

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2005 SPECIAL 301 REPORT

PAKISTAN

EXECUTIVE SUMMARY

Special 301 Recommendation: IIPA recommends that Pakistan be designated as a Priority Foreign Country.

Overview of Key Problems: Pakistan remains one of the world's leading overproducers and exporters of pirated optical discs (CDs, DVDs, VCDs, CD-ROMs) of copyrighted material (sound recordings, motion pictures, business software, published materials). Ten known facilities in Pakistan produced upwards of 230 million discs in 2004 (up 30% from the 180 million discs produced in 2003). An estimated 205 million of those discs were exported from Pakistan in 2004, and based on the latest anecdotal evidence, upwards of 30% of those discs were ultimately destined for the United States. Pirate exports of copyrighted materials from Pakistan are harming markets in at least 40 countries. The Pakistani government, at various times of the year, seemed to indicate that it was ready to take serious action (e.g., four of the plants voluntarily closed in March, but reopened when it became apparent the government did not intend to enforce). A new phenomenon in 2004 was export of pirate "pre-release" sound recordings and motion pictures — a highly damaging activity to those right owners. Piracy in Pakistan continues to gravely harm local Pakistani copyright owners, as well as the Indian music, movie, and software industries. Book piracy and other forms of piracy (e.g., cable piracy, end-user piracy of business software, Internet café piracy) remain particularly serious in Pakistan. A change to the law in 2000 which added a royalty-free compulsory license for the National Book Foundation (NBF) and similar institutions to copy books is a TRIPS violation and must be deleted. Estimated losses to the U.S. copyright industries in 2004 due to piracy in Pakistan were \$143 million.

Promised enforcement action in 2004 by the Pakistani government against optical disc plants engaged in piracy never materialized beyond the brief effort noted above. Thus, the number of plants and suspected capacity and output both grew in 2004. Some progress was made in 2004 on intercepting exports at the border, as a Directive issued by the Central Board of Revenue requiring Customs to monitor all exports of optical media was implemented by Pakistani Customs authorities.

In June 2004, IIPA's GSP petition against Pakistan (filed in June 2001) was accepted by the GSP Committee of USTR, to evaluate whether Pakistan remains eligible to retain its duty-free GSP trade benefits despite poor copyright protection and enforcement. We note that this petition was granted at a time when the U.S. wishes to promote stronger trade ties with Pakistan as evidenced by the 2003 Trade and Investment Framework Agreement (TIFA) and the announcement on September 28, 2004 of the commencement of Bilateral Investment Treaty (BIT) negotiations. If Pakistan wishes to see progress in its trading relationship with the U.S., it must, as the acceptance of the GSP petition signifies, more effectively address the growing piracy problem first. IIPA believes further trade and investment developments must await the

evaluation of whether to remove all or part of Pakistan's GSP benefits due to inadequate enforcement against rampant copyright piracy in Pakistan. At the very least, IPR protection, and enforcement against copyright piracy in Pakistan, must continue to be a prominent part of any continuing trade dialogue with the government of Pakistan.

Actions to be Taken in 2005:

- As a temporary measure, **shut down at least the ten known production facilities** (e.g., 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 to permit the legitimate production. Licensing documents to prove legitimate manufacture would be forwarded to interested private parties to ensure legitimacy of the licensing documents; right holders should be permitted to visit optical disc plants and obtain exemplars of discs.
- For the long term, **pass and implement an effective optical disc law** to enable control over optical disc production, including mandatory licensing, inspections (including by representative organizations), closure of plants in violation, monitoring and control on imports of production equipment and raw materials (including optical grade polycarbonate), requirements to use unique source identifiers (SID Code) to track location of production, etc.
- Expand and intensify **implementation of Central Board of Revenue (CBR) Directive** requiring Pakistani customs officers to inspect every export shipment to ensure the shipment contains only Pakistani repertoire. Customs authorities outside Karachi must also enforce this CBR directive.
- Conduct **effective anti-piracy enforcement actions** with active Federal Investigation Agency (FIA) involvement, and provide *ex officio* authority; establish an IPR task force within FIA.
- **Combat other forms of piracy** that hurt the domestic markets, including book piracy, cable piracy, end-user piracy, and Internet café piracy. Successfully prosecute at least one key case for each of these areas, resulting in a jail sentence and a large fine.
- 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 the WCT and WPPT.
- Conduct a **public awareness** campaign against copyright piracy.

For more details on Pakistan's Special 301 history, see IIPA's "History" Appendix to this filing at <http://www.iipa.com/pdf/2005SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years' reports at <http://www.iipa.com/countryreports.html>.

PAKISTAN
Estimated Trade Losses Due to Copyright Piracy
(in millions of U.S. dollars)
and Levels of Piracy: 2000-2004¹

INDUSTRY	2004		2003		2002		2001		2000	
	Loss	Level								
Motion Pictures	12.0	NA	12.0	95%	12.0	95%	11.0	NA	10.0	60%
Records & Music	70.0	100%	70.0	100%	60.0	83%	60.0	90%	65.0	90%
Business Software ²	9.0	83%	9.0	83%	11.2	80%	9.2	83%	24.5	83%
Entertainment Software ³	NA	NA								
Books ⁴	52.0	NA	44.0	NA	44.0	NA	NA	NA	45.0	NA
TOTALS	143.0		135.0		127.2		124.2		144.5	

COPYRIGHT PIRACY IN PAKISTAN

Pakistan Is One of World's Worst Optical Disc Producers/Exporters

Due to the Pakistani government's fundamental failure to address optical disc piracy, Pakistan remains one of the world's worst overproducers and exporters of pirate optical media. In 2004, the situation worsened, as there are now ten known optical media production plants (containing at least 25 production lines) that churned out an estimated 230 million discs, 205 million of which were destined for export.⁵ Importation of optical grade polycarbonate increased by more than 30% in 2004 in comparison to 2003 — a disturbing trend which is consistent with greater production capacity, and also suggests the likelihood that there are several underground facilities operating.⁶ Exports continued to pour out of Pakistan in 2004,⁷ many passing through Dubai, and despite increased efforts of Customs as a result of a Central Board of Revenue Directive, reports indicate seizures of pirate optical discs in Ireland, the Netherlands, France, Germany, the UAE, South Africa, Belgium, Canada, Kenya, Kuwait, Nepal, India, Singapore, the United Kingdom (UKFACT reports more than 260,000 optical discs intercepted in 2004

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2005 Special 301 submission, at www.iipa.com/pdf/2005spec301methodology.pdf.

² BSA's final 2003 figures represent the U.S. software publisher's share of software piracy losses in Pakistan, as compiled in October 2004 (based on a BSA/IDC July 2004 worldwide study, found at <http://www.bsa.org/globalstudy/>). In prior years, the "global" figures did not include certain computer applications such as operating systems, or consumer applications such as PC gaming, personal finance, and reference software. These software applications are now included in the estimated 2003 losses resulting in a significantly higher loss estimate (\$16 million) than was reported in prior years. The preliminary 2003 losses which had appeared in previously released IIPA charts were based on the older methodology, which is why they differ from the 2003 numbers in this report.

³ ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses." The methodology used by the ESA is further described in Appendix B of this report.

⁴ 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 40 to 80% of the market, depending on the title, and 90% for the most popular titles used at universities.

⁵ Estimated actual demand in Pakistan was approximately 25 million units. The ten plants include the eight plants reported in the 2004 IIPA report. IIPA has learned that a new plant opened in Karachi in June 2004, and an additional plant was identified recently. The U.S. government informed the Pakistani government last year where the eight plants are and who owns them.

⁶ It was confirmed that over 500,000 kg of optical grade polycarbonate was imported into Pakistan in April 2004 — a new monthly record.

⁷ A recording industry survey over a seven month period (January to July 2004) revealed a total of 1,353 'airfreight shipments' from Karachi, totaling more than 5 million units being transported out of Pakistan. It could be established in that survey that almost 30% of the Karachi shipments were transported to the U.S. — more than 1.6 million pirated optical discs.

originating from Pakistan), and the United States. Sources indicate that pirated exports from Pakistan were also destined for Austria, Australia, Bahrain, Bangladesh, Burundi, Denmark, Fiji, Greece, Hong Kong, Italy, Japan, Kosovo, Maldives, Mauritius, Namibia, New Zealand, Nigeria, Norway, Oman, Qatar, Saudi Arabia, Spain, South Africa, Swaziland, Switzerland, Taiwan, Tanzania, Uganda, the United States, Yemen and Zambia.

Plant owners in Pakistan are exhibiting behavior common to organized criminals.⁸ They have become more evasive in their techniques throughout 2004, probably in part as a result of Pakistani government announcements of intent to enforce (which never materialized). For example, IIPA has learned that the respective plant owners do not keep 'stock' (polycarbonate, finished discs, masters, stampers) at their premises if they can help it. Warehouses at unknown locations are used to keep these materials.⁹ A disturbing new trend is that Pakistanis and Malaysians have apparently teamed up, such that, in addition to Pakistani-produced materials, Pakistani criminals are chief recipients of product produced in Malaysia, which is then transshipped through Pakistan (much of it ultimately destined for the UK market). Pakistani pirates also appear to be following the example of the Malaysians and have begun to use other countries (e.g., particularly the UAE but also Belgium) as transshipment points for Pakistani-produced pirate products. These trends further demonstrate the organized nature of the piratical activities and the need for the Pakistani government to tackle organized piracy through the use not only of copyright laws, but organized crime statutes (such as those aimed at money laundering, fraud, tax evasion, etc.). The evidence all points to a highly organized, increasingly international enterprise of criminals engaged in copyright piracy as a high-profit, low-risk criminal enterprise; the organized and international nature of this highly damaging commercial activity requires an organized and international response. Such a response is just beginning to occur, but not by the Pakistani government. Instead, Customs officers in ports in the EU, for example, have become more active in seizing Pakistani-produced pirate product coming into those ports.¹⁰

Pakistani Domestic Market Remains Mostly Pirate

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. In April 2004, the Deputy Inspector General (DIG) of Karachi Police warned the members of a "trade association" (of pirate vendors)¹¹ of the notorious "Rainbow Centre" in Karachi¹² to withdraw all pirated optical discs or face raids and seizures.¹³ Upon this warning, many Pakistani vendors in retail outlets moved underground for a time.

⁸ It has long been known that a principal financier of one or two of Pakistan's largest optical media plants is identified by the U.S. Department of Treasury as a "Specifically Designated Global Terrorist."

⁹ These practices mirror what we are seeing in other markets, e.g., Malaysia, where it is becoming commonplace for a raid to yield no product, stampers, order documentation, etc. at the plant premises themselves. At one plant, the owner took a "wait and see" approach, believing a raid was forthcoming "to please the Americans."

¹⁰ UK Customs is working with other EU customs authorities (and with respective local APOs) to educate them about the problems of transshipment and frequently used routes. The most recent initiative is a campaign to have all offices review the manifests of shipments routed out of Dubai. Furthermore, UK Customs is also working with officers from Switzerland in order to prevent that country from becoming a "laundering" facility for pirate products.

¹¹ Pirate retailers belong to "trade associations" which are powerful and pose additional threats (e.g., threats of violence) to anyone attempting to uphold the law.

¹² Rainbow Centre is a 12 story building in the heart of Karachi and Pakistan's biggest center for pirate product with more than 200 shops virtually all selling illegal product.

¹³ Other piracy centers include "Hafeez Center" in Lahore, which 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.

However, soon thereafter, piracy activities returned to normal due to failure of the government to act.

There remain at least seven major duplicating centers for VHS videocassettes and which also burn CD-Rs to order (of motion pictures not yet released in Pakistan, as well as previously released home videos).¹⁴ 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 the legitimate.¹⁵ A new phenomenon in 2004 is major pirating of “pre-release” sound recordings of international repertoire. For example, in early November 2004, it was reported that pre-release pirate versions of Eminem, Destiny’s Child, U2, Elton John, Ja Rule, Shania Twain, and Vanessa Carlton albums had surfaced in the Pakistani market for sale; the motion picture industry experiences similar pre-release piracy. The press has noted the deleterious effect piracy has had on the market, noting that “[u]p until 20 years ago, Pakistan was ranked among the top 10 film producing countries in the world with over 100 new films released every year,” and that ironically, many of the cinemas (only 40 theaters remain in Karachi, a city of 15 million people) are being torn down and replaced by malls, which feature, among other products, pirated goods.¹⁶

Book Piracy Remains Extremely Serious

The situation regarding book piracy in Pakistan is extremely serious and large-scale. There is large-scale photocopy piracy (mainly in universities, in which one student purchases the title “adopted” for a class and then organizes the photocopying for the entire class, or lends the book to other students for them to copy any material they require). There is also “print piracy” which is more sophisticated, often being carried out by business people within the supply chain on an organized basis, i.e., distributors or booksellers who sell genuine stock but also often organize their own pirate printings, or offset printing.¹⁷ All types of books are pirated — practically anything that is popular and sells more than 500 copies. English language novels and other trade books are popular, and as a result, U.S. publishers of mainstream commercial fiction and non-fiction are struggling.¹⁸ The academic market, in turn, has been completely overrun. Elementary and high school courses taught in English routinely feature pirate versions of books.¹⁹ Piracy at the university levels is even worse, with rates soaring over 90%.²⁰ Some medical titles have been pirated, usually in one color, so legitimate importers point out the danger of medical students using pirated texts which have misleading and inaccurate illustrations. While the quality of the pirated copies is often poor across the board, some pirates

¹⁴ Much of this activity occurs on the upper floors of Rainbow Centre; the number of such operations fluctuates as alliances shift and deals are made. We also have confirmation of similar operations on Hall Road in Lahore

¹⁵ For example, pirate music CDs sell for around PKR35 to 65 (US\$0.59 to 1.09) 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\$1.68 to 2.53) per unit for international motion pictures, to PKR210 (US\$3.54) per unit for Indian or Pakistani motion pictures.

¹⁶ Hasan Zaidi, *Curtains down for most cinemas in Pakistan*, June 7, 2004.

¹⁷ The professional pirates are usually situated in the ‘Urdu Bazaar,’ the market area in either Karachi or Lahore where people go to buy their school books and college texts. Purchasers routinely ask for ‘cheap’ versions of the titles in their book lists and know that they are buying pirated versions. The main book pirates are known within the trade.

¹⁸ Some commercial trade book publishers report that there has been a mild decrease in the openness, at least, of trade book piracy, with one popular retail chain in particular ceasing its dealings in pirate editions.

¹⁹ It should be noted that the potential market for elementary and high school materials in English is immense, given the sheer numbers of middle-class families in Pakistan who are sending their children to English-medium schools.

²⁰ By contrast, publishers report a high rate of legitimate sales of reference materials to libraries. This is likely attributable to the high cost of producing these materials and the relatively small market over which to spread production costs. It is simply not an attractive market for pirates.

are now able to produce better-quality copies that are difficult to differentiate from the legitimate versions.²¹ To this end, publishers are forced to employ measures such as the use of holograms to distinguish legitimate product from counterfeits. Lack of government motivation to reduce book piracy levels results in an almost total lack of prosecutions, or cases proceeding to the imposition of fines or jail time, even in cases in which pirates are arrested. Thus, there is no deterrence in the market. Piracy levels can range from 40% to 80% of the market, depending on the title, and well over 90% for the most popular titles used at universities.²²

Pakistan is quite vulnerable to the importation of pirated books from India. The existence of pirated imports, counterfeit imports, "India-only" imports, and fully legal imports (i.e., where the importer has the right to all of South Asia, including Pakistan) complicates the enforcement environment. However, it is clear that unauthorized, illegal, and counterfeit copies pose a growing threat to legitimate imports from the U.S. and U.K. As such, it is important for Pakistani Customs to equip itself to deal with such shipments, and seize pirated, counterfeit, or unauthorized copies at the borders. A recent example involved a pirated Koranic text from India imported into Pakistan; the stock was seized by Pakistani Customs and destroyed.

The government of Pakistan amended its copyright ordinance in 2000 to include an amendment [Section 36(3)] that allows a royalty-free compulsory license. This provision is clearly overly broad and violates TRIPS. Section 36.3 provides that the government can grant any "institution," including the National Book Foundation (NBF), which is part of the education ministry, reprint rights without authorization of the right holder and without royalty.²³ This amendment was passed without any opportunity for comment from publishers and threatens to further diminish a market already almost completely overrun by piracy. This royalty-free compulsory license violates TRIPS²⁴ and Pakistan must delete it.

No Improvement in Satellite/Cable or Business Software Piracy in 2004, and Emergence of Internet Café Piracy

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 U.S. 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. An emerging problem is Internet café piracy: Internet cafés operate throughout Islamabad, Karachi, Lahore, and elsewhere. However, the cafés mostly operate without licenses from right holders. The entertainment software industry wishes to work with owners of the cafés to license personal

²¹ This is further evidenced by the fact that U.S. publishers receive routine requests for free supplementary materials from professors who have apparently adopted the book, in regions where there are absolutely no legitimate sales.

²² There are even "regional" pirate editions of highly successful school books, i.e., Karachi may have one or two pirated editions, and Lahore one or two of its own. Local school texts are pirated at the rate of at least 50%, while imported college texts lose far more than this.

²³ Section 36.3 provides,

'The Federal Government or the Board may, upon an application by any government or statutory institution, in the public interest, grant a licence to reprint, translate, adapt or publish any textbook on non-profit basis.'

²⁴ It also, incidentally, may run afoul of private property rights enumerated in the Constitution of Pakistan and should be considered in light of this domestic provision as well.

computer versions of the games especially for the cafés. There also appears to be some console-based entertainment software piracy in Pakistan.

COPYRIGHT ENFORCEMENT IN PAKISTAN

The enforcement snapshot for Pakistan in 2004 is disheartening as there remains no overall Pakistani government will to address piracy. The enforcement environment remains difficult given the general social instability, 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 (e.g., the police will not undertake a raid without a complaint), forcing right holders to undertake and fund enforcement actions on their own. Nonetheless, some raiding continued on suspected locations of piracy, and there were small pockets of cooperation, for example, from the Central Board of Revenue's (CBR) export monitoring which remains fairly effective. The Pakistani government claimed that the Pakistan Intellectual Property Rights Organization (PIPPO), established in early 2004, would result in an effective interagency process led by the Ministry of Commerce to coordinate copyright, patent and trademark issues. This organization has yet to have any effect on piracy in Pakistan whatsoever. In early 2005, press reports indicated the organization was in transition and had yet to become a major anti-piracy force. Originally intended to be coordinated by the Ministry of Commerce, PIPPO has apparently become the subject of debate as to leadership among several different ministries. However, IIPA does not believe ultimately that establishing a new bureaucratic entity is likely to be the answer; what is needed is good deterrent enforcement against the key piracy problems facing the country.

Enforcement Against Optical Disc Plants Non-Existent, and Against Retail Piracy Ineffective

The year 2004 began somewhat hopefully, as U.S. pressure and an apparent recognition of the severity of the optical disc piracy problem led the Pakistani government to send warning messages in April 2004²⁵ to plant owners that enforcement would be forthcoming if they did not shut their doors. The warnings apparently worked for a time, as several plants were reported to have shifted production capacity out of the country or at least to have operated for a time at reduced capacity as a reaction to government pressure. However, with no major raids forthcoming, all ten of the current plants remain in operations (and IIPA understands that the level of well-placed persons with investments and involvement in the primary plants has made police raids nearly impossible). Similarly, while the Pakistani government took steps such as talking with chief owners at the notorious Rainbow Centre, as noted, with no raids forthcoming, the pirates quickly realized they could once again operate openly in the market without fear of punishment.

Enforcement Against Pirate Exports: Customs' Newly Invigorated Role

One bright spot in the enforcement landscape in 2004 was Pakistan's Central Board of Revenue (CBR) Directive ordering Customs officials to intercept exports at the borders (of non-

²⁵ The press in Pakistan even reported that Commerce and Trade Minister Hamayun Akhtar Khan announced on April 1, 2004 the initiation of a nationwide campaign to enforce the intellectual property rights, but no raids were forthcoming as a result of this announcement.

Pakistani repertoire).²⁶ Specifically, the June 2004 Directive ordered all Customs officers at the international airports to prohibit commercial exports of CDs and DVDs with international sound recordings, western movies and western software, by airfreight companies or as hand baggage.²⁷ The CBR directives required Pakistani Custom officers to inspect every export shipment and sign the necessary documents permitting the export of only Pakistani (regional) repertoire. Under the Directive, Karachi Customs made tens of seizures in 2004 totaling more than 300,000 unauthorized optical discs. Five customs officers at Karachi International were temporarily suspended for not complying with the directive during the summer of 2004. However these officers have reportedly been re-instated. Pakistani Customs courts have reportedly decided four export cases resulting in fines ranging from Rs5,000 (US\$84) to Rs1,000,000 (US\$16,860). However, as of late, the pirates are aggressively seeking reevaluation of the Directive, claiming the ban has resulted in “losses” of \$3 million per month (IIPA notes the \$3 million the exporters speak of is illegal revenue!).²⁸ Nonetheless, as of June 2004, reports indicated that while there were still some seizures of copyrighted materials out of Karachi, much of it was Indian music sound recordings (an estimated 60%), while the rest was a combination of games, software and international sound recordings (an estimated 40%); however, overall numbers of seizures and amount of product had fallen off precipitously.



March 14, 2004 seizures of pirated discs from Pakistan at Zaventem Airport in Brussels, Belgium by the Belgian Customs unit ZAD. Note that the seized items include Mel Gibson's "Passion of the Christ" and a compilation of three Ben Stiller movies on one DVD.

It has been reported to IIPA that corruption may have taken hold at Karachi International Airport since the CBR Directive was implemented, and that Customs agents may be being offered payments to allow pirate shipments by air-cargo' services as well as 'couriers' carrying pirated optical discs as hand luggage. In addition, increasingly, pirates are diversifying their transship points, from Dubai in the United Arab Emirates, to Belgium,²⁹ to the Netherlands, in attempts to circumvent European customs authorities and free up the piratical product

²⁶ CBR has also become involved in a more direct way, establishing IPR units within various regional Customs units. IIPA understands that CBR constituted an anti-piracy cell at the Collectorate of Customs in Rawalpindi to control the export and import of pirated and counterfeit products.

²⁷ CBR has advised industry that language in the Customs Act 1969 would be substituted with new text to prevent the export of illegal audio and video recordings (these provisions would mirror provisions already contained in the Copyright Act).

²⁸ Imran Ayub, *CD exporters seek MoC intervention to lift ban*, Daily Times, at http://www.dailytimes.com.pk/default.asp?page=story_23-10-2004_pg5_2 ("over 20 exporters of CDs and DVDs of movies, dramas and entertainment have approached the Commerce Ministry seeking its intervention to remove a ban on the export of these products ... the ban as exporters said has resulted in losses of \$3 million a month").

²⁹ Both ports of Anwerp and Zaventem Airport Customs unit ZAD have made significant seizures in 2004.

throughout the EU.³⁰ If it is true that there are irregularities, this is a major issue that must be addressed by Pakistani Customs in 2005.

Enforcement Against Book Piracy Remains Largely Self-Funded But Serious Hurdles to Good Enforcement Remain

The publishing industry, as in prior years, has largely had to self-fund any enforcement actions in Pakistan. Raids are run and pirated copies seized, leading to low-level prosecutions. However, these actions continue to fail to provide the level of deterrence needed to lower losses due to piracy. The result has been that some publishers have had to resort to inventive means to protect copyright in Pakistan, everything from using holograms to distinguish genuine from pirated/counterfeit product (although reports indicate the pirates have started importing fraudulent holograms to confuse the public further), to using unique watermarks, to physically monitoring printers near schools to avoid overruns. These measures, of course, add considerably to the cost of conducting legitimate business in Pakistan and add further insult to the piracy-laden market legitimate publishers face.

Enforcement Against Business Software Piracy Continues at a Slow Pace, and Little Done Against End-User Piracy

The business software industry continued to obtain some raids against “resellers” of pirate software and “hard-disk” loaders in 2004,³¹ but received little to no help in addressing the unauthorized use of software in businesses in Pakistan – so-called end-user piracy of business software.

Courts Still Do Not Mete Out Deterrent Results

Aside from the Customs’ record in 2004, very few raids have been carried out, and as a result, the courts have not been put to proper use in meting out deterrent penalties against copyright piracy. For example, for publishers, although the law now enables a judge to put someone in jail for 1 to 3 years, and fine them up to Rs100,000 (US\$1,680), the maximum fine that a pirate has received from prosecutions for publishing piracy was Rs15,000 (US\$253) in 2004, hardly a deterrent, and most cases resulted in far lower fines. No sentences involving imprisonments were meted out in 2004. IIPA members report that judges routinely adopt the public view of piracy as a minor offense, along the lines of a straightforward traffic offense in the U.S. Thus, punishments are often more token than effective. As noted above, IIPA advocates, among other things, minimum jail sentences/fines for crimes involving copyright infringement. Pakistani court processes are also marred by procedural hurdles. For example, court cases in Pakistan require significant documentation to support prosecutions, further delaying already slow dockets.

³⁰ In January 2005, Customs officers at Charles de Gaulle Airport in Paris intercepted two suspect shipments of pirate DVDs sent from Pakistan to companies in Paris and Reims. Over 31,000 discs were seized. According to French Customs, one of the companies had imported about 30 similar shipments from Pakistan since November 2004.

³¹ See, e.g., *Police raiders run software pirates aground*, March 20, 2004, at http://www.dailytimes.com.pk/default.asp?page=story_20-3-2004_pg7_35 (describing a Karachi police raid on five vendors selling unlicensed software, seizing 1,774 CDs and seven computers loaded with pirated computer programs); *Software pirates arrested, illegal CDs seized: BSA*, Channelnewsasia.com, June 1, 2004 (describing Karachi police raid on a pirated software seller in which two persons were arrested for breaching copyright law, 56 unlicensed CDs were confiscated and five PCs loaded with illegal computer programs were seized).

U.S. – Pakistan Trade Dialogue A Possible Conduit for Change

In 2003, USTR signed a Trade and Investment Framework Agreement (TIFA) with Pakistan. In April 2004, the first TIFA discussions were held. IIPA is heartened that copyright was apparently a key topic of discussion in this and the September TIFA meetings, and believes these dialogues hold promise for success if the Pakistani government follows through on the actions it must take to seriously impact the piracy situation there. IIPA has noted at the top of this report the many steps that need to be taken by the Pakistani government to tackle copyright piracy. The exchanges should touch upon many issues, including acknowledgement of CBR's necessarily invigorated role monitoring exports, the disturbing increase in optical disc overproduction and polycarbonate imports in 2004, the urgent need for an optical disc law, the need to immediately close the optical disc plants, the need for greater enforcement against book piracy, end-user piracy, Internet café piracy, etc., the need for criminal prosecutions focused on deterrent penalties, and IIPA's GSP petition. IIPA is hopeful that the TIFA discussions can continue to focus seriously on the list of actions which must be accomplished in order for piracy to be reduced, and for the concerns expressed in IIPA's GSP petition and this report to be addressed.

U.S. Copyright Industry Offers Significant Technical Assistance in 2004

IIPA members provided significant technical assistance in 2004 to the Pakistani government:

- Industry provided computers, printers and scanners for Pakistani Customs at the Karachi, Lahore and Islamabad airports and the Karachi port.
- Industry provided "product identification training" for Customs officers at the Karachi International airport during the week of September 27 (while the second TIFA discussions occurred).
- The record industry conducted "product identification" training for Islamabad Customs and Customs Intelligence on January 10, 2005.
- Motion picture industry representatives will conduct a re-evaluation visit to Karachi and conduct training with Pakistani Customs in February 2005.

COPYRIGHT LAW AND RELATED ISSUES

Copyright protection in Pakistan is generally provided under the Copyright Ordinance, 1962 (as last amended in 2000), which 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.³² Remaining problems in the ordinance include criminal fines that remain far too low to deter piracy, in violation of TRIPS.³³ Criminal penalties must at least be amended to include minimum fines and prison terms. The law also retains a TRIPS-incompatible royalty-free compulsory license to copy published materials which would allow

³² 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.

³³ Some industries have suggested that the minimum fine must be increased to PKR500,000 (US\$8,420).

institutions such as the National Book Foundation to copy materials without the permission of publishers.³⁴ The new section is a violation of TRIPS and must be deleted. There are 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, the WCT and WPPT, which establish the framework for the protection of copyrighted works in the digital environment, and Pakistan should quickly join 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.

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.³⁵ 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 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. Unfortunately, there has been no progress in 2004 toward passage of an optical disc regulation. IIPA understands that in recent meetings between the U.S. and Pakistani governments, the government of Pakistan represented to the U.S. government that once PIPRO is established, they will consider passage of optical disc legislation. IIPA notes that passage of this desperately needed legislation cannot wait.

Generalized System of Preferences

IIPA is heartened that, as noted above, IIPA's GSP petition against Pakistan (filed in June 2001) was accepted in June 2004 by the GSP Committee of USTR, to evaluate whether Pakistan remains eligible to retain its GSP trade benefits due to poor copyright protection and enforcement. IIPA believes that Pakistan's copyright protection and enforcement system do not meet the criteria in order to qualify for such unilaterally granted trade preferences (i.e., USTR

³⁴ The amendment created Section 36(iii), 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.

³⁵ 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.

must be satisfied that Pakistan meets certain discretionary criteria including providing “adequate and effective protection of intellectual property rights”). In addition to optical disc pirate 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. During the first 11 months of 2004, \$85.6 million of products from Pakistan were imported into the U.S. duty-free, representing 3.22% of Pakistan’s total imports into the U.S.³⁶ Pakistan should not continue to receive such favorable treatment since it fails to meet the discretionary criteria in this U.S. law.

³⁶ The total trade between January and November 2004 was almost \$2.6 billion. During 2003, the United States imported \$91.9 million worth of products into the United States duty-free, or 3.76% of its total imports to the U.S.