

# The Congressional International Anti-Piracy Caucus

Senator Sheldon Whitehouse, Co-Chair  
Senator Orrin G. Hatch, Co-Chair



Congressman Adam B. Schiff, Co-Chair  
Congressman Bob Goodlatte, Co-Chair

---

## 2010 COUNTRY WATCH LIST

The Congressional International Anti-Piracy Caucus will focus once again on copyright piracy problems in Canada, China, Mexico, Russia, and Spain for 2010. We remain deeply concerned by the inadequacy of intellectual property protections in these countries and are greatly disappointed by their failure to make meaningful progress during the last year. Their continued failure to enforce intellectual property rights gravely hurts U.S. creators and our economy as a whole. In this watch list, we detail specific steps each country must take to protect intellectual property sufficiently in the future.

We also call upon all our international trading partners to take action against websites based within their borders whose business models are premised on delivering infringing content. Large scale intellectual property theft should not succeed in plain sight. We also urge them to give greater attention to businesses that use software without paying for it. This type of piracy undercuts sales for U.S. companies and subsidizes production costs for foreign enterprises that compete against U.S. businesses.

In addition, we call upon the Administration to do everything it can to ensure that our trading partners live up to their obligations to provide for effective enforcement of intellectual property protections.

### CANADA

The state of copyright piracy in Canada remains virtually unchanged since last year. Canada continues to lack adequate laws to allow copyright holders to protect their works from online piracy or to enable a legitimate digital marketplace to develop. This failure has been acknowledged within Canada. Indeed, numerous government reports and Throne Speeches over the past decade and a half have called for comprehensive copyright reform. Successive Canadian governments have failed to follow through on these pledges, however.

As a result, Canada remains an international safe haven for Internet pirates. It is a leading host of commercial operators of illegitimate file sharing sites. For example, at one point in 2009, five of the world's top ten illegitimate "bittorrent" sites were registered, located, or operated out of Canada. Moreover, some site operators and users boast openly of their immunity under Canadian law. One such site, *isoHunt* – which has been found liable in the U.S. for inducing copyright infringement – has in fact sued Canadian rights holders in order to establish its protection under Canadian law.

Canada also still has failed to enact urgently needed reforms that would bring it into compliance with the World Intellectual Property Organization (WIPO) Internet Treaties. For example, it still must prohibit both circumvention of technological copyright protection measures and the trafficking of circumvention devices. It also must enact an effective legal framework governing Internet Service Provider (ISP) liability and responsibility. Until it enacts these and other reforms, Canada is likely to serve as an international transshipment hub for circumvention devices, such as “mod chips” and “game copiers,” that allow for the use and reproduction of unauthorized copies of popular entertainment software products.

Canada’s enforcement record continues to fall short of what should be expected of our neighbor and largest trading partner. We therefore renew our call to the Canadian Government to adopt measures that would: (1) ensure the liability under Canadian law of parties who facilitate, encourage, and profit from widespread infringement; (2) meaningfully engage ISPs in the fight against online piracy; (3) clearly affirm that current law does not permit unauthorized copying from illegal sources; (4) effectively prevent the circumvention of technological protection measures, including a prohibition on trafficking in circumvention devices; and (5) implement effective border measures (including a grant of *ex officio* power to seize infringing goods) to protect against the international distribution of infringing goods.

## CHINA

Over the past year, there has been little, if any, improvement in the protection of intellectual property rights in China. For parts of the American copyright community, the situation has deteriorated. Copyright theft is viewed in some sectors of the economy as a legitimate strategy for Chinese competitiveness. This must end.

China’s toleration of massive physical piracy is well-known, having been documented in our previous reports, USTR’s annual Special 301 reports, and elsewhere. Nonetheless, the export and transshipment of pirated high quality CDs and DVDs of U.S. films from and through China continues to grow. Transshipments flow out of China to destinations worldwide, including the U.S. The recent emergence of high-quality, counterfeit *Blu-ray* DVDs sold online by Chinese retail and auction websites is one of the latest examples of China’s export piracy problem. China has also emerged as the global epicenter for the production and export of circumvention devices.

Physical piracy also remains problematic for the U.S. book publishing industry, whether it be illegal printing of academic books and commercial bestsellers, unauthorized commercial-scale photocopying, or production of DVDs containing numerous pirated titles. China also continues to tolerate excessive levels of software license infringement in government and in state-owned and private enterprises.

As we noted last year, China’s online and mobile markets now have become contaminated with pirated materials via an array of illegal websites, user-generated content sites such as *Tudou.com* and *Youku.com*, and so-called “deep-linking” sites such as the search engine *Baidu* that connect users to infringing websites and content. Close to half of the audiovisual content available on the world’s “top sites” is sourced from user-generated content sites in China. Internet piracy also severely affects online academic and professional journals as commercial entities provide unauthorized access to electronic copies of scientific journal articles published by U.S. publishers. Scanned books are also made available for download through websites such as *Taobao*.

The Chinese government has made numerous bilateral commitments to address these forms of piracy. We urge it to follow through with meaningful reforms and enforcement.

We and USTR also previously have documented the onerous market access restrictions that the Chinese government imposes on U.S. copyright industries but not on Chinese pirates of American content. In late 2009, the Chinese government issued a market-distorting Circular that made this situation worse. The Circular includes an increase in China's already burdensome procedures for online distribution of sound recordings; new discriminatory censorship procedures that will delay the legal marketing of sound recordings online; and WTO-inconsistent restrictions on the ability of foreign-invested enterprises to engage in the importation and distribution of online music. Moreover, the Chinese government is also moving forward with a number of protectionist policies that compel the transfer of foreign IP to Chinese entities.

We have supported the WTO complaint the U.S. government brought against China for its failure to give U.S. companies proper access to its market for film and home entertainment products, publications, and sound recordings. We urge the Chinese to work expeditiously with the U.S. government to bring its laws and measures into compliance with the resulting WTO decision. Doing so will be an important step in ensuring fair access to the Chinese market and an important step in combating piracy.

## MEXICO

While we are aware of a perceived willingness to address copyright issues on the part of Mexican officials, the sheer dimension of the piracy problems in Mexican markets remains severe. For example, Mexico has the most prolific camcording problem in Latin America, hurting the U.S. film industry in Mexico and the broader Latin American market. According to industry analysis using watermarks, there has been a 700% increase in identified camcorded copies sourced from Mexico since 2005. Growing Internet piracy, fueled by a lack of cooperation from ISPs, also continues to go unaddressed. As an example of the scope of the problem, an industry analysis found that the number of illegal music files downloaded in Mexico each year is more than six times the number of songs contained in the CDs sold legally in Mexico. Piracy of hard goods and unauthorized use of software also remain severe problems.

We recognize the efforts of Mexican enforcement agencies, and note with appreciation the high level of cooperation between authorities and rights holder organizations. We also commend the Government of Mexico for passing legislation providing *ex officio* law enforcement authority, a long-standing priority of our Caucus.

Notwithstanding these efforts, we urge the Mexican government to address the following deficiencies that continue to contribute to the failure of intellectual property protections in Mexico: (1) lack of adequate enforcement resources; (2) failure to implement a national anti-piracy plan that coordinates federal and state activities; (3) lack of deterrent sentences, due to the inadequacy of sentencing guidelines and judicial training; (4) failure to criminalize camcording in theaters and the distribution of devices that circumvent technological copyright protection measures; (5) lack of an effective legal framework to combat Internet piracy; and (6) poor enforcement performance by state and municipal governments.

## RUSSIA

The U.S.-Russia IPR Agreement, signed in November 2006, provides a mutually agreed upon roadmap for effective enforcement of intellectual property rights. It is imperative that Russia work expeditiously to fulfill its obligations under the Agreement. The Russian government has taken some positive steps, including enforcement actions against retail establishments and warehouses. There has been a decline in enforcement actions over the past two years, however, and much remains to be done. In particular, we are disappointed with the inadequate progress in addressing Internet piracy and the ongoing lack of deterrent penalties. To tackle this problem, Russia needs to amend its Civil Code to provide for meaningful cooperation from ISPs, and to establish a specialized Internet IPR Unit within the Ministry of Interior. Russia also should adopt updated and uniform procedures for investigation and prosecution of copyright infringement.

As we stated last year, Russian collecting societies continue to pose a threat to U.S. creators. Those societies should be able to operate only within the scope of the mandate that they receive from rights holders. The requirement of state accreditation should have ensured the observance of this limitation. However, two years have passed since this accreditation requirement went into force and many rogue collecting societies, and commercial online and physical entities that purport to operate under such “licenses,” continue to operate without any interference from the state. The Russian Government also has not taken steps to ensure that accredited societies operate in an open and transparent manner that is fair to foreign rights holders. We urge the Russian government to implement appropriate reforms.

It also is important that Russia implement an optical disc licensing regime and pass *ex officio* legislation, both important elements of the U.S.-Russia Agreement. According to industry reports, hard goods piracy remains rampant in many cities. In St. Petersburg, for example, it is not uncommon for legitimate retail chains to carry pirated products. The motion picture industry also reports that an explosion in camcorder piracy in 2009 has made Russia the world’s leading source of illicit full-video recordings of films from theaters.

## SPAIN

The crisis of online piracy in Spain has not changed since last year. According to reports from the music industry, Spain’s music market has fallen by 70% over the last eight years and 40,000 jobs have been lost in the last five years. Other copyright industries face similar challenges in Spain. Inadequacies in the existing Spanish legal and regulatory structure have given rise to this problem, and it is time for urgent action. In the past year, the Spanish Government has introduced a new piece of legislation to tackle piracy through websites. We welcome and support this development. We also express our hope, however, that the Spanish Government will move quickly to tackle peer-to-peer piracy which is the principal problem faced by the music and entertainment software industries. According to the entertainment software industry, Spanish ISP subscribers downloaded more than 1.2 million infringing copies of select copyrighted works through peer-to-peer file sharing in December 2009 alone, placing Spain second among countries in terms of infringing peer-to-peer downloads by overall volume and per capita.

Contributing to Spain’s high online piracy levels are the government’s policies preventing identification of the direct infringer, and that decriminalize illegal downloading of content

distributed via peer-to-peer file sharing. Spanish Police also refuse to take Internet enforcement actions. The Circular from the Officer of the Prosecutor General supporting these policies should be rescinded. Greater accountability and deterrence must be established in Spanish law. Until that happens, even voluntary agreements between copyright owners and ISPs to enable the efficient takedown of infringing hosted content will be nearly impossible to achieve.

We call upon the Spanish government to commit itself to ending online piracy in all of its forms, and to undertake the following measures: (1) expeditiously pass the legislation that has been introduced to address online piracy; (2) move quickly to address peer-to-peer infringement by ensuring greater cooperation of ISPs; (3) modify current legislation and reverse government policies that hamper Internet enforcement actions against infringers and that prevent rights holders from obtaining the necessary information to take civil actions; and (4) issue an official instruction clarifying that the private copying exception does not apply to copies from unauthorized sources.

*The Congressional International Anti-Piracy Caucus, originally formed in 2003 and currently co-chaired by Senators Sheldon Whitehouse and Orrin G. Hatch, and Representatives Adam B. Schiff and Bob Goodlatte, is made up of 70 members of Congress. The goals of the Caucus are to provide briefings for congressional delegations traveling to countries with significant piracy problems; staff and member briefings and forums on international intellectual property protection and piracy; demonstrations of new technologies and products designed to improve consumers' entertainment experiences and to reduce piracy; and to work closely with the committees of jurisdiction in the House and Senate on related hearings and legislation.*