

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2005 SPECIAL 301

### SPECIAL MENTION

#### KENYA

In spite of the Kenyan Government's acknowledgment that piracy is a problem, little progress has been made in rectifying the situation. The Kenya Copyright Board came into being in 2003, but has to date not been able to fulfill its mandate for various reasons, including funding. While IIPA members do not generally support adoption of banderole systems out of concerns that the banderoles themselves can be counterfeited, in this case, the failure of the government to implement the law with respect to banderoles has resulted in courts being unable to distinguish legitimate from illegitimate copies. This problem must be addressed. However, implementation of the banderole system is still waiting funding and the courts do not appear to be prepared to deal with the issue in the interim.

Pirated cassettes and CDs account for over 90% of the market and range toward 100% on other video and DVD media. Local repertoire is stolen and pirated in Uganda and Tanzania, the latter producing more sophisticated material. International repertoire comes in from Uganda and Pakistan. It is believed that two companies in Uganda and one in Zanzibar reproduce millions of pirated cassettes of both Kenyan and international artists and smuggle them back into Kenya — flooding the market.

There are four major problems currently preventing the fight against piracy that must be addressed by the Government of Kenya.

- Interpretation, implementation, and understanding of the copyright law pose enormous challenges to customs, police, and the judiciary.
- Corruption results in seized goods disappearing from custody and court cases being drawn out and finally dismissed.
- The Copyright Board has insufficient funds to establish a copyright office and has as such not budgeted for issues pertaining to enforcement of piracy.
- There is an ongoing refusal of Kenyan authorities to try to address the problem using any other legislation, such as the Trade Descriptions Act, which is easier for the courts to understand and apply.