the impact of the coverage is substantial. Rights-holders organizations have further been active in working together to lobby Swedish members of the European Parliament, and in answering the Government's requests for comments on legislative proposals in the area.

Pirate Bay

20. (U) After the raid on Pirate Bay on May 31, 2006, the issue of internet piracy was fiercely debated in Sweden. Press coverage was largely, and still is, unfavorable to the positions taken by rights-holders and the USG. The Pirate Bay raid was portrayed as the Swedish government caving to USG pressure. After 18 months of investigation, the prosecutor filed indictments against four individuals for contribution to copyright infringement because of their activities administrating the Pirate Bay Bit Torrent webpage. The district court in Stockholm announced its ruling on April 17, 2009, sentencing the four individuals to one year in prison each and to pay total damages of SEK 30 Million (USD 4.3 Million, very high by Swedish standards).

21. (U) Both sides appealed the sentence. The Court of Appeal in Stockholm, on November 25, 2010, upheld the guilty verdict from the district court of Stockholm of April 2009. The appellate court increased the damages from 30 Million SEK (USD 4.3 Million) to 46 Million SEK (USD 6.5 Million), but lowered and differentiated the prison sentences. Fredrik Neij was sentenced to ten months in prison, Peter Sunde to eight months, while Carl Lundstrom received a sentence of four months. The prison terms now better reflect the actual involvement in the operations of the Pirate Bay site. The appeals

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Page 4 of 6

court did not review the case against Gottfrid Svartholm Warg, who was sick in a hospital in Cambodia during the trial. He is set to receive a new trial at a later date. The film industry's legal counsel was happy with the ruling, but the defendants appealed the case to the Supreme Court. As of February 2011, the Supreme Court has not yet announced whether it will hear the case (Note. The Supreme Court only hears precedent-setting cases, where there is a new legal angle to determine).

Injunctive relief

22. (U) The Swedish provisions allowing for injunctive relief have been tried in court. The cases came following the Pirate Bay ruling, and are a way for rights-holder organizations to test if ISP's can be ordered to shut off capacity for sites required for operations of the Pirate Bay and similar Bit Torrent tracker sites. The district court issued an injunction against ISP Black Internet, resulting in the ISP turning off Pirate Bay's internet connection. Black Internet appealed, and the appellate court upheld the ruling. The Supreme Court decided not to hear the case, so the Appellate Court ruling is firm. In a similar case, 13 U.S. film producers filed to have ISP Portlane's customer Openbittorrent turned off. The district court ruled against the film producers, but the appellate court reversed the decision, and ordered the ISP to cut Openbittorrent's internet connection. ISP Portlane has since gone bankrupt, so the appellate court's ruling is the final determination.

Piracy of live sports telecasts

23. (U) The issue of pirated live sports telecasts has started to get attention in Sweden. One of the specialist prosecutors represented television distributor Canal Digital in a case against an individual who made streamed webcasts of two ice hockey games available to the public on his site on the internet. The prosecutor won the case in the first instance in November 2010, and the man who made the links available was sentenced to fines. The case has been appealed.

24. (SBU) The same tools available to rights-holders in the case of music and film are also available to owners of sports productions; both using the penal code, working through police and prosecutors, as well as the civil route, through the IPRED-legislation. [redacted] told Post already one year ago that television distributors and rights-owners in the live sports area have not been active in reporting cases for prosecution. He would welcome such reports.

B6

Comment

25. (SBU) [redacted]

B5

[redacted] Another route for the Sports Coalition to consider would be to become a member of an industry organization, in the same way as the MPA is a member of the Swedish Anti-Piracy Bureau. One such organization is STOP Nordic Content Protection, www.stoppirat.se. The English Premier League works with STOP, as do most TV-industry distributors and rights-holders in the Nordic countries.

B5

27. (SBU) Sweden is now in full compliance with its international obligations. The government has strengthened enforcement capabilities. [redacted]

B5

End comment.

B5

Signature: BARZUN

Drafted By: STOCKHOLM:Henningsson, Annika

Cleared By: Stockholm:Koehler, Marc D

Stockholm:Carrico, Frank G

Approved By: Stockholm:Kirkconnell, Laura J

Released By: STOCKHOLM:Kirkconnell, Laura J

Info: Urban, JoEllen *ROUTINE* ; Selinger, Thomas *BROUTINE*

Action Post:

Dissemination Rule: Archive Copy

UNCLASSIFIED

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Page 1 of 7

From: Henningsson, Annika
 Sent: 2/21/2012 10:27:45 AM
 To: SMART Core
 Subject: SPECIAL 301 STOCKHOLM INPUT

RELEASE IN PART
 B5,B6

UNCLASSIFIED
 SBU



MRN: 12 STOCKHOLM 112
 Date/DTG: Feb 21, 2012 / 211523Z FEB 12
 From: AMEMBASSY STOCKHOLM
 Action: WASHDC, SECSTATE ROUTINE
 E.O.: 13526
 TAGS: ECON, ETRD, KIPR, SW
 Captions: SENSITIVE
 Reference: A) 11 STOCKHOLM 88
 B) 10 STOCKHOLM 94
 C) 12 STATE 3322
 Pass Line: DEPARTMENT PLEASE PASS TO USTR
 Subject: SPECIAL 301 STOCKHOLM INPUT

REVIEW AUTHORITY: Clarke Ellis, Senior
 Reviewer

SENSITIVE BUT UNCLASSIFIED. PROTECT ACCORDINGLY.

THIS IS AN ACTION REQUEST. PLEASE SEE PARAS 2 AND 23.

1. (SBU) Summary.

As a result of several measures to improve the IPR regime in Sweden, many which came into effect during the last 2-3 years, the International Intellectual Property Alliance (IIPA) did not call for a watch listing of Sweden neither for 2011, nor for this year's review. The Sports Coalition again requested Sweden be put on the Priority Watch list this year, arguing that some of the sites for live sports telecast piracy are operating in whole or in part in Sweden.

B5

B5

As a result, all copyright-protected material is protected and must not be made available to the public without the consent of the rights-holder. Rights-holders who have their copyrights infringed now have both penal code and civil code remedies at their disposal. On the enforcement side, the new organization with three specialist IPR-prosecutors with national competence and a national coordinator for IPR investigations at the Swedish Police, with dedicated investigative police officers at his disposal, has improved coordination. As a result, the prosecutors tell us that they have seen a rather dramatic increase in the number of cases reported for investigation

2. (SBU) Summary continued:

B5

CLASSIFICATION: UNCLASSIFIED
 Page 1 of 7

CLASSIFICATION: UNCLASSIFIED

Page 2 of 7

B5

[REDACTED]

[REDACTED] Sweden's Constitution prohibits the Government from ordering an investigation by prosecutors, and Swedish law prohibits prosecutors from acting unless the rights holders have reported a complaint. **Action Request:** Post requests that the State Department or USTR inform the Sports Coalition that enforcement actions must be initiated by the rights holder. Please inform the Sports Coalition that Swedish enforcement agencies have told Post they would welcome having the Sports Coalition come to them. **End Action Request.**

3. (SBU) Summary continued: [REDACTED]

B5

[REDACTED]

[REDACTED] Since the Swedish Constitution prohibits Ministries from ordering actions such as prosecutions and the opening of criminal investigations by Swedish government agencies, any perceived action on the part of the Swedish government gets fiercely scrutinized, especially if the press, or piracy activists, suspect there is link to the U.S. in the background. [REDACTED]

B5

[REDACTED]

[REDACTED] we strongly encourage U.S. rights-holders who have their rights infringed to use the tools available to them under Sweden's criminal code and report the case to Swedish enforcement agencies -- who told us they stand ready to act on such reports. **End Summary.**

4. (SBU) This cable reviews progress Sweden has made over the last several years to step up its enforcement efforts. Post continues to engage very constructively with the Swedish government, and has good access and a good working relationship with key senior and working level Swedish officials.

B5

Background

5. (U) The Sports Coalition, in its yearly Special 301 submission to USTR, identified live sports telecast piracy, including the unauthorized live retransmission of sports telecasts over the internet, as a growing problems for its members (Major League Baseball, National Basketball Association, National Collegiate Athletic Association, National Football League, NHL Enterprises, the licensing arm of National Hockey League, and United States Tennis Association). Its submission argues for the inclusion of a number of countries on the Priority Watch List, including Sweden.

6. (U) The Sports Coalition cover letter directs to an Appendix A, where a fuller explanation is to be given. However, the Appendix A text on Sweden merely reads, in full: "During 2011, services operating either in whole or in part in Sweden pirated a material number of Sports Coalition game and event telecasts, including firstrowsports.eu, castamp.com, ilemi.eu, ilemi.me, ilemi.tv, kiwi-sportz.eu, sportzkrieg.com and unisports.me. Recommendation: Priority Watch List."

7. (U) The International Intellectual Property Alliance (IIPA) on the other hand, like in 2010 and 2011, has not nominated Sweden for watch listing in 2012. This is contrary to its practices over the last several years preceding 2010 -- an indication of an improved situation.

CLASSIFICATION: UNCLASSIFIED
Page 2 of 7

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Page 3 of 7

Implementation of IPRED

8. (SBU) Sweden's implementing legislation of EU's Enforcement Directive entered into force on April 1, 2009. The political sensitivities made the final handling of the bill very delicate for the Alliance government. Much of the debate and negotiations were done in public, and there was tremendous pressure put on individual Members of Parliament. The passage of the implementing legislation was therefore a significant, and difficult, accomplishment for the Swedish government.

9. (U) Immediately after the legislation had come into effect, there was a sharp decline in piracy rates in Sweden. Many Bit Torrent tracker sites and DC-hubs moved away from Sweden, and legal alternatives such as Spotify, Film2Home, and Voddler generated a lot of interest. Over the nearly three years since the law came into effect, there have been diverging views as to the real effects on piracy rates, and pirates have developed tools to allow users to hide their IP-number. On the whole, however, it is clear that the law has had a rather dramatic effect on public awareness and that many "regular" users have moved to legal alternatives. In 2011, record companies reported that for the first time, digital sales accounted for over 50 percent of the industry's revenues. The growth comes primarily in the segment streamed music, i.e. Spotify. Record companies' revenues from Spotify increased by 105 percent in 2011.

10. (U) The same day the IPRED law came into effect, five audio book companies used the law to demand information about the identity behind an IP-number of an FTP-server that made more than 2,000 copyright-protected audio books available to the public. ISP Ephone objected to the demands, and the case is now moving through the courts. In the first instance, the audio book companies won, but a divided appellate court over-threw the ruling later in the year. The audio book companies appealed to the Supreme Court, and the court announced in January 2010 that it would hear the case (the Supreme Court only hears cases to set a legal precedence, and when there is a new legal angle to determine). However, in September 2010, the Supreme Court announced that it will send the case to the European Court of Justice (ECJ). This meant that the process of getting a first, precedence-setting, case was delayed by several years, since the average time to get a case heard in the ECJ is around one and a half years.

11. (U) The Supreme Court asked the ECJ to rule on whether the EU Data Retention Directive is in conflict with the provisions of the IPRED law, and if so – whether it matters that Sweden is delayed its implementation of the Data Retention Directive, even though the deadline for implementation had already passed. On November 17, 2011, the European Court of Justice's (ECJ) Advocate General issued his advice on how the ECJ should rule:

- On the one hand, he said that there is no conflict between the Swedish IPRED-law and the EU's Data Retention Directive (which is what the Supreme Court asked the ECJ to settle).
- However, on the other hand, he also opined that the ISP is only obliged to release the subscriber information if the data has been stored for that specific purpose – which makes it impossible to predict the final outcome of the ECJ ruling, and the effect it will have on the muscle of the Swedish IPRED-legislation.

The Advocate General's opinion is often, but not always, a good indication of how the European Court of Justice will eventually rule the case. The date for the ECJ ruling has not yet been set, so this is only an interim step in determining the reach of the Swedish IPRED legislation. With this, by now multi-year, delay in the practical use of the civil route of combating internet piracy, the increased capabilities of police and prosecutors have become increasingly important.

Strengthened enforcement capabilitiesCLASSIFICATION: UNCLASSIFIED
Page 3 of 7

CLASSIFICATION: UNCLASSIFIED

Page 4 of 7

12. (U) Sweden has come to rely more on the penal code route in combating internet piracy; contrary to developments in some other EU members states, where the civil route with wide-spread systems of warning letters have become the main approach to enforcing rights. Although both the music and film industry welcome the opportunity to file civil cases against infringers, they attribute more importance to other measures to strengthen Sweden's IPR regime. They attach particular importance to the organization set up on the prosecutors' side, and the increase in investigative officials and coordination of efforts among the Police authorities. In addition, in February 2012, the Government presented a Bill to Parliament which will grant police and prosecutors the right to identities behind IP numbers of individuals potentially implicated in copyright crimes of "lower dignity", i.e. fines rather than prison sentences. At present, law enforcement officials are only allowed to get such information if the infringement could lead to a prison sentence. The new legislation is expected to come into effect on July 1, 2012 -- much welcomed by enforcement officials and rights holders' organizations.

13. (U) There are now three full-time specialist prosecutors, dedicated to IPR/copyright issues. They have national competence, and organizationally they belong to the International Prosecutors Chamber in Stockholm. Their work is supported by a National Coordinator for the Swedish Police, Paul Pinter. He channels cases to dedicated investigative officials in groups that are built up inside the Police authorities in Stockholm, Gothenburg, and Malmo.

14. (SBU) There is a group of investigative officials at Paul Pinter's center at the Stockholm police, and there are five respectively in Gothenburg and Malmo. In addition, 5-10 police officers based in police districts all over Sweden have received training. They are supporting the work of the dedicated IPR investigative officials. As a result, [redacted] told us that the prosecuting side gets a lot more cases reported for prosecution. In 2008, Sweden had 50 cases reported for prosecution; in 2009 the figure had gone up to 70 cases, and in 2010 and 2011, the figures were 120 and 125, respectively.

B6

Participation in international conferences

15. (SBU) In 2011, Swedish officials participated in several international conferences and training sessions, to share best practices and build up their networks. Two investigative officials from the Swedish police and an Embassy official participated in a May 16-17 workshop in Vilnius, Lithuania, hosted by the USPTO and Embassy Vilnius. The workshop, entitled "Criminal Enforcement of Intellectual Property Rights in the Digital Environment" provided an excellent opportunity to share their experiences with other Nordic, Baltic, Russian, and U.S. counterparts. One of the specialist prosecutors participated in a multi-visit project in Turkey under the auspices of TAIEX ("Technical Assistance and Information Exchange Instrument", managed by the EU Commission's Enlargement Directorate, a mechanism which enables experts to provide training in the "approximation, application, and enforcement of EU legislation" in partner countries).

Pirate Bay

16. (U) After the raid on Pirate Bay on May 31, 2006, the issue of internet piracy was fiercely debated in Sweden. Press coverage was largely, and still is, unfavorable to the positions taken by rights-holders and the USG. The Pirate Bay raid was portrayed as the Swedish government caving to USG pressure. After 18 months of investigation, the prosecutor filed indictments against four individuals for contribution to copyright infringement because of their activities administrating the Pirate Bay Bit Torrent webpage. The district court in Stockholm announced its ruling on April 17, 2009, sentencing the four individuals to one year in prison each and to pay total damages of SEK 30 Million (USD 4.3 Million, very high by Swedish standards).

17. (U) Both sides appealed the sentence. The Court of Appeal in Stockholm, on November 25, 2010, upheld the guilty verdict from the district court of Stockholm of April 2009. The appellate court increased the damages from 30 Million SEK (USD 4.3 Million) to 46 Million SEK (USD 6.5 Million), but

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Page 4 of 7

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Page 5 of 7

lowered and differentiated the prison sentences. Fredrik Neij was sentenced to ten months in prison, Peter Sunde to eight months, while Carl Lundstrom received a sentence of four months. The prison terms now better reflect the actual involvement in the operations of the Pirate Bay site. The appeals court did not review the case against Gottfrid Svartholm Warg, who was sick in a hospital in Cambodia during the trial. He was subsequently called to a new trial at a later date, which he failed to show up for. The district court sentence thus became the final verdict in his case.

18. (U) The film industry's legal counsel was happy with the appellate court ruling, but the defendants appealed the case to the Supreme Court. The Supreme Court only hears precedent-setting cases, where there is a new legal angle to determine. It was expected that the Supreme Court would take on the Pirate Bay case, but on February 1, 2012, it announced that it will not hear the Pirate Bay case. This means that the ruling and the sentence from the appellate court will stand for three of the defendants, and that the Pirate Bay case has finally been settled by the Swedish Courts, close to six years after the initial raid in 2006.

Injunctive relief

19. (U) The Swedish provisions allowing for injunctive relief have been tried in court. The cases came following the initial Pirate Bay ruling, and are a way for rights-holder organizations to test if ISP's can be ordered to shut off capacity for sites required for operations of the Pirate Bay and similar Bit Torrent tracker sites. The district court issued an injunction against ISP Black Internet, resulting in the ISP turning off Pirate Bay's internet connection. Black Internet appealed, and the appellate court upheld the ruling. The Supreme Court decided not to hear the case, so the Appellate Court ruling is firm. In a similar case, 13 U.S. film producers filed to have ISP Portlane's customer Openbittorrent turned off. The district court ruled against the film producers, but the appellate court reversed the decision, and ordered the ISP to cut Openbittorrent's internet connection. ISP Portlane has since gone bankrupt, so the appellate court's ruling is the final determination.

Perspectives from a rights holders' organization

20. (SBU) Post has regular contacts with representatives of rights holders' organizations, and from them we hear that they view their situation as being much improved, compared to 3-4 years ago. Their own actions, working to supply enforcement officials with background material for investigations leading into prosecutions for copyright infringements, have proved particularly successful vis-à-vis the top of the Piracy pyramid, the so-called the Scene. The members of the Scene are the original suppliers of copyright protected material; a tightly-knit, very secretive circle of piracy activists. Practically all activities of the Scene are now pushed outside Sweden's border, according to the Anti-Piracy Bureau. They are also optimistic about the next level – the release groups and the major piracy hubs, where court cases, including the Pirate Bay, have had a deterrent effect. The Anti-Piracy Bureau have now declared, supported by the results of several court cases, that they will go after all parties involved with copyright infringements, including those who supply the internet connectivity.

Piracy of live sports telecasts

21. (U) The issue of pirated live sports telecasts has started to get attention in Sweden. One of the specialist prosecutors represented television distributor Canal Digital in a case against an individual who made streamed webcasts of two ice hockey games available to the public on his site on the internet. The prosecutor won the case in the first instance in November 2010, and the man who made the links available was sentenced to fines. The case was appealed, and the prosecutor lost parts of the case in the appellate court (where it deemed that the production lacked the required "threshold of originality" for it to be copyright protected), while other parts were upheld, such as the linking to the streamed games and the replays. There are similar cases, regarding the threshold of originality, being tried in the European Court of Justice – so the general applicability is still being determined.

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Page 5 of 7

22. (SBU) However, the same tools available to rights-holders in the case of music and film are also available to owners of sports productions; both using the penal code, working through police and prosecutors, as well as the civil route, through the IPRED-legislation. [REDACTED]

[REDACTED] has told Post (Ref A) already one year ago that television distributors and rights-owners in the live sports area have not been active in reporting cases for prosecution. He would welcome such reports. Since infringements of copyrights is a crime where the rights holder has to report the crime to enforcement agencies, Post strongly encourages the Sports Coalition to contact Swedish enforcement agencies.

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23. (SBU) **Action request:** Post requests the State Department or USTR inform the Sports Coalition about the fact that due to provisions in the Swedish Constitution, the Government cannot order the prosecutors to initiate a particular case. Furthermore, the prosecutors cannot initiate an investigation, other than in very extreme cases, but rather need rights holders to report cases for investigation and prosecution. Finally, Post requests that the Sports Coalition be informed about enforcement agencies' expressed interest in having the Sports Coalition come forward with complaints that their rights are being infringed. **End Action Request.**

Comment

24. (SBU) [REDACTED]

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Another route for the Sports Coalition to consider would be to become a member of an industry organization, in the same way as the MPA is a member of the Swedish Anti-Piracy Bureau. One such organization is STOP Nordic Content Protection, www.stoppirat.se. The English Premier League works with STOP, as do most TV-industry distributors and rights-holders in the Nordic countries.

25. (SBU) [REDACTED]

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26. (SBU) Sweden is now in full compliance with its international obligations. The government has strengthened enforcement capabilities. Enforcement actions, as well as legal alternatives to internet piracy are beginning to make a difference. [REDACTED]

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End comment.

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Page 7 of 7

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Page 7 of 7

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Page 1 of 5

From: Tidwell, Ethan
 Sent: 3/6/2012 6:29:32 AM
 To: SMART Core
 Subject: PORTUGAL: SPECIAL 301 INPUT

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RELEASE IN PART B5



MRN: 12 LISBON 108
 Date/DTG: Mar 06, 2012 / 061128Z MAR 12
 From: AMEMBASSY LISBON
 Action: WASHDC, SECSTATE ROUTINE
 E.O.: 13526
 TAGS: ECON, ETRD, KIPR, PO
 Captions: SENSITIVE, SIPDIS
 Reference: A) 11 LISBON 510
 B) 11 LISBON 162
 C) 12 SECSTATE 3322
 Pass Line: DEPT FOR EB/TPP/IPE
 DEPT PASS TO USTR
 Subject: PORTUGAL: SPECIAL 301 INPUT

REVIEW AUTHORITY: Clarke Ellis, Senior Reviewer

1. (SBU) Summary and Recommendation:

The government has taken some steps which may strengthen intellectual property rights (IPR) if fully implemented, including creation of a mandatory patent dispute arbitration system, which although it lacks injunctive relief to patent holders, could reduce the time needed to resolve patent cases. Additionally, the government and the pharmaceutical industry have recently begun negotiating a protocol, which may improve market predictability in exchange for reduced maximum government healthcare expenditure caps. The government also announced on March 1 that it would open the specialized IPR court, which was initially approved in April 2010, in Lisbon. Pharmaceutical companies, which have called for the court's creation for years, complain that the court will not hear their cases due to the new arbitration system. Pharmaceutical industry representatives argue that the Portuguese government has still not adequately addressed industry concerns and has adopted policies that fail to provide for the full protection of IPR.

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End Summary and Recommendation.

Pharmaceutical Overview

2. (U) Despite relatively low prices compared to many Western European countries, Portugal spends approximately two percent of its GDP on pharmaceuticals. The EU/IMF bailout agreement signed in May 2011 called for the government to reduce its pharmaceutical expenditure to 1.25 percent of GDP by the end of 2012 and 1 percent by the end of 2013. Among the EU-15, Portugal is the tenth largest pharmaceutical market, with retail sales totaling \$5.9 billion in 2010. Total imports in 2010 reached \$4.76 billion, of which \$7.6 million were imported directly from the U.S. according to the U.S. Department of Commerce. The Portuguese Innovative Pharmaceutical Companies (EFI) group, which includes U.S. brand name manufacturers, has met with the government on an ad hoc basis. However, EFI has indicated that the government has not adequately addressed

CLASSIFICATION: UNCLASSIFIED

Page 1 of 5

its concerns about patent protection and market access.

Pharmaceutical Reimbursement and Pricing Policies

3. (SBU) Although the Portuguese Association of Pharmaceutical Companies (APIFARMA) signed a protocol in 2006 with the Portuguese Ministry of Health to reduce government spending on pharmaceuticals, the industry has complained that the establishment of individual reimbursement caps on the sale of all pharmaceutical products and requiring companies to remit to the government any excess revenue has been prohibitively burdensome and expensive because the government does not regularly consult with industry during the process to establish projected demand and demand-based reimbursement caps. As a result, when brand name pharmaceuticals enter the market, product demand often significantly exceeds the government-established caps. Because these pharmaceuticals are often lifesaving drugs or treatments, the brand name manufacturers often continue to supply the market with the pharmaceuticals beyond the reimbursement caps without expectation of reimbursement to avoid negative publicity.

4. (SBU) Portugal operates a reimbursement system in which pharmacies and pharmaceutical manufacturers and distributors receive reimbursement at a certain percentage of the government-established reimbursement rate. In May 2010, the Portuguese government increased the percentage received by pharmaceutical distributors from 6.87 to 8 percent and by pharmacies from 18.25 to 20 percent. At the same time, it decreased the manufacturer percentage from 74.88 to 72 percent. Pharmaceutical manufacturers criticized the change, arguing that it did not result in a cost reduction for consumers or the government, while imposing a 2.88 percent reimbursement cut to manufacturers.

5. (U) In October 2010, the government implemented a 6 percent obligatory discount on all pharmaceutical reimbursements to manufacturers, distributors, and pharmacies. Following legislation introduced in 2007, Portugal capped the maximum pharmaceutical retail price on new products at the lowest price offered in Spain, France, Italy, or Greece. However, the EU/IMF bailout agreement called for the government to change the countries it uses as reference markets to "the three EU countries with the lowest price levels or countries with comparable GDP per capita levels." In November 2011, the government passed legislation to designate Italy, Spain, and Slovenia as Portugal's reference markets, but it has not reviewed prices since October 2010. The health minister said in a speech on February 15 that the government hopes to review prices based on the new reference markets in April.

6. (U) The government has also adopted policies specifically targeting generic pharmaceuticals, which make up 19 percent of the market. In May 2010, the government instituted a policy of pricing new generic pharmaceuticals 5 percent below the lowest-priced equivalent generic on the market. The Portuguese Association of Generic Medicines (APOGEN) has complained that government-pricing policies are disproportionately targeted at lowering government expenditure on generic pharmaceuticals, which only account for an estimated 3 percent of public health expenditures. The EU/IMF bailout agreement called for the government to "set the maximum price of the first generic introduced in the market to 60 percent of the brand product with similar active substance." The health minister said on February 15 that the government anticipates setting the cap at 50 percent to further reduce the pharmaceutical deficit.

Portugal Has Hospital Arrears of Almost €3 Billion

7. (SBU) U.S. pharmaceutical manufacturers have also complained that the government subjects the industry to excessive reimbursement delays – an average of 450 days in 2011. According to EFI, Portuguese hospitals owe healthcare companies an estimated €2.7 billion, including €1.2 billion to pharmaceutical companies (including an estimated €500 million to U.S. companies in Portugal). Portuguese law entitles pharmaceutical companies to charge 8 percent annual interest on arrears. EFI members have generally declined to seek legal remedy, citing the slow Portuguese judicial system, but several American companies filed lawsuits in 2011 against the hospitals with the longest outstanding debts. The EU/IMF bailout agreement called for the government to "set out a binding and ambitious timetable to clear all arrears (accounts payable to domestic suppliers past due date by 90 days) and introduce standardized commitment control procedures for all entities to prevent the re-emergence of arrears" by the end of Q3 2011. The Health Minister told the Ambassador on September 2011 that the government had still not established a timetable for payment (ref A). The Health Minister later told the American Club that it would agree to a plan by the end of 2011. According to EFI representatives, APIFARMA submitted a request for repayment to the Health Ministry in October 2011, but it has not received a response and the Ministry has not initiated negotiations on the repayment timetable. The health minister said on February 15 that the government hopes to pay a "substantial" portion of the outstanding debt in April, but indicated that payment could

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Page 3 of 5

be further delayed if factors outside of the government's control create new financial challenges. He added that the government hopes to eliminate the deficit for pharmaceutical expenses before resolving the outstanding debt to prevent it from reoccurring.

Old Legal System Was Slow – New System Unproven

8. (U) In 1995, the government established the Code of Industrial Property to govern patent protection in Portugal. In 1996, the government passed new legislation to extend the life of then-valid patents to 20 years, consistent with the provisions of the TRIPS Agreement. A new Industrial Property Code, designed to bring Portugal into full conformity with EU and international norms, went into effect in July 2008.

9. (SBU) Portugal routinely grants market approval to new generic pharmaceutical products without systematically cross-checking for existing patent-protected products already in the market, according to the pharmaceutical industry. Industry representatives claim that ineffectiveness in the Portuguese approval process forces companies to pursue redress for patent infringement through the court system. A U.S. pharmaceutical company told us that one of its patented processes was violated when 11 generic producers entered the market in 1994. The generic companies were allowed to remain on the market until injunctions were granted several years later. Although injunctions were eventually granted, the American company said that the case is still pending enforcement of damages. The company recognizes that it will not be compensated fully for the patent violation, especially considering several of the violators no longer exist. Additionally, an international pharmaceutical company with a significant U.S. presence said that Portugal granted market approval to generic producers in 2007 even though its product with the same active ingredient had a patent valid until 2014. The pharmaceutical company has filed civil cases against 51 companies related to market approvals for 490 products since 2007. According to the company, the legal system has not granted any hearings and did not appoint an expert to assist the case until 2010, more than three years after they filed the suit. The company provided an additional example where an expert was not appointed until one year after the civil case was filed. As a result of similar situations, patent holders have often resorted to administrative courts to obtain injunctive relief. According to the Ministry of Health, international pharmaceutical companies have more than 500 patent cases pending in the Portuguese legal system. While the Ministry of Health has complained that pharmaceutical companies clog the judicial system, industry representatives claim that the cases are related to approximately 40 pharmaceutical molecules and that the companies must file individual cases for each dosage produced and against each alleged patent violator.

10. (SBU) In September 2011, the Portuguese government approved a mandatory arbitration system for resolution of patent disputes without consulting with the pharmaceutical industry. The law requires patent holders to submit their cases, including evidence, to an arbitration body within 30 days of notice of intent by a generic drug manufacturer to distribute. Pharmaceutical companies argue that the 30-day limit for case submission provides insufficient time to determine if their patents have been violated and to gather evidence. They also warn that the lack of injunctive relief against generic companies that continue to distribute products during ongoing disputes could have a serious impact on IPR protection in Portugal if cases are not resolved quickly. One company told us that it recently resorted to the mandatory arbitration process when a generic drug was granted market authorization for a product violating one of its patents. The generic entered the market in January and although arbitration is ongoing, the generic remains on the market allegedly violating the patent. The law requires generic pharmaceutical companies found to have violated a patent to reimburse the patent holder for losses, but American pharmaceutical companies point out that this system does not account for losses incurred during the arbitration proceedings due to unfair market competition. They also oppose the concept of mandatory arbitration, which they say does not exist in any other European country. According to industry representatives, two cases have been referred to the new arbitration system, but the process is ongoing.

11. (SBU) In April 2010, the Portuguese government enacted legislative changes to create a special court, with two judges dedicated to hearing IPR disputes nationwide. The EU/IMF bailout agreement called for the IPR court to be operational by the end of Q1 2012. On March 1, the Council of Ministers approved a proposal to establish the court in Lisbon. However, according to the government's IPR office, it has not yet assigned judges or begun training staff. Pharmaceutical companies have complained that even with the creation of the new IPR court, they will still be required to use the mandatory arbitration system.

Market Access

12. (SBU) Brand name pharmaceutical manufacturers have complained that Portuguese market entry regulations are excessively burdensome. According to a 2010 study conducted by the international

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Page 4 of 5

pharmaceutical consulting firm IMS Health, widely regarded as credible by the industry, the approval process in Portugal takes an average of 22 months following EU certification, more than one year longer than the EU-15 average. Pharmaceutical manufacturers complain that the slow approval process is excessively costly as it significantly reduces the period of market exclusivity for new pharmaceuticals due to the rapid approval process for generics. According to the IMS Health study, new retail pharmaceuticals in Portugal lose exclusivity 9 months earlier than the EU-15 average and are commonly among the first to lose exclusivity. Because Portugal's approval process is more than one year longer than the EU-15 average and generics enter the market 9 months earlier than the EU-15 average, new patent-protected retail pharmaceuticals enjoy an average period of exclusivity of 11 years in Portugal, compared to the EU-15 average of 12.7 years, according to the IMS Health study. The study showed a similar trend for hospital pharmaceuticals, resulting in a period of exclusivity of 11.4 years in Portugal, compared to the EU-15 average of 14.3 years.

Government Healthcare Protocol Not Implemented

13. (SBU) In March 2011, the Portuguese Pharmaceutical Industry Association (APIFARMA), which includes EFI, and the Portuguese government signed a protocol for "sustainability and access to medicinal products" to address longstanding industry concerns and to reduce expenditure caps (ref B). In exchange for APIFARMA agreeing to a reduced cap on the government's overall pharmaceutical expenditure, the government committed to create a mechanism to resolve the debt owed by public hospitals to pharmaceutical companies, postpone an annual price schedule review, facilitate opening the intellectual property court, and form an oversight committee to monitor implementation of the protocol. The government postponed the annual price review, but has failed to follow through on its other commitments. APIFARMA and the government recently began negotiations on a new protocol, which will lower the maximum healthcare expenditure cap while increasing market stability. Industry representatives, however, have expressed uncertainty over the outcome of the negotiations.

Piracy of Copyrighted Works

14. (SBU) Regarding films, recordings, software, and electronic entertainment, although Portugal regularly conducts inspections at fairs, markets, and festivals, which resulted in the seizure of illegal goods in 2008 (latest published data) worth an estimated €6 million, it does not have sufficiently strong mechanisms to combat internet piracy. The Inspectorate General for Cultural Affairs (IGAC) is responsible for inspecting copyrighted material. It works in coordination with law enforcement authorities to combat the sale of physical copies of copyrighted material such as pirated CDs, DVDs, and video games.

15. (SBU) According to industry and government representatives, internet service providers have not taken proactive steps to restrict known peer-to-peer websites offering copyrighted material. The Portuguese Association for the Management of Author, Producer, and Editor Copyrights (GEDIPE), which represents in Portugal the majority of U.S. film studios and video system makers, said that it worked with the government to block 20 websites that violated Portuguese law in 2009. The Portuguese Video Editors Association (FEVIP), which is closely affiliated with GEDIPE, said that Portugal's largest internet provider, SAPO, had recently agreed to block websites illegally hosting copyrighted material that did not fall under the scope of Portuguese law. Although GEDIPE commented that Portuguese laws more effectively combat internet piracy than Spanish laws, its managing director said that internet piracy in Portugal is a serious problem, which is expected to grow.

16. (SBU) According to the Portuguese Phonographic Association (AFP), which represents Portuguese, U.S., and other international music producers, Portugal suffered a severe decline in music sales between 2005 and 2009. While sales of music in physical format fell 36 percent in Europe during this period, they fell 44 percent in Portugal. AFP noted that the 363 percent growth of digital sales throughout Europe helped alleviate diminishing physical sales, leading to an overall sales decline of 27 percent Europe-wide. AFP commented, however, that digital sales grew only 14 percent in Portugal between 2005 and 2009, resulting in a net decline in sales in the Portuguese music market of 40 percent. Portugal's legal system to combat theft of copyrighted works discourages legal action, according to AFP's director. Portuguese law requires imprisonment for up to three years for unlicensed reproduction, sale, or purchase of copyrighted works. He commented that the stringency of the law discourages legal action because judges and prosecutors view imprisoning someone for illegally downloading music as excessive. He also noted that the law requires the copyright holder to file a legal claim before the government can take action, but many are reluctant to do so due to the slow legal system.

17. (SBU) In December 2010, AFP signed an agreement with the government to cooperate on combating digital piracy, especially piracy related to peer-to-peer sharing. In the agreement, IGAC committed to provide Justice Ministry officials IP addresses and Portuguese websites sharing unlicensed music. AFP committed to provide

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Page 4 of 5

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Page 5 of 5

IGAC with technical resources and training, which involved a two-day session taught by the International Federation of the Phonographic Industry (based in London). IGAC agreed to publish the results of its investigation to provide a better understanding of the level of digital piracy in Portugal. However, IGAC has sought legal review from the Portuguese National Commission for Data Protection, which AFP said will likely take two years.

18. (SBU) A group of copyright activists, led by the Portuguese Association of Audiovisual Commerce, Cultural Works, and Entertainment (ACAPOR), filed lawsuits in 2011 alleging that more than 2,000 Portuguese users had downloaded copyrighted content between December 2010 and March 2011. According to ACAPOR representatives, the copyright activists collected the data by manually searching known peer-to-peer sharing websites after the Portuguese government rejected their request to block The Pirate Bay website.

19. (U) Portugal has implemented directives on the EU information society and protection of databases through national legislation. On January 26, 2012, Portugal joined EU member states to sign the Anti-Counterfeiting Trade Agreement. According to a 2010 report (latest published) of the Business Software Alliance, the software piracy rate in Portugal in 2009 was 40 percent, compared to the EU average of 35 percent and the Western Europe average of 34 percent.

Recommendation

20. (SBU)

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Page 5 of 5

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Page 1 of 2

From: Echols, William L
Sent: 2/20/2013 8:37:18 AM
To: SMART Core
Subject: The Netherlands: Special 301 Input

RELEASE IN PART B5

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REVIEW AUTHORITY: Clarke Ellis, Senior Reviewer

MRN: 13 THE HAGUE 94
Date/DTG: Feb 20, 2013 / 201337Z FEB 13
From: AMEMBASSY THE HAGUE
Action: WASHDC, SECSTATE ROUTINE
E.O.: 13526
TAGS: ECON, ETRD, KIPR, NL
Captions: SENSITIVE
Reference: 13 STATE 4811
Pass Line: DEPARTMENT FOR EB/TPP/IPE -- DAMON DUBORD AND JOELLEN URBAN
DEPARTMENT PASS TO USTR -- PAULA KAROL PINHA
Subject: The Netherlands: Special 301 Input

1. (SBU) SUMMARY: [REDACTED] Dutch law provides rights holders strong measures to redress instances of copyright infringement through civil procedures, while adequate criminal provisions exist in the event that civil procedures are insufficient. The Netherlands is a party to major intellectual property-related treaties and agreements, and has implemented them in domestic law. Dutch authorities continue to respond to outside complaints about infringement and update policy to combat unacceptable activity. The Sports Coalition (SC) has this year recommended the Netherlands be placed on the Priority Watch List. [REDACTED]

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END SUMMARY

The Policy Framework for IPR Protection in the Netherlands

2. (U) The Netherlands is a popular web-hosting center because it is situated close to major Internet exchanges and has excellent broadband penetration. This speed of service is an attraction for both legitimate and illegitimate web-sites. The Dutch Ministry of Security and Justice is responsible for copyright enforcement, while the Ministry of Economic Affairs is responsible for other aspects of intellectual property policy.

3. (U) The Netherlands is a party to major treaties and international agreements related to copyright and intellectual property rights, including most treaties overseen by the World Intellectual Property Organization and the World Trade Organization's Agreement on Trade Related Aspects of Intellectual Property Rights. Domestic law reflects this status. However, like other EU member states, the Dutch government has not signed the Anti-Counterfeiting Trade Agreement.

4. (U) In the Netherlands, copyright infringement cases are primarily handled through civil procedures, with criminal prosecution seen as a last resort. The Dutch case law and statutory framework have slowly grown to provide a strong civil code for the removal of illegal content. Recent cases have demonstrated that the courts were ready to require sites to remove content, to require hosting providers to take down sites, or to require internet service providers (ISPs) to block

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Page 1 of 2

user access to infringing sites hosted outside of the Netherlands, when rights holders or their representatives bring legal cases against the offender. During 2012, Dutch courts ruled that multiple Dutch ISPs must block access to torrent hub The Pirate Bay, though some ISPs have appealed the ruling. The cases were brought by Dutch NGO Bescherming Rechten Entertainment Industrie Nederland (BREIN), the self-appointed watchdog of the IPR industry. In 2012, BREIN successfully took action against 571 infringing web sites in total.

5. (U) Dutch IPR protection relies on strong interaction between the public and private sector. BREIN, which represents authors, artists and producers of music, film and interactive software, is the central point of contact for government, law enforcement, trade and media in the Netherlands for all issues concerning the unauthorized copying and distribution of entertainment products both offline and online. BREIN notes that litigation in Dutch courts is considerably cheaper and faster than in the U.S. and many European countries and is generally an effective means of redressing copyright infringement. BREIN also notes that, as case law on copyright infringement has developed, Dutch ISPs and hosting providers are increasingly willing to proactively address rights holder concerns about infringing sites.

The Sports Coalition's Priority Watch List Nomination

6. (SBU) The Sports Coalition has nominated the Netherlands for the Priority Watch List. It contends that services operating in whole or in part in the Netherlands pirated a material number of live game and event telecasts. In past years, Major League Baseball (MLB) – a member of the Sports Coalition – has lodged similar complaints and was advised by Post to contact the Ministry of Security and Justice, BREIN, and Dutch ISPs directly, and work with Dutch entities to take action based on these concerns using the procedures available under Dutch law. BREIN representatives have told us they have received no communications from the Sports Coalition to date. The Ministry of Security and Justice is not at liberty to discuss individual cases. [REDACTED]

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7. (SBU) COMMENT: Given the size of the Dutch web-hosting industry, there is a significant quantity of legal and illegal IPR content available. Taking down illegal linking and file-sharing sites is a constant exercise for Dutch authorities, civil society organizations and service providers; however, sufficient legal instruments exist to allow rights holders to redress infringement. [REDACTED]

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END COMMENT.

Signature: NOLAN

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Info: EUROPEAN POLITICAL COLLECTIVE ROUTINE

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