



February 14, 2003

Mr. Steven Falken
Executive Director for GSP
Chairman, GSP Subcommittee
Office of the U.S. Trade Representative
1724 F Street NW, Room F-220
Washington, DC 20508

Re: Pakistan GSP IPR Petition for Review
Case: 024-CP-02

To the GSP Subcommittee:

We take this opportunity to update and supplement the public file with respect to the IIPA's pending petition requesting the initiation of a review of Pakistan's intellectual property rights practices under the GSP trade program.

Attached please find IIPA's 2003 Special 301 report on Pakistan which we filed with USTR today. This report is also available online at the IIPA website, www.iipa.com.

We request that the Subcommittee accept IIPA's GSP IPR petition against Pakistan (filed on June 13, 2001) and that a hearing be held.

Sincerely,

Eric H. Smith
President
International Intellectual Property Alliance

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2003 SPECIAL 301 REPORT

PAKISTAN

EXECUTIVE SUMMARY¹

IIPA recommends that Pakistan be elevated to the Priority Watch List. Pakistan has quickly emerged as one of the world's leading producers of pirate optical discs (CDs, DVDs, VCDs, CD-ROMs) of copyright material (music, audio-visual, business software, videogames, reference software), while the government has taken no steps to curtail production.

Pakistan has been on the Watch List for over a decade. USTR retained Pakistan on the Watch List in 2002, but recognized that "optical media piracy remains a growth industry in Pakistan [and that] Pakistan has emerged as one of the world's largest exporters of pirate CDs and optical media." In 2001, largely because of rising pirate optical disc production, IIPA filed a petition to the U.S. government to evaluate whether Pakistan continues to qualify for benefits under the Generalized System of Preferences (GSP) program (a U.S. trade program in which Pakistan enjoys trade benefits).

The optical disc pirate production problem has grown out of control in 2002. IIPA knows of five factory locations in which eight companies operate optical disc production lines in Pakistan (as many as twelve lines), and based on import of the raw materials, actual production may have risen as high as 66 million discs per year. Legitimate domestic demand is roughly seven million discs, resulting in more than a 9-to-1 ratio of discs produced to possible legitimate domestic demand, meaning that Pakistan is exporting its problem to the world. Shockingly, discs sourced from Pakistan are being found all over the world. Meanwhile, the domestic market in Pakistan is ravaged by piracy.²

Required Action for 2003:

Legislation

- Pass and implement an effective optical disc law to enable licensing and control over optical disc production, including controls on imports of production equipment and raw materials, as well as requirements to use unique source identifiers to track the loci of production.

Enforcement

- Shut down known production facilities, if necessary by temporary executive order, pending their ability to demonstrate that they have some legitimate materials to produce (whereupon supervised access to the plant could be granted so as to permit the legitimate production, but thereafter closed again).
- Regulate/monitor the importation of the raw materials required for CD production (optical grade polycarbonate, for which there is no domestic source), if necessary by temporary executive order.

¹ For more details on Pakistan's Special 301 history, see IIPA's "History" Appendix to filing.

² The seriousness of the piracy situation is exemplified by one case in 2002, in which two forms of organized crime came to a head: a Pakistani was caught in Karachi with pirated VCDs of motion pictures (produced in Pakistan), and 950 grams of heroin concealed in jewel boxes of some of the optical discs.

PAKISTAN
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1998 – 2002³

INDUSTRY	2002		2001		2000		1999		1998	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	12.0	95%	11.0	NA	10.0	60%	9.0	60%	9.0	60%
Records & Music ⁴	60.0	83%	60.0	90%	65.0	90%	3.0	90%	2.0	95%
Business Software Applications ⁵	NA	83%	9.2	83%	24.5	83%	14.1	83%	18.1	86%
Entertainment Software	NA	NA	NA	NA	NA	NA	NA	NA	11.1	94%
Books	44.0	NA ⁶	44.0	NA	45.0	NA	42.0	NA	40.0	NA
TOTALS⁷	116.0		124.2		144.5		68.5		80.2	

COPYRIGHT PIRACY IN PAKISTAN

Pakistan Has Become One of the World's Largest Exporters of Pirate Optical Discs

Pakistan emerged in 2001 and continued in 2002 as one of the world's largest producers for export of pirated CDs and other optical discs (e.g., VCDs and CD-ROMs) of copyrighted

³ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2003 Special 301 submission, and is available on the IIPA website (www.iipa.com/pdf/2003spec301methodology.pdf).

⁴ Pakistan saw its already minuscule legitimate music market decline in value terms from \$9.2 million in calendar year 2000 to \$3.2 million in 2001. See Nyay Bhushan, *Industry Insiders Fear Imminent Collapse of Indian Music Industry*, February 01, 2003, http://www.billboard.com/billboard/billboard_members/currenteditorials/article_display.jsp?vnu_content_id=1803209. Total record industry losses for 2001 (including pirate exports) were \$60 million. In 2000, the estimated losses to the sound recording/music industry due to piracy in Pakistan were US\$3 million, whereas the total record industry losses for 2000 (including export piracy losses) were US\$65 million. The piracy level for international repertoire is higher than that for overall repertoire; it was 99% in 1998, and virtually 100% for 1999 through 2002.

⁵ BSA's estimated piracy losses 2002 are not available, and levels are preliminary; both will be finalized in mid-2003. In IIPA's February 2002 Special 301 filing, BSA's 2001 estimates of \$28.3 million at 87% were identified as preliminary; BSA finalized its 2001 numbers in mid-2002, and those revised figures are reflected above. BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA's trade loss numbers released separately in its annual global piracy study which reflects losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

⁶ While no overall piracy rate for published materials is available from the Association of American Publishers, many publishers report unacceptably high piracy levels at around 90%.

⁷ In IIPA's 2002 Special 301 report, IIPA estimated the total losses due to piracy in Pakistan for 2001 as \$143.3 million. Due to the revision in the loss to the business software industry, the total losses for 2001 are adjusted to \$124.2 million.

material (music, audio-visual, business software, videogames, reference software).⁸ Five optical disc plants (with as many as twelve production lines) are responsible for production of tens of millions of discs.⁹ Based on known imports of the raw materials used to make discs (optical grade polycarbonate), plants in Pakistan now produce up to 66 million discs per year.¹⁰ Given Pakistan's 7.1 million legitimate domestic demand for discs, it is not surprising that the bulk of pirate optical discs are exported to India, but 2002 marked a watershed, with discs sourced from Pakistan showing up literally all over the globe.¹¹

Piracy in Pakistan Ruins the Domestic Market

Piracy phenomena in Pakistan include the following:

- **Optical Disc Piracy:** Pirate optical discs of all types of copyrighted content (music, audio-visual, business software, videogames, reference software) decimate the legal market in Pakistan, mainly through retail sales at roughly 12,000 or more retail outlets, kiosks and stores.¹² For example, pirate music CDs sell for around PKR35 to 65 (US\$0.60 to 1.12) per unit, while proliferating pirate DVDs, often containing movies that have not yet or have just begun their theatrical release, sell for PKR150 (US\$2.50) per unit for international motion pictures, to PKR210 (US\$3.33) per unit for Indian or Pakistani motion pictures. Indicative of the seriousness of the optical media piracy problem in Pakistan is the Rainbow Centre in Karachi, and Hafeez Center in Lahore, shopping arcades of 100s of retail outlets filled with pirated product, including a cornucopia of entertainment software. Even all the well-known and reputable local shopping malls have music, video, and computer shops offering pirated optical discs, and even the duty-free area of Karachi International airport has a retail shop filled with pirated optical media, including games software. Pirate business software is readily available in Pakistan for less than US\$1; for example, pirate Microsoft Office XP is available for PKR30 (US\$0.52).
- **Book Piracy:** Pakistan is the world's worst pirate country for published materials (per capita), with losses to U.S. publishers in Pakistan due to piracy estimated at \$44 million in 2002. Book piracy (mainly photocopying of medical texts, computer books, and business

⁸ For the year 2001, industry estimated that of all optical discs exported out of Pakistan, 45% were audio CDs (23.8 million), 20% were Video CDs (VCDs) (10.6 million), 5% were MP3 music files (so-called "extended MP3") (2.65 million), and 30% software CD-ROMs (including business and entertainment software) (15.9 million).

⁹ Industry knows the locations of these plants.

¹⁰ Total known imports of polycarbonate from November 2000 to December 12, 2001 were 877,184 kilos (60 CDs per kilo). In 2002, estimated imports of polycarbonate, based on the first three months of the year, were 1.1 million kilos for the year.

¹¹ Pakistani-produced discs showed up in 2002 in India, Sri Lanka, Bangladesh, Kenya, Mauritius, Mozambique, South Africa (and elsewhere in Africa), Australia, New Zealand, Maldives, Kuwait, Saudi Arabia, United Arab Emirates (and elsewhere in the Gulf region), Egypt, Syria, the United Kingdom, Germany, Nepal, Hong Kong, Indonesia, Singapore, Thailand, the United States, and Canada. Of U.S. Customs seizures in 2002, Pakistan ranked fifth as the country of origin of pirated copyright materials, marking the first time Pakistan had ranked so high on the list. Data regarding known shipments of pirate product bear out the disturbing trend: from November 2001 to mid-March 2002, a total of 120 air shipments were sent from Karachi Airport to various countries, including approximately 476,663 pirated optical discs; from mid-March to mid-April 2002, a total of 22 air shipments were sent from Karachi Airport to various countries, including approximately 100,452 pirated discs; and from September 2001 to February 2002, 51 couriers have been identified who traveled from Karachi Airport to various countries, smuggling about 216,250 pirated discs.

¹² Retail "kiosks" operate in cities such as Karachi, Lahore, Islamabad, Faisalabad, Peshawar and Quetta.

titles, but including reprint piracy and commercial photocopying) is a net-export business to India, the Middle East, and even Africa. Computer and business books also continue to be popular with pirates. Entire books are photocopied and available for sale in stalls and bookstores. There was incremental improvement in 2001 as retail bookstores sold fewer pirated copies. However, 50% of the medical text and reference market remains pirated. Trade bestsellers are still pirated in large numbers and available everywhere. Though compulsory licensing under the old National Book Foundation rules is no longer authorized, titles published under those licenses years ago continued to be reprinted in 2002.

- **Corporate End-User Piracy of Business Software:** The phenomenon of corporate end-user piracy of business software (in which a company purchases one copy of software but loads it on all company computers, or in which a company exceeds its licensed number of users) is an emerging problem in Pakistan.
- **Cable Piracy:** Cable piracy is on the rise in Pakistan. According to a recent Neilson survey, in 2002, 19.0 million Pakistanis viewed pirate VCDs and DVDs per month through pirate cable channels. There are a number of unlicensed cable operators in metropolitan areas routinely transmitting pirate programming on their networks.

COPYRIGHT ENFORCEMENT IN PAKISTAN

While in previous years, IIPA had reported some progress against retail piracy, including noting the establishment in 1999 of special intellectual property task forces in major cities, the year 2002 witnessed decreased drive and resolve among Pakistani authorities to tackle piracy. If not already the case, it is only a matter of time that criminal syndicates (frequently also connected with other organized crime syndicates) will take over the manufacture and distribution of pirate optical discs. Such lawlessness must not be allowed to go unfettered.¹³ One industry group's members (those of the Motion Picture Association of America) pulled out of Pakistan since a legal market did not develop despite six years of effort. In the last year of MPAA's active anti-piracy program, the members ran over 700 criminal raids, with no deterrent effect or positive impact commercially.

Bright Spots Include Establishment of 'IP Authority' and Cooperation Against Book Piracy and End-User Piracy of Business Software

One bright spot in 2002 was the announcement by the government of its decision to formulate an "Intellectual Property Authority;"¹⁴ however, this group is not visible, has yet to be funded, and to date has not shown any concrete activities. Only time will tell if it will provide the kind of sustained enforcement, particularly against pirate optical disc production, to provide a deterrent to further infringements. It is hoped that this authority can supervise task forces all over Pakistan in the investigation and prosecution of intellectual property violations. IIPA also recommends that the IP Authority consider ways to ensure that only those judges who are

¹³ As noted at the outset of this report, in one instance in 2002, a Pakistani was caught in Karachi with pirated VCDs of motion pictures (produced in Pakistan), and 950 grams of heroin concealed in jewel boxes of some of the optical discs. The investigation revealed that, indeed, the delivery of both the pirated discs and the heroin was expected by a family member of one of the suspects. *IFPI Enforcement Bulletin*, Issue 16 (September 2002).

¹⁴ The announcement of the establishment of the new Intellectual Property Authority was available at <http://www.dawn.com/2002/07/23/ibr11.htm>.

specifically trained in copyright handle such cases, or to consider the establishment of a specialized intellectual property court with judges dedicated to hear such cases.

The U.S. book publishing industry reports raids and convictions against pirate photocopy shops, as well as some book shops, including ones specializing in scientific, technical and medical books. U.S. publishers are pleased to be engaged in this raiding, but note that raiding and the small fines that result are not sustained such that it can provide a deterrent to further infringements.¹⁵ The Business Software Alliance reports some useful cooperation from the Pakistani government in the fight against corporate end-user piracy of business software. Specifically, in October 2002, there were two raids against large end-users using BSA member software outside the scope of their licenses. In both cases, the raids were conducted on the basis of Anton Piller orders (*ex parte* civil search orders), a measure recently added to the Copyright Act.¹⁶ IIPA commends the courts for their support in issuing the *ex parte* orders in order to secure evidence of end-user piracy. Such successes hopefully signal the possible enforcement to come in Pakistan.¹⁷ Unfortunately, Pakistani courts have generally not followed through with adequate penalties against pirates.

COPYRIGHT LAW AND RELATED ISSUES

Pakistan Must Pass and Implement an Effective Law to Curtail Pirate Optical Disc Production

Because of the dire nature of pirate optical disc production in Pakistan, and because exports from Pakistan are severely damaging foreign markets, in 2003, the Pakistani government must take steps to implement effective measures against “optical media” piracy.¹⁸ In

¹⁵ These raids, which are largely privately arranged and financed by foreign publishers, are on bookshops in Karachi, Peshawar, Rawalpindi and Lahore using the Royal IPR Security Services. The raids have generated some publicity in the local papers. After a “conviction,” the pirate booksellers are often on the streets the next day. The government of Pakistan should work hard to invigorate the judiciary to mete out more deterrent justice against book pirates.

¹⁶ One case was taken against Dollar Industries (Pvt) Limited, a leading company of Pakistan engaged in the business of making stationary items. A total of 48 personal computers were found at the location. Each was using a range of unlicensed Business Software Alliance member-company software. In the second case, Al-Karam Textiles was found to have 40 computers with a range of unlicensed software installed. In both cases, injunctions were issued against the companies to prevent further use of the unlicensed software. Both cases remain before the courts. These cases however, have not moved forward with any swift conclusion even after over three months, but IIPA commends the local High Court and the presiding Judges in the matter for their support, cooperation, and interim verdicts.

¹⁷ For example, in 2002, there were eight raids on various software and computer resellers in Karachi in 2002, with seizures of more than 10,000 pirate units of software. All the cases remained pending in the courts as of February 2003. The early adjudication of IPR cases with penalties that create deterrence are necessary in Pakistan.

¹⁸ The global copyright community has agreed that the key elements of an effective optical disc law include:

1) Licensing of Facilities: Centralized licensing (for a fixed, renewable term, no longer than three years) of manufacturing of optical discs and “production parts” (including “stampers” and “masters”), including requirements like production take place only at the licensed premises, a license only be granted to one who has obtained “manufacturer’s code” (e.g., SID Code) for optical discs and production parts, licensee take measures to verify that customers have copyright/trademark authorization of the relevant right holders, etc.

2) Licensing of Export/Import of Materials: Centralized licensing of export of optical discs, and import/export of production parts (including “stampers” and “masters”), raw materials or manufacturing equipment (an automatic licensing regime consistent with WTO requirements).

3) Requirement to Apply Manufacturer’s Code: Requirement to adapt manufacturing equipment or optical disc molds to apply appropriate manufacturer’s code, and to cause each optical disc and production part to be marked with manufacturer’s code, and prohibitions on various fraudulent/illegal acts with respect to manufacturer’s codes

particular, the Pakistani government should introduce effective optical disc plant control measures, giving the government and right holders the ability to track the movement of optical media production equipment and parts, as well as the raw materials (including optical grade polycarbonate), and compelling plants to use manufacturing codes, such as the Source Identification (SID) code, in order to successfully halt the production of pirate optical discs. Such regulations will give Pakistani authorities a needed tool to conduct spot inspections and raids on plants, seize infringing copies of product and machinery, and impose administrative and criminal penalties to deter the organized manufacturing and distribution of pirate product.

Pakistan's Copyright Ordinance Provides Strong Measures on the Books, But Pakistan Government Has Not Fully Enforced the Law

The Copyright Ordinance, 1962 (as last amended in 2000)¹⁹ provides strong tools to fight piracy, including, for example, provisions enabling the Registrar to monitor exports, with inspections and seizures of pirated goods leaving Pakistan. Remaining problems in the ordinance include criminal fines that remain too low to deter piracy,²⁰ a TRIPS-incompatible

(including making, possessing or adapting an optical disc mould for forging manufacturer's code; altering, gouging or scouring a manufacturer's code on or from a mould or any disc; selling a production part not marked with manufacturer's code, etc

4) License Record-Keeping Requirements: Requirement to keep various records, for example, machinery and raw materials, orders received, quantity of raw materials, exemplars of each optical disc title manufactured, etc.

5) Registration Requirement for Commercial Optical Disc Duplication: Requirement that commercial establishments that record copyrighted materials onto recordable optical discs for purposes of sale or other commercial dealings register with the government prior to engaging in such "commercial optical disc duplication," giving the names and addresses of the responsible persons and the address of the premises at which the duplication takes place.

6) Plenary Inspection Authority: Possibility of inspection, without notice, at any time, to examine licensed or registered premises; prohibition on obstructing raid; possibility of forcible entry; possibility for right holder organization to assist; etc.

7) Search and Seizure Authority: Plenary authority to: enter and search any place, vessel, aircraft or vehicle; seize, remove, detain or seal contraband or other evidence of a violation of the law; forcibly enter when necessary; prohibit the removal of seal applied; etc.

8) Government Record-Keeping Requirements: Maintenance of a register of applications filed and production licenses granted, available for public inspection; maintenance of a record of all inspection actions made publicly available; etc.

9) Criminal Penalties for Violations: Violation of any significant aspect of the regime is criminally punishable, including individual liability (fines and/or imprisonment).

10) Possibility of Withholding, Suspending, or Revoking a License for Prior Copyright Infringement, Fraud in the Application Process, or Violation of the Optical Disc Law.

11) Possibility of Closure of a Plant.

¹⁹ The Copyright (Amendment) Ordinance, 2000, passed in September 2000, dealt with many of the TRIPS deficiencies noted in IIPA's 2000 Special 301 report, bringing Pakistan's law closer to compliance with TRIPS, and strengthening certain enforcement provisions. For example, the amendment provided for increased criminal penalties of up to three years imprisonment or a fine of 100,000 rupees (approximately US\$1,660), which are doubled for second or subsequent offenses (Section 66 *et seq.*). In addition, the amendment provided for civil *ex parte* search orders (without notice to the defendant), essential to enforcement against end-user piracy and required by Article 50 of TRIPS (Section 60). As noted, the Business Software Alliance was able to obtain two such raids in 2002, a very positive sign. Third, the amendment broadened the Registrar's authority to prohibit (seize, detain, etc.) the export out of Pakistan of infringing copies in addition to infringing imports coming into Pakistan, and includes goods to which infringing labels are applied as subject to this prohibition (Section 58). This is an unusual remedy, but we are unaware of whether it has been employed to stop exports of pirated goods out of Pakistan. Certainly, this tool could be used to curtail the massive exodus of pirate optical discs that the industries are noting.

²⁰ Some industries have suggested that the minimum fine must be increased to PRs 500,000 (US\$8,300).

compulsory license to use published materials,²¹ other overly broad exceptions to protection, and 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 should join the Geneva (phonograms) Convention.

Generalized System of Preferences

In 2001, in large part because of the serious optical media piracy problem in Pakistan, IIPA filed a petition under the Generalized System of Preferences (GSP) program, a U.S. trade program offering duty-free imports of certain products into the U.S. from developing countries, including Pakistan. In order to qualify for such unilaterally granted trade preferences, USTR must be satisfied that Pakistan meets certain discretionary criteria, including providing “adequate and effective protection of intellectual property rights.” Pakistan’s system does not meet the eligibility criteria of GSP, particularly with respect to its serious optical media piracy problem. In addition, the introduction in Pakistan of a government-imposed free compulsory license for copying, translating and adapting textbooks makes the copyright law incompatible with Pakistan’s current international obligations, including under TRIPS. During the first eleven months of 2002, the United States imported \$83.8 million of products from Pakistan without charging a duty (4.7% of Pakistan’s total imports into the U.S.).²² Pakistan should not continue to expect such favorable treatment at this level if it continues to fail to meet the discretionary criteria in this U.S. law. If requisite improvements are not made by Pakistan to remedy the deficiencies noted in IIPA’s petition, which have adversely affected U.S. copyright owners, Pakistan’s GSP benefits should be suspended or withdrawn (in whole or in part).

Pakistan Should be Encouraged to Adhere to the WIPO Treaties

Pakistan’s recent amendments to its Copyright Ordinance demonstrate the government’s understanding of the need to modernize its legal systems to take into account the latest technological developments. The next step is to join the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The WCT went into force on March 6, 2002, while the WPPT went into force on May 20, 2002. These treaties establish the framework for the protection of copyrighted works as they travel over the Internet, and without which content providers are unlikely to place their valuable works on the Internet, which will retard the development of electronic commerce on a global basis. These treaties also protect technological protection measures used by copyright owners to protect their works. The legal framework provided in the WIPO treaties is critical to combating Internet piracy. While certain key elements still have not been provided satisfactorily in the legislation in Pakistan, this should not discourage the government of Pakistan from seeking immediate accession to the WCT and WPPT, and swift deposit in Geneva.

²¹ The amendments in 2000 contained one change, in Section 36, that could devastate the publishing industry’s ability to exercise and enforce its rights in Pakistan. Specifically, the amendment contained a provision whereby the Pakistani government or the Copyright Board (established pursuant to Article 45 of the Copyright Ordinance) may grant a royalty-free, government-imposed, compulsory license for copying, translating and adapting any textbooks “on a non-profit” basis. This amendment takes Pakistan out of compliance with its international treaty and convention obligations, and must be appropriately narrowed. The government of Pakistan must confirm that Section 36(iii) of the amended law only applies in cases in which the conditions of Section 36(i) have been met. Otherwise, Section 36(iii) will amount to a discretionary compulsory license, which violates TRIPS.

²² During 2001, the United States imported \$104.6 million worth of products into the United States without duty (4.7% of its total imports to the U.S.), according to U.S. government statistics.