



October 15, 2007

By E-MAIL to [fr0606@ustr.eop.gov](mailto:fr0606@ustr.eop.gov)

Jennifer Choe Groves  
Director for Intellectual Property and Innovation  
Office of the U.S. Trade Representative  
1724 F Street, N.W.  
Washington, D.C. 20508

**Re: Pakistan: Special 301 Out-Of-Cycle Review  
IIPA Comments on Copyright Protection and  
Enforcement 72 Fed. Reg. 51266 (September 6,  
2007)**

Dear Ms. Groves:

This submission by the International Intellectual Property Alliance ("IIPA") responds to the Special 301 Committee's request for comments on regarding its out-of-cycle review to be conducted on Pakistan. The Committee requests comments "concerning acts, policies, and practices regarding the adequacy and effectiveness of intellectual property protection" in Pakistan. We note in the comments below that copyright piracy problems remain severe for certain sectors, and that the IPO needs to become more operational, effective and accountable to all rightholders. At the same time, given the continued cooperation with and enforcement activity of the Federal Investigation Agency (FIA) and Pakistani Customs, especially with respect to stopping factory-pressed optical disc pirate production and exports, and in the hope that FIA will become active against book piracy as well as the hope that cases against optical disc plant owners will proceed through the courts, IIPA recommends that Pakistan remain on the Watch List at this time. It is important that sufficient progress be made in these last two areas prior to February 2008.

### **Interest of the IIPA**

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. IIPA's seven members (see below), each representing a significant segment of the U.S. copyright community. These member associations represent over 1,900 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). Several of the IIPA member trade associations have counsel or anti-piracy personnel in Pakistan. Pakistan is a potential vast market for several industries, but represents a constant threat to return to pirate production for export in addition to continuing domestic piracy issues, and thus is a market which must be monitored closely.

### **Special 301 Out-of-Cycle-Review in 2007**

In February 2007, IIPA submitted a comprehensive review of copyright protection in Pakistan in its Special 301 submission.<sup>1</sup> In that report, IIPA recommended that Pakistan be maintained on the Special 301 Watch List this year in recognition of effective action taken to eradicate optical disc piracy, and recommended a specific targeted out-of-cycle review:

... IIPA remains extremely concerned about Pakistan's persistent failure to address book piracy in a meaningful way and to take other necessary actions to address piracy in general. Thus, IIPA recommends an out-of-cycle review (OCR) to be conducted in September 2007 to assess Pakistan's progress in (1) undertaking significant action against pirate booksellers, often located in Urdu bazaars, namely, FIA-led enforcement followed by prosecutions of cases leading to significant penalties; (2) ensuring that the National Book Foundation ceases all activity considered infringing under international norms; (3) making the Intellectual Property Organization a more meaningful and effective organization, functioning to allow input from government officials and private sector representatives alike, and staging a comprehensive plan for tackling Pakistan's outstanding piracy issues; (4) beginning the prosecution of the optical disc manufacturing pirates that were arrested over a year ago; (5) stepping up enforcement against retail piracy; and (6) improving border enforcement against the growing number of pirate imports from Malaysia and other countries.

On April 27, 2007, the United States Trade Representative (USTR) did place Pakistan on the Watch List, and added this out-of-cycle review.<sup>2</sup> USTR acknowledged progress made by Pakistan, noting, "In 2006, Pakistan was lowered from the Priority Watch List to the Watch List in recognition of Pakistan's progress on IPR enforcement," but encouraging Pakistan "to ensure that its authorities aggressively prosecute IPR crimes and that its courts issue deterrent sentences for pirates and counterfeiters," agreeing to "continue to monitor closely the IPR situation during

---

<sup>1</sup> IIPA's 2007 Special 301 submission on Pakistan is posted at <http://www.iipa.com/rbc/2007/2007SPEC301PAKISTAN.pdf>.

<sup>2</sup> USTR's Special 301 statement on Pakistan (April 27, 2007) is posted at [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2007/2007\\_Special\\_301\\_Review/asset\\_upload\\_file60\\_11126.pdf](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2007/2007_Special_301_Review/asset_upload_file60_11126.pdf).



the OCR” and vowing to “work together with Pakistan to achieve further improvements in its IPR protection and enforcement regimes.”

### **IIPA Observations on Copyright-Related Progress Made in Pakistan in 2007**

Since the April 2007 USTR Special 301 decision on Pakistan, several copyright industry sectors have continued coordinating work in-country to promote improved copyright protection and enforcement. The following is a review of the situation as to key out-of-cycle review priorities noted by the IIPA in its February 2007 Special 301 country report, and further updates on the situation on the ground.

#### **Key out-of-cycle review priorities:**

***(1) undertaking significant action against pirate booksellers, often located in Urdu bazaars, namely, FIA-led enforcement followed by prosecutions of cases leading to significant penalties***

**UPDATE:** While publishers report that book piracy is actually worsening in Pakistan<sup>3</sup> (except *see* update below on the National Book Foundation), the Federal Investigation Agency (FIA) has taken steps toward beginning to address publisher right holder concerns. Publishers’ representatives have met recently with the Director General of FIA as well as his senior colleagues in Islamabad, and while FIA has not yet initiated specific actions against book piracy, the agency is in correspondence with industry representatives and is asking for specific information. This is a positive sign. It will be a very important bellwether if FIA can be responsive to right holder information regarding enforcement needs, and if police officers can become more consistent allies in carrying out actions against book piracy, including by initiating sustained enforcement actions closely timed in consultation with industry. *IIPA urges USTR to continue monitoring carefully whether the latest signs of cooperation from FIA translate to real deterrent actions, such as those taken against the optical disc plants or against notorious pirate havens like Rainbow Centre in Karachi. The coming months will be instructive as to whether the Pakistani government truly intends to address pirate book presses and binderies, down to the retail and bazaar level.*

***(2) ensuring that the National Book Foundation ceases all activity considered infringing under international norms***

**UPDATE:** In a positive development over the past several months, it appears that the National Book Foundation (NBF) has ceased commission of blatant unauthorized reproduction of books.

---

<sup>3</sup> For example, recent visits to Gilgit and Hunza in the Northern Areas of Pakistan reveal that most books are still pirated. In addition, schools continue to use (or allow use of) mostly pirated books, despite meetings with Ministry of Education officials, including the Education Secretary of the Northern Areas. It is important that the copyright laws be applied consistently in the Northern Areas, which are administered from Islamabad by the Ministry of Kashmir and Northern Areas.



Publishers are monitoring this development with interest and are engaged in dialogue with the NBF regarding alternate business models recognized as legitimate in the global industry. IIPA will be observing this situation closely to ensure that the NBF continues along this path and adopts a system of fair and accurate business practices. As a start, industry representatives would like to see a written commitment from the NBF to use legitimate product, engage in transparent business practices, and revisit its interpretation of copyright ordinance section 36(3) (see “other priorities” section to follow).

***(3) making the Intellectual Property Organization a more meaningful and effective organization, functioning to allow input from government officials and private sector representatives alike, and staging a comprehensive plan for tackling Pakistan's outstanding piracy issues***

**UPDATE:** The Intellectual Property Organization (IPO) has not been effective and, in the view of some IIPA members, has completely failed. The IPO Board has not held a general meeting for nearly a year and the organization still lacks a Chairman, although an Executive Committee has been meeting throughout 2007 and has helped coordinate training events. IIPA would like to see the IPO live up to its vision as a forum for dialogue between private sector representatives and government officials, with a clear, transparent mandate and mode of operation.

***(4) beginning the prosecution of the optical disc manufacturing pirates that were arrested over a year ago***

**UPDATE:** The court cases against the CD plant owners are still pending, as the owners have filed a Constitutional Petition (CP) in the Pakistani High Court challenging the legislation (under which they were arrested). Thus, the Lower Court cases are on hold. Industry has been in close contact with the U.S. Embassy staff in Islamabad to urge them to follow the developments closely. A decision in these extremely important decisions is expected before the end of this year. Meanwhile, it is positive that the plants are still under the close surveillance of the FIA and only are allowed to replicate Pakistani repertoire. Industry has not detected any pressed pirated optical discs in the market which could be traced back to Pakistan since the spate of 2005 raids. Polycarbonate importation has decreased by roughly 90% compared to the 2004-2005 timeframe.

***(5) stepping up enforcement against retail piracy***

**UPDATES:** The situation with the IPO stands in sharp contrast to the Federal Investigation Agency. For several years, IIPA has recommended that a specialized IPR unit within the FIA be established. Recently, an official “Director” has been appointed who is staffing the unit. The record industry group there (under the auspices of the International Federation of Phonographic Industries) met the Director of IPR recently in Islamabad and he and the Director General of FIA have assured industry that they will expand their anti-piracy activities. In particular, they have requested industry to provide them with intelligence about CDR-burner facilities and big



warehouses as enforcement targets. Unfortunately, book publishers report that no progress has been made with respect to retail piracy of books, although recent conversations with the FIA lend hope that more vigorous action in this sector will follow.

***(6) improving border enforcement against the growing number of pirate imports from Malaysia and other countries***

**UPDATE:** There has apparently been no meaningful action taken against pirate imports of books. As a result, pirated books are reportedly flowing in, especially from Iran.

**Other priorities from the 2007 Special 301 cycle:** IIPA highlighted several “priority actions” which needed to be taken in 2007 in order for the copyright piracy situation to be significantly improved. While several of these were identified by IIPA specifically for review in the out-of-cycle review, all of these are worth noting herein with brief updates where available.

- **Take Action Against Cable and Satellite Piracy:** Piracy of cable and satellite broadcasting signals is out of control in Pakistan, with cable companies estimated to transmit without authorization 94% to 97% of the programming they provide to end users. There are around 50,000 satellite dishes receiving unauthorized programming in Pakistan, and over 10% of Pakistani households have unauthorized cable TV connections. It is vital that the Pakistani government take action to address this serious problem. In 2006 and into 2007, such piracy remained pervasive in the absence of sustained enforcement. The illegal cable piracy operations are serviced by “lead *walas*” who obtain cable feeds from a cable operator with hardware facility (head end). Unfortunately, to date, IIPA is unaware of any actions taken against these pirate cable operations. Similar action to that taken against the optical disc plants in 2005 should be taken in the case of cable piracy in Pakistan in 2007. **IIPA is unaware of any progress made to address this problem during 2007.**
- **Significantly Reduce Book Piracy:** Pakistan is one of the world’s worst markets for books, as piracy of published materials is rampant. Large-scale photocopy piracy and higher quality print piracy have decimated the market for most legitimate publishers. The Federal Investigation Agency (FIA) must devote resources and manpower to raid pirate printers and warehouses where pirated books are stored, and pirate retailers, especially those in the Karachi and Lahore Urdu Bazaars. The Ministry of Education must ensure that all books being used in educational institutions are legitimate copies, and that pirate photocopying is no longer tolerated. **See discussion above for update.**
- **Fix Royalty-Free Book Compulsory License That Violates TRIPS:** The government of Pakistan amended its copyright ordinance in 2000 to include Section 36(3) that allows a royalty-free compulsory license of books. This amendment was passed without any opportunity for publishers to comment. This provision threatens to further diminish a market already almost completely overrun by piracy. This royalty-free compulsory license violates



the Berne Convention and TRIPS and the government of Pakistan must repeal it. *IIPA is unaware of any progress made to address this problem during 2007.*

- **Prosecute Optical Disc Plant Owners:** The persons responsible for massive pirate OD production in Pakistan (including those who were arrested during the 2005 raids) should be expeditiously prosecuted and given deterrent sentences consistent with the huge scale of their infringing activity. Plants previously found to be engaged in piracy, and/or recidivist plants, must remain closed and equipment dismantled and/or destroyed. *See discussion above for update.*
- **Take Action Against “Burning” Operations and Seize More Pirate Imports:** With the resounding success of the actions by IPO and FIA against pirate plant production of optical discs, increased vigilance will be needed in 2007 through raids, seizures, and monitoring at the border to ensure that the void is not filled by “burning” operations and/or pirate imports from Southeast Asia. FIA should take swift action against any “burning” operations, including raids, seizures, and, where warranted, arrests. A directive should be issued to Customs officials to be increasingly active in intercepting pirate imports at the borders. *See discussion above, including discussion of “retail piracy,” for update.*
- **Take Actions Against Business Software Piracy and Other Forms of Piracy:** The rate of unauthorized use of business software in Pakistan is extremely high. Inspections should be run against those suspected to be engaged in this form of piracy, and prosecutions brought. In addition, while many prosecutions were brought against those engaging in hard-disk loading of pirate software onto computers, the slow pace of court processes and lack of deterrent sentences has meant those engaging in this activity will not be deterred. Steps should be taken to reverse this trend. *IIPA is unaware of any progress made to address this problem during 2007.*
- **Amend Copyright Law to Enhance Enforcement, Create Deterrence:** The laws in Pakistan remain a weak link, since there are no mandatory minimum sentences; as a result, judges impose only nominal fines which have no deterrent value, and actually embolden pirates. It is essential to strengthen laws by introducing minimum sentences, including mandatory fines and jail sentences. Also, the current copyright law provides only reproduction and rental rights for sound recordings. Revisions are necessary to protect digital content, including an exclusive communication to the public right/right of making available, and protection against the unlawful circumvention of technological protection measures or trafficking in or providing circumvention devices or services. *IIPA is unaware of any progress made to pass such legislation during 2007.*
- **Pass Optical Disc Regulation:** As promptly as possible the Pakistani government should pass and implement an effective optical disc law to enable control over optical disc production, including licensing, inspections (including by representative organizations),



closure of plants in violation, monitoring and control on imports of production equipment and raw materials (including optical grade polycarbonate), requirements to use unique source identifiers (SID mastering-LBR and mold codes) to track the location of production, etc.  
**IIPA is unaware of any progress made to pass such legislation during 2007.**

For more details on Pakistan’s Special 301 history, see IIPA’s “History” Appendix to this filing at <http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years’ reports at <http://www.iipa.com/countryreports.html>.

<b>PAKISTAN</b> <b>Estimated Trade Losses Due to Copyright Piracy</b> <i>(in millions of U.S. dollars)</i> <b>and Levels of Piracy: 2002-2006<sup>4</sup> (updated June 2007)</b>										
INDUSTRY	2006		2005		2004		2003		2002	
	Loss	Level								
Records & Music	25.0	100%	25.0	100%	70.0	100%	70.0	100%	60.0	83%
Books	55.0	NA	55.0	NA	52.0	NA	44.0	NA	44.0	NA
Business Software <sup>5</sup>	78.0	86%	26.0	86%	14.0	82%	9.0	83%	11.2	80%
Entertainment Software	NA	NA								
Motion Pictures	NA	NA	NA	NA	12.0	NA	12.0	95%	12.0	95%
<b>TOTALS</b>	<b>158.0</b>		<b>106.0</b>		<b>148.0</b>		<b>135.0</b>		<b>127.2</b>	

IIPA appreciates this opportunity to provide comments in the Special 301 out-of-cycle review to be conducted on Pakistan. Please feel free to contact me with any questions you may have.

Respectfully submitted,

Michael Schlesinger  
 International Intellectual Property Alliance

<sup>4</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2007 Special 301 submission at [www.iipa.com/pdf/2007spec301methodology.pdf](http://www.iipa.com/pdf/2007spec301methodology.pdf). For information on the history of Pakistan under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

<sup>5</sup> BSA’s 2006 piracy statistics were preliminary at the time of IIPA’s February 12, 2007 Special 301 filing; the 2006 data was revised and posted on the IIPA website on June 6, 2007 (see <http://www.iipa.com/statistics.html>), and the 2006 revisions (if any) are reflected above.