

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2003 SPECIAL 301 REPORT

# BANGLADESH

## EXECUTIVE SUMMARY

---

Bangladesh should be placed on the Watch List. The piracy rate in Bangladesh for sound recordings is close to 100%, due in large part to a lack of enforcement of Bangladesh's Copyright Act. In addition, two optical disc manufacturing plants are operational and further plants are likely to be opened, which could produce optical discs for the pirate market. There are also numerous CD-R duplication units operating in Dhaka.

Bangladesh has not appeared on the Special 301 list.

Bangladesh remains a cassette-dominated market. The market size is estimated at two million units of music cassettes per month and 0.7 million audio CDs per month. CD penetration for all formats is expected to increase significantly over the next two to three years, partly due to smuggling of CD players from Taiwan and China.

In 2003, the Government of Bangladesh should take several steps to address piracy:

- Crack down on pirate production facilities (especially pirate optical disc plants and CD-R duplication units) and pirate retail outlets through sustained raids by enforcement authorities (including surprise inspections), followed up by swift police investigations, efficient handling by prosecutors, imposition of deterrent penalties and destruction of all infringing articles as well as materials and implements used in the pirate activities.
- Enhance border enforcement, especially including seizures of imports and exports of pirated audio CDs, CD-ROMs and cassettes, and the tracking of machinery and parts (including masters and stampers) used to produce such pirated goods, including optical disc production equipment.<sup>1</sup>
- Promptly pass and implement an optical disc law to regulate optical disc production, production equipment, raw materials and facilities.
- Promptly accede to and implement the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) and update the Copyright Act.

## COPYRIGHT PIRACY IN BANGLADESH

---

Piracy levels are extremely high in Bangladesh. The recording industry reported that the piracy rate for music cassettes, still the dominant format, totalled 96% for all types of repertoire. Repertoire sold on cassettes is 80% Indian (Hindi), 16% Bangladeshi and 4% international. The annual retail turnover for both legitimate and pirate product is 160 million BDT (Bangladeshi taka) (US\$2.76 million). The retail price for local cassette albums is 35 BDT (US\$0.60),

---

<sup>1</sup> Because the Motion Picture Association does not have an anti-piracy operation in Bangladesh and would not be in a position to support Custom's actions against piratical import or export of pirated DVDs or VCDs, MPA is not requesting the Bangladesh Customs authorities to focus on intercepting optical disc products containing American filmed entertainment at this time.

compared with 30 BDT (US\$0.52) for pirate cassette albums. The piracy rate in the CD sector is 100% for regional (Indian) and international repertoire, and 85% for local repertoire.

Pirate optical discs are both produced locally and imported from abroad. It is estimated that at least 50% of pirated CDs are smuggled into Bangladesh from Pakistan, Sri Lanka, Singapore, Malaysia and other channels. A manufacturing plant in Dhaka is producing at very high capacity and a second plant opened up recently. Tourists from neighboring countries also contribute to pirate sales.

There are at least 30 to 45 CD-R duplication units in Dhaka, ranging from sophisticated European stand-alone duplicators to PC workstation duplicators. Although not confirmed, some industry officials estimate that the Bangladeshi market for audio and videos CDs is almost entirely supplied by these CD-R facilities and that there are as many as 60 CD-R duplicating facilities operational in the entire country.

Bangladesh, especially the city of Dhaka, today displays a scenario dangerously similar to Pakistan in 1997, one year prior to the establishment in Pakistan of the first of the eight currently operating CD plants. Currently in Bangladesh there is one fully functional optical disc manufacturing plant, and a second plant that recently became operational, in addition to the CD-R duplication units. It is only a matter of time before other parties also venture into CD production unless immediate action is taken.

It is very sad to note that Sunbeam, the official agent of one of the most important record companies in the region (Saregama) in Bangladesh, is considering closing its HMV business in Bangladesh due to financial losses it accrued mainly due to piracy. Sony Music, which has already delayed its launch in Dhaka, could face a similar scenario. Sunbeam is now thinking of changing its business from audio cassette production to blank CD-R production and is in negotiation with European companies for the purchase of a blank CD-R-producing plant for installation in Dhaka.

Different sources confirm that Bangladesh is importing 1 million blank CD-Rs from China and Taiwan per month. The price of a blank CD-R is \$0.07 (seven cents) per unit.

## **COPYRIGHT ENFORCEMENT IN BANGLADESH**

---

There is little or no enforcement of Bangladesh's recently amended Copyright Act.

Bangladesh should step up its efforts to crack down on pirate production facilities (especially optical disc plants and CD-R duplication units) and pirate retail outlets. The government should organize sustained raids by enforcement authorities (including surprise inspections), followed up by swift police investigations, efficient handling by prosecutors, imposition of deterrent penalties and destruction of all infringing articles as well as materials and implements used in the pirate activities.

Another important initiative should be the enhancement of border enforcement, including seizures of imports and exports of pirated audio CDs, CD-ROMs and cassettes, and the tracking of machinery and parts (including masters and stampers) used to produce such pirated goods, including optical disc production equipment.

## **COPYRIGHT LAW AND RELATED ISSUES**

---

The Copyright Act of Bangladesh went into effect in July 2000. Bangladesh should take the opportunity to update the Copyright Act in order to combat piracy and pave the way for intellectual property industries to develop, invest and create jobs.

In addition to the rights granted in the Copyright Act, Bangladesh should accede to the WIPO Performances and Phonograms Treaty (WPPT) as well as to the WIPO Copyright Treaty (WCT) and should update the Copyright Act to comply with the treaties. Accession and implementation of these two treaties ensures that the legal framework in Bangladesh offers an adequate basis to fight international piracy, ensures the protection of Bangladeshi right holders in foreign territories, and supports the development of electronic commerce in the region.

In this context it is essential that Bangladesh grant producers of sound recordings exclusive rights for the communication to the public, public performance and digital transmission of their works. An adequately broad right of communication to the public ensures that right holders enjoy adequate protection for all commercially significant uses of their works, including the making available of works so that individual members of the public are able to access them from a place and at a time of their liking. The granting of such a right guarantees right holders protection in new forms of communication, such as digital media. The public performance right is also very important for the protection of all categories of works.

Bangladesh should revise its reproduction right for works as well as for neighboring rights, including for record producers, to include express protection of reproductions, whether temporary and permanent, partial and whole, or direct or indirect. The reproduction right continues to be a pivotal economic right in the new digital environment. A sufficiently broad reproduction right is essential on the one hand to enable right holders to devise and implement new licensing models and on the other to fight all forms of piracy.

The Copyright Act should be amended to provide adequate protection for all right holders against the circumvention of technological protection measures (TPMs), including access and copy controls, used by right holders to protect their works against unauthorized uses, as well as adequate protection against the manufacture and trafficking of devices and offering of services/information that enable the circumvention of such technological measures. The Bangladesh government should also add provisions prohibiting the illegal removal and altering of rights management information and the trafficking of copies that contain tampered-with information. Such amendments would deal with key WIPO treaties requirements.

The exceptions and limitations to exclusive rights in the current Copyright Act are very broadly formulated and should be amended in order to avoid prejudice to right holders' legitimate interests, which would be inconsistent with Article 13 of TRIPS (which requires that exceptions and limitations to exclusive rights comply with the well-established "three-step test"). It is important that exceptions, such as the exemption for private copying, are sufficiently narrow so that broad unauthorized uses are not unintentionally permitted.

TRIPS also requires civil and criminal sanctions that constitute a deterrent to further infringements as well as provide for adequate compensation to right holders for injury suffered due to infringement. Bangladesh could achieve this objective by offering injured right holders the opportunity to select pre-established (i.e., statutory) damages, and by substantially increasing the minimum and maximum fines and sentences for criminal offenses.

In order to fight piracy and protect its right holders, Bangladesh should enact an optical disc law to regulate optical disc production, as well as the import and export of raw materials, equipment and parts. An optical disc law would enable local intellectual property industries to develop and thrive.