

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2003 SPECIAL 301 REPORT

SRI LANKA

EXECUTIVE SUMMARY

Sri Lanka should be placed on the Watch List. The piracy rate in Sri Lanka for sound recordings is very high, making it difficult for the legitimate music industry to establish and develop itself in the Sri Lankan market. A small percentage of CDs are legally imported into Sri Lanka, while most are “smuggled” into the country as hand luggage or air freight. Probably all pirated CDs are imported from Pakistan or Malaysia. In addition, approximately two million blank CD-Rs are imported into Sri Lanka annually (many of which are used to “burn” pirate music).

The cassette is the dominant music carrier in Sri Lanka, although CD penetration is likely to expand significantly. The estimated total annual market for cassettes is 8.5 million units, including both blank and pre-recorded, while the market for CDs, including both legally imported and smuggled units, is approximately one million units. Sri Lanka has three large music cassette duplication sites, all of which are involved in the production of both legitimate product for the domestic market and pirate cassettes.

In 2003, the government of Sri Lanka should take the following steps to combat piracy:

- Promptly ratify and implement the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) and update its copyright law.
- Boost border enforcement and increase seizures of imports of pirate cassettes, CDs and other optical media.
- Crack down on pirate production facilities 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.

COPYRIGHT PIRACY IN SRI LANKA

Piracy levels are very high in Sri Lanka. The recording industry reported that the piracy rate for optical discs totalled 35% for Sinhalese repertoire, but was a startlingly high 99% for international repertoire and 100% for Tamil and Hindi repertoire. Virtually the entire market for music cassettes of Tamil and Hindi repertoire is pirate, and the piracy rate for international repertoire on cassette is 97%, compared with 20% for Sinhalese repertoire. Legitimate cassette albums cost from SLR125 to 300 (Sri Lankan Rupees) (US\$1.29 to 3.10), compared with SLR125 to 150 (US\$1.29 to 1.55) for pirate cassette albums. Legitimate CD prices range from SLR400 to 1,100 (US\$4.13 to 11.36), while pirate CDs and CD-Rs cost between SLR100 and 350 (US\$1.03 to 3.61).

In Sri Lanka there are three large duplication sites for music cassettes, all of which produce both legitimate and pirate product. Probably all pirate CDs are smuggled in from Pakistan or Malaysia, and two million blank CD-Rs are imported into Sri Lanka annually (many of which are used for pirate CD-R “burning”).

COPYRIGHT ENFORCEMENT IN SRI LANKA

Sri Lanka should step up its efforts to crack down on pirate production facilities and pirate retail outlets. It 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 of pirate cassettes, CDs, and other pirate optical discs.

COPYRIGHT LAW AND RELATED ISSUES

Sri Lanka’s Code of Intellectual Property came into effect in 1979 and was last amended in 1990. The Sri Lankan government has also recently produced some drafts to update the Code. Sri Lanka should take the opportunity to accede to and implement the WIPO Performances and Phonograms Treaty (WPPT) as well as to the WIPO Copyright Treaty (WCT) and update the Code to comply with TRIPS. Accession and implementation of the two WIPO treaties will ensure that Sri Lanka’s legal framework can offer an adequate basis to fight international piracy, ensure the protection of Sri Lankan right holders in foreign territories, and support the development of electronic commerce.

In addition to acceding to and implementing the WCT and the WPPT, Sri Lanka should update the Code to do the following:

- Grant clear and immediate protection for producers of sound recordings on the basis of national treatment of all WTO members, as required in TRIPS;
- Amend the exclusive reproduction right for works, including for producers of sound recordings, to include reproductions, whether temporary or permanent, whole or in part, direct or indirect;
- Grant producers of sound recordings TRIPS and WIPO treaties-compatible rights, including: an exclusive rental right, as required by TRIPS; an exclusive communication to the public right, covering all transmissions by wire and wireless as well as digital transmissions, including the making available of sound recordings so that individual members of the public are able to access them from a place and at a time they choose, consistent with the WIPO treaties; an exclusive distribution right, as required by the WIPO treaties; and an exclusive public performance right;
- Provide adequate protection against the circumvention of technological protection measures (TPMs), including access and copy controls, used by right holders to protect their works against unauthorised 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;
- Prohibit the illegal removal and altering of rights management information and the trafficking of copies that contain tampered information;

- Narrow exceptions and limitations, including the provisions on fair use and private copying, to avoid prejudice to right holders' legitimate interests and to ensure no unauthorized use is unintentionally permitted, as is required to comply with the "three-step test" set forth in Article 13 of TRIPS;
- Provide for civil remedies and criminal sanctions that constitute a deterrent to further infringement as well as compensate right holders for injuries suffered due to piracy, for all right holders, including producers of sound recordings, as required in TRIPS;
- Provide for all right holders, including producers of sound recordings, to be able to request *ex parte* provisional measures, including injunctions and searches and seizures of infringing copies, equipment and materials used in the manufacture and trafficking of pirated goods;
- Grant enforcement authorities, including customs officials, *ex officio* authority to search and seize infringing goods, as well as tools and implements used in infringement, and to conduct surprise inspections where violations and infringements may be taking place.