

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2004 SPECIAL 301 REPORT

PAKISTAN

EXECUTIVE SUMMARY

Special 301 Recommendation: IIPA recommends that Pakistan be designated as a Priority Foreign Country. The government of Pakistan has been ignoring the problem of copyright piracy, and likely will continue to do nothing to stem piracy unless the U.S. elevates Pakistan to bring the severity of this problem to the Pakistani government's attention. If the government of Pakistan continues to turn a blind eye to piracy concerns, the U.S. should consider all possible avenues to address this intolerable situation, including suspending GSP benefits or any other benefits Pakistan receives through other trade programs.

Overview of Key Problems: Pakistan is one of the world's leading producers and exporters of pirated optical discs (CDs, DVDs, VCDs, CD-ROMs) of copyrighted material (sound recordings, motion pictures, business software, published materials). Eight known facilities in Pakistan produced upwards of 180 million discs in 2003, nearly all illegal, and most being exported around the world to at least 46 other countries. The Pakistan government, which met with the U.S. government and private industry several times in 2003, took no serious steps to curtail production or export of pirated product. Book piracy also remains a serious problem in Pakistan, and other piracy phenomena (e.g., cable piracy, end-user piracy of business software) must continue to be addressed by the government. In 2001, IIPA filed a GSP petition against Pakistan in response to the frightening growth of production of optical discs in the country. At the same time as that petition remained pending in 2003, the United States and Pakistan signed a Trade and Investment Framework Agreement (TIFA) on June 27, 2003, which paves the way for more serious trade discussions. It is crucial in the context of the larger trade relationship, and in view of the IIPA's pending GSP petition, that Pakistan live up to its obligations to provide adequate and effective copyright protection and take immediate steps to eradicate piracy in all forms, including optical disc piracy. Pakistan's enforcement system fails to "prevent infringements" and fails to provide "remedies that constitute a deterrent to further infringements," as required by TRIPS. Despite skyrocketing production, distribution and export of pirate optical discs, Pakistan has not initiated any action—criminal, civil or administrative—against its fast-growing pirate producers.

Actions to be taken in 2004

- Pass and implement an effective optical disc law (or temporary order) to enable control over optical disc production, including monitoring and control on imports of production equipment and raw materials (including optical grade polycarbonate), as well as requirements to use unique source identifiers (SID code) to track the location of production.
- Shut down known production facilities (if necessary, by temporary order), pending their ability to demonstrate that they have licenses to produce legitimate materials (whereupon supervised access to the plant could be granted so as to permit the legitimate production). Licensing documents aimed at proving legitimate manufacture should be forwarded to interested private parties to ensure the legitimacy of the licensing documents; right holders should be permitted to visit the optical disc plants and obtain exemplars of discs.
- Stop exports of pirated optical discs and other copyrighted materials from Pakistan.
- Conduct effective anti-piracy enforcement actions with active Federal Investigation Agency (FIA) involvement; establish an IPR task-force within FIA.

- Combat other forms of piracy that hurt the domestic markets, including book piracy, cable piracy, and end-user piracy.
- Issue a directive to courts on the seriousness of copyright crime and the need to impose deterrent penalties in cases of commercial piracy.
- Develop a group of prosecutors and judges familiar with copyright, including selective training on bringing copyright cases and deterrent enforcement practices.
- Pass a law to strengthen maximum criminal fines and to implement the WIPO “Internet” treaties, and join those treaties.
- Conduct a public anti-piracy awareness campaign.

For more details on Pakistan’s Special 301 history, see IIPA’s “History” Appendix to this filing.¹ Please also see previous years’ reports.²

PAKISTAN
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1999 – 2003³

INDUSTRY	2003		2002		2001		2000		1999	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	12.0	95%	12.0	95%	11.0	NA	10.0	60%	9.0	60%
Records & Music	70.0	100%	60.0	83%	60.0	90%	65.0	90%	3.0 ⁴	90%
Business Software ⁵	NA	NA	11.2	80%	9.2	83%	24.5	83%	14.1	83%
Entertainment Software	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Books	44.0	NA ⁶	44.0	NA	44.0	NA	45.0	NA	42.0	NA
TOTALS⁷	126.0		127.2		124.2		144.5		68.5	

COPYRIGHT PIRACY IN PAKISTAN

Pakistan Is One of World’s Leading Optical Disc Producers/Exporters

Eight plants/production facilities in Pakistan (one devoted to DVD production, and six which have DVD production capability), with as many as 25 production lines, produced an estimated 180 million discs during 2003 (including sound recordings, VCDs of motion pictures, DVDs of motion pictures, and business software) as well as other media (e.g., videocassettes, audiocassettes).⁸ While a minimal amount of production is for Pakistani licensees (believed to

¹ <http://www.iipa.com/pdf/2004SPEC301HISTORICALSUMMARY.pdf>.

² <http://www.iipa.com/countryreports.html>.

³ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2004 Special 301 submission, at <http://www.iipa.com/pdf/2004spec301methodology.pdf>.

⁴ This number represents the domestic losses due to sound recording piracy in 1999 (excluding exports).

⁵ BSA’s 2003 piracy statistics were not available as of February 13, 2004, and will be made available in the near future and posted on the IIPA website at <http://www.iipa.com/>. BSA’s statistics for 2003 will then be finalized in mid-2004 and also posted on the IIPA website. BSA’s trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA’s trade loss numbers released separately in its annual global piracy study which reflect losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

⁶ While no overall piracy rate for published materials is available from the Association of American Publishers, many publishers report unacceptably high piracy levels, ranging from 65% to around 90%.

⁷ In IIPA’s 2003 Special 301 report, IIPA estimated the total losses due to piracy in Pakistan for 2002 at \$116 million. IIPA’s revised loss figures are reflected above.

⁸ The number of discs produced has been ascertained by calculating the amounts of optical grade polycarbonate

be about 10%), to our knowledge, the remaining 90% of discs produced are unauthorized, since there are no legitimate licensees producing in Pakistan or licensed to produce such product in Pakistan. Industry and the U.S. government have informed the Pakistan government exactly where these plants are and have supplied ownership information, but the government has done nothing in 2003 to eradicate this form of piracy. Legitimate domestic demand in Pakistan is dwarfed by the number of discs being produced, meaning Pakistan's production is destined for export.⁹ Product exported out of Pakistan is showing up all over the world.¹⁰ Pirate optical disc piracy in Pakistan generates enormous profits which are channeled into other organized criminal activities and thwart the establishment of rule of law in Pakistan.

In addition to the export problem, pirate optical discs and other media of all types of copyrighted content (music, audio-visual, business software, videogames, reference software) severely hurt the domestic market.¹¹ There are seven major duplicating centers for VHS videocassettes and which burn CD-Rs to order (of motion pictures not yet released in Pakistan, as well as previously released home videos). Over 12,000 retail outlets, kiosks and stores remain in operation in Karachi, Lahore, Islamabad, Faisalabad, Peshawar, Quetta, and elsewhere, selling pirated product for a fraction of the cost of legitimate.¹² Markets like Rainbow Centre in Karachi and Hafeez Center in Lahore still contain hundreds of retail outlets filled with pirated product. Even the duty-free area of Karachi International airport has a retail shop filled with pirated optical media. Pirate retailers even belong to "trade associations" which are powerful and pose additional threats (e.g., threats of violence) to anyone attempting to uphold the law. An individual who has been identified by the U.S. Department of Treasury as a "Specifically Designated Global Terrorist," is understood to be a principal financier of one or two of Pakistan's largest optical media plants.

Little Overall Improvement in the Book Piracy Situation in 2003, Despite Some Criminal Convictions

Book piracy in Pakistan (mainly illegal printing of medical texts, computer books and other academic titles, English Language Teaching materials, and reference materials such as dictionaries, but also commercial photocopying) remains rampant in Pakistan. Publishers report pirate editions of popular children's books such as the Harry Potter[®] series, as well as works of popular adult fiction. All popular titles have several illegal editions, with pirates competing for market share. The book bazaars in Karachi and Lahore are teeming with pirated engineering and computer science books. This activity is not limited to the large cities, as booksellers in

coming into Pakistan. The 2003 production numbers (180 million discs) compares with 66 million discs produced in 2002, which, while still representing massive over-capacity for Pakistan, is dwarfed by this year's figure.

⁹ Exports of optical discs out of Pakistan had until 2003 occurred through "personal" couriers; this modus operandi, however, is now in decline. Optical discs are now being smuggled in bulk quantities by sea and air. In a recent survey by the International Federation of Phonographic Industries over the period from March to May 2003, it was revealed that a total of 461 air shipments derived from Karachi, containing 307,275 DVDs and 669,549 CDs (229 of the shipments were destined for the U.S.).

¹⁰ Pakistani-produced discs showed up in the following countries/territories in 2003: Australia, Austria, Bahrain, Belgium, Burundi, Canada, France, Fiji Island, Germany, Iceland, Italy, Kenya, Kuwait, Maldives, Mauritius, Mozambique, Nepal, Netherlands, New Zealand, Nigeria, Norway, Qatar, Singapore, South Africa, Tanzania, Uganda, United Arab Emirates, the United Kingdom and the United States.

¹¹ See, e.g., Amir Zia, *Pirated Movies, Software Swamp Pakistan Markets*, Reuters, May 21, 2003 (noting that Windows XP was selling on the street for 40 rupees, which is about US\$0.70).

¹² For example, pirate music CDs sell for around PKR35 to 65 (US\$0.61 to 1.13) per unit, while proliferating pirate DVDs, often containing movies that have not yet or have just begun their theatrical release, sell for PKR100 to 150 (US\$1.73 to 2.61) per unit for international motion pictures, to PKR210 (US\$3.66) per unit for Indian or Pakistani motion pictures.

smaller towns produce pirated versions to meet local demand. Also rampant are unauthorized Urdu translations of popular trade books.

Entire books are photocopied and available for sale in stalls and bookstores. University authorities often encourage students to photocopy books or sections of books by making photocopying facilities available on their campuses. Some universities even prepare course packs for sale to students by photocopying sections of different books and binding them. In addition, pirate producers have set up networks within the universities themselves, whereby lecturers buy one copy of the required text and hand it over to the pirate operators along with an order for pirate versions for the class. In exchange, the lecturers receive full reimbursement for the legitimate copy ordered. In addition to saturating the domestic market, book piracy remains a net-export business to India, the Middle East, and even Africa.

No Improvement in Cable or Business Software Piracy in 2003

There are an estimated 50,000 satellite dishes in Pakistan, and an undetermined number of small, in-house cable TV systems, creating the potential for large-scale unauthorized retransmissions of MPA member company motion pictures. A Neilson survey in 2002 indicated that 19.0 million Pakistanis viewed pirate VCDs and DVDs each month through pirate cable channels. Despite significant public awareness and enforcement drives by the business software industry, the piracy situation for that sector remained serious in 2003.

COPYRIGHT ENFORCEMENT IN PAKISTAN

The enforcement snapshot for Pakistan in 2003 is mostly disheartening. The enforcement environment remains difficult given the general social instability (particularly the problems in nearby Afghanistan), as well as a lack of education on the part of police officials charged with enforcement. Government-initiated enforcement actions against piratical operations are virtually nonexistent, forcing right holders to undertake and fund enforcement actions on their own. Nonetheless, some raiding continued on suspected locations of piracy, especially for the book publishing and business software industries. The publishing industry reports that there were 41 raids in the first six months of 2003, resulting in the seizure of over 35,000 books. Of those 41 raids, prosecutors have secured 8 convictions, while 26 cases remain pending. Unfortunately, fines have been paltry and non-deterrent (US\$163 to \$271).

The business software industry reports some raids against pirate hard-disk loading (the unauthorized loading of software onto a computer) and retail sales of pirate copies of business software on optical discs.¹³ That industry also had some successes in the fight against corporate end-user piracy of business software.¹⁴ In 2003, actions were initiated against end-

¹³ For example, in March 2003, police in Lahore seized 2,384 CDs and two computers containing pirate business software for promoting and selling pirated software in Lahore. *Police Crack Down on Software Pirates*, Daily Times, March 18, 2003, at http://www.dailytimes.com.pk/default.asp?page=story_13-3-2003_pg7_28. In May 2003, police in Karachi arrested four unauthorized sellers and seized and confiscated nine computers and 2,846 illegal CDs containing pirate business software in four separate raids. *Law enforcement agencies arrest four software pirates*, Pakistan Press International Information Services, May 9, 2003. In October 2003, Lahore Police arrested a pirate retailer and confiscated about 330 pirate CDs. *330 pirated CD's confiscated in Lahore*, Pak Tribune, Oct. 24, 2003, at <http://www.paktribune.com/news/index.php?id=42719>.

¹⁴ In October 2002, there were two raids against large end-users using unlicensed software. In both cases, the raids were conducted on the basis of Anton Pillar orders (*ex parte* civil search orders), a measure recently added to the Copyright Act. One case, against Dollar Industries (Pvt) Limited, revealed 48 personal computers using a range of unlicensed software. Another case, against Al-Karam Textiles, revealed 40 computers using a range of unlicensed

user piracy using Anton Pillar orders/searches. While the availability of Anton Pillar orders is a positive aspect of the system in Pakistan, results in court cases continue to be non-deterrent.

The establishment of the Pakistan Intellectual Property Rights Organization (PIPPO) in 2002 was a hopeful sign that things might improve in terms of commitment of resources and recognition by the government of the seriousness of the piracy problems in Pakistan, coupled with the will to combat them. Unfortunately, the group has yet to be funded by the Pakistan government (although the United States in July offered technical assistance to the body), and to date has not shown any concrete activities. Other efforts to coordinate enforcement have similarly failed. For example, specialized police (anti-piracy task) forces devoted to intellectual property enforcement were established in 1999 in Pakistan's three major cities, but these forces still have not had the expected impact because of insufficient commitment by the government. Industry representatives continue to report that since responsibility for copyright is spread among the Education, Home, Commerce, Industry and Law Ministries of the government in Islamabad, the result is lack of coordination regarding anti-piracy activities, information gathering and knowledge-sharing.

A further dilemma for copyright owners is the unenlightened or sometimes hostile attitude copyright representatives face from pirates and even officials in Pakistan when trying to uphold the copyright law.¹⁵ On occasion, raids have resulted in threats or violence against copyright representatives.¹⁶ Even when raids have resulted in the recovery and seizure of pirated books, police have on several instances failed to file a police report, being influenced by "irregular" practices of pirate booksellers and the "trade associations" running the retail markets (i.e., some corruption as well as coercion has been reported). In these cases, copyright representatives have had no choice but to prepare cases themselves without the help of the Pakistan authorities, and at their own cost.¹⁷

Courts Must Hand Down Stricter Sentences

Pakistan's courts have traditionally done an acceptable job finding civil or criminal liability for copyright infringement, but fines meted out have been only a fraction of the maximum fine of US\$1,745 (PKR100,000). In addition, judges still require significant documentation to support prosecutions, which further delays adjudication of cases. Imprisonment is never imposed in Pakistan for copyright infringement, notwithstanding that the maximum imprisonment for infringement is three years. It is obvious from the rise of optical disc piracy and other continuing piracy problems that court decisions are having little or no deterrent effect on piracy in Pakistan. The Pakistan government should issue a directive to courts on the seriousness of copyright crime and the need to impose deterrent penalties in cases of commercial piracy. In addition, minimum penalties, including imprisonment, should be provided for in the copyright

software. In both cases, injunctions issued against the defendants, and the cases remain before the courts.

¹⁵ In one instance in 2003, a Home Ministry official indicated to a U.S. publisher's representative that piracy is good, since it supplies less fortunate persons with free books and copyrighted materials. In another, following one raid, the "trade association" of the retail market in which pirated books were found announced a boycott of the publisher.

¹⁶ In a bookshop raid in Lahore, as soon as pirated books were seized, a mob, including all the pirate booksellers, began surrounding and threatening to attack the representatives, while the Pakistan Police officer looked on. The fact remains that enforcement actions in Pakistan are complicated by threats of violence against legitimate booksellers and publisher representatives, and the police have advised that publishers hire security guards to protect them.

¹⁷ In one case in 2003, which is typical of the problems encountered, failure of the police officer to file the police report at the outset after the raid caused a delay of two weeks (the amount of time it took the District Court to order the Superintendent of Police to register the police report), and cost the copyright owner's representative attorney's fees and court costs (since he had to go to the "sessions court" for that district, engage a lawyer, lodge the complaint, produce evidence, e.g., photographs of the raid, samples of books seized, and witnesses).

law. Training of judges, in conjunction with PIPRO, would be useful, to ensure that only those judges who are specifically trained in copyright handle such cases; the government should also consider the establishment of a specialized intellectual property court with judges dedicated to hear such cases.

Pakistan's Government Should Devise and Carry Out a Coordinated Enforcement Plan

In 2004, it is imperative that the government of Pakistan begin to address the piracy difficulties in the country, and the failure to deter further infringements, in a systematic and coordinated manner. In particular, the government should:

- Shut down known optical disc production facilities (if necessary, by temporary order), pending their ability to demonstrate that they have licenses to produce legitimate materials (whereupon supervised access to the plant could be granted so as to permit the legitimate production, but thereafter closed again). As a critical first step, the government of Pakistan must permit right holders organizations to visit optical disc plants to obtain sample discs.
- Combat other forms of piracy, including book piracy and cable piracy.
- Begin the process of solidifying a cadre of specially trained law enforcement officials (including police and prosecutors), by training them in copyright law to handle all copyright cases. Such a core group would have *ex officio* authority, and would work with all governmental departments having functions necessary to achieve proper enforcement against piracy (e.g., customs) to prepare cases and see them through to final prosecution.
- Begin the process of solidifying a cadre of specially trained judges in the area of copyright protection.
- Instruct all police authorities to carry out raids, with active involvement of the Federal Investigation Agency, on a more frequent and sustained basis and to seize all pirate products discovered during such raids
- Take all necessary steps to stop pirate shipments out of or into Pakistan. In particular, customs authorities should be able and encouraged to take *ex officio* action without a formal complaint in order to seize any suspected pirate product entering into or being exported or transited out of Pakistan
- Issue a decree making the fight against piracy a high priority and carry out an awareness campaign underscoring the need to fight piracy.

COPYRIGHT LAW AND RELATED ISSUES

Pakistan Should Pass and Implement an Effective Law to Curtail Pirate Optical Disc Production

Because of the dire nature of pirate optical disc production in Pakistan, and because exports from Pakistan are severely damaging foreign markets, in 2004, the Pakistani government must take steps to implement effective measures against optical disc piracy.¹⁸ In particular, the Pakistani government should introduce effective optical disc plant control measures, giving the government and right holders the ability to track the movement of optical

¹⁸ The global copyright community has agreed on the key elements of an effective optical disc law; please see the 2003 Special 301 report on Pakistan, at <http://www.iipa.com/rbc/2003/2003SPEC301PAKISTAN.pdf> for a full discussion of what is needed in Pakistan's optical disc regulation.

media production equipment and parts, as well as the raw materials (including optical grade polycarbonate), and compelling plants to use manufacturing codes, such as the Source Identification (SID) code, in order to successfully halt the production of pirate optical discs. Such regulations will give Pakistani authorities a needed tool 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.

Pakistan's Copyright Ordinance Needs Strengthening, and Motion Picture Ordinance Should be Amended

The Copyright Ordinance, 1962 (as last amended in 2000) provides strong tools to fight piracy, including, for example, provisions enabling the Registrar to monitor exports, with inspections and seizures of pirated goods leaving Pakistan.¹⁹ Remaining problems in the ordinance include criminal fines that remain far too low to deter piracy, in violation of TRIPS,²⁰ and at least criminal penalties must be amended to include minimum fines and prison terms. The law also retains a TRIPS-incompatible compulsory license to use published materials,²¹ other overly broad exceptions to protection, and unclear full retroactive protection for works and sound recordings as required by TRIPS. Pakistan should further amend its law to fully implement the WIPO "Internet" treaties, which establish the framework for the protection of copyrighted works as they travel over the Internet, and should accede to these treaties. Finally, Pakistan should adopt the 1971 (Paris) text of the Berne Convention and should join the Geneva (phonograms) Convention.

IIPA also encourages Pakistan to amend its Motion Picture Ordinance to more clearly cover home video products, and understands that the Ministry of Culture has announced plans to do this. The motion picture industry has reviewed and provided comments on drafts of the proposed amendments, which would require licensing of video shops and would include minimum penalties for infringements, all of which would be helpful in the fight against this form of piracy.

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. That petition remains pending. 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." There is little doubt but that Pakistan is failing to provide adequate and effective protection for U.S. intellectual property as contemplated in the GSP statute. In addition to optical disc pirate

¹⁹ Please see the 2003 Special 301 report on Pakistan, at <http://www.iipa.com/rbc/2003/2003SPEC301PAKISTAN.pdf> for a full discussion of the Pakistan Copyright Act.

²⁰ Some industries have suggested that the minimum fine must be increased to PRs 500,000 (US\$8,300).

²¹ The amendments in 2000 contained one change, in Section 36, that could devastate the publishing industry's ability to exercise and enforce its rights in Pakistan. Specifically, the amendment contained 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 takes Pakistan out of compliance with its international treaty and convention obligations, and must be appropriately narrowed. 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.

production for export, the 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. At the same time as the GSP petition remained pending in 2003, the United States and Pakistan signed a Trade and Investment Framework Agreement (TIFA) on June 27, 2003, which paves the way for more serious trade discussions. It is crucial in the context of the larger trade relationship, and in view of the IIPA's pending GSP petition, that Pakistan live up to its obligations to provide adequate and effective copyright protection and take immediate steps to eradicate piracy in all forms, including optical disc piracy. During the first 11 months of 2003, \$84.6 million of products from Pakistan were imported into the U.S. duty-free, representing 3.61% of Pakistan's total imports into the U.S.²² 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.

²² During 2002, the United States imported \$89.9 million worth of products into the United States duty-free, or 3.89% of its total imports to the U.S.