

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301 REPORT

INDONESIA

EXECUTIVE SUMMARY

Special 301 Recommendation: IIPA recommends that Indonesia remain on the Priority Watch List.

Priority Actions Requested in 2006:

- **Sustain Raid Efforts on Major Retail Centers and “Burning” Operations in Indonesia:** Piracy rates in Indonesia have been among the highest in the world for years. In late 2005, the Indonesian National Police ran a series of unprecedented raids aimed at the heart of retail piracy and CD-R/DVD-R “burning” in Indonesia. In 2006, the test will be whether such raids can be run on a continuous and sustained basis, to rid the most notorious pirate hotspots of piracy for good.
- **Eradicate Production of Pirate Optical Discs:** Indonesia-sourced optical discs are not only harming the domestic market for copyright products, but are landing outside of Indonesia, namely, in the Philippines, the United Kingdom and elsewhere in Europe. Now that Indonesia has an optical disc statute it believes is adequate to eradicate pirate production, IIPA urges it to take actions in 2006, including inspections, seizures of pirate goods and equipment, and prosecutions of plant owners and financiers, that will test this assertion.
- **Curb Pirate Exports:** The Directorate General of Customs & Excise has not gotten sufficiently involved with the fight against pirate exports. Customs should name and direct an IPR team of agents to track and work with other agencies to investigate organized exports of pirate goods, seeking to curb substantially the sheer numbers of pirated goods leaving the docks and ports each year.
- **Sign National IP Task Force Decree:** To ensure that adequate resources are devoted to the piracy problem on a year-round basis, the President must sign and implement the National Task Force Decree, and assign sufficient numbers of officers to tackle copyright piracy and bring piracy rates down.
- **Inspect Businesses Suspected of End-User Software Piracy:** End-user piracy of business software causes the greatest losses to the business software industry in Indonesia, and piracy rates there remain among the highest in the world. The Government recently added a provision to its Copyright Law criminalizing end-user piracy. In 2006, the Government must bring more cases, including criminal cases; legalize software usage in businesses throughout Indonesia; and improve the Government’s software asset management.
- **Address Book Piracy:** Piracy of published materials runs rampant in Indonesia, including photocopying (mainly on university campuses), print piracy, and unauthorized translations. The Indonesian Government should include in its ambit of raids photocopy shops as well as distributors of pirate offsets and translations, and should implement an approach to legitimize use of published materials at schools and universities, including directives to ensure adoption of legal textbooks.

- **Lift Market Access Restrictions:** Indonesia’s investment bans and barriers to a foreign role in creating and distributing copyright products are wholly inconsistent with the steps the regime has taken to reduce barriers to the Indonesian market generally and to respond to calls from the international community for market liberalization. They also violate Indonesia’s bilateral pledge to the United States in 1992 that direct distribution of audiovisual product would be permitted as soon as the market was opened to the direct distribution of any other foreign goods. The various stifling market access restrictions in Indonesia should be lifted.

For more details on Indonesia’s Special 301 history, see IIPA’s “History” Appendix to this filing at <http://www.iipa.com/pdf/2006SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years’ country reports, at <http://www.iipa.com/countryreports.html>.

INDONESIA										
Estimated Trade Losses Due to Copyright Piracy										
(in millions of U.S. dollars)										
and Levels of Piracy: 2001-2005¹										
INDUSTRY	2005		2004		2003		2002		2001	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Business Software ²	97.9	85%	100.0	87%	94.0	88%	109.6	89%	63.1	88%
Books	32.0	NA	32.0	NA	30.0	NA	30.0	NA	30.0	NA
Records & Music	24.5	75%	27.6	80%	44.5	87%	92.3	89%	67.9	87%
Motion Pictures ³	NA	NA	32.0	92%	29.0	92%	28.0	90%	27.5	90%
Entertainment Software ⁴	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
TOTALS⁵	154.4+		191.6		197.5		259.9		188.5	

PIRACY AND ENFORCEMENT UPDATES IN INDONESIA

National IP Task Force Decree: IIPA hopes that the President of Indonesia will shortly sign the National IP Task Force Decree, establishing an inter-departmental task force on IP enforcement made up of representatives of the Directorate General of IPR, Ministry of Trade, the Police, Customs and the Attorney General’s office. This Task Force would hopefully ensure that adequate resources and manpower (such as that needed for the raids described immediately below) are devoted to significantly reducing piracy in Indonesia in 2006.

Recent Campaign on Retail Malls Meets Success, Massive Seizures: Beginning in November 2005, the Indonesian authorities began what appears to be the first serious effort to

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2006 Special 301 submission at www.iipa.com/pdf/2006spec301methodology.pdf.

² BSA’s 2005 statistics are preliminary. They represent the U.S. publishers’ share of software piracy losses in Indonesia, and follow the methodology compiled in the Second Annual BSA/IDC Global Software Piracy Study (May 2005), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA’s 2004 piracy statistics were preliminary at the time of IIPA’s February 11, 2005 Special 301 filing; the 2004 data has been revised and is reflected above.

³ MPAA’s trade losses and piracy levels for 2005 are available for a limited number of countries and are based on a methodology that analyzes physical or “hard” goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As loss numbers and piracy levels become available for additional countries at a later time, they will be posted on the IIPA website, <http://www.iipa.com>.

⁴ 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.

⁵ Total losses due to piracy of records & music, business software, and books was virtually unchanged, from \$159.6 million in 2004 to \$154.4 million in 2005.

tackle piracy in Indonesia in many years. The high profile and highly “secured” Ratu Plaza and Mangga Dua malls in Jakarta were both raided on the same day with each raiding party comprising around 50 officers (a much more significant show of manpower than is normally the case). As is usually the case in Indonesia, information of the raids had leaked and, as a result, the shops and counters were not staffed upon arrival. However, the Indonesian Police actually opened the shops and counters and seized the goods without the presence of the owners – an unprecedented act in Indonesia. Close to one million pirate optical discs were seized in these two operations. A few days later, the Police raided Glodok, the largest distribution center in Jakarta and one that is notoriously difficult to raid, seizing around 300,000 pirate optical discs. IIPA understands that these and some raids on “burning” operations (detailed below) were the result of instructions from highest levels of the Indonesian National Police. The Police have since given right holders assurances that raids will be ongoing in 2006 and will be followed by prosecutions. It is hoped that this reflects a real sea change from the sporadic enforcement efforts of the past few years. Whether further raids promised against Ratu Plaza and Mangga Dua proceed will be a good indication of the veracity of these claims, as past history has shown that once raided, targets become even harder to raid again due to increased “interference.” Raids are now scheduled for mid-February 2006 as pirate activity has recently picked up.

IIPA understands that the President of Indonesia will shortly issue a decree establishing an interdepartmental task force focused on IPR enforcement. The force is likely to consist of representatives of the Directorate General of IPR, the Ministry of Trade, the Police, Customs and the Attorney General's office. IIPA looks forward to learning more about this task force, its goals and its actions.

Breakthrough on Criminal Cases Out of Retail Raids, Book Piracy: It is hoped that the raids described above will be followed by swift prosecutions leading to the imposition of deterrent sentences on key pirate operators. In 2004 and 2005, industry has been heartened by what it sees as an increased recognition that raiding alone is not enough, but must be followed by swift and effective prosecutions in order to create deterrence and drive piracy levels down. For example, the business software industry has seen several of its cases proceed to criminal prosecution and conviction.⁶ Five convictions were achieved in October and November 2005 as a result of retail raids run in Jakarta in February 2005 on ITC Cempaka Mas, Ambassador Mall, and Mangga Dua Mall, with unsuspended sentences ranging from ten months imprisonment (Cybershop Mangga Dua Mall, which is on appeal), two years imprisonment (owner of Meteor Disc store, ITC Cempaka Mas), to three years imprisonment (Luis Mauwa, owner of store in ITC Cempaka Mas). These cases represent a welcome development in that they are custodial sentences, not suspended, and that the prosecutions were concluded in a reasonably short time. In one of the few cases brought against book piracy in Indonesia,⁷ a defendant was convicted on September 12, 2005 for pirating books (in a case dating back to October 2003) of six local publishers and one international publisher and sentenced to 30 months imprisonment. The defendant has appealed. IIPA is hopeful that if raiding and prosecuting continues at this pace, and with these levels of penalties, piracy rates may begin to decrease in 2006.

Optical Disc Piracy, Both Factory-Produced and “Burned”: IIPA understands there remain at least 29 plants mass-producing optical discs in Indonesia, with a minimum estimated

⁶ Cases arising from retail raids in Mangga Dua and Harco Malls in February 2004 resulted in six convictions between December 2, 2004 and January 10, 2005, all resulting in sentences of one year imprisonment (suspended for two years probation).

⁷ *In re Parlin Marbun.*

100 production lines for VCDs, DVDs, CDs, and CD-ROMs of all kinds of copyright materials.⁸ Total annual disc capacity in 2005 can be estimated at over 300 million discs. There are at least six plants (three registered) in Indonesia with “stamper” manufacturing facilities (a key production part needed to mass-produce optical discs that contains the copyright content and therefore must be covered in laws, optical disc regulations, and be subject to seizure). Indications suggest that in 2004, some factories relocated from Malaysia to Indonesia, mainly in the Jakarta area, but also in Surabaya and Batam. The result of all this factory production is that, in addition to local consumption of pirate factory-produced discs, Indonesia remains an export base for pirate CDs, VCDs, and DVDs. Pirate product sourced from Indonesia was found in 2005 in the Philippines, Australia, Hong Kong, Belgium, Denmark, Norway and the United Kingdom. Local “burning” of pirate product onto recordable discs is also becoming an increasing concern.

There have reportedly been some enforcement actions/inspections conducted at ten plants in 2005, reportedly seizing at least two lines.⁹ Charges have been laid in some cases, but there have been no prosecutions as yet. Results were better in terms of dealing with pirate “burning.” In late November 2005, the Jakarta Metropolitan Police raided a highly sophisticated burning operation, seizing 28 stack burners and over one million burned discs, the majority of which were pirate copies of U.S. motion pictures. This demonstrates both the magnitude of the optical disc piracy problem in Indonesia, and that deterrence will be virtually impossible to achieve without more raids and more criminal prosecutions in the area of production as well as those stemming from the retail piracy trade. Activity in Jakarta against plants is pushing some factories out into other regions.

Significant Levels of Signal Theft Piracy: The cable and satellite television industry in Indonesia remains in its infancy in part due to significant levels of piracy. Industry analyst Media Partners Asia estimates that there are twice as many homes receiving illegal pay television as there are receiving legal services (150,000 legal versus at least 300,000 illegal as of December 2004). Anecdotal industry estimates are an order of magnitude higher, incorporating many subscribers using decoder boxes from overseas to receive programming, including the programming of U.S. companies, without authorization. The government passed its Broadcast Law in November 2002, governing terrestrial, and cable and satellite subscription television, and paving the way for creation of an Independent Broadcast Communication (KPI) which began functioning in December 2003. Both the Broadcast Law and the Copyright Law of 2002 provide a degree of protection for broadcast signals. Enforcement to date, however, has been virtually non-existent. There are reports that the KPI is considering the initiation of anti-piracy programs and enforcement actions but no enforcement action, has been taken thus far.

End-User Piracy of Business Software: Unauthorized use of business software in businesses causes the greatest losses to the business software industry in Indonesia, and piracy rates there remain among the highest in the world (only China and Vietnam are higher of relatively major markets). While the Government is very responsive to the software industry’s needs for raids against suspected pirate end-users, and as noted above, has run some

⁸ Department of Industry (DOI) figures indicate that 22 plants have been identified, comprising 3 mastering facilities and 19 replication plants. Seven plants had SID code allocation through IFPI/Philips prior to the passage of the Optical Disc Act, five more have been allocated SID codes by the DOI; and a further thirteen applications were being processed as of January 18, 2006. There is no certain indicator of the number of replication lines but exemplars have been recently collected from 5 plants which have between them 34 injection molding machines. One licensed plant alone has 19 replication lines with a projected output of 6 million CD-Rs per month (72 million/year) in full production.

⁹ It has been reported in local newspapers that a four line VCD factory in Bogor was raided by local police in November 2005. Also, it appears the Metro Polda police raided a factory in November 2005.

unprecedented retail raids in 2005, the limited number of criminal prosecutions in this area and the sheer size of the problem have made it difficult to bring piracy rates down significantly. The Copyright Law now criminalizes end-user piracy, and four end-user raids, against targets provided by the Business Software Alliance, have been conducted by the Police since September 2004. However, given the size of the problem and the indiscriminate use of licensed software in the workplace, the deterrent impact has been negligible. A high profile conviction in such a case in 2006 would help to send a strong message to the business community.

Book Piracy Still Severe: Book piracy remains widespread in Indonesia, consisting of photocopy shops in and around universities (copying English language teaching materials, reference books, and computer-related volumes), and commercial offset printing operations throughout the country, including some that produce and market illegal reprints or unauthorized translations of U.S. books. Disturbingly, in 2004, the Indonesian Army announced an initiative to offer unauthorized electronic versions of books in Indonesia, which would be blatantly illegal.¹⁰ There were no large-scale raids against pirates of published materials, although there was one encouraging conviction (discussed above). The Government of Indonesia needs to add commercial printers and photocopy shops to those targeted for immediate enforcement and follow up prosecutions. The Ministry of Education and Culture must get involved to direct universities to use only legal copyright materials. Most universities in Java condone students and libraries buying pirated copies and photocopying them. Photocopy kiosks litter the areas around major universities such as Bandung Technology Institute, Parahyangan University and Padjajaran University. In addition to these street stalls and copyshops, mainstream bookselling chains such as Gramedia and Gunung Agung are in some cases openly stocking pirated books. The Pondok Indah mall in Jakarta is well known for featuring pirate sellers.

Internet Piracy Emerging: Internet piracy remains in its relative infancy in Indonesia, although the number of users has grown nine-fold (from 2 million in 2000 to 18 million today). Broadband penetration is still low, so most usage is through Internet cafés and purchasing hard goods from websites advertising pirate “burned” discs. Nonetheless, the business software industry noted a significant upward trend in piracy, detecting 328 software infringements online in 2004, and 594 by October 2005, representing 117% growth year-on-year. IIPA is encouraged by reports that the Police have taken actions against two “advertising” sites in 2005. These two raids resulted in seizure of 6,700 pirate DVDs, two PCs, a printer and Internet modem.

Positive Development on Government Legalization: The business software community received good support from the Government to legalize software usage within Indonesian Government ministries and is to be commended for its efforts in this regard.¹¹

TRAINING AND PUBLIC AWARENESS

The copyright industries participated in various training and public awareness activities in Indonesia:

¹⁰ The Indonesian Army Headquarters has reportedly decided to scan books without permission or regard to any royalty structure. The Army needs to comply with the law and seek licenses in order to engage in the activity it is planning.

¹¹ *Bisnis Indonesia*, November 22, 2005, reported, [T]he government's IT expenditure for hardware and software reached Rp528b [US\$57.2 million] this year and was distributed to 67 departments or non-departmental government institutions all over Indonesia. The Director of Electronics and Information Technology Center for BPPT Sulistyو Suhwardi had previously said that as much as 90% of PCs in government institutions use pirated software.

- The Motion Picture Association has been active over the years in providing training to enforcement authorities. In 2004 and in particular 2005, extensive training was provided (in association with other trade associations) for the optical disc monitoring and inspection teams.
- The International Federation of Phonographic Industries conducted five training sessions in 2005, and two thus far in 2006. IFPI also is due to participate in two additional training sessions funded by USAID in February 2006.
- The Business Software Alliance (BSA) launched a “hotline” to report end-user software piracy in March 2005. The response was overwhelming with nearly 500 leads being received by the end of the year. The Government of Indonesia has been supportive of this effort.
- The BSA held a “software asset management” seminar in Jakarta (supported by the Indonesian Directorate General of IPR) on August 25, involving 324 participants from 249 companies. The event featured a keynote by Mrs. Halidah Miljani, Expert Staff of the Ministry of Trade, and Abdul Bari Azed, Director General of intellectual Property Right Indonesia.
- The BSA conducted training for the Indonesian Police Department in Bali from November 24 to 26 for police officers from all over Indonesia on issues relating to investigating and prosecuting instances of software piracy.

MARKET ACCESS BARRIERS

Trading and Distribution Rights, and Media Investment Ban: Indonesia maintains a blanket prohibition on foreign company participation in, or even investment in, importation, direct distribution, exhibition, or retailing in most copyright products in Indonesia. Presidential Decree 118 of 2000 remains in force and stipulates that all importation and distribution of films and video product be restricted to wholly-owned Indonesian companies. An annexure to the Decree lists those media sectors that are closed to foreign investment, including:

- Radio and television broadcasting service providers, radio and television broadcasting subscription service providers and print media information service providers;
- Film making businesses, film technical service providers, film export and import businesses, film distributors and movie houses operators and/or film showing services.

However, the Broadcast Law allows foreign ownership up to a 20% cap. As a law, this will override a Presidential Decree. It is believed the draft Film Law also contains a 20% foreign ownership cap.

Broadcast Law: As reported in previous years, the “Broadcast Law”¹² would, among other things, ban the broadcast of most foreign programming in Indonesia.¹³ The Independent Regulatory Commission (KPI) created by the new Broadcast Law has now been installed and

¹² Law of the Republic of Indonesia, No. 32 Year 2002, Regarding Broadcasting (into force February 2003).

¹³ Specifically, the law requires that private broadcasting institutions be established initially without any foreign investment. Subsequent foreign investments can then be made, but only up to a 20% ownership cap shared by a minimum of two shareholders. Additional restrictions in the draft legislation include: (1) a restriction on foreign managers, (2) cross ownership limitations, (3) a local content quota of 60% on broadcast television and 10% on pay-television, (4) a 30% dubbing quota on foreign programs, (5) advertising limits of 20% of total broadcasting time for private broadcast stations and 15% for public stations, and (6) a total ban against the establishment of foreign broadcast institutions in Indonesia.

has issued implementing regulations, but a competing set of regulations was issued by the Ministry of Communication and Information Technology (Kominfo), and the latter are being challenged as unconstitutional by KPI.¹⁴ Support from members of Parliament for KPI's position is believed to have led to the postponement and likely amendment of the regulations. Even with KPI's regulations, the law is onerous and the various market access restrictions should be lifted. IIPA understands that the Kominfo regulations were scheduled to be finalized after consultation with KPI by February 2006, but at the time of writing, their status was unclear. IIPA will be monitoring this situation closely.

Film Law: It is believed a draft Film Law was submitted to Parliament for consideration in December 2005. Industry has not been able to view this draft and indications that it contains screen quotas and limits on foreign participation in the film industry, among many other market access restrictions are of real concern.¹⁵ It is also highly unfortunate that the government advisory board on Film Issues, the BP2N, which has been tasked with this law, did not consider the views of foreign film producers or related associations' views in their discussions. It is suspected that this draft will follow the Broadcast Law and limit foreign participation to 20%.

COPYRIGHT LAW AND RELATED ISSUES

Previous years' reports have gone through in detail the legislative landscape in Indonesia. The following is intended to provide a summary of latest developments only.

Copyright Law: In addition to the improvements proposed in previous reports to the Law of the Republic of Indonesia, Number 19 Year 2002 Regarding Copyright (Copyright Law) (effective July 29, 2003),¹⁶ draft "rights management information" (RMI) regulations were

¹⁴ Of concern to foreign broadcasters is that the Kominfo regulations, issued on November 16, 2005, are reported to have a number of negative features, possibly including a "made in Indonesia" requirement for pay-TV advertising. Article 24(5) of Government Regulation of the Republic of Indonesia No. 52 of 2005 Regarding Broadcasting Provided by Subscriber Broadcasting Institutions requires advertising to use a "domestic resource," although it is not clear if this requires the advertising to be made in Indonesia (e.g., it may simply mean Indonesian talent or resources had to be used). Art 24(6) requires foreign advertising to be replaced by domestic advertising, and cross-media and foreign ownership restrictions.

¹⁵ The draft was expected to install an Independent Film Commission made up of local members, and set import and screen quotas, higher entertainment taxes on film admissions to imported films, requirements that all prints be made locally, and possible restrictions on foreign direct investment in the film industry. In addition, under the draft, it was reported that only local Indonesian companies would be permitted to operate a "Film Business" or a "Film Professional Service." Another provision of the draft apparently provides that film businesses are "obliged to use national potential to the maximum limit while paying attention to the principles of efficiency, effectiveness and quality." The draft also apparently specifies that only national film companies would be permitted to make film commercials, that imported films are expected to be supplementary to national product and imports should be "in proportion to local production," and although the existing film law permits films approved for all ages to be dubbed into Bahasa Indonesian, the new draft would apparently prohibit any form of dubbing except for educational, research, or information purposes, and require that all films be subtitled in Bahasa Indonesian.

¹⁶ The key improvements recommended include but are not limited to the following:

- Extend the term of protection for all protected materials, to life plus 70 years for works, and 95 years from publication for producers of sound recording.
- Confirm protection for pre-existing works and sound recordings (and performances).
- Confirm that the right of "publication" satisfies the WCT Article 8 requirement with regard to communications to the public and the "making available" of works, and afford a WPPT-compatible right including the "making available" right to right holders in sound recordings.
- Delete the compulsory translation and reproduction license which does not meet the requirements of the Berne Convention (and therefore violates TRIPS Article 9).

apparently finalized but were not issued in 2005,¹⁷ but implementing regulations regarding technological protection measures (TPMs) (as covered in Article 27 of the Copyright Law) are still badly needed.¹⁸

Inadequate Border Measures: Indonesia's border control measures leave serious gaps that must be filled to ensure that Indonesia provides TRIPS-compatible protection. The 1995 Customs Law established a judicial seizure system and allowed for *ex officio* action, but no implementing regulations ever followed passage of the law. Seizures are occasionally made on the basis of an incorrect declaration or under-declaration. Draft regulations went out to industry for comment in July 2001, but there has been no reported further progress toward issuance of regulations since then. Recently, the Ministry of Finance indicated that steps were being taken to revamp the existing Customs Law. Since export of pirate discs is such a crucial issue for right holders, IIPA is hopeful that the Government will share a draft for comment.

Electronic Information and Transactions Bill: The "Draft of the Law of Indonesia, No. __, Year __, Regarding Electronic Information and Transaction" has been submitted to the Indonesian National Assembly (DPR) for debate. The Bill represents an essential component of the broader vision to address ICT needs under the "Government of Indonesia's Five-Year Action Plan to overcome the Digital Divide for the Development and Implementation of Information and Communication Technologies (ICT) in Indonesia" of May 2001. The Bill focuses mainly on electronic transactions and digital signatures, but contains, in Article 24, the general provision on copyright, "Electronic information composed in an intellectual creation, internet website design and intellectual creation contained within, are protected as an Intellectual Property Right, based on prevailing law and legislations." It is unclear whether a separate cybercrime bill will be considered, but if not, then a provision which essentially implements the copyright provision of the Council of Europe Cybercrime Convention should be added.¹⁹

OD Regulations Enter Into Force: On October 5, 2004, outgoing Indonesian President Megawati Soekarnoputri signed the "Government Regulation Number 29 of 2004 Concerning High Technology Production Facilities for Optical Discs." The Regulations entered into force on April 5, 2005. With Indonesia fast becoming an export base for pirated optical discs, the successful enforcement of these regulations is crucial to reducing endemically high piracy levels

-
- Delete Article 18(1) which appears to amount to an a statutory license for "publication of a work" by the Indonesian government "through a radio, television broadcast and/or other means," which goes beyond what is permitted by TRIPS and the Berne Convention.
 - Provide minimum level punishments including mandatory jail time, which would create a true deterrent effect.

¹⁷ The 2004 proposed RMI Regulations we reviewed appeared successful at implementing the RMI provision in the Copyright Law (Article 25). The stated "purposes" of RMI in the new draft include "Maintain[ing] the access control and the using of Work" as well as "Manag[ing] every access, the using, and integration of protected Work." Essentially, Article 4(1) of the draft Regulations identify two infringements of "The Management Information of Author Rights": "Destroy[ing] or chang[ing] The Management Information of Author Rights without any permission from the Author"; or "Distribut[ing], import[ing] to distribut[e], announc[ing], or communicat[ing] to the society upon a certain Work, or multiplication result that the Management Information of Author Rights has been changed or eliminated without any rights."

¹⁸ The April 2003 Report indicates that

The Law No. 19 does not provide detailed provisions on the safeguard of technological measures.

Rather, such provisions have been accommodated by Law Number 14 of 2001 regarding Patents.

We are unaware of any articles that deal with TPMs in the Patent Law.

¹⁹ Article 10 of the Council on Europe Cybercrime Convention (Sept. 10, 2001) provides that a party to the Convention will "establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system."

in Indonesia and contributing to a reduction elsewhere in Southeast Asia. The Regulations allow the Government to inspect, to seize suspected pirate goods and tools and implements used to produce them, and to prosecute plant owners for violation of the Regulations or other laws (e.g., the Copyright Law). Nonetheless, IIPA notes the severe shortcomings in these Regulations:

- No centralized licensing of prerecorded or blank optical discs.
- Requires imported pre-recorded discs to be marked with identification code, which violates GATT/WTO rules and could have other negative ramifications.
- Does not adequately cover stampers and masters, e.g., it is not clearly stated that penalties specifically apply against illegal stampers or moulds alone.
- Does not expressly cover exports of discs, equipment and raw materials.
- Does not expressly prohibit unlawful uses/manipulation of identification code.
- Does not expressly authorize forcible entry in an inspection.
- Does not require the government to keep records of “permits” and raids run.
- Does not provide for plant closure (although IIPA understands that since business licenses can be revoked, technically, factories cannot operate without the license).
- Does not expressly impose corporate liability on individuals.

Two Ministerial Decrees were issued by the Minister of Trade and Industry, one relating to the importation of machinery, raw material, and optical discs,²⁰ and another on reporting by registered producers.²¹ The former sets forth requirements as to the importation of optical disc production machinery, raw materials (optical grade polycarbonate) and, unfortunately, finished discs (in addition to blank discs). It is feared that this importation Decree will thus be used as a tool to keep legitimate copyright owners or authorized distributors from importing discs into Indonesia.

Generalized System of Preferences: Indonesia currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program which offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provides “adequate and effective protection for intellectual property rights.” In 2004, nearly \$1.3 billion worth of Indonesian goods (or 11.9% of Indonesia’s total imports to the U.S.) entered the U.S. under the duty-free GSP Code. During the first 11 months of 2005, \$1.4 billion worth of Indonesian goods (or 13.0% of Indonesia’s total imports to the U.S.) entered the U.S. under the duty-free GSP Code. Indonesia’s failure to address effectively the endemic problem of copyright piracy creates serious questions about whether it meets the criteria for continuing favorable treatment under the GSP program.

²⁰ Regulation of Minister of Trade of the Republic of Indonesia 05/M-DAG/PER/4-2005 (May 2005) (which repealed Ministerial Decree of the Minister of Trade and Industry of Republic of Indonesia, Number 645/Mpp/Kep/10/2004 (October 18, 2004), Regarding Stipulations on Importation of Machinery, Machine Equipments, Raw Material and Optical Disc.

²¹ Ministerial Decree of the Minister of Trade and Industry of Republic of Indonesia, Number 648/Mpp/Kep/10/2004 (October 18, 2004), Regarding Reporting and Monitoring of Optical Disc Industrial Company.

THIS PAGE LEFT BLANK INTENTIONALLY.