

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2006 SPECIAL 301

### SPECIAL MENTION

## NIGERIA

IIPA specially mentions Nigeria in the 2006 report to highlight the alarming growth in optical disc production capacity, continuing rampant piracy concerns in several sectors, and an enforcement system which is ineffective in tackling these problems. In 2006, IIPA would like to see the following:

- Enactment of draft optical disc regulations to require the 15 known optical disc plants and two mastering facilities to come forward and be licensed, and to require the plants' use of SID codes (mastering LBR code and mould code) on all discs produced and sold in Nigeria.
- A campaign by the Nigerian Copyright Commission (NCC), including *ex officio* actions (traditionally complaints have been required), to sweep the markets clear of piracy, as well as duplicators, photocopy equipment, other equipment and tools used to pirate, and to inspect businesses to ensure they are not engaged in unauthorized use of business software.
- An enforcement campaign by Nigeria Customs Service (NCS) to interdict pirate imports coming in at the ports as well as those coming to Nigeria to pick up pirate exports.
- Reinstate funding to universities and libraries to purchase books.
- More prosecutorial attention to copyright cases, ensuring that cases go to trial and result in judgment with deterrent penalties actually imposed.
- Enactment of an amendment to prohibit unauthorized (parallel) and pirate imports, and to limit any exception to import of "a legal copy of a work by a physical person for his own personal purposes."

**Piracy and Enforcement:** There are 15 optical disc plants in Nigeria, some of which have migrated to Nigeria from Asia and operate to supply Central and West Africa. Many of the plants are not licensed to produce any kind of copyright content. Two of these plants (Akina and Nasinma) were raided in June and July 2004. However, to date there has been no outcome with respect to actions against these plants. This massive over-capacity, plus pirate imports, results in pirate production not only for domestic consumption but also for export (or "take out" as it is called, as people come from all over West Africa to buy pirated discs from the Alaba International Market in Lagos). Pirated product from Nigeria has been found in Algeria, Senegal, Ghana, Zambia and South Africa. In addition, Nigeria is itself a very large potential market, but the country is domestically overrun with pirated materials. Pirated CD-Rs are being sold for less than the equivalent of US\$1 in the local market containing compilations of up to 300 tracks of songs by local and international artists. There has also been a recent influx of imported pirated CDs from unknown locations in Asia. Book piracy continues to be a serious problem, due in part to the Government's decision in 2003 to cut all funding for university and library purchases and illegal photocopying that plagues the academic market. Some U.S. publishers indicate that the presence of legitimate publishers in the market is increasing, accounting for modest increases in sales during 2005, but the market is essentially still a piracy haven. For the business software industry, hard-disk loading of pirate software and unauthorized use of software in businesses remain significant problems. Piracy levels are nearly 85% or above for all industry sectors with

estimates (and is a staggering 98% for international music repertoire), among the highest in the world.<sup>1</sup>

Though a copyright law was enacted in 1990,<sup>2</sup> there is little enforcement activity,<sup>3</sup> and cooperation between government agencies to implement and enforce the law, including law enforcement, is sparse and erratic. The NCC has responsibility in Nigeria for anti-piracy activities, and the NCS, as the nation's gateway police, has a significant role to play in anti-piracy enforcement, although Customs has never, to our knowledge, seized any product on their own initiative. There needs to be better coordination between these two enforcement entities. The NCC's Director General was suspended in November 2005 over the de-certification of one of Nigeria's music collecting societies, the Musical Copyright Society of Nigeria.<sup>4</sup> In addition to these problems, NCC's effectiveness is hampered by a lack of funding. We understand that consideration is being given to transferring the NCC functions to the Ministry of Justice. Lastly, civil claims in court continue to be an expensive and risky remedy.

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<sup>1</sup> The record industry reports 98% piracy rates (for international repertoire), while the Business Software Alliance reports an 84% piracy rate and losses due to piracy of between US\$47 million and \$54 million.

<sup>2</sup> Copyright Act (Cap 68 Laws of the Federation of Nigeria, 1990) as amended.

<sup>3</sup> The port of Lagos is inadequately policed against piracy and has become a major transshipment site for pirated product to enter Nigeria and nearby countries.

<sup>4</sup> Nigeria suffers from over-zealous collecting societies, and must ensure that these voluntary organizations do not abuse their positions by claiming rights in artists/catalogs which they do not have. The other collecting society, which remains certified by the government, is the Performing and Mechanical Rights Society of Nigeria (PMRS), which was approved by the first NCC Chair, Moses Ekpo, back in the 1980s. See Ozolua Uhakheme and Richard Eghaghe, *NCC Declares MCSN Illegal, Nullifies Adewopo's Approval*, Daily Independent, November 25, 2005, at <http://www.independentng.com/life/lsnov250501.htm>.