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Via electronic submission: FR0441@ustr.gov

Marideth J. Sandler

Executive Director of the GSP Program and Chairwoman of GSP Subcommittee

Office of the U.S. Trade Representative

1724 F Street, NW

Washington, DC 20508

Re: GSP Country Practices Review,
017-CP-05, Pakistan, Pre-Hearing Brief and
Request to Appear at the GSP Public
Hearing

To the GSP Subcommittee:

The International Intellectual Property Alliance (IIPA) hereby submits this Request to Appear at the November 30, 2005 public hearing on the GSP country practices review of Pakistan. As you know, the IIPA was the original petitioner of the GSP review of Pakistan's intellectual property practices in the 2004 GSP Annual Review. Attached to this letter is our Pre-Hearing Brief.

The IIPA witness will be:

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Thank you.

Sincerely,

Eric H. Smith
President
International Intellectual Property Alliance



Pre-Hearing Brief
International Intellectual Property Alliance
GSP Review of the Intellectual Property Rights Practices of Pakistan

Before the GSP Subcommittee
Case 017-CP-05, Pakistan
November 30, 2005

The International Intellectual Property Alliance appreciates the opportunity to provide the GSP Subcommittee with a summary of the copyright enforcement situation in Pakistan. In short, while a few very serious problems remain that require earnest attention from the U.S. and Pakistani governments, the Government of Pakistan has taken some outstanding steps to comply with the eligibility requirements for GSP benefits. In recognition of this progress, specifically in the area of fighting optical disc piracy, we recommend that the GSP Subcommittee terminate this investigation. In any such decision to terminate the investigation, the U.S. government should note the need for Pakistan to make progress on the problems identified below.

The positive action by the Pakistani government in combating optical disc piracy should be sustained and augmented to include effective action against other types of copyright piracy. To date, the Pakistani government has not solved all the problems that our industries are experiencing there and the government needs take further steps as cited in this brief. In addition, the Pakistani government should continue aggressive and vigorous enforcement to ensure that pirated optical disc production does not return to Pakistan.

IIPA also notes that the U.S.-Pakistan dialogue is not limited to the GSP process. Therefore, the Alliance urges U.S. government engagement on the outstanding issues described below through other appropriate processes such as dialogue related to the Trade Investment Framework Agreement and Special 301.

Until recently, Pakistan had been one of the world's leading overproducers and exporters of pirated optical discs (CDs, DVDs, VCDs, CD-ROMs) of copyrighted material (sound recordings, motion pictures, business software, published materials). Ten known facilities in Pakistan produced upwards of 230 million discs in 2004 (up 30% from the 180 million discs produced in 2003), of which some 30 million were destined for local consumption. We have strong indications that a substantial part of the remaining 200 million discs were exported from Pakistan to overseas markets in 2004. Airfreight and other international transport data show that tens of millions of those discs were ultimately destined for the United States. By our analysis, pirate exports of copyrighted materials from Pakistan have harmed our industries in at least 40



countries. In addition, a new phenomenon in 2004 was the production by Pakistani OD plants of pirate “pre-release” sound recordings and motion pictures — a highly damaging activity to right owners.

Piracy in Pakistan also has gravely harmed local Pakistani copyright owners, as well as the Indian music, movie, and software industries. Book piracy and other forms of piracy (such as cable piracy, end-user piracy of business software, Internet café piracy) remain very serious problems in Pakistan. In this brief, we outline specific measures that should be taken with regard to these issues.

IIPA documented and described in considerable detail the magnitude of these problems in its 2005 Special 301 submission filed on February 11, 2005. We viewed these problems as being so severe that, in its 2005 Special 301 filing recommended that Pakistan be identified as a “Priority Foreign Country.” The IIPA filing on Pakistan can be found at: <http://www.iipa.com/rbc/2005/2005SPEC301PAKISTAN.pdf>

Optical Disc Piracy

The sound recording and motion picture industries noted some improvements during 2004 in the battle against OD piracy. Four of the pirate OD plants voluntarily closed, but then re-opened. Much more positively, the Pakistani Government’s Central Board of Revenue (CBR) implemented new directives for customs officers at the international airports stating that commercial exports of optical discs from Pakistan – particularly the export of CDs and DVDs with international repertoire, western movies and western software, by air freight companies or as hand baggage – were prohibited. The CBR directives required Pakistani custom officers to inspect every export shipment and verify that the shipment contained Pakistani (regional) repertoire only. Since this change has taken effect, Pakistani customs officers have made many seizures totaling more than several hundreds of thousands of optical discs at Karachi and Islamabad airports. After implementation of the directives, several customs officers at Karachi International were suspended because they did not act accordingly. Because of the intensifying Anti-Piracy activities by Customs at Karachi International and Islamabad airport in 2005, the exports of pirated optical discs by air-freight companies declined by more than 90% during 2005.

Even more dramatically, in May 2005, Pakistan’s Federal Investigation Agency (FIA) raided five optical disc manufacturing plants in the Karachi area. The authorities arrested nine people and confiscated more than 400,000 pirate CDs, DVDs and audio cassettes, along with at least 11,000 “stampers”— the master discs from which CDs are made. The plants were sealed following the raids and the nine persons arrested were released on bail. The FIA, which the Prime Minister’s office appointed as the leading organization for intellectual property rights enforcement in April this year, followed the initial actions with a raid on the registered office and warehouse of one of the sealed plants a week later. On May 26, the FIA seized a further



10,600 discs on their way to Lahore and Rawalpindi in India. On August 13, the Corporate Crime Circle, FIA Karachi seized over 270,000 pirated CDs and DVDs from a warehouse in Karachi and arrested two persons. Ninety percent of the DVD's were of English-language movies.

FIA has raided the following six facilities:

- AMIN'S Private Limited, F141-B, S.I.T.E., Karachi
- B.S. MAGNETIC, L-1/8, Block 22, F.B. Area, Karachi (MC factory)
- MULTIMEDIA MANUFACTURER, L-5/5, Block 22, F.B. Area, Karachi (Ajani)
- DISTECH MEDIA, AP-5, Sector 12-D, North Karachi. (Sadaf)
- WORLDWIDE PLASTICS INDUSTRIES, F-253, S.I.T.E., Karachi
- SUNBEAM CORPORATION, L-5/A-4, Block 22, F.B. Area, Karachi

Following the raids, four of the five remaining plants have temporarily suspended production of optical discs. The court has granted three of these the plants temporary permission to start producing legitimate discs and gave FIA power to visit and inspect the production of these plants at any time. The plants will continue to be considered as "sealed" and the owners have no right to shift or repair machinery without receiving permission from relevant courts.

New and pre-release English-language movies are still available in the market but in DVD-R format, that is, copied on personal computers as opposed to produced in a factory. Small quantities of factory pressed DVDs are available — however we believed these are being imported from Southeast Asia. After the raids, no pre-release music has been detected in Pakistan.

These events have been very positive. However, the problem of massive OD piracy could return if the government of Pakistan does not remain vigilant.

Book Piracy

Book publishers face an increasingly dire situation in Pakistan, where authorities are severely limiting cooperation with rightholders in owner-initiated enforcement actions in favor of bowing to the powerful lobby of pirate booksellers from the Urdu Bazaars (book markets) in major cities such as Karachi and Lahore. Book piracy is accepted as routine by all but a few legitimate importers, with little to no recognition of its criminal nature.

Local estimates of the market lost to the book pirates vary from 60% up to 90% and more, and the IIPA estimated losses of at least US\$52 million in 2004. All types of books are pirated — anything that is popular and sells more than 500 copies. Local school texts are pirated at a rate of at least 50%, while imported college texts lose far more market share than this. Imported trade titles are pirated as soon as they show signs of being popular. In all cases,



multiple pirated versions are available. The pirates are an integral part of the book supply chain, and are known by name to industry observers. Photocopying, especially of college books, is widespread and supported by most universities. It is not only international publishers that are affected. The damage to local publishers, importers and booksellers is immense.

The enforcement situation is particularly grim in Karachi and Lahore. Karachi's Urdu Bazaar features approximately 350 booksellers who are actively involved in fighting against any sort of anti-piracy measure suggested by rightholders. It is imperative that the government authorities not bow to this pressure. Lahore's Urdu Bazaar contains approximately 700 largely pirate booksellers and wholesalers. While the blatancy of pirate books in the market has diminished somewhat due to word about rightholders' anti-piracy actions in Karachi, the practices have simply moved underground, adding yet another layer to what is already a complex enforcement situation. The influence of the two book markets in Karachi and Lahore is obviously substantial, as these booksellers and wholesalers supply much of the country. Their activities must be brought under control.

In short, rife piracy continues to infect the legitimate supply chain, making the market all but untenable for foreign publishers. While some booksellers in the Urdu Bazars may be willing to legitimize their practices, the bulk of the practice in Pakistan is pirate trade. Anyone visibly working on book piracy issues in Pakistan is threatened with violence. It is past time for authorities to work to legitimize their book markets through strong and continual enforcement rather than putting the burden on rightholders to "negotiate" a reduction in piracy.

On the legislative side, Section 36.3 of the Copyright Ordinance allows the Pakistan Federal Government to license the National Book Foundation to reprint any title (local or foreign) without approval by the copyright owner, or payment to that owner. Because there have been two serious cases of piracy by the NBF in the last four years, this is of major concern.

Cable TV Piracy

Cable television piracy remains an area which concerns us inasmuch as many of the companies producing motion pictures distribute works through this channel and it is estimated that this form of piracy approaches 94% in the Pakistani market. Signal theft takes several forms, including the illegal redistribution of signals, unauthorized distribution of some services, and other forms of signal theft as well as the practice of stripping advertisements from the signal. While signal theft remains a concern, we do note that the government has taken steps to improve its capacity to attack this problem in recent months, though the actions taken have yet to yield positive results.



Actions the Pakistani Government Should Take

The government should continue to implement aggressively its optical disc anti-piracy program and expand its efforts to combat the other types of piracy described above. To facilitate this, the Pakistani government should take the actions outlined below:

- Take concerted action against notorious book pirates in the Urdu Bazaars in Karachi and Lahore, including full prosecution of pirates already charged, complete with deterrent penalties.
- Issue appropriate mandates to universities concerning illegal photocopying on campus and take enforcement actions against universities who fail to comply with the mandates.
- Implement an effective OD law including mandatory adoption of SID mastering (LBR) and mould codes for all Optical Discs plants;
- Permit official plant visits by rightholders' representatives at the remaining 4 CD plants.
- The sessions court should pursue vigorously outstanding prosecutions;
- The government should provide IPR training should be provided to law enforcement authorities, prosecutors and judges (industry is prepared to cooperate fully on this);
- Amend copyright legislation, particularly to enhance deterrent penalties and bring compulsory license provisions (specifically for the National Book Foundation) into compliance with international norms;

Respectfully submitted,

International Intellectual Property Alliance