

IIPA GSP Post-Hearing Brief on Pakistan IPR Review

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Pakistan IPR

IIPA – ANSWERS TO QUES FROM
HEARING AS POST-HEARING BRIEF

December 14, 2005

Memorandum to: Marideth J. Sandler, Executive Director of the GSP Program
and Chairwoman of GSP Subcommittee Office of the U.S. Trade
Representative

From: Joseph S. Papovich, Senior Vice President International,
Recording Industry Association of America, on behalf of the
International Intellectual Property Alliance

Subject: FOLLOW-UP QUESTIONS FOR WITNESSES TESTIFYING
AT THE GSP PUBLIC HEARING ON COUNTRY PRACTICE
PETITIONS, 2005 ANNUAL REVIEW, November 30, 2005

The International Intellectual Property Alliance (IIPA) offers the following replies in response to the two additional questions posed by the U.S. Government (USG) at the GSP Country Practice Hearing (Nov. 30, 2005):

Response regarding PAKISTAN (IPR):

Please provide further information on the nature of the book publishing piracy problem in Pakistan. How does it work? Does the piracy involve both English language and Urdu language books? Are there rogue printing presses?

Reply: Book piracy in Pakistan does affect both English and Urdu language books. Most foreign publishers active in the Pakistani market, or whose books are being used in pirated form in the Pakistani market, are involved in educational or academic publishing. Demand for these books at the university-level is high because the medium of most higher education instruction in Pakistan is English. Their books are used in one of two contexts: (1) university-level education; and (2) English language teaching at the university or secondary level. Urdu language books most likely to be pirated, by contrast, are primary and secondary school books. English language books are far more frequently targeted for piracy than local language books.

There are rogue printing presses. In fact, a great number of printers in Pakistan are making an entire living off of printing without authorization. These are highly organized

operations with sophisticated printing equipment which are able to approximate the look and quality of a legitimate book. This takes a great deal of investment and forethought. Also troublesome are otherwise licensed or legitimate printers who are engaging in “overruns,” a process by which they legitimately print an agreed-upon number of copies but then engage in additional printing without authorization from the publisher. These print overrun copies are then sold at a full profit for the printer. Under the publishing industry’s traditional system of risk management in sales, the publisher bears the brunt of risk for “returns” (books that don’t sell). Thus, Publisher A can contract with Printer Y to print 100 copies of a book, based on market research and projected demand for the title. Printer Y can then print 100 copies for Publisher A and 50 copies to sell at his own additional profit and put all of those into the marketplace. When only 100 copies sell (say, 50 copies authorized by Publisher A and the 50 pirated copies), Publisher A receives the additional 50 authorized copies back as “returns.” It is not unusual for a publisher to receive pirated books as “returns,” alerting the publisher to the problem. However, the more common practice is that the publisher bears the loss of his authorized versions that didn’t sell because the unauthorized versions took their place in filling the demand.

Some of this is a contracts issue, but it is also a criminal enforcement issue, and it is imperative that the government take a role in policing the marketplace for books. Publishers have taken extremely expensive precautions such as inserting special watermarks in their books in attempts to distinguish legitimate from unauthorized copies. Some publishers also have placed personnel at the printing facilities to ensure that printing templates are appropriately stored after legitimate printing has ceased. Those measures are important but they do not replace criminal enforcement against these types of practices, and they do not even begin to address the problem of printers who obtain the templates another way—or create their own templates—and who are pirating without any sense of legitimacy at all.

Equally destructive, but much less high-tech (and therefore much more accessible to would-be pirates), is illegal commercial photocopying of books. This tends to affect the same markets—English language teaching materials and especially higher education textbooks. The industry estimates that piracy takes 90% of the market for university textbooks, and a significant proportion of this is photocopying. Of course, all that is required to decimate the market through photocopying is a single copy—legitimate or otherwise—of a book.

Book piracy, while concentrated on the academic sector, is not limited to that, and bestsellers such as the Harry Potter® series, John Grisham novels and much more are subject to print piracy such as that described above. Pakistan has a large English-reading population, so anything that can grab a market share in the least is subject to widespread piracy, at times with several different pirates competing for market share.

Pirate retail outlets in Pakistan, unlike in some other markets, are highly concentrated and thus should provide easy raiding targets. The book markets (Urdu Bazaars) in cities such as Karachi and Lahore are teeming with pirate product, sold by highly organized groups of 350 (Karachi) to 700 (Lahore) booksellers. These entities have formed their own trade

associations and exert a fair bit of political pressure. This does not change the fact that they are engaging in wholly illegal activity and should be stopped, and the government of Pakistan needs to summon the will to stop them. The publishing industry worked with authorities to stage a series of raids against the two main bazaars in September, resulting in seizures of over 3000 infringing titles and four arrests. Overall, however, government intervention has been minimal and reluctant at best. IIPA is told that experimental talks are underway to turn some of the bazaar dealers into legitimate enterprises, but the feasibility of this path remains unclear.

Violence affects publishers' efforts to enforce their rights in Pakistan more than in any other country of which IIPA is aware. Representatives of publishers engaging in anti-piracy matters have been kidnapped, tortured and otherwise harassed. Foreign representative travel has been restricted due to the political unrest generated by the recent raids.

Finally, there remains a troubling provision in the copyright ordinance that has a potentially adverse effect on one important potential book market—government institutions. Section 36(3) provides that the government can grant any “institution,” including the National Book Foundation (NBF), part of the education ministry, royalty-free reprint rights without authorization of the right holder.¹ This amendment, a TRIPs violation, was passed without any opportunity for comment from publishers and threatens to further diminish a market already almost completely overrun by piracy.

All of this exists in a market where American and other foreign books are being offered at some of the lowest prices in the world. “South Asian editions,” tailored to this region, are widely available in the Pakistan market. Often, these are the very books that are used as templates for pirating.

Certainly, the recent successes in fighting optical disc piracy in Pakistan could serve as a model for fighting book piracy as well. The especially organized nature of the book piracy in Pakistan when compared to some other countries in the region makes the models employed with regard to other types of products more applicable than usual. We can only assume the reluctance to curb this problem has more to do with government will than capacity.

[Response regarding LEBANON deleted] * * *

¹ Section 36.3 provides,

‘The Federal Government or the Board may, upon an application by any government or statutory institution, in the public interest, grant a license to reprint, translate, adapt or publish any textbook on non-profit basis.’