

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301 REPORT

MALAYSIA

EXECUTIVE SUMMARY

Special 301 Recommendation: Malaysia should be maintained on the Watch List, and an out-of-cycle review should be conducted to evaluate whether the Government of Malaysia has taken steps sufficient to monitor and significantly decrease pirate production in licensed as well as unlicensed facilities; reduce the number of pirate exports, with special focus on entertainment software; and adequately enforce against piracy for the domestic market, including book piracy in the form of illegal commercial photocopying.

Priority Actions Requested in 2006:

- **Close Licensed (and Unlicensed) Facilities Engaged in Piracy, and Bring “Recordable” Plants into the Fold:** Pirate optical disc production continues in licensed as well as unlicensed factories. The Government has done a good job shutting down plants engaged in piracy, but must do more against licensed facilities known and suspected to be doing so. Plants found to be engaged in pirate production or mastering must not be given second chances. Finally, plants producing “recordable” discs or extending “recordable” facilities must provide exemplar discs and otherwise be subject to the optical disc laws. Inspections must continue, including off-hours and off-site inspections, since stamper, masters and other evidence are sometimes removed prior to the raids. The Ministry of Domestic Trade and Consumer Affairs (MDTCA) must allow for more extensive use of forensic testing.
- **Continue to Increase Seizures of Pirate Exports at the Border, Focusing on Entertainment Software:** The Malaysian Government indicates that it doubled seizures of pirate product destined for export in 2005, to over 700,000 discs. If true, this is a worthy accomplishment, but more must be done, especially since the entertainment software industry reports no improvement for their industry. The Government must continue to aggressively intercept pirated products/materials at the borders (KLIA, Penang, Johor Port, etc.), with special focus on eradicating export of pirate entertainment software. It must also enhance monitoring of exports, and take measures to address problems of false documentation, a regular occurrence in exports originating from Malaysia. The Government should maintain cooperation with Malaysia Airlines Cargo, purchase more x-ray scanners and like equipment, and establish a government reward scheme for targeting export syndicates.
- **Tackle Internet-Based Piracy:** Internet piracy, in the form of P2P file-sharing and Internet cafés facilitating online infringements, is on the rise. The Government should take broader action to address Internet piracy, including expediting drafting/consideration of copyright law amendments to enhance and facilitate online enforcement. Piracy at Internet cafés continues to be problematic; the Government should conduct more inspections for copyright (and other license) compliance, and shut down those establishments found to be engaged in illegal activities.
- **Stop Illegal Photocopying:** The principal problem book publishers face in Malaysia is massive illegal photocopying in and around university campuses. The MDTCA has been cooperative, but officers lack training needed to effectively handle raids, decide on seizures,

track and act against underground operations, and protect right holders (who were being asked to give copies of their national ID cards to infringers).

- **Take Stronger Steps to Deter End-User Piracy of Business Software:** Unlicensed use of software in the workplace causes the greatest revenue losses to the business software industry. The MDTCA conducted 12 end-user raids in 2005, representing only a small fraction of the number of companies using pirated or unlicensed software. Thus, there is little deterrence against this highly damaging activity in Malaysia. The Government needs to do more.
- **Prosecute More Cases, Including Factory Cases; Establish Specialized IP Courts and Special IP Unit of Prosecutors:** In general, there remains a significant divergence between the number of raids being carried out and the number of cases being processed through the courts in Malaysia (e.g., against distribution warehouses, factories, pirate photocopy shops, etc.). MDTCA appears to understand the problem, and has indicated a desire to commence a Special Intellectual Property Court in 2006, which it is hoped would greatly ease the burdens imposed on right holders due to current court delays and other difficulties. The MDTCA has already established a specialized prosecution unit (although the number of deployed officers needs to be substantially enhanced) and the Attorney-General's Chambers has dedicated officers to handle IP crimes. However, what is needed is a specialized legal academy, allowing staff in both the MDTCA and Attorney-General's Chambers to be properly trained in IP prosecution. The Government should additionally issue sentencing guidelines to ensure imposition of deterrent sentencing.
- **Address Organized Crime/Use All Available Forensic Techniques:** The Government has never adequately addressed the linkage between piracy and organized crime. In addition, despite the availability of sophisticated forensic techniques, the Government has been reluctant to use forensics except in some straightforward kinds of cases (smaller retail cases). Such forensics should be used in all cases, especially optical disc factory cases and cases involving large seizures of pirated products at retail locations, where forensics can identify the source of production. IIPA recommends the re-establishment of the Special Copyright Task Force to ensure proper resource allocation to tackle all forms of piracy, including coordinating the fight against organized crime and factory piracy.
- **Amend/Modernize Copyright Law, Optical Disc Law:** The Malaysian Government should modernize its Copyright Act, including fully implementing the WCT and WPPT (the WIPO "Internet" Treaties), and joining these treaties to provide adequate protection of copyright. Legislative changes should also facilitate enforcement in the digital environment, including, *inter alia*, by extending and/or clarifying mall owners' liability for the rampant trade of pirated products that still occurs within many commercial buildings. The Optical Media Act is also in need of modernization to address the changing situation in Malaysia, including, *inter alia*, the need to (1) prohibit the gouging of SID code from discs; (2) ensure that inspection authority is available and used at any time, day or night, and in any place where optical media production activity may be occurring; and 3) prohibit the unauthorized "burning" of content onto recordable discs. The Government must be discouraged from adopting levies against foreign films (such as those proposed by the Minister for Culture, Arts and Heritage) that would violate Malaysia's WTO obligations. Finally, the Government should pass anti-camcording legislation making the possession and/or use of recording equipment and devices in movie theaters a crime (theft of film prints is also a problem and, if not already dealt with in the law, should be prohibited).
- **Allow Right Holders to Access Criminal Files to Initiate Legal Actions Against Infringers:** The Copyright Act is interpreted in a way that impedes the ability of injured right holders to take civil actions based on evidence seized by MDTCA, even in raids run pursuant to complaints by rights holders and undertaken with the support of right holders'

representatives. It is vital that the law on this point be clarified in a way that allows right holders access to, and examination of, evidence which in many cases will be critical to support a civil claim.

For more details on Malaysia's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2006SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years' reports at <http://www.iipa.com/countryreports.html> for more detailed discussion of the situation in Malaysia, particularly as to what is needed legislatively.

MALAYSIA										
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
Records & Music	38.8	49%	55.5	52%	40.0	45%	110.2	70%	148.9	70%
Business Software²	75.1	60%	73.0	61%	77.0	63%	79.2	68%	75.0	70%
Entertainment Software³	23.4	91%	12.9	91%	NA	90%	NA	NA	56.4	93%
Books	10.0	NA	10.0	NA	9.0	NA	8.3	NA	8.2	NA
Motion Pictures⁴	NA	NA	36.0	50%	38.0	50%	42.0	75%	40.0	80%
TOTALS⁵	147.3+		187.4		164.0		239.7		328.5	

PIRACY AND ENFORCEMENT UPDATES IN MALAYSIA

Pirate Production Continues in Licensed and Unlicensed Plants, Despite Government Efforts: Malaysian optical disc manufacturers, both underground and licensed, continue to press infringing discs for domestic and international consumption. There are 38 licensed factories and an unknown number of underground factories (at least three, for a total of 41 known plants). The licensed factories alone contain enough production lines to produce over 300 million discs per year. This disc production over-capacity presents enormous challenges to the Malaysian Government, both in terms of saturation of the domestic market by pirate product, but, more damaging, massive export piracy.

The Government of Malaysia made further strides in 2005 tackling pirate optical disc production in underground factories, resulting in decreases in the numbers of pirate music and motion picture discs produced in Malaysia for export. However, the entertainment software industry notes that pirate exports of its products have not decreased. Unfortunately,

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 Malaysia, 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 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 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>.

⁵ Total losses due to piracy of records & music, business software, entertainment software, and books remained virtually the same at \$151.4 million in 2004 to \$147.3 million in 2005.

notwithstanding the closure of five licensed factories in 2005, several licensed facilities known to have engaged in pirate production continue to operate with impunity.⁶ These known entities must be a focus of attention for the Malaysian Government in 2006. The Malaysian Government has reported that in 2005, MDTCA successfully shut down seven factories, and industry is aware of five license revocations. In the factory raids, as in previous years, MDTCA has successfully seized equipment including machinery used in the pirate production.⁷ Significantly, in March 2005, the first successful raid was carried out on an unlicensed mastering factory, the culmination of a four-year investigation into Malaysia's largest pirate audio manufacturing and distribution syndicate. However, industry has since been informed that pressure from elements within the Prime Minister's office are pushing to have the facility's equipment returned and a license issued. If this is the case it would mark a low point in MDTCA's enforcement action and Government/industry efforts to promote and support the legitimate manufacturing industry. In addition, only three licensed plants have been charged for any offense since January 2004.⁸ Of particular concern are the Pioneer Solution and Universal Fitlink plants, which have seen no inspections to date despite numerous complaints. The failure to prosecute plant owners in all cases, and especially, any signs of backsliding with respect to Malaysia's largest pirate audio manufacturing and distribution syndicate, contribute to a continued lack of deterrence against this damaging form of piracy.

It is also essential in 2006 that MDTCA ensures that any plants which indicate that they are producing on "recordable" discs (CD-R, DVD-R, etc.), or existing plants requesting licenses to acquire or expand recordable production, be fully subject to the licensing regime. Exemplars from all such plants/lines must be provided for production (even recordable-only plants). Evidence has emerged regarding pirate pre-recorded production at such plants (e.g., MDTCA inspected a licensed recordable plant, H.I.Edar, in February 2004, finding 13 film stampers and 4,000 pressed titles). Reportedly, on January 17, 2006, MDTCA raided another recordable-only facility, resulting in clear evidence of content bearing pirate disc production. Standardized exemplar collection from all optical disc manufacturing facilities, irrespective of format, is needed.

Pirate Exports of Entertainment Software Still a Problem, Despite Increased Seizures for Other Industries: Pirate entertainment software products continue to be exported out of Malaysia at a furious pace, notwithstanding Government reports that MDTCA had seized double the number of discs destined for export in 2005 than in the previous year – over 700,000 discs.⁹ As MDTCA itself indicates, "[t]he bigger haul was due to the effort of a special enforcement unit set up in April last year, to focus specifically on pirated films and music destined for export to other countries." MDTCA's statement is tellingly silent on seizures of

⁶ The recording industry reports that its forensic lab in London has matched pirate product against 15 licensed Malaysian plants (including separate premises owned by the same company) with criminal complaints lodged against 12 since 2002.

⁷ For example, in seven successful raids the record industry participated in against unlicensed pirate optical disc factories (as well as one mastering factory) from January to April 2005, a total of six CD/VCD lines and three DVD lines were seized, as well as one mastering line.

⁸ Optical Disc Tech (MDTCA ref ACO1/04[NS]), H.I.Edar (ACO1/04[KAJ], and Multimedia Commerce (AHC45/04[KKB]).

⁹ Ministry of Domestic Trade and Consumer Affairs (MDTCA) enforcement officers indicated that in 2005, they had seized 702,369 CDs and VCDs destined for export (worth RM5.88 million) (US\$1.6 million), more than double the cache seized in 2004. Deborah Loh, *Crackdown on VCD Piracy Showing Results*, New Straits Times, February 4, 2006 (quoting MDTCA Director-General of Enforcement, Datuk Abdullah Nawawi Mohamed). See also *More Pirated Discs Being Exported*, The Star Online, at <http://thestar.com.my/news/story.asp?file=/2006/2/5/nation/13299803&sec=nation> (indicating that the latest major seizure took place on January 26, 2006 at KL International Airport involving 24,000 pirate DVDs destined for export to the United Arab Emirates and Jordan).

pirate entertainment software destined for export. Malaysian sourced pirated entertainment software continues to be shipped from Malaysia literally all over the world, to neighboring markets (e.g., Thailand, the Philippines and New Zealand); Europe (Belgium and Germany); the Middle East; South Africa and elsewhere in Africa; Latin America; and even the United States.¹⁰ Thus, the Government must redouble its efforts in 2006 to significantly reduce pirate entertainment software exports.

Book Piracy: The principal problem book publishers face in Malaysia is massive illegal photocopying in and around university campuses. Dozens of shops line each campus, and most academic buildings at universities contain shops. Despite regular cooperation between book publishers and MDTCA, the problem has gone largely unchecked, especially at on-campus facilities.¹¹ Furthermore, as the off-campus shops have gone underground, the problem has become harder to detect. Shops will often set up facilities in monitored residential areas, where a front guard can warn pirates of incoming authorities. While MDTCA is well-intentioned (taking raids against commercial photocopy centers near university campuses, especially in the Klang Valley), they need training on how to track and deal with such underground operations, including consistent instructions from superiors to MDTCA officers on how to handle raids, decide to seize, and protect right holders (who, e.g., are inappropriately being asked to provide copies of their national ID cards to the targets of raids). Other structural difficulties include that there have been no *ex officio* actions taken to combat book piracy, and MDTCA has not, to date, conducted raids at night (although we are hopeful that ongoing talks with industry on this issue will result in night raids in the near future). In addition, the universities and educational authorities (Ministry of Education) must become more engaged, especially regarding practices of on-campus facilities.

End-User Piracy: The unauthorized use of copyrighted software in businesses — end-user piracy — is an increasing global problem, including in Malaysia, and causes the greatest losses to that industry. In 2005, MDTCA conducted the most end-user raids for a single calendar year, conducting 12 end user criminal raids and 8 retail raids by the end of October 2005. In the course of the raids, 125 computers were seized (with an estimated value of RM375,000 – US\$100,540), along with the discovery of more than 41,000 copies of suspected pirated and unlicensed software worth an estimated RM98.6 million (US\$26.4 million). In addition, 2005 saw the first-ever criminal end-user conviction in a contested case that went through a full trial (detailed further below). However, the conviction is now on appeal, a process that often takes a year or more. The software piracy rate in 2005 of 60% remains well above the Asia Pacific rate of 53% and significantly higher than the world average of 35%.

Internet Piracy: Given that from October 2004 to September 2005, the number of broadband lines in Malaysia increased by 61.6%, placing it in the top ten in the world in terms of growth,¹² it is no surprise that Internet-based piracy is an increasing threat to legitimate

¹⁰ U.S. Customs, on the other hand, has noted some seizures of pirate entertainment software product sourced from Malaysia being transshipped through in Alaska. In late 2005, U.S. Customs & Border Protection apprehended a shipment of 1,400 pirated entertainment software on DVDs (with the SID codes etched out) from Malaysia at the Anchorage Federal Express Facility, destined for Paraguay. It is believed that the shipper information provided was false.

¹¹ Not only have pirate photocopy centers infiltrated campuses, but the problem is being perpetuated through the active involvement of lecturers, who often provide sample copies they receive from publishing representatives to be used as masters for the photocopying. Institutions of higher learning should be monitored closely to ensure that these practices are not tolerated.

¹² Point Topic Ltd., *World Broadband Statistics Q3 2005*, December 2005, Press Rel. at <http://www.point-topic.com/content/dslanalysis/ukbb051229.htm>. No other country in Southeast Asia grew by such a large margin.

copyright owners, including local Malay artists.¹³ In 2004, 2,176 online software infringements were traced to Malaysian ISPs; this number skyrocketed to 6,537 in the first 10 months of 2005. Internet cafés are also known to facilitate illegal activities or use unlicensed software. Piracy at Internet cafés continues to be problematic for the entertainment software industry. The MDTCA has been reluctant to run raids against such cafés and often asks that companies resolve such matters through private contracts/licensing.¹⁴

Domestic Retail Piracy (Optical Disc): Domestic retail piracy involving sales of mainly optical discs has been a longstanding problem in Malaysia, but in the past two years, MDTCA has done a better job driving retail piracy underground. Significant raiding continued in 2005.¹⁵ Nonetheless, industry continues to note the harm caused by retail piracy, e.g., many legitimate retail outlets for home video products have closed, with commensurate loss of jobs. In addition, for the first time in many years, the record industry reports significant numbers of copies of pirate CDs being imported into Malaysia from China. Enforcement against fixed retail premises will need to be stepped up and amendments to legislation extending and/or clarifying criminal liability to mall owners (who condone the flagrant open sale of pirated optical discs by their tenants) need to be introduced. Finally, prosecutions leading to deterrent sentences actually imposed are few and far between. For example, in October 2004, an entertainment software company initiated a raid at the retail premises of a suspected producer, exporter and local distributor of pirate entertainment software products. The raid resulted in the seizure of nearly 800,000 pirate entertainment software discs, but to date, there has been no progress towards initiating prosecution against this notorious pirate. Prosecutions must occur in this case and others like it to create deterrence and drive piracy from Malaysia.

Camcorder Piracy: The vast majority of movies are stolen right off the screen by professional camcorder pirates, who use video cameras to illicitly copy a movie during exhibition in a movie theatre – usually very early in its theatrical release or even prior to the film’s release (e.g., at a promotional screening). Camcorder pirates are often sophisticated criminals and typically sell the master recordings to illicit “source labs” where they are illegally duplicated, packaged and prepared for sale on the black market, then distributed to bootleg “dealers” throughout the world. As a result of camcorder piracy, many motion pictures become available over the Internet – on peer-to-peer networks, file transfer protocol (FTP) sites, Internet Relay Chat (IRC) rooms, or auction sites – as well as on street corners and night markets around the world during the US theatrical release and well before their international debuts. An essential element in the fight against camcorder piracy is the enactment of legislation to prevent the

¹³ Siti Syameen Md Khalili, *Mawi Versus Pirates*, New Straits Times, February 2, 2006 (describing that top-selling musical act Mawi cannot thrive in “the piracy-infested local music scene where CD copies go as low as RM10 for three pieces and free Internet downloads are easily available at a few clicks.” The article notes record sales of 170,000 copies and 120,000 copies for two of the band’s efforts, though notes that

this is only a small percentage of the real sale. The Domestic Trade and Consumer Affairs Ministry recently reported that the raids in Sarawak revealed that 95 per cent of Mawi’s albums sold throughout the State were actually pirated copies. A simple search on the Internet reveals that the whole content of Mawi’s first solo album ... are available for download. All you need is a registration with the portal and a stable Internet connection to get free Mawi tracks saved onto the hard disk.

¹⁴ MDTCA insists that “cease and desist” letters be sent (even though they are largely ignored by the café operator) before they even considering raiding the premises.

¹⁵ The Government reported that in 2005, MDTCA officers conducted 37,296 raids, resulting in the seizure of 4.7 million discs worth RM100.8 million (US\$27 million). They also arrested 710 distributors and sellers. The motion picture industry reports that during 2005, there were 1,123 raids against sales of pirate VCDs and DVDs (473 criminal copyright cases initiated), 75 raids against pirate DVD and VCD distributors (18 criminal copyright cases initiated), 8 actions involving Internet piracy (1 criminal copyright case initiated), and 526 raids involving pirate product for export (2 criminal copyright cases initiated).

unauthorized operation of audiovisual recording equipment in motion picture theaters while a motion picture is being exhibited. Although in Malaysia, this may already amount to a violation of the copyright law, existing copyright laws have not been used and may not be adequate to combat the “act” of using a camcorder to reproduce a cinematographic film. We urge the Government of Malaysia to take whatever steps are necessary to ensure that adequate protection against camcording piracy is reflected in its national legislation.

Organized Crime/Need for Complex Investigation: There can be little doubt of the involvement of organized crime in Malaysian piracy operations, whether by this term we mean large-scale illegal commercial operation or an operation that involves many individuals conspiring to engage in many different criminal ventures. It has also been clear for years that anti-piracy work, either from the industry side or the Government side, is fraught with danger.¹⁶ Malaysian authorities continue to be reluctant to thoroughly investigate links between piracy and organized crime. This must change if the Government is to begin to adequately address its piracy problem and to successfully remove these syndicate-run operations (such as those that control the large-scale production and export of pirated entertainment software products) from the country.

A related point is the continuing reluctance of Malaysian authorities to make use of the forensic capabilities available to them. While MDTCA supports the industry’s forensic programs in Malaysia where infringing product is found on site in the course of a raid or inspection, MDTCA had not until recently (September 2005) submitted samples from sizeable seizures to the Government Chemist to identify the manufacturing source. Industry has been assured by the new Director of Intellectual Property that this is now being done, which is a positive sign. Some dynamic middle managers in MDTCA appear enthusiastic to take on more sophisticated investigative operations to target major pirates. One act that might help the Government to prioritize and allocate resources to tackle piracy, including organized piracy, most effectively would be the re-establishment of the Special Copyright Task Force to take on these coordinating responsibilities.

Courts’ Response to Piracy/Need for Specialized IP Court: Malaysia’s court system, whose ruling bodies seem out of step with the more forward thinking government departments, remains incapable of processing court hearings in a timely, logical and ordered manner. Until this bottle neck is addressed, the Malaysian Government will continue to fight an uphill battle to successfully combat piracy. Notwithstanding this over-arching problem, the year 2005 saw a couple of breakthrough events in the courts. Constant pressure led to most criminal end-user software piracy cases being brought to court shortly after the raids in 2005. This is a very encouraging development. The MDTCA also achieved its first-ever criminal end-user conviction in a contested case that went through a full trial,¹⁷ resulting in a sentence of a fine of RM120,000 (US\$32,174) or six months’ jail per charge for directors in default of payment of the fine, for possession of 15 infringing copies of software, other than for private and domestic use.¹⁸ For the recording industry, court cases are proceeding well only for retail cases where arrests are made during raids. Other cases, however, languish in an essentially broken court system. There remains a significant divergence between the number of raids being carried out

¹⁶ In a raid run recently on an Internet café by a representative for an entertainment software company, the owner and the supervisor of the café became agitated and verbally and physically abusive, tossing computers on the floor in the presence of the police. They also took photos of the industry representative with their cell phones and cameras and threatened to distribute the photos to other cafés.

¹⁷ The defendant, Sarawak-based Alom Industries Sdn Bhd, is currently appealing the conviction.

¹⁸ Though many of the criminal end user cases have reached the courts, many still remain in the investigation phase, including some cases over two years old. In addition, cases in the courts can still take many years to reach resolution.

and the number of cases being processed through the courts. In addition, a number of appeal cases lodged by the prosecution against acquittals, some dating back to 2003, have never been concluded.¹⁹ The MDTCA Minister appears to understand and has announced that he hopes to have a pilot specialized IP Court in Kuala Lumpur by 2006.²⁰ IIPA supports this initiative.

Right Holders Not Permitted to Access Criminal Files to Initiating Legal Actions Against Infringers: The Copyright Act is interpreted in a way that impedes the ability of injured right holders to take civil actions based on evidence seized by MDTCA, even in raids run pursuant to complaints by rights holders and undertaken with the support of right holders' representatives. In particular, right holders have been refused access to evidence seized by local authorities on the argument that such access would violate a non-disclosure provision in the Act.²¹ Application of the non-disclosure provision to refuse access to evidence prevents right holders from being able to initiate civil actions for their injury. This creates an impossible enforcement situation in cases when the authorities fail to take criminal actions against the infringer but nevertheless refuse to allow access to evidence for use in civil actions.

Hologram Sticker Program Does Not Deter Piracy: The hologram stickering program remains an unreasonable burden on industry. This program requires that the sticker be affixed inside the shrink-wrap packaging of discs. Since entertainment software products are not domestically produced but imported into Malaysia, when imported legitimate products arrive in the country, they have to be re-packaged to accommodate the hologram stickers, adding unnecessary costs and delays. The sticker program is also subject to abuse if stickers are issued to pirates.

TRAINING AND PUBLIC AWARENESS

The Malaysian Government has generally been receptive to training opportunities and technical assistance for its enforcement authorities. As noted, a key issue in Malaysia is developing a cadre of trained prosecutors and a specialized IP court with judges sufficiently familiar with copyright law as well as the links between copyright and organized crime to be ready to mete out deterrent sentences. In addition, before a case even reaches court, it would be highly useful to provide training to MDTCA staff (and others involved in investigations) to deal with all the "post-raid" investigative procedures. The record industry is considering such a training for 2006.

The MDTCA has been very supportive of initiatives by the business software sector to publicize the need to respect software copyright. In April 2005 the Deputy Minister for the MDTCA announced the launch of the *Ops Tulen 2005 Korporat* program at a press conference, after which the campaign (and raiding discussed above) against end-user software piracy commenced. In addition, most of the criminal end-user software piracy raids discussed were publicized by the local heads of the MDTCA at press conferences irrespective of where the raid was conducted. The MDTCA also co-sponsored a number of "Software Asset Management"

¹⁹ It has also been reported that cases, once filed, do not move forward, as officers are transferred, etc.

²⁰ Izatun Shari, *Special court to hear IP cases*, The Star, September 13, 2005.

²¹ A series of raids by the recording industry and MDTCA in 2005 uncovered distribution centers, offices and replicators used by a known syndicate distributing suspected pirate products throughout Southeast Asia. Over one million discs and large quantities of documents and other evidence were seized. While industry wished to bring a civil action, MDTCA, citing Section 52 of the Copyright Act (dealing with the disclosure of information obtained pursuant to the Act) would not provide industry with access to the materials recovered from the raids. MDTCA has further opined, after consulting with the Attorney General's office, that such information would not be provided in other cases as well. This makes civil litigation with respect to these matters extremely difficult if not impossible.

(SAM) seminars with the Business Software Alliance (BSA) across Malaysia, including places such as Penang, Kota Kinabalu, Kuala Lumpur, and Johor, targeting CEOs, business owners, financial managers, IT managers and auditors. The MDTCA also sent out around 10,000 letters to businesses urging to them to use licensed software programs and to join the BSA's voluntary software audit program. This support from the MDTCA resulted in a very favorable response from the business community.

The MDTCA has also been generally supportive of industry initiatives to boost the standard of IP prosecution in Malaysia. For example, from November 25 to 27, 2005, the Motion Picture Association and the MDTCA jointly organized a "Copyright Enforcement and Prosecution" seminar at Genting Highlands which was attended by 28 MDTCA prosecutors nationwide, five Senior Deputy Public Prosecutors from the Attorney-General's Chambers, the Senior Assistant Parliamentary Draftsman, the Head of the Commercial Crimes Division, and MPA's local counsel. The seminar allowed participants the opportunity to discuss and share their court experiences directly with senior prosecutors from the Attorney-General's Chambers.

MARKET ACCESS

Broadcast Quotas and Investment Restrictions Hamper Legitimate Right Holders: Broadcast stations in Malaysia are being required, through licensing agreements, to devote 70% to 80% of airtime to local Malaysian programming. Broadcast stations are also being banned from broadcasting foreign programming during "prime time" hours of 8:30 to 9:30 p.m. Foreign investment in terrestrial broadcast networks is also strictly prohibited, and through licensing agreements the government also imposes a 20% limit on foreign investment in cable and satellite operations. These restrictions are extremely damaging and highly prejudicial to U.S. copyright owners in program content, and should be eased or lifted.

Proposed Levy Could Violate National Treatment: The Malaysian Government also maintains several other regulatory requirements in the audiovisual sector that effectively combine to impede the growth of the film and home video industries and has announced the possible imposition of further restrictions on foreign products. In October 2005, Malaysia's Culture, Arts and Heritage Minister, Datuk Seri Dr. Rais Yatim, was quoted in several newspapers supporting the idea of introducing a levy to be assessed against all imported films distributed in Malaysia. The Minister stated that the proposal was specifically for the purpose of assisting the development of the local film industry. While the extent of the proposal remains unclear, audiovisual distributors and exhibitors remain concerned that the imposition of such a levy would place Malaysia at a competitive disadvantage with respect to other markets in the region, may result in a reduction in the importation of films into Malaysia, and may violate Malaysia's WTO obligations to extend full national treatment to foreign rights owners.

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