



June 13, 2001

GSP Subcommittee  
Trade Policy Staff Committee  
Office of the U.S. Trade Representative  
1724 F Street NW, Room F220  
Washington, DC 20508

Re: Request for Review of the Intellectual Property Rights Practices of Pakistan in the 2001 Annual GSP Country Eligibility Practices Review, 66 Fed. Reg. 19278 (April 13, 2001)

To the Subcommittee:

The Trade Policy Staff Committee (TPSC) of the Office of the United States Trade Representative (USTR) published in the April 13, 2001 Federal Register a notice announcing the 2001 Annual Generalized System of Preferences (GSP) Country Eligibility Practices Review. USTR indicated that "Interested parties may submit petitions to have the GSP status of any eligible beneficiary developing country revised with respect to any of the designation criteria listed in sections 502(b) or 502(c) of the Trade Act (19 U.S.C. 2462(b) and (c))." See 66 Fed. Reg. at 19279.

The International Intellectual Property Alliance (IIPA) hereby submits its request that the eligibility of Pakistan as a GSP beneficiary developing country be reviewed, and that its GSP benefits be suspended or withdrawn, in whole or in part, if requisite improvements are not made by Pakistan to remedy the deficiencies (outlined below) which have adversely affected U.S. copyright owners. In 1999, the U.S. imported \$64.2 million in products from Pakistan under the GSP program; this represented approximately 3.7% of Pakistan's total exports to the U.S., according to U.S. government statistics. In 2000, the U.S. imported \$93.3 million in products from Pakistan under the GSP program; this represented approximately 4.3% of Pakistan's total exports to the U.S., according to U.S. government statistics.

## **Petitioner and its Interest: International Intellectual Property Alliance (IIPA)**

IIPA is a coalition of seven trade associations that collectively represent the U.S. copyright-based industries -- the motion picture, music and recording, business and entertainment software, and book publishing industries. IIPA's member associations are the Association of American Publishers (AAP), AFMA (formerly the American Film Marketing Association), Business Software Alliance (BSA), Interactive Digital Software Association (IDSA), the Motion Picture Association of America (MPAA), National Music Publishers' Association (NMPA) and the Recording Industry Association of America (RIAA).

These associations represent almost 1,500 U.S. companies producing and distributing copyright-protected materials throughout the world -- all types of computer software including business applications and entertainment software (such as videogame CDs and cartridges, personal home computer CDs, and multimedia products); motion pictures, television programs, and home videocassettes; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications, and journals (in both electronic and print media).

These U.S. copyright-based industries represent the leading edge of the world's high technology, entertainment and publishing industries. According to the most recent edition of the report, Copyright Industries in the U.S. Economy: The 2000 Report, prepared for IIPA by Economists, Inc., these core copyright industries accounted for \$457.2 billion in value added to the U.S. economy, or approximately 4.94% of the Gross Domestic Product (GDP) in 1999 (the last year for which complete data is available). The total copyright industries accounted in 1999 for \$677.9 billion in value added, or approximately 7.33% of GDP. The core copyright industries' share of the GDP grew more than twice as fast as the remainder of the U.S. economy between 1977 and 1999 (7.2% vs. 3.1%). Employment in the core copyright industries grew at close to three times the employment growth in the economy as a whole between 1977 and 1999 (3.24% vs. 1.6%). 7.6 million workers were employed by the total copyright industries, about 5.7% of the total U.S. work force, in 1999. The core copyright industries accounted for an estimated \$79.65 billion in foreign sales and exports in 1999, a 15.1% gain over the \$69.21 billion generated in 1998. The Copyright Industries in the U.S. Economy report has been made widely available to officials working on country and IPR issues at USTR, and throughout other agencies, including the State Department, the Commerce Department, the U.S. Patent and Trademark Office, and the U.S. Copyright Office. The Executive Summary of this report is available on IIPA's website, at [http://www.iipa.com/copyright\\_us\\_economy.html](http://www.iipa.com/copyright_us_economy.html).

The U.S. creative industries represent one of the few sectors of the U.S. economy that regularly contributes to a positive balance of trade. It is essential to the continued growth and future competitiveness of these industries that our trading partners provide free and open markets and high levels of protection to the copyrights on which this trade depends. Inexpensive and accessible reproduction technologies make it possible for U.S. copyrighted works to be pirated -- stolen -- in other countries, including in Pakistan. The copyright industries represented in IIPA lose an estimated \$20-22 billion

annually due to piracy outside the United States. These staggering losses, if not halted, could reverse this path of growth in these sectors, threaten the high wage employment that these industries bring to the U.S. economy, and damage U.S. competitiveness. To combat the problems of inadequate legislation and ineffective IPR enforcement in developing countries, the U.S. copyright-based industries joined with the Administration and Congress to fashion new legislation and negotiating tools. IIPA and its members have supported various trade tools with IPR provisions over the years, including the GSP Program, Special 301, Section 301, the Caribbean Basin Economic Recovery Act, the Andean Trade Preferences Act, and the U.S.-Caribbean Trade Partnership Act.

### **Action Requested by Petitioner**

Pursuant to the Trade Act of 1974, as amended (19 U.S.C. 2461 et seq.), IIPA, on behalf of its seven trade association members, hereby petitions the President to review the eligibility of Pakistan as a GSP beneficiary developing country, and if requisite improvements are not made swiftly by Pakistan, then IIPA requests the President to suspend or withdraw GSP benefits of Pakistan, in whole or in part, for its failure to provide adequate and effective copyright protection for U.S. copyright owners.

### **Legal Authority for this Petition and Discussion of the IPR Criteria in the GSP Statute**

A full discussion of the legal authority for this petition, and the specific IPR provisions and legislative history of the GSP programs is found in Appendix A. To summarize, in the GSP Renewal Act of 1984, Congress specified conditions that GSP beneficiary countries must meet in order to gain and maintain their preferential trading status. In particular, one of these express conditions (which Congress also delineated as one “purpose” of the GSP Program) was to encourage developing countries “to provide effective means under which foreign nationals may secure, exercise, and enforce exclusive intellectual property rights.”<sup>1</sup> The legislation required the President to apply mandatory and discretionary criteria with respect to IPR protection as a condition to a country achieving “beneficiary” status under the GSP Program. When the GSP Program was reauthorized in August 1996, the language of the IPR discretionary criterion for GSP eligibility in Section 502(c)(5) was simplified slightly and now requires the President to “take into account the extent to which such country is providing adequate and effective protection of intellectual property rights.”<sup>2</sup>

### **Pakistan Fails to Provide “Adequate and Effective Protection” of U.S. Copyrights**

To the best of petitioner’s knowledge, much of the information describing the deficiencies in Pakistan’s copyright enforcement regime has been presented previously to members of various U.S. governmental interagency groups, including the Special 301 interagency group, several members of the GSP Subcommittee, as well as

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<sup>1</sup> See Section 501(b)(9)(B) of the GSP Renewal Act of 1984.

<sup>2</sup>GSP Renewal Act of 1996, Title I, Subtitle J, of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (codified at 19 U.S.C. 2462(c)(5)).

the Trade Policy Staff Committee, in the context of USTR's Annual Special 301 Review. On February 16, 2001, IIPA presented its annual Special 301 submission to Assistant USTR for Services, Investment and Intellectual Property Joseph Papovich; this submission was widely distributed among the interagency for its internal consideration in the 2001 Special 301 Annual Review. IIPA's Pakistan country report is available on our website, at <http://www.iipa.com/countryreports.html>. The entire 2001 Special 301 report is also available on our website, at <http://www.iipa.com/special301.html>.

USTR has highlighted inadequacies in the copyright law and enforcement situation in Pakistan. For example, in his April 30, 2001 Special 301 announcement, Ambassador Robert Zoellick kept Pakistan on the "Watch List" and remarked:

The sharp growth in optical media piracy . . . offsets [some] promising developments in legal infrastructure. Pakistan now hosts up to seven illegal optical media production plants with a reported capacity of 100 million units. Pirated goods account for 90% of the domestic marketplace, and are exported throughout the region. In addition, book piracy remains a significant issue, accounting for \$45 million in losses for U.S. publishers. Illegal reprinting of scientific, technical and medical texts plague legitimate sales. Also, the refusal of Pakistani courts to issue *ex parte* search orders continues to hamper enforcement efforts, particularly in the area of business software. Delayed court proceedings and non-deterrent fines similarly reduce the effectiveness of [the Pakistan] government . . . .<sup>3</sup>

Recent developments have made us keenly aware of the severity of the optical media piracy problems in Pakistan. In particular, we now know that the capacity of operational optical media (CD) plants in the Karachi area will soon outstrip the capacity in the Ukraine, with an estimated 1.5 million CDs (audio, video, games and software) being exported monthly. The following describes the inadequate protection of copyright that is the basis for this petition.

**1. Growing Optical Media Pirate Production in Pakistan is Devastating the Market in and Outside of Pakistan.**

The most troubling development in Pakistan involves the growth of optical media piracy and the government's failure to address it. While domestic legitimate demand for CDs is very limited in Pakistan, we now have reports of up to seven optical media plants, at least four in operation now with a total of 15 or 16 production lines. At least two other plants are scheduled to go into operation within the next couple of months. Only two of the seven known plants are registered with the proper authorities. Unconfirmed reports also indicate the existence of two additional underground CD plants producing pirate product exclusively for export. An estimated 75-80% of

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<sup>3</sup> Recent Postings 01-22, Office of the United States Trade Representative, "USTR Releases the Super 301, Special 301 and Title VII Reports which Emphasize Enforcement Priorities," April 30, 2001, found at <http://www.ustr.gov/enforcement/special.pdf>.

production is for the Indian market, while the rest are destined for the United States, United Kingdom, Africa, Australia, New Zealand, Sri Lanka, Bangladesh, Kuwait, Egypt and Indonesia. These plants have a reported installed capacity of 100 million units, with 18 million CDs sold domestically (90% piracy rates for CDs sold in Pakistan), and the rest produced for export. The pirated copies being produced are often made from foreign-produced, uncensored masters. Because of the rise of pirate production in Pakistan, imported or smuggled pirate optical discs from countries like China and Malaysia has decreased somewhat in 2000, compared with 1999. The owner of one of the Pakistani plants reportedly opened a new plant in Bangladesh as well.

The Pakistani government has not taken steps to implement effective measures against CD and CD-ROM piracy. In particular, the Pakistani government has not introduced effective optical media plant control measures, including the ability to track the movement of optical media production equipment, as well as the raw materials (including optical grade and other polycarbonate), and has not compelled the use of Source Identification (SID) codes in order successfully to halt the production of pirate CDs and CD-ROMs. In addition, Pakistani authorities have neither conducted raids on plants producing unauthorized product nor seized infringing copies and machinery, nor imposed criminal penalties to deter the organized manufacturing and distribution of pirate product.

The result of this overwhelming increase in pirate optical media production is that piracy produced in Pakistan is decimating the legitimate markets domestically and abroad. Pirate music CDs (which are pricing at about US\$1 to \$2.50 for international and Indian repertoire, and US\$1 to \$1.50 for domestic repertoire, compared with US\$4 in 1999, and accounted for some 18% of total pirate unit sales in 2000, up from 15% in 1999), pirate VCDs, which are starting to appear in the Pakistani market in increasing numbers within days of a film's theatrical release, and pirate copies of business software and games are all readily available for sale in Pakistan. The Pakistani market remains mired in business software piracy, with an estimated piracy level in 2000 of 83%. Presently, there are estimated to be over 10,000 illegal software kiosks throughout Pakistan, in cities such as Karachi, Lahore, Islamabad, Faisalabad, Peshawar and Quetta. These software retailers feed Pakistan's immense illegal end-user community, which includes major banks, financial institutions and government ministries. Recent raids indicate the scope of the problem. In 2000, the police conducted 20 raids against resellers, and two others against pirate end-users (businesses engaged in the unauthorized use of software). No fines or penalties were meted out as a result of these actions. While similar activities were carried out in 1998 and 1999, the trivial fines imposed in those cases were ineffective and non-deterrent. Indicative of the seriousness of the problem is the Rainbow Centre in Karachi, a shopping arcade for pirated music, film, games and software, with 150 retail outlets for Pirated CDs, DVDs, VCDs and videos. Another example is the duty free area of Karachi International airport, which has a retail shop filled with pirated CDs and DVDs.

**2. Book and Sound Recording/Music Piracy Continues To Harm The Copyright Industries.**

Audiocassette piracy and book piracy (mainly photocopying of medical texts, computer books, and business titles, but also including reprint piracy and commercial photocopying) continue to cause serious commercial harm to copyright owners in Pakistan. For example, pirate audiocassettes sell for as little as seven cents in Pakistan; not surprisingly, it becomes difficult in the face of such pirate prices to develop a legitimate local market. Piracy of international and regional (Indian) sound recordings continues to be nearly 100%, while the overall rate of piracy is estimated at 90% (no change from 1999). U.S. publishers report that the piracy situation in Pakistan continues to plague legitimate sales as the problem of illegal reprinting and commercial piracy of scientific, technical and medical titles increases. Computer and business books also continue to be popular with the pirates.

**3. Enforcement Efforts Either Are Not Forthcoming or Fail to Result in Deterrence.**

Enforcement efforts are lacking in Pakistan for most industries. For example, for the recording industry, the videogame industry, and the publishing industry, enforcement is entirely absent. In 2000, there were no known enforcement actions taken by the authorities to protect regional (Indian) and international sound recordings. There has also been no detectable enforcement against book piracy. Most textbook publishers lose whatever legitimate market they might enjoy to pirates. Groups like the National Book Foundation fail to comply with the already very weak regulations on notification and payment of royalties, driving losses up. Losses in Pakistan due to piracy of publishers' works are U.S.\$45 million, the highest per capita in the world. For the business software industry, Pakistani enforcement authorities have been reluctant to act against pirate end-users (businesses engaged in the unauthorized use of software). While a court ordered a raid on a pirate end-user for the first time in 2000, the effectiveness of the order was greatly curtailed in that the court refused to issue the order *ex parte* (i.e., without giving notice to the defendant). Because of the different nature of the problems faced by the software industry in this regard, and the fact that no deterrent penalties have been imposed to date on software pirates, business software piracy levels in Pakistan remain alarmingly high at 84% in 2000. Statements made by the Pakistani government several months ago asking enforcement officials to cease engaging in enforcement actions are not helpful. The enforcement environment remains difficult when factors of the general social instability and safety are considered. There is also no central administrative government body that focuses on copyright awareness and enforcement, exacerbating the difficulties already faced by right owners.

The Pakistan government did raid optical disc factories in 2000 in conjunction with industry representatives. In addition, police forces in three major cities (Karachi, Lahore, and Islamabad) established special intellectual property anti-piracy task forces in 1999. Unfortunately, the raids failed to lead to deterrent results and the IPR task forces have not had the expected impact because of insufficient commitment by the government to this effort. For the business software industry, the police conducted

raids of illegal hard disk loaders, but again, the results have been less than deterrent, and have not resulted in a lowering of piracy levels in Pakistan.

#### **4. Court Proceedings are Bogged Down By Delays and Result In Non-Deterrent Fines.**

The courts require significant documentation to support criminal prosecutions, which delays anti-piracy cases. While maximum criminal penalties for infringement are three years, imprisonment and a fine of U.S.\$1,720 (Rp100,000), such punishments only exist on the books; they are never carried out in practice, and instead, typical penalties imposed on pirate video outlets are miniscule. Even though there has been some indication of increased fines over the past couple of years, the court system simply does not provide an effective deterrent to piracy. Cases brought in 1994 have moved along at a glacial pace (while the rare case is decided in days). There are several possible sources of delays, including: the failure of the raiding officer to submit the final chart sheet (*chalan*), often due to the officer's heavy caseload or his transfer (a common occurrence); the non-availability of the judge; the non-availability of witnesses on hearing dates; and the non-appearance of a defendant's lawyer for several hearings in order to delay the proceedings.

#### **5. Pakistan's Copyright Ordinance Contains Some Remaining Deficiencies, Including a Devastating Compulsory License.**

In September 2000, the Copyright Ordinance, 1962, was amended by the Copyright (Amendment) Ordinance, 2000. While this amendment deals with several TRIPS deficiencies, it also contains a disturbing change that could devastate the publishing industry's ability to exercise and enforce its rights in Pakistan. Specifically, the amendment contains a provision whereby the Pakistani government or the Copyright Board (established pursuant to Article 45 of the Copyright Ordinance) may apparently grant a royalty-free, government-imposed, compulsory license for copying, translating and adapting any textbooks 'on a non-profit' basis. If this provision is not narrowed by other provisions to make it consistent with international treaty and convention standards, this amendment would take Pakistan out of compliance with its international obligations, and possibly subject it to an immediate TRIPS case.

The following additional problems with the Ordinance (as amended through 1992), notwithstanding the reported amendments discussed above, include:

- unclear point of attachment for foreign sound recordings;
- other overly broad exceptions to protection;
- unclear full retroactive protection for works and sound recordings, as required by TRIPS,

Pakistan must further amend its copyright law to fix the problems identified, should adopt the 1971 (Paris) text of the Berne Convention, and join the Geneva (phonograms) Convention.

**6. Because of Inadequate and Ineffective Copyright Protection and Enforcement in Pakistan, U.S. Copyright Owners Suffer Economic Harm.**

Total losses to the U.S. copyright-based industries in Pakistan were estimated at \$155.6 million in 2000, with levels of video, business software and entertainment software piracy all remaining well above 50%. Attached as Appendix B is the methodology used by IIPA members to calculate estimated losses due to copyright piracy and piracy levels. This methodology was also submitted to USTR in IIPA's 2001 Special 301 submission, and can be found at [http://www.iipa.com/pdf/2001\\_SPEC301METHODOLOGY.pdf](http://www.iipa.com/pdf/2001_SPEC301METHODOLOGY.pdf).

**ESTIMATED TRADE LOSSES DUE TO PIRACY  
 (in millions of U.S. dollars)  
 and LEVELS OF PIRACY: 1995 - 2000**

INDUSTRY	2000		1999		1998		1997		1996		1995	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	10.0	60%	9.0	60%	9.0	60%	9.0	70%	10.0	80%	10.0	100%
Sound Recordings / Musical Compositions <sup>4</sup>	65.0 <sup>5</sup>	90%	3.0	90%	2.0	95%	2.5	95%	2.0	95%	5.0	94%
Business Software Applications <sup>6</sup>	24.5	83%	14.1	83%	18.1	86%	16.4	88%	16.7	92%	10.5	92%
Entertainment Software <sup>7</sup>	11.1	94%	NA	NA	11.1	94%	10.2	92%	9.8	93%	8.0	90%
Books	45.0	NA	42.0	NA	40.0	NA	30.0	NA	30.0	NA	30.0	NA
<b>TOTALS</b>	<b>155.6</b>		<b>68.1</b>		<b>80.2</b>		<b>68.1</b>		<b>68.5</b>		<b>63.5</b>	

<sup>4</sup> The 1999 loss figure represents U.S. losses only, while the piracy level figure represents the overall piracy level for music and sound recordings (including Indian and international repertoire). The piracy level for international repertoire in 1999 was virtually 100%. The 1998 figures should be read the same way. The piracy level for international repertoire in 1998 was 99%.

<sup>5</sup> The estimated losses to the sound recording/music industry due to domestic piracy are U.S.\$3 million for 2000, but this number excludes any losses on sales of exported discs. Total record industry losses for 2000 (including export piracy losses) were U.S.\$65 million in 2000.

<sup>6</sup> BSA estimates for 2001 have been finalized and appear above. In IIPA's February 2001 Special 301 submission, BSA reported that its 2000 estimates of \$16.9 million and 84% were preliminary. BSA's estimates above reflect losses experienced by U.S. copyright owners, and does not include losses that may occur along the rest of the retail chain. This explains the difference between the estimated losses reported in the GSP and Special 301 context, and those global estimated losses that BSA reports in its separate publications. For example, BSA reports in its Sixth Annual BSA Global Software Piracy Study (May 2001) that the estimated global losses due to business software piracy in Pakistan were \$31.4 million for 2000.

<sup>7</sup> IDSA estimates for 2000 are preliminary. They are based on 1998 estimates and the fact that there has been no marked improvement in the Pakistani market for videogame products.

**CONCLUSION**

For the reasons stated in this submission, IIPA requests that the GSP Subcommittee initiate a review the GSP country eligibility of Pakistan for its failure to provide adequate and effective copyright protection for U.S. copyright owners.

If requisite improvements are not made in Pakistan to remedy these deficiencies in the near future, then IIPA requests that the U.S. suspend its eligibility or withdraw GSP benefits of Pakistan, in whole or in part.

Respectfully submitted,

Eric H. Smith  
President  
International Intellectual Property Alliance

Enclosures

## **APPENDIX A**

### **Statutory Basis for the Country Eligibility Practice Review of the Intellectual Property Rights Practices of PAKISTAN under the Criteria of the Generalized System of Preferences (GSP) Program**

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The Generalized System of Preferences (GSP) program of the United States provides unilateral, non-reciprocal, preferential duty-free entry for over 4,650 articles from approximately 140 countries and territories designated beneficiary countries and territories for the purpose of aiding their economic development through preferential market access. The GSP program was instituted on January 1, 1976, and authorized under Title V of the Trade Act of 1974 (19 U.S.C. 2461 et seq.) for a 10-year period. Since 1997, an additional 1,770 items are eligible for GSP treatment for specified least developing beneficiary developing countries.

The GSP program has been renewed several times since its establishment. Most recently, in 1999 Congress reauthorized the GSP program through September 30, 2001.<sup>8</sup> What was unique about this extension was that, for the first time in several years, Congress extended the GSP Program for more than a single year. IIPA has supported a multi-year extension of this program to support the use of the GSP program as a tool to protect the interests of U.S. copyright owners around the world.

Provisions tying intellectual property protection to trade benefits were first added to the Trade and Tariff Act of 1984 [hereinafter "TTA 1984"]. Title V of the TTA 1984, known as the GSP Renewal Act of 1984,<sup>9</sup> renewed the GSP Program and specifically required the President to consider intellectual property protection in determining whether to designate a developing country as eligible for GSP benefits. While there has been a minor change in the statutory language between the GSP Renewal Act of 1984 and the GSP Renewal Act of 1996, the GSP provisions as related to IPR remain essentially the same as in 1984. The legislative history of the 1984 Renewal Act is particularly instructive on the important link between GSP benefits and strong IPR protection.

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<sup>8</sup> See Extension of Duty-Free Treatment under Generalized System of Preferences, Section 508 of the Ticket to Work and Work Incentives Improvement Act of 1999, Pub. L. No. 106-170 (codified at 19 U.S.C. 2465).

<sup>9</sup> See the Generalized System of Preferences Renewal Act of 1984, Title V, Pub. L. No. 98-573 (1984) (codified at 19 U.S.C. 2461-2465).

### The GSP Renewal Act of 1984

In the GSP Renewal Act of 1984, Congress specified conditions that GSP beneficiary countries must meet in order to gain and maintain their preferential trading status. In particular, one of these express conditions (which Congress also delineated as one “purpose” of the GSP Program) was to encourage developing countries “to provide effective means under which foreign nationals may secure, exercise, and enforce exclusive intellectual property rights.”<sup>10</sup>

The legislation required the President to apply mandatory and discretionary criteria with respect to IPR protection as a condition to a country achieving “beneficiary” status under the GSP Program. The mandatory criterion prohibited the designation of a country from becoming a “beneficiary developing country” if, for example, “such country has nationalized, expropriated, or otherwise seized ownership or control of property, including patents, trademarks, or copyrights, owned by a United States citizen or by a corporation, partnership, or association which is 50 percent or more beneficially owned by United States citizens.” See Section 503(b)(4) of the GSP Renewal Act of 1984, now codified at 19 U.S.C. 2462(b)(2)(D).

The GSP Renewal Act of 1984 added as a discretionary criterion, in determining whether to designate a developing country as eligible to receive GSP duty-free trade treatment, that

the President shall take into account ... the extent to which [each] country is providing adequate and effective means under its laws for foreign nations to secure, to exercise, and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights.

Section 503(c)(5) of the GSP Renewal Act of 1984, codified at 19 U.S.C. 2462(c)(5). The Senate Finance Committee Report explained that:

To determine whether a country provides “adequate and effective means,” the President should consider the extent of statutory protection for intellectual property (including the scope and duration of such protection), the remedies available to aggrieved parties, the willingness and ability of the government to enforce intellectual property rights on behalf of foreign nationals, the ability of foreign nationals effectively to enforce their intellectual property rights on their own behalf and whether the country’s system of law imposes formalities or similar requirements that, in practice, are an obstacle to meaningful protection.

S. Rep. No.98-485, 98<sup>th</sup> Cong., 2d Sess. At 11 (1984). The Senate Report also noted:

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<sup>10</sup>See Section 501(b)(9)(B) of the GSP Renewal Act of 1984.

In delegating this discretionary authority to the President, it is the intent of the Committee that the President will vigorously exercise the authority to withdraw, to suspend or to limit GSP eligibility for non-complying countries ....

Where valid and reasonable complaints are raised by U.S. firms concerning a beneficiary country's market access policy or protection of intellectual property rights, for example, it is expected that such interests will be given prominent attention by the President in deciding whether to modify duty-free treatment for that country.

Id. at 12-13 (emphasis added). The House Ways and Means Committee stated that "countries wishing to reap the benefits of preferential duty-free access to the U.S. market must fulfill international responsibilities" in the intellectual property area. House Rep. No. 98-1090, 98<sup>th</sup> Cong., 2d Sess. at 12 (1984).

The IPR criteria are a condition, not only for obtaining GSP benefits in the first place, but also for retaining them. The 1984 Act authorized the President to "withdraw, suspend, or limit the application of the duty-free treatment accorded under Section 501 of this title with respect to any article or any country" and requires the President, when taking any such action, to "consider the factors set forth in Sections 501 and 502(c)." TTA 1984 Section 505(a)(1); TA 1974 Section 504(a)(1), as amended; 19 U.S.C. 2464(a)(1) (emphasis added). The Act also created a system of "general reviews" to ensure that these statutory criteria are met. TTA 1984 Section 505(b); TA 1974 Section 504(c)(2)(A), as amended; 19 U.S.C. 2464(c)(2)(A); see also 15 C.F.R. 2007.3.

IIPA requests that this GSP Subcommittee follow the explicit intent of Congress, and advise the President to "vigorously exercise" his authority to withdraw, suspend or limit GSP eligibility of Pakistan for its non-compliance with the statutory criterion on IPR in the GSP Program.

#### The GSP Renewal Act of 1996

When the GSP Program was reauthorized in August 1996, the language of the IPR discretionary criterion for GSP eligibility in Section 502(c)(5) was simplified slightly and now requires the President to "take into account the extent to which such country is providing adequate and effective protection of intellectual property rights."<sup>11</sup> The expired law specified (as discussed above) that each beneficiary country provide "adequate and effective means under its laws for foreign nationals to secure, to exercise and to enforce exclusive rights in intellectual property, including patents, trademarks, and copyrights." Otherwise, the GSP Renewal Act contains identical IPR provisions, including "mandatory" criteria denying GSP status to countries that directly

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<sup>11</sup> GSP Renewal Act of 1996, Title I, Subtitle J, of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 (codified at 19 U.S.C. 2462(c)(5)).

or indirectly expropriate U.S. property (including intellectual property), and authorizing the President to withdraw, suspend or limit GSP privileges based on failure to meet the IPR criteria.

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## APPENDIX B

### Methodology Used to Estimate Trade Losses due to Copyright Piracy And Levels of Piracy

Estimated trade losses due to piracy are calculated by member associations of the International Intellectual Property Alliance (IIPA). Since it is impossible to gauge losses for every form of piracy, we believe that our reported estimates for 2001 actually underestimate the losses due to piracy experienced by the U.S. copyright-based industries.

Piracy levels are also estimated by IIPA member associations and represent the share of a country's market that consists of pirate materials. Piracy levels together with losses provide a clearer picture of the piracy problem in different countries. Low levels of piracy are a good indication of the effectiveness of a country's copyright law and enforcement practices. IIPA and its member associations focus their efforts on countries where piracy is rampant due to inadequate or non-existent copyright laws and/or lack of enforcement.

#### BUSINESS SOFTWARE APPLICATIONS

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The Business Software Alliance (BSA)'s calculation method compares two sets of data -- the *demand* for new software applications, and the legal *supply* of new software applications.

Demand: PC shipments for the major countries are estimated from proprietary and confidential data supplied by software publishers. The data is compared and combined to form a consensus estimate, which benefits from the detailed market research available to these member companies.

Two dimensions break the shipments into four groups. Splitting the PC shipments between Home and Non-Home purchasers represents the market segments of each country. The PC shipments are also compared to the change in the installed base of existing PCs. The part of PC shipments which represents growth of the installed base is called "new shipments" and is separated from the "replacement shipments" which represent new PCs that are replacing older PCs.

A scale of the installed base of PCs by country compared to the number of white-collar workers was developed. PC penetration statistics are a general measure of the level of technological acceptance within a country. The level of penetration, for a variety of reasons, varies widely from country-to-country. This level is then ranked and each country is assigned to one of five maturity classes.

The number of software applications installed per PC shipment is provided by member companies, and the following ratios for the four shipment groups are developed:

Home-New Shipments  
Non-Home - New Shipments  
Home - Replacement Shipments  
Non-Home - Replacement Shipments

For each shipment group, ratios are developed for each of five maturity classes. U.S. historical trends are used to estimate the effects of lagged technological development by maturity class.

Piracy rates can vary among applications. Grouping the software applications into three Tiers and using specific ratios for each Tier further refined the ratios. The Tiers were General Productivity Applications, Professional Applications, and Utilities. These were chosen because they represent different target markets, different price levels, and it is believed, different piracy rates.

Software applications installed per PC shipped are researched and estimated using these dimensions:

1. Home vs. Non-Home
2. New PCs vs. Replacement PCs
3. Level of Technological Development
4. Software Application Tier

From this work, a total software applications installed estimate was calculated for each country.

Supply: Data was collected by country and by 26 business software applications. Shipment data was limited in some instances, hence, uplift factors were used to estimate U.S. and world-wide shipments.

Piracy Estimates: The difference between software applications installed (demand) and software applications legally shipped (supply) equals the estimate of software applications pirated. The piracy rate is defined as the amount of software piracy as a percent of total software installed in each country.

Dollar Losses: The legal and pirated software revenue was calculated by using the average price per application. This is a wholesale price estimate weighted by the amount of shipments within each software application category.

To develop the wholesale dollar losses for U.S. software publishers, the wholesale dollar losses due to piracy were reduced by the ratio of the software shipped by U.S. software publishers as a percent of software shipped by all software publishers.

## **ENTERTAINMENT SOFTWARE**

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The Interactive Digital Software Association (IDSA) draws piracy rates from numerous estimates provided by member and non-member company representatives, distributors and enforcement personnel based on local market conditions. Separate estimates of piracy rate pertaining to console- and PC-based software are calculated,

and then averaged into a single piracy rate based on the prevalence of each platform in the market.

Trade loss figures reported (in both the IIPA's February 2001 Special 301 Report and this GSP petition) are preliminary and are based only on partial data samples. These figures are likely to underestimate those to be reported upon completion of our review.

This year's dollar loss figures rely in part on estimates provided by member companies. These estimates are generated using proprietary methodologies that integrate market data of dedicated platform and PC entertainment software in both compact disc and cartridge formats and hardware shipments. These methodologies take into account market conditions including but not limited to the installed base of a given platform (console, PC-based, handheld, etc.) and actual distribution and sales figures.

Dollar loss figures also incorporate inferences from seizure statistics that result from border and other enforcement actions in the countries of production, export and import. These losses are attributed to the country of production where such is known. This aspect of the methodology relies on conservative estimates about the total number of piratical goods produced based on the numbers seized.

The methodology also assumes that piratical goods in the marketplace displace to some degree legitimate product sales. In these instances, displaced sales are multiplied by the wholesale price of legitimate articles rather than the retail price of the pirate goods.

## **MOTION PICTURES**

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Many factors affect the nature and effect of piracy in particular markets, including the level of development of various media in a particular market and the windows between release of a product into various media (theatrical, video, pay television, and free television). Piracy in one form can spill over and affect revenues in other media forms. Judgment based on in-depth knowledge of particular markets plays an important role in estimating losses country by country.

Video: As used in the document the term encompasses movies provided in video cassette as well as in all optical disc formats. Losses are estimated using one of the following methods:

1. For developed markets:
  - a. The number of stores that rent pirate videos and the number of shops and vendors that sell pirate videos are multiplied by the average number of pirate videos rented or sold per shop or vendor each year;
  - b. The resulting total number of pirate videos sold and rented each year in the country is then multiplied by the percent of those pirate

videos that would have been sold or rented legitimately and adjusted to reflect the US producers' share of the market.

2. For partially developed markets:
  - a. The number of legitimate videos sold or rented in the country each year is subtracted from the estimated total number of videos sold or rented in the country annually to estimate the number of pirate videos sold or rented annually in the country;
  - b. The resulting total number of pirate videos sold and rented each year in the country is then multiplied by the percent of those pirate videos that would have been sold or rented legitimately and adjusted to reflect the US producers' share of the market.
3. For fully pirate markets:

The estimated number of pirate videos of U.S. motion pictures sold or rented in the country each year is adjusted to reflect the wholesale price of legitimate videos which equals losses due to video piracy.

TV, Cable and Satellite: Losses are estimated using the following method:

1. The number of TV and cable systems that transmit U.S. motion pictures without authorization is multiplied by the average number of U.S. motion pictures transmitted without authorization by each system each year;
2. The resulting total number of illegal transmissions is multiplied by the average number of viewers per transmission;
3. The number of viewers of these illegal transmissions is allocated among those who would have gone to a theatrical exhibition or who would have rented or purchased a legitimate video. The number of legitimate transmissions of the motion picture that would have been made is also estimated;
4. These figures are multiplied by the producers' share of the theatrical exhibition price, the wholesale share of the video cost or the license fee per legitimate transmission, as appropriate, to estimate the lost revenue from the illegal transmissions.

Public Performance: Losses are estimated using the following method:

1. The number of vehicles and hotels that exhibit videos without authorization is multiplied by the average number of viewers per illegal showing and the number of showings per year;
2. The resulting total number of viewers of unauthorized public performances is allocated among those who would have gone to a theatrical exhibition or who would have rented or purchased a legitimate

video. The number of legitimate TV and cable transmissions that would have been made of the motion pictures is also estimated;

3. These figures are multiplied by the producers' share of the theatrical exhibition price, the wholesale share of the video cost or the license fee per legitimate TV, cable and satellite transmissions, as appropriate, to estimate the lost revenue from the illegal performances.

## **SOUND RECORDINGS AND MUSICAL COMPOSITIONS**

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RIAA generally bases its estimates on local surveys of the market conditions in each country. The numbers produced by the music industry generally reflect the value of sales of pirate product rather than industry losses, and therefore undervalue the real harm to the interests of record companies, music publishers, performers, musicians, songwriters and composers.

Where RIAA has sufficient information relating to known manufacture of pirate recordings that emanate from a third country, this loss data will be included in the loss number for the country of manufacture rather than the country of sale.

In certain instances where appropriate, RIAA employs economic data to project the likely import or sale of legitimate sound recordings, rather than merely reporting pirate sales. In these instances, projected unit displacement is multiplied by the wholesale price of legitimate articles in that market rather than the retail price of the pirate goods.

## **BOOKS**

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The book publishing industry relies on local representatives and consultants to determine losses. These experts base their estimates on the availability of pirate books, especially those found near educational institutions, book stores and outdoor book stalls. A limitation here is that experts can only gauge losses based on the pirated books that are sold; it is impossible to track losses for books which are pirated but not available for public purchase. The trade loss estimates are calculated at pirate prices which are generally (but not always) below the prices which would be charged for legitimate books. Also included are conservative estimates of losses due to unauthorized systematic photocopying of books.