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Via Electronic Filing to FR0528@ustr.gov

Ms. Sybia Harrison
Special Assistant to the Section 301 Committee
Office of the U.S. Trade Representative
600 17th Street NW
Washington, DC 20508

Re: Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment on “Special 301 Out-of-Cycle Review: Indonesia,” 70 Fed. Reg. 56963 (September 29, 2005)

To Ms. Harrison and the Special 301 Committee:

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to comment on the Out-of-Cycle Review (OCR) of Indonesia under Special 301. IIPA recommends that USTR retain Indonesia on the Priority Watch List as a result of this Out-Of-Cycle Review.

About the IIPA

The International Intellectual Property Alliance (IIPA) is a coalition of seven trade associations formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyright materials, and to open up foreign markets closed by piracy and other market access barriers. The IIPA is comprised of: the Association of American Publishers (AAP), the Business Software Alliance (BSA), the Entertainment Software Association (ESA), Independent Television and Film Alliance (IFTA), the Motion Picture Association of America (MPAA), the National Music Publishers' Association (NMPA), and the Recording Industry Association of America (RIAA). These member associations represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media). For more information on the IIPA, visit www.iipa.com.



IIPA has been actively engaged in efforts to improve copyright protection and enforcement in Indonesia for many years, and IIPA member organizations or their affiliates in the region continue to work to build a healthy market for legitimate copyright materials in Indonesia. IIPA filed its 2005 Special 301 submission on February 11, 2005, which can be found at <http://www.iipa.com/rbc/2005/2005SPEC301INDONESIA.pdf>.

Out-Of-Cycle Review Recommendation and Reasons

On April 29, 2005, the United States Trade Representative announced the results of the 2005 Special 301 review, and stated specifically regarding Indonesia,

Indonesia will remain on the Priority Watch List for 2005, and the United States will conduct an out-of-cycle review to monitor Indonesia’s progress on IPR issues. Indonesia took steps in 2004 to strengthen its IPR protection regime. Notably, Indonesia passed Optical Disc Regulations in 2004 that took effect in April 2005 and demonstrate Indonesia’s commitment on paper to improving its IPR regime. The U.S. copyright ... industries report that serious concerns remain, however, over numerous issues, including: lack of effective IPR enforcement; the adequacy of the new regulations to reduce the production, distribution, and export of pirated optical media products ... and deficiencies in Indonesia’s judicial system. Indonesia carried out some raids against retail outlets for pirate optical media products in 2004, but the U.S. copyright industry reported that enforcement and prosecution of IPR violations remained insufficient and non-deterrent. Pirate optical media products, including CDs, VCDs, DVDs and CD-ROMs, still dominate Indonesia’s market. The U.S. copyright industry estimated losses in Indonesia of approximately \$197.5 million in 2004. ... In addition to the out-of-cycle review, the United States will continue to use our bilateral Trade and Investment Framework Agreement (TIFA) to work with Indonesia to take the additional measures necessary to develop and implement a robust and effective IPR regime.

Notwithstanding some encouraging signs on the procurement side (for business software) and with regard to some very recent raid activity, IIPA recommends that, to ensure that such positive steps are sustained and to address the continuing problems highlighted below, USTR retain Indonesia on the Priority Watch List as a result of this Out-Of-Cycle Review.

- There have been a couple of inspections on optical disc production plants, but no prosecutions of owners/managers of plants; also, the government still has no register of plants. Meanwhile, 40-50 optical disc production plants remain in operation.
- No National IPR Task Force has been established.
- There have still been no criminal prosecutions against end-user piracy of business software.
- The book market is almost entirely pirate.



- Piracy levels for most sectors (sound recording, motion picture, book piracy, entertainment software) are reported as unchanged, and Internet piracy is a new but increasing problem in Indonesia.
- Signal theft piracy is an increasing problem in Indonesia, depriving right holders in motion pictures and television programming of revenues.
- Severe market access barriers in Indonesia continue to hinder legitimate copyright owners from doing business there.
- The OD law remains deficient in many key areas.

Updates to 2005 Special 301 Report: Piracy and Enforcement

A Couple of Inspections/Raids Have Occurred Against Optical Disc Plants, But There Have Been No Prosecutions of Owners/Managers

- On August 15, 2005, the Jakarta Metropolitan police raided an alleged OD pirate production plant in West Jakarta. An arrest was made and a number of pirate ODs were seized along with some production machinery. The ODs were destroyed mid-September in a public ceremony. The seized machinery was put on display and we understand the Police intend to hand this over to the Directorate of Intellectual Property for display at their premises. We do not know of any progress made towards the successful prosecution of the owners/managers of the production plant raided.
- Separately, and of more concern, we do not know of any progress made in the prosecution of the owners/managers of the pirate DVD production plant raided by the Directorate of IPR (with police support) on December 29, 2004. This raid was attended by the Minister of Legislation and Human Rights, Mr. Hamid Awaluddin, and the head of the Directorate of IPR, Mr. Bari. It appears the Defendants have “intervened” since such a high profile raid should have resulted in a prosecution and the Indonesian authorities should provide a clear explanation of why, if such is the case, this has not yet happened.
- To date, the Ministry of Industry still does not have a definitive list of plants or a centralized register. The recording industry has held trainings, concluding in August 2005, intended to enable the Ministry of Industry Monitoring Teams to inspect and monitor replication facilities. Most of the involved agencies sent senior officials; while it was positive to have high-level officials attend these trainings, since they are not part of the monitoring teams, the knowledge imparted during these trainings did not directly reach those most likely to be involved in routine monitoring.

National IP Enforcement Task Force Has Not Been Established

One of the Indonesian government’s promises was to fully establish a national IP enforcement “task force” which would have adequate devoted resources to address piracy in the



country. A “National Task Force Decree” was issued but apparently still awaits approval from the State Secretariat and Presidential signature. It is highly unfortunate that there has been no announcement and no progress on this issue. At present the National Task Force for IPR remains dormant/inactive.

Still No Criminal Prosecutions Against End-User Piracy of Business Software

IIPA was hopeful that the criminalization of end-user piracy of business software in the new copyright law would lead to prosecutions. Unfortunately, there have been no prosecutions. In March 2005, the launch of a BSA (private industry) hotline was publicly supported by the Director General of Intellectual Property Rights Mr. Abdul Bari Azed. He also publicly supported the BSA’s software asset management seminar in August, at which Mrs. Halidah Miljani, Expert Staff of Minister of Trade, gave the welcoming address. The IPR section of the Police has conducted two end-user raids, and three in the past year. These cases are still in the hands of the police. Another end-user raid is imminent. The police unit involved in the raids are gradually coming to grips with evidence collection and developing the cases for prosecution. IIPA urges the government to take these cases forward to conviction to demonstrate that the law with respect to end-user piracy is not simply dead-letter.

Book Market in Indonesia Almost Entirely Pirate

The book market in Indonesia is almost entirely pirate, and several legitimate publishing companies have closed offices due to lack of a sustainable market. Illegal offset prints and translations constitute the main forms of piracy harming this market. Several best-selling higher education titles have been translated into the Bahasa Indonesia language and pirated. While cases are opened with the Police and IKAPI (Indonesian Publishers’ Association), the pirates normally abscond and cases drag in court, with some cases having dragged on for years. For example, it took more than a year for a book pirate caught in a raid on October 9, 2003 to be taken to trial (December 29, 2004), and it was not until Sept 12, 2005 that a conviction was returned (with a 30 month jail sentence; it is unknown whether this is being served, was suspended, or is on appeal). There were books from six local publishers and one International publisher, Thomson Learning (*Accounting* by Fess/ Warren).

Most universities in Java (including Jakarta, Surabaya, Bandung, Yogyakarta, Semarang) condone students and libraries buying pirated copies and photocopy them, especially in Bandung, West Java. There are photocopy kiosks near big universities, e.g., Bandung Technology Institute, Parahyangan University and Padjajaran University. They have catalogs of titles from McGraw-Hill, Wiley, Pearson, Thomson Learning, Oxford University Press, Cambridge, Sage, etc. which they have ready-made to sell to students, lecturers and libraries. Street markets, small copy-shops and informal (private) educational copying are also important elements contributing to book piracy. The largest mainstream bookselling chains – Gramedia



and Gunung Agung – openly stock pirated copies of domestic and international titles, as do the branches in malls such as Pondok Indah in Jakarta.

Sound Recording Piracy

As noted, there is no change reported in Indonesia’s music/record piracy rate, which is still estimated to be in the region of 90%. There are no appreciable legitimate CD sales, despite the presence of at least one music store in every mid to high-end shopping mall. In stalls the split between CD titles and cassettes appears even, and as seen outside Indonesia, there is a growing trend towards the sales of DVD movies. Generally audio discs are burned CD-Rs (which sell for as little as R5,000 or US\$ 0.50), with a growing number of bootleg DVDs (which range in price from R5,000 for domestic material to R15,000 or US\$1.50 for imported DVDs from Malaysia, and up to R40,000 or US\$4.00 for Chinese origin product, some being the same origin as product found in the Philippines).

Internet Piracy: An Emerging Problem in Indonesia

Industry sectors are noting increasing levels of Internet piracy. Several websites have been established in Indonesia which sell or promote the sale of pirate copyright materials. An example of one site, “Easy Order DVD” (www.easyorderdvd.com) promotes pirate copies of DVDs of the latest theatrical-release motion pictures as well as other content, and also includes a link for the sale of counterfeit cigarettes (example dated September 26, 2005). While Internet sites advertising sale of pirate DVDs is in an infancy in Indonesia, it should be noted as a concern. During late 2004, MPA built up relations with the Cyber Crime division of the Jakarta Metropolitan Police and in May and June 2005, the police raided and closed two websites.¹ As a direct consequence, two other known pirate DVD Internet based distributors closed.



¹ As an aside, in the first case, the infringer unwittingly assisted the authorities when he sent a virus to the Police investigation team’s computers.



Significant Levels of Signal Theft in Indonesia

The cable and satellite television industry in Indonesia remains in its infancy in part due to significant levels of piracy. Industry analyst Media Partners Asia estimates that there are twice as many homes receiving illegal pay television as there are receiving legal services (150,000 legal versus at least 300,000 illegal as of December 2004). Anecdotal industry estimates are an order of magnitude higher, incorporating the untold number of subscribers using decoder boxes from overseas to receive programming, including the programming of U.S. companies, without authorization. The government passed its Broadcast Law in November 2002, governing both terrestrial and cable and satellite subscription television, and paving the way for creation of an Independent Broadcast Commission (KPI in Bahasa) which began functioning in December 2003. Both the Broadcast Law as well as the Copyright Law of 2002 provide a degree of protection for broadcast signals. Enforcement to date, however, has been virtually non-existent. There are reports that the KPI is considering the initiation of anti-piracy programs and enforcement actions but no enforcement action has been taken thus far. IIPA urges USTR to raise signal piracy as one of the many issues in Indonesia given the absence of concrete steps to address the problem to date.

Market Access Barriers Should be Lifted

Foreign audiovisual producers still cannot participate directly in the importation and distribution of their product, and bans on foreign investment in media businesses remain in place. To our knowledge there have been no legislative changes made nor proposed to ensure that U.S. right holders can participate in the Indonesian market. These factors exacerbate an already severe piracy problem.

Positive Signs From Recent Raids on Procurement of Business Software are Encouraging But Must be Sustained

Retail Piracy Raids Net Some Positive Results

IIPA has long called for sustained enforcement activities against pirate retail outlets, street vendors, distributors, production facilities, and commercial photocopy shops. In particular, IIPA has noted that the government needs to ensure that sustained, effective enforcement is taken against the retail and distribution outlets in the persistently pirate malls Ratu Plaza and Mangga Dua in Jakarta and that the pirates are successfully prosecuted.

The IPR Police has conducted some effective retail raids against some shops selling pirated software in malls in Jakarta in 2004 and early 2005, with convictions being achieved in some of the cases from 2004. Of the raids run on the complaint of the business software industry in 2004, the following results were achieved:



- Harco Mall was raided in February 2004, at which time 7,200 copies of pirated software were seized. The store owners were convicted in December 2004 and were sentenced to imprisonment of year, suspended for a probation period of two years. In addition, all pirated items seized were ordered to be destroyed.
- Ratu Plaza was raided in February 2004, at which time 11,000 copies of pirated software were seized. The store owner later absconded and no further action was taken in this instance.
- Mangaa Dua Mall was raided in April 2004. Six shops at the mall were raided and 10,300 pieces of pirated software in total were seized. The store owners were convicted in court on October 1, 2005 and were all sentenced to imprisonment of one year suspended for a probation period of two years. In addition, all pirated items seized were ordered to be destroyed.

Several further raids were run in early 2005. In “ITC Cempaka Mas,” “Ambassador Mall,” Ratu Plaza and Mangaa Dua Mall, seven stores were raided in February 2005, resulting in the seizure of 22,000 pieces of pirated software. In all, six store owners were brought to court (one owned two of the stores). Of the cases brought as a result of these raids, the following were the case results:

- Meteor Disc Store located at ITC Cempaka Mas: The store owner was found guilty and sentenced to two years imprisonment without probation. The accused declared his intention to file an appeal to the Supreme Court against the decision but none has been filed to date.
- Luis Mauwa Store located at located at ITC Cempaka Mas: The store owner was found guilty and sentenced to three years imprisonment without probation.
- Meteor PC located at ITC Cempaka Mas: The Public Prosecutor has read the accusation in which a term of three years imprisonment has been sought. A result is expected before the end of 2005.
- Viacom store located at ITC Cempaka Mas: The Public Prosecutor has read the accusation in which a term of three years imprisonment has been requested. A result is expected before the end of 2005.
- Ho Yhi Huat Cybershop located in Mangga Dua Mall: The store owner was found guilty and sentenced to ten months imprisonment without probation. The accused has filed an appeal with the Supreme Court.



The 2005 case results, when compared with those from the 2004 cases, are obviously positive indicators that the government recognizes the importance of seeking more deterrent criminal penalties in the form of imprisonments to bring down piracy levels in Indonesia.

There are some further recent signs that the Indonesian government has stepped up cooperation to combat piracy, including two major raids involving the Indonesian authorities aided by motion picture industry representatives. In the first raid, on November 17, more than 100 Jakarta and National Police officers, with Motion Picture Association (MPA) and Indonesian Home Video Industry Association (ASIREVI) representatives, raided two of Indonesia’s most notorious pirate shopping malls, seizing approximately 800,000 pirate optical discs, of which an estimated 80 percent were infringing MPA member company titles. The seizures were by far a record for seizures of pirated discs from retail premises in Indonesia. The simultaneous raids on the Ratu Plaza and Mangga Dua shopping malls found all of the 108 targeted shops shuttered, apparently having been tipped off to the operations. However, after MPA representatives prevailed on senior police officers to seize stocks of pirated optical discs found on the premises, police locksmiths opened the shops and officers spent the day removing hundreds of thousands of pirated DVDs, representing lost pirate sales/illegal revenues of approximately \$800,000. The managers of both malls fled the premises during the raids, but during pre-raid planning sessions, senior Jakarta Police officers stated to MPA representatives that they intend to prosecute the owners of the pirate outlets and to interview the mall owners/managers.

In the second raid, on November 23, Jakarta Metropolitan Police officers, supported by Motion Picture Association (MPA) representatives, raided a number of shopping malls and market vendors in Jakarta’s Chinatown district, seizing approximately 300,000 pirated optical discs, of which an estimated 70 percent were DVDs containing infringing movie titles. The seizures were the largest haul ever from pirates in Jakarta’s Chinatown. IIPA applauds the government for the complete removal of pirated optical disc stocks from Ratu Plaza and Mangga Dua – the two most notorious piracy centers in Indonesia. General Firman Gani and his officers are to be congratulated.

Such progress in the court cases going forward and in the raiding conducted must be sustained, or the situation in Indonesia will quickly return to the status quo ante. For example, the occurrence of the recent African-Asia summit caused the Indonesian authorities to shut down many pirate retailers. However, once the Summit was concluded, the pirates were permitted to return in force. In 2005, the evidence shows that pirates have been moving into mid to upper market malls. The retailers in these premises enjoy the enthusiastic support of their landlords. In some cases, mall owners are actually supplying retail stalls purposely built for display of pirate goods.



Procurement Increases for IT Expenditures

In a recent newspaper report (*Bisnis Indonesia*, November 22, 2005) it was noted (inter alia) “the government’s IT expenditure for hardware and software reached Rp528 billion (over US\$52 million) this year and was distributed to 67 departments or non-departmental government institutions all over Indonesia. The Director of Electronics and Information Technology Center for BPPT Sulistyو Suhwardi had previously said that as much as 90% of PCs in government institutions use pirated software.” This purchase is an encouraging development.

Updates to 2005 Special 301 Report: Laws

Copyright Law Must Be Fully Implemented

Now that Indonesia has joined the WPPT (effective February 15, 2005), the copyright law should be amended to, among other changes, provide record producers with rights in line with the WPPT (other changes include extending duration of copyright protection, etc.). In addition, the law mandated regulations to deal with the protection of technological protection measures (and consistent with the WCT and WPPT). These implementing issues have not to our knowledge been drafted yet, much less issued.

Further Improvements to Optical Disc Law Needed

The optical disc regulations fail to establish an effective mechanism to address growing optical disc pirate production in Indonesia. While the authorities could take many more inspections and prosecute owners, the regulations in all likelihood need to be amended to, among other things: provide centralized licensing of plants; ensure proper use of identification codes, including prohibiting gouging or other alterations of codes; cover stampers/masters; cover exportation of discs, equipment and raw materials. To strengthen the OD regime, the copyright industries urge the government of Indonesia to:

- Establish a central register of OD Plants, and allocated Source Identification (SID) Codes.
- Require that applications for SID Codes be made within a specified period.
- Grant Ministry of Industry Inspection teams 24 hour access to all OD plants, including supporting departments and associations.
- Require that OD plants provide exemplars from all replication machines to inspection teams.
- Require plant owners/managers to notify the Ministry of Industry in writing of any machine imports/exports/sales or transfers, prior to the transaction.



- Require OD plants to grant inspections teams full access to order books/ production records at any reasonable time.
- All export orders, freight handlers, shippers and consignees must be recorded.
- Require polycarbonate importers/distributors to provide records of all transactions.

To the extent that the Ministry of Industry is in the process of addressing effectively any of these needs noted above, we look forward to receiving confirmation and information pertaining to the above.

Other Issues

We understand that the U.S. government is providing training and assistance, including a full-time senior technical advisor in Indonesia’s Ministry of Industry for one year to provide assistance to the government of Indonesia in the implementation of Indonesia’s Optical Disc Regulations, and a second full-time senior technical advisor to be placed in the Indonesian National Police’s Special Economic Crimes Division to provide assistance to investigators in IP enforcement efforts. IIPA members look forward to working with these advisors and with the Indonesian government to seek improvements in the enforcement regime against optical disc piracy and all copyright piracy in Indonesia.

For all of the foregoing reasons, we recommend that Indonesia be retained on the Special 301 “Priority Watch List.” Please feel free to let us know if you have any further questions.

Sincerely,

Michael Schlesinger
Vice President and Associate General Counsel
International Intellectual Property Alliance (IIPA)

Reference:

IIPA 2005 Special 301 Report on Indonesia, available at
<http://www.iipa.com/rbc/2005/2005SPEC301INDONESIA.pdf>