



September 15, 2006

Via Email: FR0627@ustr.eop.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: **Indonesia: Special 301 Out-of-Cycle Review**
Identification of Countries Under Section 182 of the Trade Act
of 1974: Request for Public Comment
(71 Fed. Reg. 49491, August 23, 2006)

To the Section 301 Committee:

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials.¹ We take this opportunity to provide the Committee with our views on the Special 301 out-of-cycle-review of Indonesia's intellectual property rights practices.

The IIPA provided our views on Indonesia's copyright law, piracy and enforcement efforts in our 2006 Special 301 submission to USTR. In that submission, IIPA recommended that Indonesia remain on the Special 301 Priority Watch List.² On April 28, 2006, USTR chose to maintain Indonesia on the Priority Watch List and conduct this Out-of-Cycle Review (OCR). Specifically, USTR indicated that the OCR would be conducted "to monitor Indonesia's progress on IPR issues," in particular, to

"assess Indonesia's progress on" ... "enforcing its IPR laws effectively and in a deterrent manner against piracy and counterfeiting, including through raids on pirate optical disc factories; by conducting seizures of pirated goods and the machinery used to make them; by arresting and prosecuting IPR infringers; and by ensuring

¹ IIPA is comprised of seven trade associations, each representing a significant segment of the U.S. copyright community. 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).

² See IIPA's Special 301 2006 report on Indonesia, February 13, 2006, available online at <http://www.iipa.com/rbc/2006/2006SPEC301INDONESIA.pdf>.



that courts impose jail sentences for IPR crimes and that offenders actually serve such sentences.”

As is noted below, IIPA is pleased with enforcement efforts, at least as to optical disc piracy, over the past several months. These efforts include large seizures of pirated goods as well as machinery used to make them. However, it is not yet clear that key piracy bosses are going to be prosecuted to the full extent of the law, and to IIPA’s knowledge, there remain few, if any, prosecutions of such pirates, and fewer sentences meted out. In addition, other problems like book piracy as well as end-user piracy of business software, remain severe, and thus it is simply too early to declare victory in the fight against piracy in Indonesia.

Therefore, in recognition of enormous efforts in the area of enforcement against optical disc piracy, **IIPA recommends that the Committee lower Indonesia to the Special 301 Watch List, with the condition** that, should the Indonesian Government fail (a) to follow up these raids with arrests and successful prosecutions of main perpetrators of these piracy operations (i.e., managers and owners, not mere employees), and (b) to make improvements in enforcement against: book piracy, namely, photocopy piracy (mainly on university campuses), print piracy, and unauthorized translations; end-user software piracy (where piracy levels are the third worst in the world); and signal theft piracy, that Indonesia should once again be moved to the Priority Watch List in the 2007 Special 301 cycle.

Updates for the 2006 Out-Of-Cycle Review of Indonesia

IIPA’s 2006 Special 301 outlined several priority actions which needed to be taken in order to improve copyright protection in Indonesia and reduce piracy. Below these are listed with updates for this 2006 Out-of-Cycle Review.

Sustain Raid Efforts on Major Retail Centers and “Burning” Operations in Indonesia: Piracy rates in Indonesia have been among the highest in the world for years. In late 2005, the Indonesian National Police ran a series of unprecedented raids aimed at the heart of retail piracy and CD-R/DVD-R “burning” in Indonesia.³ Such raids have continued in 2006 against licensed and unlicensed production facilities and against retail establishments.

Update for the 2006 Out-of-Cycle Review – Large-Scale Raids in Spring 2006: IIPA notes that the raids run in late 2005 led to a decline in blatant retail piracy in some chief piracy locations in Indonesia. In June 2006, a new set of large-scale raids occurred once pirates attempted to retake to the streets. These raids have resulted in large numbers of discs being

³ Ratu Plaza was believed “untouchable” until last November, when MPA investigators and more than 100 Jakarta and National Police officers, accompanied by Indonesian Home Video Industry Association (ASIREVI) representatives, raided Ratu Plaza and the Mangga Dua shopping mall, two of Indonesia’s most notorious pirate retail centers, seizing approximately 800,000 pirated optical discs, of which an estimated 80 percent were infringing MPA member company titles.



seized, which indicates an increasing and welcome resolve among Indonesian authorities to go after the “big fish” pirate operators, but also unfortunately still indicates the large scope of the piracy problem in Indonesia. Industry estimates that in 2006 year-to-date, (including a three-month-long anti-piracy campaign), the Indonesian authorities have, through concerted raid efforts, netted seizures of well over 5 million pirate optical discs and over 400 optical disc burners capable of producing tens of millions more. As in late 2005, raids included those carried out on Ratu Plaza.⁴ The reports indicate the Indonesian Government’s intention to prosecute the arrested persons for copyright piracy, but we have yet to receive significant statistics on such cases, thus, while the raiding is very impressive, and is a chief reason we are recommending that Indonesia be lowered to the Watch List today, it remains to be seen whether the raids will have longstanding deterrent effects, both as to the specific defendants whose piracy businesses were subject to the raids, or to society at large. The defendants in these cases should be referred for criminal prosecution and prosecuted to the full extent of the law.

To be clear, enforcement has improved but needs to be sustained and continued and coordinated among the agencies. The Department of Industry (DOI) and police must work closely together. To be effective and successful over the longer term, Indonesia must prosecute pirates and impose deterrent sentencing, as IIPA has regularly indicated in our Special 301 submissions.

Eradicate Production of Pirate Optical Discs: Indonesia-sourced optical discs are not only harming the domestic market for copyright products, but are landing outside of Indonesia, namely, in the Philippines, the United Kingdom and elsewhere in Europe. Now that Indonesia has an optical disc statute that it believes is adequate to eradicate pirate production, IIPA urges it to take actions in 2006, including inspections, seizures of pirate goods and equipment, and prosecutions of plant owners and financiers, that will test this assertion.

Update for the 2006 Out-of-Cycle Review – Some Impressive Raids/Seizures: As with retail raids and raids on CD-R or DVD-R “burning” facilities, the Indonesian Government appears to have gotten serious about addressing the optical disc piracy problem in 2006. We commend the government for raids in February and August 2006. In the February raids, a total of fourteen optical disc production lines were seized, seven in a raid in a Jakarta suburb, along with 20 bags of polycarbonate, 30 stampers and 74,000 pirated DVDs, VCDs and CDs. Police arrested 16 people in that raid. In the other raid in February, Jakarta Regional Police raided an optical disc factory in the Jakarta suburb of Tangerang, seizing seven VCD/CD replicating lines that production records showed had been producing 100,000 optical discs per day. Also seized were around 54,000 pirated optical discs, around 70 percent of which were infringing Motion Picture Association of America (MPAA) member company titles. In the August raid, officers from the

⁴ Ratu Plaza had recently reopened after a lengthy closure prompted by the seizure in a raid late last year of hundreds of thousands of pirated optical discs, and on June 23 KrimSus officers responded to the return of pirate traders with a raid that netted 410,000 pirate DVDs, a record for seizures of pirated discs from a single retail location in Indonesia.



Special Economic Crimes Division (Krimsus) of the Jakarta Metropolitan Police raided a warehouse and factory in the Tangerang area of Jakarta, arresting five men and seizing five factory production lines, nineteen 750-kilogram sacks of optical grade polycarbonate, a DVD bonding machine and around 750,000 optical discs in various stages of production. Through these raids, the Police are showing tremendous leadership in addressing Indonesia's piracy problems at source. IIPA also understands that the Ministry of Industry also has been instrumental in these improved enforcement efforts by the Indonesian government. IIPA has learned that the Ministry of Industry has determined that it will run inspections (albeit they have warned the 26 registered optical disc plants in a letter to the plants informing them of such).

Curb Pirate Exports: The Directorate General of Customs & Excise has not gotten sufficiently involved with the fight against pirate exports. Customs should name and direct an IPR team of agents to track and work with other agencies to investigate organized exports of pirate goods, seeking to curb substantially the sheer numbers of pirated goods leaving the docks and ports each year.

Update for the 2006 Out-of-Cycle Review: We are unaware of developments toward curbing pirate exports (or imports) or specific steps taken by Customs to combat the piracy problem.

Sign National IP Task Force Decree: To ensure that adequate resources are devoted to the piracy problem on a year-round basis, the President must sign and implement the National Task Force Decree, and assign sufficient numbers of officers to tackle copyright piracy and bring piracy rates down.

Update for the 2006 Out-of-Cycle Review – Decree Issued, Task Force Met in June, But No Results Yet: In March 2006, President Susilo Bambang Yudhoyono finally issued the decree establishing the “National Task Force for IPR Violation Prevention.”⁵ According to the Decree, the Task Force's aims are to:

- Formulate a national policy to prevent IPR infractions;
- Determine national efforts needed to prevent IPR violations;
- Assess and determine measures for resolving strategic problems concerning IPR infractions, including prevention and law enforcement activities in accordance with the main duties of participating agencies;
- Educate and socialize related government institutions and society about IPR matters through various activities; and
- Improve bilateral, regional and multilateral cooperation to prevent IPR violations.

⁵ Presidential Decree No.4/2006, March 27, 2006.



The Task Force is responsible directly to the President, and must “report in writing” to the President every 6 months or whenever it is needed (we believe this means “at least” every six months but more frequently if needed, although we would like to confirm this). IIPA understands that the first meeting of the Task Force occurred in June 2006, however we do not know if the Task Force addressed these issues or indeed what, if anything, that it did decide to do. One outstanding issue is funding for the Task Force and its activities. According to the Decree, all costs associated with IPR Task Force activities are to be levied on the Ministry of Justice and Human Rights budget, however, it does not appear the Task Force has an independent budget at this stage.

With the establishment of the National IP Task Force, we believe the following tasks, at a minimum, should be accomplished by this group:

- a. Establish and implement a 3-year Intellectual Property Protection and Awareness Roadmap or Blueprint that consists of short term and long term strategies
- b. In the short term, the National IP Task Force should before the end of 2006, launch a Nationwide educational and enforcement campaign. Two proposals for short term action are:
 - i. The National IP Task Force to declare 2007 an “IP Action Year” and work with the industry to coordinate awareness and enforcement activities across the country
 - ii. The National IP Task Force to consider making it mandatory for new computers to be loaded with only genuine software
- c. In the long term, the National IP Task Force may wish to consider the following goals:
 - i. Education: Reach businesses, schools and the general public to promote respect for IP
 - ii. Legislation: Review and enhance IP legislations periodically
 - iii. Enforcement: Conduct sustained enforcement efforts to tackle both retail and business software end user piracy)

Address Book Piracy: Piracy of published materials runs rampant in Indonesia, including photocopying (mainly on university campuses), print piracy, and unauthorized translations. The Indonesian Government should include in its ambit of raids photocopy shops as well as distributors of pirate offsets and translations, and should implement an approach to legitimize use of published materials at schools and universities, including directives to ensure adoption of legal textbooks.

Update for the 2006 Out-of-Cycle Review: There is little good news from Indonesia regarding the fight against photocopying piracy, print piracy, and unauthorized translations. Therefore, this is an area in which the Indonesian Government must take a stand in the next several months, by:



- Engaging in large-scale raids against pirates of published materials;
- Add commercial printers and photocopy shops to those targeted for immediate enforcement and follow up prosecutions;
- Having the Ministry of Education and Culture get involved to direct universities to use only legal copyright materials.⁶

Inspect Businesses Suspected of End-User Software Piracy: End-user piracy of business software causes the greatest losses to the business software industry in Indonesia, and piracy rates there remain among the highest in the world. The Government recently added a provision to its Copyright Law criminalizing end-user piracy. In 2006, the Government must bring more cases, including criminal cases; legalize software usage in businesses throughout Indonesia; and improve the Government's software asset management.

Update for the 2006 Out-of-Cycle Review – Decree Issued, Task Force Met in June, But No Results Yet: Indonesia has the dubious distinction of having the third-highest software piracy level in the world. Approximately 87 percent of software used in Indonesia is pirated. The piracy rate represents a decline of one percent from the previous year, and despite the seemingly insignificant percentage change, it actually reveals that there is some law enforcement occurring in Indonesia, with some illegal merchants being sentenced by the courts in recent years (with sentences ranging from ten months to two years or more in a couple of cases).

With respect to business end user piracy, the Business Software Alliance (BSA) reports that the police have been responsive to requests from BSA for corporate end user raids to be taken and have been agreeable to publicize such raids. Nevertheless, it will be important to have business end user piracy cases brought to the courts for prosecution as soon as possible. For example, in a recent end user case, the police completed the file for prosecution and submitted it to the Prosecutor. Notwithstanding this, the prosecutor has so far challenged the police on matters related to evidence and offense. BSA hopes this case and future cases will be investigated and prosecuted smoothly

With respect to business software retail piracy, BSA is encouraged to note that the courts in Jakarta have begun to consistently convict pirate retailers and hand out custodial sentences. In one particular case where the defendant (Jimmy Rompas) appealed against his 1 year imprisonment with 2 years probation, and the sentence was increased to a 3 years' custodial one. BSA notes that the time lag between a retail raid against pirate software and the case appearing in court is now only a few months. For example, shops raided in Mall Ambassador in March 2006 were in the District Court by June. Finally, in view of the foregoing, BSA hopes

⁶ Most universities in Java condone students and libraries buying pirated copies and photocopying them. Photocopy kiosks litter the areas around major universities such as Bandung Technology Institute, Parahyangan University and Padjajaran University. In addition to these street stalls and copyshops, mainstream bookselling chains such as Gramedia and Gunung Agung are in some cases openly stocking pirated books. The Pondok Indah mall in Jakarta is well known for featuring pirate sellers.



retail actions taken are faithfully brought to the courts. Regular reporting of the convictions will deter potential sellers from getting into this illegal trade.

With respect to government legalization of software, BSA member companies continue to work with the Indonesian Government on the use of legal software within government ministries. BSA has heard from its member companies that there has been some progress on this front. BSA nevertheless stresses the importance of the Government legalizing its software use. This will strengthen the Government and its law enforcement's credibility when conducting IP education and enforcement efforts.

Address Significant Levels of Signal Theft Piracy: In the 2006 Special 301 report, IIPA noted that the cable and satellite television industry in Indonesia remains in its infancy in part due to significant levels of piracy,⁷ and that while both the Broadcast Law and the Copyright Law of 2002 provide a degree of protection for broadcast signals, enforcement to date has been virtually non-existent.

Update for the 2006 Out-of-Cycle Review: There is no good news out of Indonesia on addressing signal theft piracy. There were reports that the Indonesian Broadcasting Commission (KPI) was considering the initiation of anti-piracy programs and enforcement actions in this area, but, to IIPA's knowledge, no enforcement actions have been taken thus far.

Lift Market Access Restrictions: Indonesia's investment bans and barriers to a foreign role in creating and distributing copyright products are wholly inconsistent with the steps the regime has taken to reduce barriers to the Indonesian market generally and to respond to calls from the international community for market liberalization. They also violate Indonesia's bilateral pledge to the United States in 1992 that direct distribution of audiovisual product would be permitted as soon as the market was opened to the direct distribution of any other foreign goods. The various stifling market access restrictions in Indonesia should be lifted.

Update for the 2006 Out-of-Cycle Review: There is no good news out of Indonesia, and the country remains one of the most closed markets in the world to legitimate U.S. copyright businesses. Problems remaining include:

- **Trading and Distribution Rights, and Media Investment Ban:** Indonesia maintains a blanket prohibition on foreign company participation in, or even investment in, importation,

⁷ 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 many subscribers using decoder boxes from overseas to receive programming, including the programming of U.S. companies, without authorization.



direct distribution, exhibition, or retailing in most copyright products in Indonesia. Presidential Decree 118 of 2000 remains in force and stipulates that all importation and distribution of films and video product be restricted to wholly-owned Indonesian companies. An annexure to the Decree lists those media sectors that are closed to foreign investment, including:

- Radio and television broadcasting service providers, radio and television broadcasting subscription service providers and print media information service providers;
- Film making businesses, film technical service providers, film export and import businesses, film distributors and movie houses operators and/or film showing services.
- **Broadcast Law:** The “Broadcast Law”⁸ bans the broadcast of most foreign programming in Indonesia.⁹ The Independent Regulatory Commission (KPI) created by the new Broadcast Law has now been installed and has issued implementing regulations, but a competing set of regulations was issued by the Ministry of Communication and Information Technology (Kominfo), and the latter are being challenged as unconstitutional by KPI.¹⁰ Support from members of Parliament for KPI’s position is believed to have led to the postponement and likely amendment of the regulations. Even with KPI’s regulations, the law is onerous and the various market access restrictions should be lifted. IIPA understands that the Kominfo regulations were scheduled to be finalized after consultation with KPI by February 2006, but at the time of writing, their status was unclear. IIPA will be monitoring this situation closely.
- **Film Law:** It is believed a draft Film Law was submitted to Parliament for consideration in December 2005. Industry has not been able to view this draft and indications that it contains screen quotas and limits on foreign participation in the film industry, among many other market access restrictions are of real concern.¹¹ It is also highly unfortunate that the

⁸ Law of the Republic of Indonesia, No. 32 Year 2002, Regarding Broadcasting (into force February 2003).

⁹ Specifically, the law requires that private broadcasting institutions be established initially without any foreign investment. Subsequent foreign investments can then be made, but only up to a 20% ownership cap shared by a minimum of two shareholders. Additional restrictions in the draft legislation include: (1) a restriction on foreign managers, (2) cross ownership limitations, (3) a local content quota of 60% on broadcast television and 10% on pay-television, (4) a 30% dubbing quota on foreign programs, (5) advertising limits of 20% of total broadcasting time for private broadcast stations and 15% for public stations, and (6) a total ban against the establishment of foreign broadcast institutions in Indonesia.

¹⁰ Of concern to foreign broadcasters is that the Kominfo regulations, issued on November 16, 2005, are reported to have a number of negative features, possibly including a “made in Indonesia” requirement for pay-TV advertising. Article 24(5) of Government Regulation of the Republic of Indonesia No. 52 of 2005 Regarding Broadcasting Provided by Subscriber Broadcasting Institutions requires advertising to use a “domestic resource,” although it is not clear if this requires the advertising to be made in Indonesia (e.g., it may simply mean Indonesian talent or resources had to be used). Art 24(6) requires foreign advertising to be replaced by domestic advertising, and cross-media and foreign ownership restrictions.

¹¹ The draft was expected to install an Independent Film Commission made up of local members, and set import and screen quotas, higher entertainment taxes on film admissions to imported films, requirements that all prints be made locally, and possible restrictions on foreign direct investment in the film industry. In addition, under the draft, it was reported that only local Indonesian companies would be permitted to operate a “Film Business” or a “Film Professional



government advisory board on Film Issues, the BP2N, which has been tasked with this law, did not consider the views of foreign film producers or related associations' views in their discussions. It is suspected that this draft will follow the Broadcast Law and limit foreign participation to 20%.

Issue Implementing Regulations on Technological Protection Measures (TPMs):
The Indonesians were to have drafted implementing regulations to implement Article 27 of the Copyright Act on TPMs.

Update for the 2006 Out-of-Cycle Review: The Government of Indonesia still has not issued implementing regulations to implement Article 27 of the Copyright Act on TPMs.

Finalized Copyright Piracy Statistics for 2005: Finally, we report that BSA has finalized its 2005 business software data. Estimated losses reported by three industry sectors in Indonesia amounted to at least \$209.5 million last year.

INDUSTRY	INDONESIA 2005	
	Estimated Loss Due to Piracy (in US\$ million)	Estimated Piracy Level
Business Software ¹²	153.0	87%
Books	32.0	NA
Records & Music	24.5	75%
Motion Pictures	NA	NA
Entertainment Software	NA	NA
TOTALS ¹³	\$209.5	

Service.” Another provision of the draft apparently provides that film businesses are “obliged to use national potential to the maximum limit while paying attention to the principles of efficiency, effectiveness and quality.” The draft also apparently specifies that only national film companies would be permitted to make film commercials, that imported films are expected to be supplementary to national product and imports should be “in proportion to local production,” and although the existing film law permits films approved for all ages to be dubbed into Bahasa Indonesian, the new draft would apparently prohibit any form of dubbing except for educational, research, or information purposes, and require that all films be subtitled in Bahasa Indonesian.

¹² BSA’s 2005 statistics as reported in IIPA’s February 2006 301 filing were identified as preliminary (\$97.9 million, 85%). These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. In May 2006, BSA released its Third Annual BSA/IDC Global Software Piracy Study (May 2006), available at <http://www.bsa.org/globalstudy/>. The now finalized 2005 BSA data for Indonesia (above) continues to represent the U.S. publishers’ share of software piracy losses in Indonesia.

¹³ The methodology for all industry statistics provided by each industry association appears in Appendix B of IIPA’s 2006 Special 301 filing.



We appreciate this opportunity to provide the Subcommittee with our comments on Indonesia's Special 301 out-of-cycle-review. Please feel free to let us know if you have any further questions.

Respectfully submitted,

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on behalf of the
International Intellectual Property Alliance (IIPA)