

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2001 SPECIAL 301 REPORT

PAKISTAN

EXECUTIVE SUMMARY¹

IIPA recommends that the Pakistan be placed on the Watch List.

Notwithstanding the political upheaval in late 1999, cooperation from Pakistani authorities continued to result in some enforcement actions during 2000. Police forces in Pakistan have also established special intellectual property, anti-piracy task forces.

Seven known CD production plants (only three of which are registered with the proper authorities) threaten to devastate the entire legitimate market, and worse yet, change what was a small-scale domestic enforcement problem into an international export-piracy problem. Piracy levels remain very high for all the copyright industries, and estimated trade losses due to piracy increased to more than \$136.9 million in 2000. Pakistan's copyright law still violates TRIPS, and the Copyright (2000) Amendment to the the Copyright Ordinance, 1962, reportedly introduces an apparent new royalty-free government-imposed compulsory license for copying, translating and adapting textbooks that, if not deleted or drastically curtailed, could make Pakistan subject to an immediate TRIPS case. The amendment also reportedly makes some changes intended to bring Pakistan's law closer into compliance with TRIPS in other areas.

ESTIMATED TRADE LOSSES DUE TO PIRACY (in millions of U.S. dollars) and LEVELS OF PIRACY: 1995 - 2000

INDUSTRY	2000		1999		1998		1997		1996		1995	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	10.0	60%	9.0	60%	9.0	60%	9.0	70%	10.0	80%	10.0	100%
Sound Recordings / Musical Compositions ²	65.0 ³	90%	3.0	90%	2.0	95%	2.5	95%	2.0	95%	5.0	94%
Business Software Applications ⁴	16.9	84%	14.1	83%	18.1	86%	16.4	88%	16.7	92%	10.5	92%
Entertainment Software ⁵	NA	NA	NA	NA	11.1	94%	10.2	92%	9.8	93%	8.0	90%
Books	45.0	NA	42.0	NA	40.0	NA	30.0	NA	30.0	NA	30.0	NA
TOTALS	136.9		68.1		80.2		68.1		68.5		63.5	

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

² The 1999 loss figure represents U.S. losses only, while the piracy level figure represents the overall piracy level for music and sound recordings (including Indian and international repertoire). The piracy level for international repertoire in 1999 was 100%. The 1998 figures should be read the same way. The piracy level for international repertoire in 1998 was 99%.

³ The estimated losses to the sound recording/music industry due to domestic piracy are U.S.\$3 million for 2000, but this number excludes any losses on sales of exported discs. Total record industry losses for 2000 (including export piracy losses) were U.S.\$65 million in 2000.

⁴ BSA loss numbers for 2000 are preliminary.

⁵ IDSA estimates for 2000 are preliminary.

PAKISTAN: CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS 2000			
ACTIONS	MOTION PICTURES	BUSINESS SOFTWARE	TOTALS
Number of raids conducted	31	22	53
Number of cases commenced	29	0	29
Number of defendants convicted (including guilty pleas)	284	0	284
Acquittals and dismissals	NA	0	0
Number of cases pending	625	0	625
Total number of cases resulting in jail time	0	0	0
Suspended prison terms	0	0	0
Maximum 6 months	0	0	0
Over 6 months	0	0	0
Over 1 year	0	0	0
Total Suspended Prison Terms	0	0	0
Prison Terms Served (not suspended)	0	0	0
Maximum 6 months	0	0	0
Over 6 months	0	0	0
Over 1 year	0	0	0
Total Prison Terms Served (not suspended)	0	0	0
Number of cases resulting in criminal fines	0	0	0
Up to \$1,000	284	0	284
\$1,000 to \$5,000	0	0	0
Over \$5,000	0	0	0
Total amount of fines levied	190400	0	190400

COPYRIGHT PIRACY AND ENFORCEMENT IN PAKISTAN

Little Has Been Done in 2000 to Curb Growing Optical Media Piracy in Pakistan

The most troubling development in Pakistan since 1999 involves the growth of optical media piracy and the government's failure for the most part to address it. While domestic legitimate demand for CDs is very limited in Pakistan, IIPA now has reports of up to seven optical media plants (at least four in operation now, with at least two others going into operation in the second half of 2001), only two of which are registered with the proper authorities. These plants have a reported installed capacity of 100 million units; 18 million CDs are reportedly sold domestically (with a 90% piracy rate for CDs sold in Pakistan), with the rest being exported. The sudden arrival of such extensive CD manufacturing capability in Pakistan demands swift action from the Pakistani government, as these plants supply the pirate market in Pakistan and export pirate product to other countries in the region. The pirated copies being produced are often made from foreign-produced, uncensored masters. Because of the rise of pirate production in Pakistan, imported or smuggled pirate optical discs from countries like China and Malaysia has decreased somewhat in 2000, compared with 1999.

As a result of this increase in optical media pirate production and the pirate import of optical media in 1999 and 2000, there has understandably been a sharp rise in the sale and availability of all kinds of optical media pirate copies, including pirate music CDs (which are pricing at about U.S.\$2.50 for international and Indian repertoire, and U.S.\$1.50 for domestic repertoire, compared with U.S.\$4 in 1999, and accounted for some 18% of total pirate unit sales in 2000, up from 15% in 1999), pirate VCDs, which are starting to appear in the Pakistani market in increasing numbers within days of a film's theatrical release, and pirate copies of business

software. In short, piracy produced in Pakistan is now decimating the legitimate markets domestically and abroad.

The Pakistani government must immediately take steps to implement effective measures against CD and CD-ROM piracy. In particular, the Pakistani government should introduce effective optical media plant control measures, including the ability to track the movement of optical media production equipment, as well as the raw materials (including optical grade polycarbonate), and also including the compulsory use of Source Identification (SID) codes, in order successfully to halt the production of pirate CDs and CD-ROMs. In addition, Pakistani authorities must conduct raids on plants producing unauthorized product, must seize infringing copies and machinery, and must impose criminal penalties to deter the organized manufacturing and distribution of pirate product.

The Pakistani market remains mired in software piracy, with an estimated 1998 piracy level of an unacceptably high 84% for business software applications. Presently, there are estimated to be over 10,000 illegal software kiosks throughout Pakistan, in cities such as Karachi, Lahore, Islamabad, Faisalabad, Peshawar and Quetta. These software retailers feed Pakistan's immense illegal end-user community, which includes major banks, financial institutions and government ministries. Recent raids indicate the scope of the problem. In 2000, the police conducted 20 raids against resellers, and two others against pirate end-users (businesses engaged in the unauthorized use of software). No fines or penalties were meted out as a result of these actions. While similar activities were carried out in 1998 and 1999, the trivial fines imposed in those cases made the enforcement efforts ineffective and non-deterrent.

Production of Analog Piracy (Videocassettes, Audiocassettes, Textbooks) Continues To Harm The Copyright Industries

Analog piracy, namely videocassette piracy, audiocassette piracy, and book piracy (mainly photocopying of medical texts, computer books, and business titles, but also including reprint piracy and commercial photocopying) continues to cause serious commercial harm to copyright owners in Pakistan. For example, pirate audiocassettes sell for as little as seven cents in Pakistan; not surprisingly, it becomes difficult in the face of such pirate prices to develop a legitimate local market. U.S. publishers report that the piracy situation in Pakistan continues to plague legitimate sales as the problem of illegal reprinting and commercial piracy of scientific, technical and medical titles increases. Computer and business books also continue to be popular with the pirates.

Back-to-back copying of videos in video outlets in Pakistan causes serious harm to the motion picture industry. An estimated 60% of the 35,000 to 40,000 shops carry pirated back-to-back videos. Pirated copies of movies are even found for sale in supermarket entertainment sections. There are three major duplicating centers in Pakistan; one of them, Rainbow Center in Karachi, was closed recently for a short time. The labs in these duplicating centers produce illegal copies of movies not yet released in theaters ("pre-release") as well as already-released home videos. The major source of the masters for these titles is copies reproduced on camcorders from the U.S. There are an estimated 50,000 satellite dishes in the country, and an undetermined number of small, in-house cable systems, creating the potential for large-scale unauthorized retransmissions of U.S. motion pictures. Finally, restaurants and other public establishments engage in the unauthorized showing (public performance) of motion pictures. In 2000, the motion picture industry reports unacceptably high piracy levels of 75% and 60% for cable/satellite piracy and public performance piracy, respectively.

Overall piracy of international and regional (Indian) sound recordings continues to be nearly 100%, while the overall rate of piracy is estimated at 90% (no change from 1999). In 2000,

there were no known enforcement actions taken by the authorities to protect regional (Indian) and international sound recordings.

Enforcement Efforts Continue Against Motion Picture Piracy And Software Piracy, But Deterrent Results Are Scarce

Despite the political upheaval of late 1999, and considering the other law enforcement priorities the government has faced, the Pakistani government has shown some commitment to enforce the laws against video and software piracy, although not without problems, and IIPA is particularly worried about statements made by the Pakistani government in recent months asking enforcement officials to cease engaging in enforcement actions. The enforcement environment remains difficult when factors of the general social instability and safety are considered, as well as a lack of education on the part of police officials charged with enforcement. Enforcement by the police has been effective when complaints are presented and evidence of infringement is produced in advance. However, there is no central administrative government body that focuses on copyright awareness and enforcement, exacerbating the difficulties already faced by right owners.

Evidence of continued commitment to engagement includes the government's activity in raiding optical disc factories in 2000, in conjunction with industry representatives. In addition, police forces in three major cities (Karachi, Lahore, and Islamabad) established special intellectual property anti-piracy task forces in 1999. Unfortunately, these task forces have not had the expected impact because of insufficient commitment by the government to this effort. In addition, enforcement efforts in general have been hampered by continuing civil unrest, which has required significant allocations of police resources.

For the motion picture industry, for example, in 2000, tens of retail video outlet raids were conducted nationwide, in cooperation with the the motion picture industry's local anti piracy program. As a result of all of these enforcement efforts, the level of video piracy has dropped over the years, from 100% in 1995 to approximately 60% in 1999.

For the business software industry, while the police have been actively engaged in conducting raids of illegal hard disk loaders, the Pakistani enforcement authorities have been less willing to act against pirate end-users (businesses engaged in the unauthorized use of software). Finally, in 2000, a court-ordered raid on a pirate end-user occurred for the first time; however, the effectiveness of the order was greatly curtailed in that the court refused to issue the order *ex parte* (i.e., an "Anton Piller" order, without giving notice to the defendant). *Ex parte* civil searches are essential to preserve evidence of illegal copying of software and therefore to the successful pursuit of civil infringement cases in Pakistan. Until Anton Piller orders are more reasonably granted in South Africa (consistent with Article 50 and Article 41 of TRIPS), right holders have few prospects for effective civil enforcement against software pirates in Pakistan. Because of the different nature of the problems faced by the software industry in this regard, and the fact that no deterrent penalties have been imposed to date on software pirates, business software piracy levels in Pakistan remain alarmingly high at 84% in 2000.

There has been no detectable enforcement against book piracy. Most textbook publishers lose whatever legitimate market they might enjoy to pirates. Groups like the National Book Foundation fail to comply with the already very weak regulations on notification and payment of royalties, driving losses up. Losses in Pakistan due to piracy of publishers' works are U.S.\$45 million, the highest per capita in the world.

Court Proceedings are Bogged Down By Delays, and Result In Non Deterrent Fines

Up until the political upheaval of late 1999, the courts, while seriously backlogged, appeared to be working piracy cases through the system. The courts require significant documentation to support criminal prosecutions, which delays anti-piracy cases even further. While maximum criminal penalties for infringement are three years, imprisonment and a fine of U.S.\$1,720 (Rp100,000), such punishments only exist on the books; they are never carried out in practice, and instead, typical penalties imposed on pirate video outlets are miniscule. Even though there has been some indication of increased fines over the past couple of years, the court system simply does not provide an effective deterrent to piracy. Cases brought in 1994 move along at a glacial pace (while the rare case is decided in days). There are several possible sources of delays, including: the failure of the raiding officer to submit the final chart sheet (or *chalan*), often due to the officer's heavy caseload or his transfer (a common occurrence); the nonavailability of the judge; the nonavailability of witnesses on hearing dates; and the nonappearance of a defendant's lawyer for several hearings in order to delay the proceedings.

COPYRIGHT LAW AND RELATED ISSUES

Pakistan's Copyright Ordinance Reportedly Amended in 2000

In September 2000, the Copyright Ordinance, 1962, was reportedly amended by the Copyright (Amendment) Ordinance, 2000. IIPA is still awaiting confirmation to determine if and when the amendment went into effect. This amendment reportedly deals with many of the TRIPS deficiencies noted in IIPA's 2000 Special 301 report. It also reportedly establishes neighboring rights in producers of sound recordings and performers. Specifically, the amendment reportedly would do the following:

- The amendment reportedly defines the term "copyright" in Section 3 to include the exclusive right to authorize the rental of computer programs and cinematographic works. "Rental" is now reportedly defined in Section 2 as "the authorization to use the original or a copy of a computer program or a cinematographic work for a limited period of time for consideration." While express neighboring rights are provided for in the amendment (a new Section 24-A), IIPA has not seen the amendment, and thus will await to confirm whether the exclusive right to authorize rental of sound recordings is afforded to producers of sound recordings, as required by Article 14 of TRIPS.
- The amendment reportedly provides for civil *ex parte* search orders (without notice to the defendant), essential to enforcement against end-user piracy and required by Article 50 of TRIPS. Specifically, Section 60-A reportedly provides "Special remedies for infringement of copyright," permitting the owner of an infringed work or subject matter to apply to the court for immediate provisional orders to prevent infringements and preserve evidence. The court would have the power to order the search without notifying the defendant if it determines that any delay would risk frustrating the proceedings; the copyright owner or other person seeking the order would reportedly be bound to file a suit or other civil proceeding within 30 days of initiating the provisional proceedings.
- An amendment to Section 58 reportedly broadens the Registrar's authority under the current Ordinance to prohibit, in addition to infringing imports coming into Pakistan, the export out of Pakistan of such infringing copies. A new Subsection 60-A(3) reportedly

provides for border measures (including the court's ability to refuse to release goods destined for import or export that are suspected of being infringing into the channels of trade, until the matter is decided by the court); adequate border measures are required by Articles 51-59 of TRIPS.

- The amendment reportedly adds similar prohibitions on import and exports, along with analogous border measures, of infringing copies of a work, "whether themselves or depicted or applied to any article or goods or in any other form," which might include labels, t-shirts and other merchandise.
- The amendment reportedly provides express protection for compilations of data as required by TRIPS Article 10.2.

Unfortunately, included in the reports is the disturbing news about an amendment that could devastate the publishing industry's ability to exercise and enforce its rights in Pakistan. Specifically, the amendment reportedly contains a provision whereby the Pakistani government or the Copyright Board (established pursuant to Article 45 of the Copyright Ordinance) may apparently grant a royalty-free, government-imposed, compulsory license for copying, translating and adapting any textbooks 'on a non-profit' basis. If true, and if not drastically narrowed by other provisions to make it consistent with international treaty and convention standards, this amendment would take Pakistan out of compliance with its international obligations, and possibly subject it to an immediate TRIPS case.

The following additional problems with the Ordinance (as amended through 1992), notwithstanding the reported amendments discussed above, include:

- unclear point of attachment for foreign sound recordings;
- other overly broad exceptions to protection;
- unclear full retroactive protection for works and sound recordings, as required by TRIPS,

Pakistan must further amend its copyright law to fix the problems identified, and is urged to ratify the 1971 (Paris) text of the Berne Convention, and join the Geneva (phonograms) Convention.

Motion Picture Ordinance Amendments

As of late 1999, proposed amendments to the Motion Picture Ordinance (to more clearly cover home video products) were with the Pakistani Cabinet. However, with the dissolution of the Cabinet, the draft went back to the Ministry of Culture, which has once again announced plans to amend the Ordinance. Motion picture industry representatives have reviewed and provided comments on drafts of the proposed amendments. Once approved, these amendments would need to be reviewed one last time by the Ministry of Law before going to the President for signature as an ordinance. This is expected within the next several months. As the Ministry of Culture has spent several years preparing these amendments, the government should take this final step without any further delay. Among other things, the proposed amendments would introduce a video outlet licensing requirement, would require the censorship of home video product and would impose meaningful penalties for trading in unauthorized home video product. These amendments are a critical supplement to the protection afforded under the Copyright Ordinance.

Pakistan Should be Encouraged to Adhere to the WIPO Treaties

In addition to the changes necessary to bring Pakistan's Copyright Ordinance into compliance with TRIPS, the goal of such amendments should be to modernize the copyright system, taking into account the latest technological developments, such as technological protection measures and modern digital distribution models. As such, Pakistan should ratify and implement the WIPO "Internet" treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).

Generalized System of Preferences

Pakistan currently participates in the U.S. GSP program offering duty-free imports of certain products into the U.S. from developing countries. In order to qualify for such unilaterally granted trade preferences, USTR must be satisfied that Pakistan meets certain discretionary criteria, including whether it provides "adequate and effective protection of intellectual property rights." At the same time as Pakistan caused losses to the U.S. due to piracy and kept its law in violation of international treaty obligations, Pakistan imported (during the first eleven months of 2000) \$84.8 million of products into the United States without duty (4.4% of its total imports into the U.S.). Pakistan should not continue to expect such favorable treatment at this level if it continues to fail to meet the discretionary criteria in this U.S. law.