

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2001 SPECIAL 301 REPORT

MALAYSIA

EXECUTIVE SUMMARY¹

During 2000, Malaysia enacted optical disc legislation and issued implementing regulations to this law, providing an important legislative tool to combat the manufacture of illegal optical discs. Malaysia also made helpful changes to its copyright law, including amendments that reduce the documentary burden of proving copyright subsistence and ownership. In addition, Malaysia conducted many enforcement actions against retail outlets and more recently against optical disc plants. Malaysia has also demonstrated great willingness to act against corporate end user piracy of software. However, despite these positive developments, the absence of a continuous and methodical government effort, including the imposition of deterrent sentences, against entrenched owner-operators of pirate replication facilities meant that there was little impact on the local pirate production/exportation network which has made Malaysia one of the world's leading exporters of pirated IP product. Widespread optical media piracy continues to dominate Malaysia's domestic market for copyrighted materials; to tarnish its international standing, as pirate optical media exports from Malaysia find their way into the global marketplace; and to cloud its hopes to be a leading regional player in the healthy development of electronic commerce.

2001 could be a watershed year in Malaysia's fight against optical media piracy. To achieve success, Malaysia must aggressively enforce the optical disc legislation, on a strict and deliberate timetable, and its vigorous and sustained enforcement efforts must be complemented by expeditious prosecutions, and the consistent imposition of deterrent sentences. Removing judicial bottlenecks and imposing tough sentences are also essential in combating the chronic problem of book piracy, and in attacking end-user business software piracy, where the government's exemplary cooperative efforts with industry are undermined by the shortcomings of its criminal justice system.

Despite the legislative changes Malaysia made in 2000, it remains very clear that the piracy situation in Malaysia will not change until there is sustained and meaningful government enforcement action against a number of local pirate manufacturers and exporters. The U.S. government should continue to maintain Malaysia on the Special 301 Priority Watch List for 2001, but should conduct an out-of-cycle Review in November, by which time IIPA would fully expect Malaysia to have made an all-out and effective effort to close down illegal optical disc manufacturers. If by November Malaysia has pursued enforcement efforts and fulfilled specified benchmarks in the following areas, IIPA would call on the U.S. Government to move Malaysia's Special 301 designation to Watch List:

- Well-publicized enforcement of the optical disc law, including publication of a list of applicants for licenses; expedited review of applications and issuance of licenses

¹ For more details on Malaysia's Special 301 history, see IIPA's "History" Appendix to filing.

only in appropriate cases; enforcement against unregistered plants beginning March 15, and against registered plants with regard to statutory and license terms compliance beginning September 15; seizure of equipment at plants that violate the copyright law, trademark law and/or the Optical Disc Law, and impoundment until all prosecutions are successfully resolved.

- Prompt indictments for violations of the copyright law, trademark law or the Optical Disc Law, and speedy court processing of pending cases, culminating in the imposition of deterrent sentences upon conviction. Judicial proceedings should be closely monitored to ensure that meaningful remedies are made promptly available.
- Immediate and sustained enforcement actions under the copyright law and other applicable laws against pirate manufacturers, exporters, distributors and retailers.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1998 – 2000

| INDUSTRY | 2000 | | 1999 | | 1998 | |
|--|--------------|-------|--------------|-------|--------------|-------|
| | Loss | Level | Loss | Level | Loss | Level |
| Motion Pictures | 41.0 | 80% | 42.0 | 85% | 40.0 | 80% |
| Sound Recordings/ Musical Compositions | 16.0 | 60% | 5.0 | 40% | 13.0 | 70% |
| Business Software Applications ² | 96.0 | 66% | 67.8 | 71% | 63.8 | 73% |
| Entertainment Software ³ | NA | 98% | 164.0 | 99% | 135.2 | 99% |
| Books | 8.0 | NA | 8.0 | NA | 8.0 | NA |
| TOTALS | 161.0 | | 286.8 | | 260.0 | |

OPTICAL MEDIA PIRACY

Beginning in the late 1990's, authorities in China, Hong Kong, and other jurisdictions started to crack down on the pirate production and export of optical media products – including music and video CDs, and CD-ROMs containing entertainment, educational and business software and literary material. As a result, Malaysia became an increasingly attractive destination for the organized criminal enterprises that are suspected to be running optical media factories and distributing their output worldwide. In 2000, Malaysian authorities took some important steps to combat this plague, including enactment of a new Optical Disc Act and the most extensive series of raids yet mounted against pirate production facilities. But these efforts have not yet effectively addressed the problem.

² BSA loss numbers for 2000 are preliminary.

³ IDSA estimates for 2000 are preliminary.

Malaysian authorities now clearly recognize the scope and seriousness of the optical media piracy problem. They appear to be committed to the fight against it, and in many cases work ably and willingly with affected industries. But not until raiding and legislating are supplemented by thorough investigating, aggressive prosecuting, and deterrent sentencing will Malaysia be able to turn the corner in this struggle, in which the viability of its hopes to play a leading regional role in electronic commerce are clearly at stake.

The Scope of the Problem

The Malaysian market for copyrighted materials of all kinds remains dominated by piracy. The Malaysian authorities candidly admit this, estimating that 71 percent of all computer programs, 80 percent of all audiovisual products, and 60 percent of all musical recordings in the country are pirate.⁴ Other government statistics place the overall piracy rate at a shocking 85 percent.⁵ The market impact of such widespread piracy, unsurprisingly, has been substantial. For instance, within days after new films are first released for theatrical exhibition in the U.S., pirate VCD versions are readily available on the streets of Kuala Lumpur at prices as low as RM6 (US\$1.60). In a market flooded with pirate videos, legitimate exhibitors cannot survive: according to press reports, some 219 Malaysian theater screens went dark in 1998-99.⁶ Piracy is so prevalent that often two or three different pirate VCD versions of a single popular title, marketed by five to seven competing distributors, can be found in the market. The Malaysian market for recorded music has been similarly damaged by piracy, with sales by the local industry dropping a reported 75 percent between 1996 and 2000.⁷ Entertainment software companies find it nearly impossible to compete in a market dominated by piracy.

At the root of this market damage is the enormous excess capacity for the production of optical media formats, most of which is devoted to pirate production. While officially there are 38 optical disc plants in the country, industry estimates there may be as many as 200-300 optical disc production lines, scattered across the country. The total capacity of these facilities far exceeds the legitimate demand for optical media products either for domestic production or for authorized export. Indeed, these Malaysian plants remain a primary source for pirate optical media products that are exported all over the world.

Pirate product of all kinds enters Singapore from Malaysia over the causeway connecting the two countries, and forms the basis of the active pirate market in Singapore. But the impact of Malaysian-based piracy is also felt at much greater distances. Markets all over the world are compromised by the influx of product manufactured by pirates in Malaysia. Pirate music CD's from Malaysia have been seized throughout Asia, Latin America and Europe. The country is a major supplier of pirate video CD's to India, Indonesia, Philippines, Singapore, New Zealand and Australia, and these products have also turned up in South Africa, Canada, and throughout South America and Europe. Malaysia is a leading source of high quality counterfeit business software products which are shipped via Singapore into the United States and other markets. And with regard to entertainment software in CD-ROM format, Malaysia continues as

⁴ "New Ruling for Optical Disc Makers," New Straits Times, July 27, 2000, at 7.

⁵ "Malaysia 4th Biggest User, Producer of Pirated Items," New Straits Times, Sept. 8, 2000.

⁶ Cheung, "Malaysian Pirates Rule Movie Market," Reuters, June 5, 2000.

⁷ Ghani, "Piracy Woes," Malay Mail, Dec. 16, 2000, at 5.

the world's single leading source of pirate product, and the unauthorized output of Malaysian optical media plants has been identified in markets on every inhabited continent.

Pirate optical media exports from Malaysia move fast and far. The James Bond movie "The World is Not Enough" had its theatrical world premiere in Malaysia on November 19, 1999. The next day, pirate VCDs recorded in a Kuala Lumpur cinema were available on the streets of Malaysia. A day later they were in India and Pakistan. Within five days they were in Hong Kong, within a week in Bangkok, within ten days in Manila, and within two weeks in Beijing. The U.S. market is an important part of the picture. Between Fiscal Years 1999 and 2000, seizures by U.S. Customs of counterfeit products from Malaysia increased by nearly 3300%. In the latter year, three-quarters of those seizures of Malaysian imports were for copyrighted materials, amounting to some 38% of the total of all seizures of such products. Pirate export is a high volume business; one manufacturer in Malaysia of pirate optical media product for export reportedly rejects orders that would occupy less than a full shipping container.

Optical Disc Act

On September 15, 2000, Malaysia's long-awaited Optical Disc Act came into effect. The legislation provides a comprehensive framework for the regulation of optical media production facilities in Malaysia. Plants must be licensed, and may be inspected without warning for compliance with license conditions. Violations of these conditions may lead not only to license revocation, but also to seizure and forfeiture of the production equipment and significant fines and jail terms. All plants must employ unique source identification (SID) codes, not only in replication operations but also in the production of masters. Regulations issued to implement the legislation impose record-keeping requirements on the inventory of optical grade polycarbonate (the key raw material for optical disc production), production runs, shipment of finished product, and production orders received, including copyright licenses or other documents relied on for authorization. When the Optical Disc Act is fully implemented, Malaysia will have in place what should prove to be an effective tool in bringing much greater transparency to the operation of optical media production facilities, and in ensuring that excess production capacity is not devoted to piracy.

Unfortunately, none of these benefits have yet been realized, because of the slow implementation schedule contained in Section 57 of the Act. Once the law does become effective, vigorous enforcement is essential. Authorities must move swiftly beginning on March 15, 2001, to shut down any production facility not covered by a pending license application, and to enforce the law with respect to all registered plants beginning September 15. In the meantime, we call on the Malaysian government to continue and intensify its enforcement efforts against pirate optical disc factories under the Copyright Act, as described further below, and any other legal tools available.

The Optical Disc Act is already beginning to have some positive impact. Some syndicates operating pirate production facilities in Malaysia are already reported to be scouting new locations in neighboring countries that are thought to pose less threat of enforcement. But the built-in delay in bringing this legal weapon to bear could have the effect of providing a safe harbor of several months during which pirates can close out their Malaysian operations before moving them abroad. If this commendable legislation is to achieve its full potential in the fight against copyright piracy, it must be vigorously enforced, and violations must trigger deterrent penalties that will put pirates out of business and discourage others from following in their footsteps.

Factory Raids

During the second half of 2000, enforcement officials of Malaysia's Ministry of Domestic Trade and Consumer Affairs (MDTCA) carried out more raids against pirate optical media production facilities than ever before. Without waiting for the Optical Disc Act to take effect, MDTCA has used the Copyright Act as the basis for conducting some nine raids against pirate plants with a total of at least 15 optical disc production lines. The results give some indication of the scope of the pirate production and export problem that Malaysia must grapple with.

For instance, in a series of raids in August against a factory in Selangor and warehouses in Kajang and Puchong, officials seized not only 138,000 pirate CD-ROMs containing videogames, but also 45 "stampers," or master copies, each capable of producing thirty to ninety thousand additional units of pirate product. Another 500 pirate stampers, including those used to produce unauthorized VCD versions of U.S. motion pictures such as "Con Air," "Rome Must Die," and "Home Alone," were seized in a raid in late October in Shah Alam. This raid closed down three pirate production lines, capable of producing 100,000 units of unauthorized product daily, which authorities said had been in operation for a year.⁸ Three more pirate lines were discovered in Batu Caves in Selangor in November, along with pirate CDs, CD-ROMs, and VCDs of U.S. film titles such as "Charlie's Angels," which was slated to have its theatrical debut in Malaysia the next day. Records seized in the raid indicated that the plant had produced five million discs before being shut down.⁹ Other evidence underscored the international nature of the syndicates operating the pirate plants in Malaysia; for instance, the master copies seized in one raid had been made in Macau.

MDTCA should be commended for carrying out these factory raids, and such enforcement efforts should be continued and stepped up, particularly in the coming months before enforcement can begin under the Optical Disc Act. But the ultimate effectiveness of these efforts remains to be seen; surely they have not yet put a dent in the prevalence of pirate product in the Malaysian market nor in the thriving pirate export trade. While some of the production facilities targeted in last year's raids have been effectively sealed, other pirates, such as the distributors raided in August, appear to be back in operation. And government enforcement efforts suffer from a lack of coordination. For instance, after Customs investigators discovered an underground CD production facility in North Malaysia in mid-December, the case was not handed over to MDTCA for two weeks, and by the time an inspection was carried out, two production lines had disappeared, probably to resurface later elsewhere. MDTCA's raiding activities have not been matched by a willingness to conduct follow-up investigations; this reluctance virtually guarantees that if anyone is held responsible for the operations of pirate CD plants, it will be low-level operatives and not the criminal masterminds who finance, direct and control these facilities. Finally, as with nearly all other copyright enforcement efforts in Malaysia, none of these impressive raids has yet resulted in a criminal conviction of those responsible, much less in deterrent sentencing of anyone involved in a pirate syndicate.

⁸ "Syndicate Behind Pirate CDs Crippled," *New Straits Times*, Nov. 4, 2000, at 6.

⁹ Puvaneswary, "Replicating Machines Worth RM20M Seized at Batu Caves Factory," *The Sun (Malaysia)*, Nov. 23, 2000.

Retail Raids

Two of the largest Malaysian retail markets for pirate product are found on Petaling Street, in Kuala Lumpur, and in the Holiday Plaza shopping center in Johor Baru. In these bazaars, dozens of stalls or shops openly sell pirate VCDs, music CDs (usually unauthorized compilations), videogames and entertainment software. Malaysian authorities devoted considerable resources to enforcement against pirate retailers in these locations last year, with mixed results.

Holiday Plaza, which is only a half-hour's drive from Singapore, is a popular shopping destination for day-trippers from that country, and also a major supply source for pirate vendors in Singapore. MDTCA carried out well-publicized blanket raids in Holiday Plaza early in 2000, reducing the number of outlets for pirate product in this mall from 70 to 6. Repetitive enforcement efforts have prevented piracy from regaining its foothold in Holiday Plaza, a notable achievement, although more dispersed pirate vendors have set up shop in other Johor Baru malls like City Square and Giant. There was less success in Kuala Lumpur, however. "Operation Blockbuster," with the avowed aim of stamping out VCD piracy in the capital, involved a series of raids against retailers and warehouses involving MDTCA, Police, and Customs officials. A nine-day blitz against Petaling Street in April closed the pirate stalls, but most of them re-opened a day later. Other pirate retailers simply switched temporarily from VCDs to pirate videogame or music product until things quieted down. Others fought back: on May 15, during the ninth raid on Petaling Street, a mob attacked the van carrying government and industry investigators, pelting it with bottles and breaking windows. In the end, after seizures of hundreds of thousands of pirate discs, Petaling Street continues to offer tourists and locals a seemingly inexhaustible supply of illegal product. The same is true at scores of other, less celebrated pirate bazaars across the country.

As the Minister of MDTCA himself has acknowledged, "We don't have enough officers to monitor the piracy problem throughout the country.... The problem is even when you raid and confiscate at 5 pm, they will come back at 8 pm."¹⁰ But the problem goes beyond the resources issue. MDTCA enforcement officers have no power of arrest, and only a very limited ability to conduct further investigations in order to move up the distribution chain from retailers to wholesalers, distributors, and manufacturers. Other agencies which could make arrests or carry out investigations usually play only a minor role in enforcement against piracy.

Finally, the impact of Malaysia's commendable retail piracy enforcement efforts are undermined by the lack of prosecutions, and the endemic delays in those cases that are prosecuted. In the overwhelming majority of cases, vendors remain free to ply their trade for many months before being called to court. In the end, any punishment imposed against retail pirates is for labeling violations under the Trade Descriptions Act, which brings only a nominal fine. Under these circumstances, the pirate syndicates in charge of optical media piracy in Malaysia seem fully prepared to treat the loss of inventory in raids, and the occasional administrative fine imposed under price control or labeling laws, as an acceptable cost of doing business.

¹⁰ Kadir, "New Act to Help Combat Piracy," *New Straits Times*, July 8, 2000, at 8.

Bottlenecks in the Criminal Justice System

Despite all the raids and seizures, none of the enforcement activity carried out over the past year, either at the retail or the factory level, has had much impact on Malaysia's pervasive optical media piracy problem. The main reason for this failure is that raiding has almost never been followed up with active prosecutions, much less with the imposition of deterrent penalties on violators. Indeed, the 10,700 raids carried out between April 1999 and January 2000 led to the opening of only 77 investigations of copyright infringement, and not a single copyright prosecution was initiated as a result of these raids. A similar pattern persisted in 2000. Some 145 raids under the Copyright Act were carried out against music pirates, for example, but only four copyright prosecutions were initiated. The Motion Picture Association of America (MPAA) reports that not a single one of the 235 raids in which it participated over the first eight months of 2000 was followed up with a copyright prosecution.

Unfortunately, even if prosecutions were brought, there is little basis for optimism that the Malaysian court system would process them promptly, or that deterrent penalties would be imposed on convicted pirates at the end of the process. The judicial system has never been able to deliver these results, even before the onslaught of optical media piracy began in Malaysia a few years ago. For example, Malaysian authorities carried out a total of 798 raids against audiovisual piracy in 1998 and seized more than 1.1 million pirate VCDs. Not a single criminal conviction has yet resulted from these raids. The only copyright conviction in 2000 in a music piracy case arose from a raid that took place in 1998; many other music cases arising from raids during 1997 have yet to be resolved. Cases arising from optical media factory raids that took place in 1998 have not yet come to trial. Similarly, some prosecutions arising from raids against book pirates dating back to June 1996 have not yet been resolved, and the Association of American Publishers (AAP) reports that prosecutions have not even been initiated in any of the three raids against book pirates conducted in Gelugor, Penang in 1998.

Bottlenecks plague the entire criminal justice process in Malaysia. After a raid is carried out, MDTCA investigators and police prosecutors must prepare the case before charges can be filed. The vast majority of copyright cases are stalled at this point in the process; they fall to the very bottom of the huge investigative docket assigned to these overburdened officials. Those few cases which do result in criminal prosecution are caught in years-long backlogs at the criminal courts. Prosecutors have the authority to move these cases to a faster track but they do not exercise it. Not surprisingly, prosecutors and judges lack expertise in such cases, since they almost never make it to court. Even more familiar causes of action, such as labeling violations, are backlogged; offenders are free on bail during the months or years it takes to move cases through the system, and free to continue their pirate activities. Often the defendant disappears and the case stays mired in limbo.

Two recent cases appear to have escaped some of these bottlenecks. In a case from Johor Baru involving sale of pirate VCDs over the Internet, the prosecution was concluded within two months after the raid. And authorities moved relatively quickly in charging defendants in one of the optical disc factory raids from 2000; they are now awaiting trial. If these cases are harbingers of greater efficiency and responsiveness in the Malaysian criminal justice system, that will be a welcome and praiseworthy change.

The system has produced some convictions in cases arising from raids conducted in previous years, but never any deterrent penalties. For instance, in the 400 cases arising from raids carried out in the first six months of 1997, not a single defendant was sentenced to any jail term. All other cases resulted in low fines, when the defendant bothered to show up at all. The

pattern persists today. Three cases involving the attempted export of over six hundred pirate VCDs of U.S. films were processed under the copyright law with unusual speed in January 2001. The highest fine imposed amounted to just RM8.36 (US\$2.20) per pirate copy.

Section 41 of the Malaysian Copyright Act authorizes punishments that, if consistently applied, could be sufficient to deter commercial copyright piracy (fines of RM 10,000 [US\$2600] per infringing copy, and/or five years imprisonment, with a doubling for repeat offenders). However, these punishments are never imposed at anything close to a deterrent level.

Legislation enacted in 2000 removed one legal roadblock in the path of effective prosecutions against copyright piracy. Section 42 of the Copyright Act was amended to clarify that affidavits from local agents of the copyright owner are sufficient to establish prima facie the subsistence and ownership of copyright. While this move eases the documentary and testimonial burden of proving an infringement case, it can only apply when a criminal infringement case is actually initiated. So long as actual prosecutions remain rare, the value of the section 42 amendment remains limited. Courts should also permit the introduction of a photo-ready copy of a pirated book, rather than the original book itself, as evidence in infringement cases.

Optical media piracy will continue to flourish in Malaysia, despite the government's vigorous efforts to suppress it, until the crimes committed by the syndicates and their operatives are efficiently, swiftly, consistently, and publicly punished. This means that a significant number of prosecutions of substantial participants in the criminal enterprise -- including replicators, distributors, exporters as well as the largest retailers -- must be commenced promptly after raiding; that the cases must be processed fairly and expeditiously; and that deterrent sentences, including jail terms, must be imposed upon those found guilty. The quantity and quality of prosecutions of optical media pirates, measured by these criteria, should be the predominant factor in Malaysia's ultimate placement in the Special 301 hierarchy.¹¹

Export

One of the most injurious characteristics of Malaysian optical media piracy is that the criminal syndicates operating there are producing primarily, or at least substantially, for export, not just for the domestic Malaysian market. No legal attack on these production facilities will succeed overnight, and consequently Malaysian authorities must act much more aggressively to interdict the exports which are leaving Malaysia in huge volumes, including shipments originating in overnight courier facilities.

Seizure of pirate optical media exports should be a top priority for enforcement officials in Malaysia. If new regulations need to be issued to implement this priority, that should be done as soon as possible. U.S. government training resources should be made available to customs officers; the private sector stands ready to offer training as well. The recent prosecution under the Copyright Act of three defendants attempting to export pirate VCD's from the Kuala Lumpur airport is a hopeful sign, although these cases were relatively small and, as noted above, did not result in anything close to deterrent penalties.

¹¹ The problems of judicial bottlenecks and the absence of deterrent sentencing are not limited to enforcement against optical media piracy. As discussed below, similar problems have undermined enforcement against book pirates and against end-user piracy of business software applications.

Malaysian officials should also respond promptly to investigate seizures of pirate product originating in Malaysia, of which they are notified by customs officials in other countries, including the U.S. For instance, in December 1999 and January 2000, U.S. Customs intercepted seventeen separate shipments of a total of almost 28,000 pirate videogames, being transhipped through Los Angeles bound for Paraguay, originating with a single named exporter in Malaysia.

Conclusion

Optical media piracy remains a plague that closes Malaysia's market to most legitimate trade in copyrighted materials and that blights the country's international reputation. With the coming into force of the new Optical Disc Act, most of the legal tools needed to combat this plague are now in place. It is enforcement -- vigorous and sustained enforcement of copyright, censorship, licensing, revenue and customs laws -- that is now urgently needed. This must be backed up by courts that process cases expeditiously and that demonstrate their willingness to impose deterrent sentences on commercial optical media pirates. Only in this way can Malaysia effectively suppress this organized criminal activity, which tarnishes the country's image of leadership in the development of the global electronic commerce marketplace.

BOOK PIRACY CONTINUES UNABATED

Aside from the widespread piracy of reference material and other literary works in optical media formats, as described above, U.S. book publishers face continued illegal photocopying of college textbooks, computer-related books, and scientific/technical/medical (STM) texts in and around universities in Malaysia. The problem is compounded by the fact that university officials condone the illegal activity. Unauthorized reprinting of books on offset presses is also a problem for publishers.

The same problems that optical media piracy cases encounter in Malaysian courts also face book piracy cases: unwarranted delays and extremely low fines. Although successful book piracy raids against piracy of U.S. books were carried out in 1997, 1998 and 1999, there has been no court action on any of them yet; at least one case arising from a 1996 raid in Kajang is officially still "under investigation" five years later. Convictions have been obtained in five book piracy cases involving U.S. publishers arising from raids in 1996; but the average fine in these cases was RM2740 (US\$720), hardly sufficient to deter a pirate commercial photocopying operation.

CRACKDOWN ON BUSINESS SOFTWARE END-USER PIRACY

As in other markets, the most damaging piracy problem for business software publishers in Malaysia is end-user piracy, in which a business or other institution may legitimately acquire one copy of a computer program, but then makes unauthorized copies of it available for use by its employees throughout the premises or over a network. MDPCA and other Malaysian government agencies have actively cooperated with the Business Software Alliance (BSA) in recent years to inform Malaysian businesses about their responsibility to respect copyright.

In 2000, MDPCA joined together with BSA in a campaign against end-user piracy called "Crackdown 2000." The campaign followed up on an "Awareness Campaign" in 1998, jointly organized by MDPCA and the BSA to educate end users on the need to use legal software.

Crackdown 2000 started in May 2000 with public warnings by MDPCA and BSA of the repercussions of using pirated software. The public was forewarned that aggressive and extensive enforcement actions would be carried out by the relevant enforcement authorities against those who continued to use pirated software in their businesses.

On July 1, 2000 MDPCA initiated a series of enforcement actions against suspected end-users of pirated software. These actions included raids, spot checks and personal educational visits by the enforcement officers of the Enforcement Division on a weekly basis. By November 2000, MDPCA had undertaken over 200 of these enforcement actions. MDPCA is conducting further investigations on end-users who were found to be using pirated software during Crackdown 2000 and MDPCA plans to follow up with prosecution where warranted.

2000 also saw the first arrest of a corporate director for end-user piracy. The case arose from a raid carried out in 1999, as a result of which the company had previously been charged with infringement. The individual prosecution reflects the tough stance adopted by the enforcement authorities against the use of pirated software, especially the Attorney-General's Chambers. The BSA hopes this will set the precedent for more prosecutions against the senior management of businesses found to be using pirated software. The sentences imposed in these and other cases, including any arising from Crackdown 2000, must be carefully monitored to ensure that deterrent penalties are imposed.

When criminal remedies have been pursued in end-user software piracy cases, copyright owners have encountered the same problems of inordinate delay and lack of deterrent sentencing that undermine enforcement against optical media piracy and book piracy. In the 22 cases in which criminal raids against end-user software pirates have been carried out since 1997, two have ended in guilty pleas; none of the other 20 cases has been resolved. In four of the cases from 1997 and 1998, formal charges have not been filed yet. The fines imposed in the two end-user cases have been insufficient: the highest was RM1500 (US\$395) per copy, and in one case, the fine per infringing copy was only about one-twentieth the market value of a legitimate copy.

UNAUTHORIZED PUBLIC PERFORMANCES

Uncensored and unauthorized video titles are not only sold openly in Malaysia, they are also publicly shown in minitheaters in some parts of the country. Although the violations are notorious -- some minitheaters in East Malaysia even advertise the illegal showings of banned films in local newspapers -- the authorities do almost nothing to stop them. The Board of Film Censors lacks resources and motivation, and in any event can levy only a small fine for sale or performance of uncensored material. FINAS, the National Film Development Corporation, which licenses both video outlets and theaters in Malaysia, has only seven employees to cover the entire country. While its inspectors are empowered to suspend or revoke these licenses, they almost never do so, even in the case of establishments that repeatedly violate copyright, and they have no power to impose other penalties. Pending legislation that would increase penalties for censorship violations could help address this problem, but additional enforcement resources and more aggressive use of existing license revocation authority are needed.

COPYRIGHT LAW REFORM

Seeking to expand the retail market for their product, Malaysian pirates have taken to cyberspace. Sites based in Malaysia that offer pirate sound recordings, VCDs, videogames or entertainment software for sale are becoming increasingly common. Spurred by a desire to enhance the attractiveness of its Multimedia Supercorridor to high-tech investments, Malaysia has already taken a number of steps toward updating its copyright laws to meet the challenges of the Internet era. On April 1, 1999, amendments to the Copyright Act adopted two years earlier were brought into force. These amendments implement in Malaysian law some of the standards contained in the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), such as recognizing that the copyright owner's exclusive right of communication to the public embraces the right to make works available on demand (as via the Internet). However, other treaties requirements, such as the protection of technologies used by copyright owners to manage and control access to and use of their works, are not adequately addressed in the amendments. As a country seeking to participate actively in the global electronic marketplace that is rapidly becoming a reality, Malaysia should ratify both treaties immediately, and should complete work on statutory amendments to fully implement all aspects of both treaties as soon as possible.