

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2002 SPECIAL 301 REPORT

PAKISTAN

EXECUTIVE SUMMARY¹

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

As volatile as events have been in Pakistan over the past year, the government has taken some actions to try to keep copyright piracy in check. However, the problem of CD piracy has become alarming, with millions of pirate discs produced in Pakistan now showing up all over the world, including in South Asia, Africa, Australia and New Zealand, the Middle East, parts of Europe, parts of Asia, and the United States. Our filing is intended to signal to the government in Pakistan the need to deal with the overwhelming problem of pirate exports from Pakistan that disrupts markets around the world.

In 2002, the government in Pakistan needs to reign in underground pirate optical media production facilities, as well as those plants already known to the government. Enacting measures to control optical media production will begin to address this problem. Such measures would require plants producing optical media to obtain a license, report the movement of optical media production equipment and parts as well as raw materials, and use manufacturer's codes to track the source of manufacture. Optical media regulations would provide an additional enforcement tool (along with the copyright law) to fight the organized manufacture and distribution of pirate optical media product, and would follow the lead of many countries that have enacted such regulations. As regards retail piracy and monitoring of exports, in 1999, the government of Pakistan established special intellectual property anti-piracy task forces in major cities. While this was a very positive development, IIPA looks to this task force to take an even more active role in enforcing against copyright piracy in 2002, especially in intercepting intended pirate exports at the borders before they leave Pakistan.

Estimated trade losses due to piracy increased to more than \$143.3 million in 2001.

In large part because of the serious optical media piracy problem in Pakistan, in 2001, IIPA filed a petition under the Generalized System of Preferences (GSP) program, a U.S. trade program whereby Pakistan enjoys trade benefits, subject to the requirement that it provide "adequate and effective" copyright protection. With respect to optical media pirate production for export, Pakistan's system does not meet the eligibility criteria of GSP. In addition, Pakistan's copyright law still violates TRIPS in certain respects, and the introduction in Pakistan of a royalty-free government-imposed compulsory license system for copying, translating and adapting textbooks, makes the copyright law incompatible with Pakistan's current international obligations.

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

PAKISTAN: ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1996 - 2001

INDUSTRY	2001		2000		1999		1998		1997		1996	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	11.0	NA	10.0	60%	9.0	60%	9.0	60%	9.0	70%	10.0	80%
Sound Recordings / Musical Compositions ²	60.0	90%	65.0	90%	3.0	90%	2.0	95%	2.5	95%	2.0	95%
Business Software Applications ³	28.3	87%	24.5	83%	14.1	83%	18.1	86%	16.4	88%	16.7	92%
Entertainment Software ⁴	NA	NA	NA	NA	NA	NA	11.1	94%	10.2	92%	9.8	93%
Books	44.0	NA	45.0	NA	42.0	NA	40.0	NA	30.0	NA	30.0	NA
TOTALS⁵	143.3		144.5		68.5		80.2		68.1		68.5	

COPYRIGHT PIRACY IN PAKISTAN

Optical Media Piracy Production in Pakistan Is an Export Business

Pakistan has emerged in 2001 as one of the world's largest producers for export of pirate CDs and other optical media (media read with an optical device such as a laser, including CDs, VCDs, DVDs, CD-Rs, CD-ROMs, etc.). Eight known optical media plants⁶ are responsible for an actual production of approximately 55 million units per year.⁷ The bulk of pirate optical media

² Total record industry losses for 2001 (including pirate exports) were \$60 million. In 2000, the estimated losses to the sound recording/music industry due to piracy in Pakistan were US\$3 million, whereas the total record industry losses for 2000 (including export piracy losses) were US\$65 million. The piracy level for international repertoire only is higher than that for overall repertoire (reported in the chart above); it was 99% for 1998, and virtually 100% for 1999 through 2001.

³ Reported losses to the business software industry for 2001 are preliminary. In IIPA's February 2001 Special 301 submission, the business software loss figure of \$16.9 million for 2000, and level figure of 84%, were also reported as preliminary. These numbers were finalized in mid-2001, and are reflected above.

⁴ IDSA estimates for 2001 are not available.

⁵ In IIPA's 2001 Special 301 submission, IIPA estimated that total losses to the U.S. copyright-based industries in Pakistan were \$136.9 million. Because of the adjustment to reflect BSA's final 2000 statistics (see footnote 3), estimated total losses to the U.S. copyright-based industries in Pakistan in 2000 are increased to \$144.5 million.

⁶ Reports indicate that at least two of the original eight plants have moved their operations into the northern part of Karachi, making enforcement much more difficult, due to sectarian violence. Our understanding is that all the known lines are new and are capable of being upgraded to replicate DVDs.

⁷ These figures are well supported by the confirmed import figures for polycarbonate into Pakistan. Total known imports of polycarbonate from November 2000 to December 12, 2001 were 877,184 kilos (60 CDs per kilo).

travels to India (estimated at 75-80% of pirate production), while other shipments of discs head for Sri Lanka, Bangladesh, Kenya, Mauritius, Mozambique, South Africa (and elsewhere in Africa), Australia, New Zealand, Maldives, Kuwait, Saudi Arabia, United Arab Emirates (and elsewhere in the Gulf region), Egypt, Syria, the United Kingdom, Germany, Nepal, Hong Kong, Indonesia, Singapore, Thailand, the United States, and Canada.⁸ Given Pakistan's small legitimate domestic demand for optical discs (estimated at 5.5 million), it is indisputable that pirate production in Pakistan is an export problem. Preliminary estimates conclude that of the millions of CDs being exported, approximately 45% of pirate exports, or 23.7 million discs, are music CDs, and roughly another 5% (2.6 million) are MP3 formats.

Because of the severity of the optical media problem in Pakistan, and because exports from Pakistan damage foreign markets, in 2002, the Pakistani government must take steps to implement effective measures against "optical media" piracy. In particular, the Pakistani government should introduce effective optical media plant control measures, giving the government and right holders the ability to track the movement of optical media production equipment and parts, as well as the raw materials (including optical grade and other polycarbonate), and compelling plants to use manufacturing codes, such as the Source Identification (SID) code, in order successfully to halt the production of pirate CDs and other optical media. Such regulations will give Pakistani authorities an additional tool (along with the copyright law) to conduct spot inspections and raids on plants, seize infringing copies of product and machinery, and impose administrative and criminal penalties to deter the organized manufacturing and distribution of pirate product.

Piracy in Pakistan Continues to Harm the Copyright Industries

Piracy phenomena in Pakistan include the following:

- **Optical Media Piracy:** As described above, pirate optical media produced in Pakistan decimates legitimate markets, both domestically and abroad. For example, pirate music CDs sell for around US\$1 to \$2.50 for international and Indian repertoire, and US\$1 to \$1.50 for domestic repertoire. Also, pirate VCDs and even pirate DVDs now appear in the retail pirate market in Pakistan (an estimated 12,000 shops deal in pirated optical media in Karachi alone), often containing movies that have not yet or have just begun their theatrical release.
- **Retail Piracy of Entertainment Software:** The retail markets in Pakistan all sell pirate copies of games. Presently, an estimated 10,000 (or more) retail "kiosks" operate in cities such as Karachi, Lahore, Islamabad, Faisalabad, Peshawar and Quetta, selling illegal copyrighted materials. Indicative of the seriousness of the optical media piracy problem in Pakistan is the Rainbow Centre in Karachi, a shopping arcade of 150 retail outlets filled with pirated product, including interactive games. The duty-free area of Karachi International airport even has a retail shop filled with pirated optical media, including games software.
- **Book Piracy:** Pakistan is the world's worst pirate country for published materials (per capita), with losses to U.S. publishers in Pakistan due to piracy estimated at \$44 million in 2001. Book

⁸ Notwithstanding difficulties in accurately tracking pirate shipments, it is at least known that from October 30, 2001 to December 12, 2001, no less than a total of 43 shipments (involving 36 couriers), containing approximately 160,000 pirated CDs, were shipped by air from the Karachi Airport to various different countries.

piracy (mainly photocopying of medical texts, computer books, and business titles, but including reprint piracy and commercial photocopying) is a net-export business to India, the Middle East, and even Africa. Computer and business books also continue to be popular with pirates. Entire books are photocopied and available for sale in stalls and bookstores. There has been some incremental improvement in 2001 as retail bookstores sell fewer pirated copies.⁹ However, 50% of the medical text and reference market remains pirated (no improvement over 2000). Trade bestsellers are still pirated in large numbers and available everywhere. Though compulsory licensing under the old National Book Foundation rules is no longer authorized, titles published under those licenses years ago appear to be being reprinted regularly in 2001.

- **Music Piracy on Analog Formats:** Audiocassette piracy of music continues to cause harm to the U.S. record industry. For example, pirate audiocassettes sell for as little as seven cents in Pakistan, and not surprisingly, it is impossible to develop a legitimate local market in the face of such pirate prices.

COPYRIGHT LAW AND RELATED ISSUES

Pakistan's Copyright Ordinance, Amended in 2000, Generally Strengthens Law

In September 2000, the Copyright Ordinance, 1962, was amended by the Copyright (Amendment) Ordinance, 2000. This amendment deals with many of the TRIPS deficiencies noted in IIPA's 2000 Special 301 report, brings Pakistan's law closer to compliance with TRIPS, and strengthens certain enforcement provisions. Specifically, the amendment does the following:

- provides an express "rental right" for computer programs (and cinematographic works), but not for sound recordings (Section 3), and producers of sound recordings receive neighboring rights, including a rental right, pursuant to Section 24A;
- provides for criminal penalties to up to three years imprisonment or a fine of 100,000 rupees (approximately US\$1,660), which are doubled for second or subsequent offenses (Section 66 *et seq.*);
- 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 (Section 60);¹⁰

⁹ The publishing industry reports that some raids were run against book pirate operations in 2001. However, these raids have had little to no effect on piracy.

¹⁰ The Pakistani government has stated that the court has the power to order *ex parte* civil searches "[w]here delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed, or where it appears that the object of granting the injunction will be defeated by the delay."

- broadens the Registrar's authority to prohibit (seize, detain, etc.) the export out of Pakistan of infringing copies in addition to infringing imports coming into Pakistan, and includes goods to which infringing labels are applied as subject to this prohibition (Section 58);¹¹
- provides a new right in "typographical arrangement" of a published edition of a work (with a term of protection of 25 years from publication); and
- provides express protection for compilations of data as required by TRIPS Article 10.2.

Remaining problems in the ordinance include criminal fines that are too low to deter piracy, a new compulsory license to use published materials (see below), other overly broad exceptions to protection, and 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, should adopt the 1971 (Paris) text of the Berne Convention, and should join the Geneva (phonograms) Convention.

New Compulsory License for Published Materials

The 2000 amendments contain one change, in Section 36, that could devastate the publishing industry's ability to exercise and enforce its rights in Pakistan. Specifically, the amendment contains a provision whereby the Pakistani government or the Copyright Board (established pursuant to Article 45 of the Copyright Ordinance) may grant a royalty-free, government-imposed, compulsory license for copying, translating and adapting any textbooks 'on a non-profit' basis. This amendment would take Pakistan out of compliance with its international treaty and convention obligations if not narrowed to make it consistent with such obligations. The government of Pakistan must confirm that Section 36(iii) of the amended law only applies in cases in which the conditions of Section 36(i) have been met. Otherwise, Section 36(iii) will amount to a discretionary compulsory license, which violates TRIPS.

Generalized System of Preferences

In 2001, in large part because of the serious optical media piracy problem in Pakistan, IIPA filed a petition under the Generalized System of Preferences (GSP) program, a U.S. trade program offering duty-free imports of certain products into the U.S. from developing countries, including Pakistan. In order to qualify for such unilaterally granted trade preferences, USTR must be satisfied that Pakistan meets certain discretionary criteria, including providing "adequate and effective protection of intellectual property rights." Pakistan's system does not meet the eligibility criteria of GSP, particularly with respect to its serious optical media piracy problem. In addition, the

¹¹ Apparently, there is also a draft "Enforcement of Intellectual Property Rights Rules" that provides for the suspension of release of counterfeit trademark goods and pirated copyright goods by the Customs authorities in Pakistan. The infringement of intellectual property rights other than counterfeit trademark goods or pirated copyright goods as defined in the Agreement on Trade-Related Aspects of Intellectual Property Rights is not covered in the draft rules. The draft rules would also not apply to goods in transit, *de minimis* imports and on the imports of goods put on the market in another country by or with the consent of the right holder, or to goods destined for exportation. These draft rules apparently would provide for TRIPS-compatible border measures, including the possibility of suspension of pirated goods from release into the channels of commerce, and the destruction under official supervision of the goods seized in the suspension order, as well as disposition "by such other manner that the disposal shall be outside normal channels of commerce and would be without detriment to the owner of . . . the copyright holder."

introduction in Pakistan of a government-imposed free compulsory license for copying, translating and adapting textbooks makes the copyright law incompatible with Pakistan's current international obligations, including under TRIPS. During the first eleven months of 2001, the United States imported \$98.6 million of products from Pakistan without charging a duty (4.7% of Pakistan's total imports into the U.S.).¹² 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. If requisite improvements are not made by Pakistan to remedy the deficiencies noted in IIPA's petition, which have adversely affected U.S. copyright owners, Pakistan's GSP benefits should be suspended or withdrawn (in whole or in part).

Pakistan Should be Encouraged to Adhere to the WIPO Treaties

Pakistan's recent amendments to its Copyright Ordinance demonstrate the government's understanding of the need to modernize its legal systems to take into account the latest technological developments. The next step is to join the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). Those treaties provide copyright owners with the rights they need to protect their works in the digital environment, and also protect technological protection measures used by copyright owners to protect their works. The WCT will go into force on March 6, 2002, while the WPPT requires only two more deposits as of the date of this filing, deposits which are sure to come shortly. Thus, while certain key elements still have not been provided satisfactorily in the legislation in Pakistan, this should not discourage the government of Pakistan from seeking immediate ratification of the WCT and WPPT, and swift deposit in Geneva.

¹² In 2000, the U.S. imported \$93.3 million in products from Pakistan under the GSP program; this represented approximately 4.3% of Pakistan's total exports to the U.S., according to U.S. government statistics.