

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

BANGLADESH

Special 301 Recommendation: Bangladesh should be placed on the Watch List.

EXECUTIVE SUMMARY

In 2004, when the Pakistani government began addressing the problem of massive over-production of optical discs (for domestic consumption and export) by closing several of the plants, and cutting off the supply of key components of optical discs (including by controlling the importation of optical disc polycarbonate), optical disc plants began migrating to Bangladesh. Recent reports confirm that there are currently six optical disc plants in Bangladesh. The capacity for over-production (which is apparently already being manifested in exports to India and perhaps Europe, as well as saturation of the local market with pirate product) requires a response, which should include 1) an optical disc regulation to license and inspect the plants; and 2) rapid-fire and unannounced inspections, with any plants found to be pirating subject to closure and with its owners subject to prosecution. Other piracy problems abound, including unchecked book piracy in the form of print piracy and illegal commercial photocopying, stolen theatrical motion picture prints which are illegally contracted for exhibition in Bangladesh, and broadcast/cable piracy (i.e., unauthorized showing of international and Hindi movies on channels without authorization), which should be addressed as well. CD-R "burning" piracy remains a problem, from large-scale "burning" in the plants to small-scale 'mom-n-pop' burning. However, the use of pirate music cassettes continues to dominate the music market in Bangladesh and the music cassette piracy rate is 90% for domestic, Indian and international repertoire.

The harm from piracy in Bangladesh is not only to U.S. and other foreign right holders but is felt keenly by Bangladeshi nationals.¹ Recently, Bangladeshi record/music producers have taken it upon themselves to seek to enforce their own rights, calling it "a matter of life and death" for their local Bangladeshi companies.² The government of Bangladesh response has been inadequate, both in terms of the results from enforcement actions taken, as well as from the standpoint of publicizing results of actions in order to create necessary deterrence.³

¹ The local music companies are regularly complaining about growing piracy problems, especially the fact that music albums of the leading Bangladeshi music labels are being pirated in the outskirts of key urban areas. The music industry of Bangladesh is at the same time undergoing steady growth in terms of new music production companies in the sector. These companies aspire to create quality music and have no intention to engage in piracy, so protecting their interests should be paramount to the Bangladeshi government. As to broadcast piracy, the local television industry has also expanded with four new channels coming into operation, Channel One, Bangla Vision, Baisakhi, and STV.

² See *Bangladesh Music Producers Take Law Into Own Hands To Fight Piracy*, August 17, 2006, at <http://www.channelnewsasia.com/stories/entertainment/view/225343/1/html> (describing a record producer-launched "Movement Against Piracy" campaign, raiding shops in the capital Dhaka and the southeastern port city of Chittagong to catch traders selling pirated CDs and cassettes, and quoting senior campaign member, and CEO of G-Series, Nazmul Haq, as saying, "[w]e had no choice but to take the law into our own hands as piracy has almost sent our business to the graveyard. It's (a) matter of life and death for us"). Raids run by local industry revealed 99% piracy. Haq was further quoted as saying, "[i]n the last four years alone, as many as 10 big and respected companies have had to close because of piracy."

³ In Bangladesh's Trade Policy Review at the World Trade Organization in September 2006 (minutes released in November 2006), the government of Bangladesh essentially indicated that it does not keep regular copyright

PRIORITY ACTIONS REQUESTED IN 2007

- Inspect Optical Disc Plants, Closing Down Those Found to be Engaged in Piracy and Prosecuting Owners of Pirate Plants
- Pass and Implement an Effective Optical Disc Regulation, With Plant Visits/Mandatory Exemplars and Mandatory Use of SID Mater (LBR) and Mold Code, Among Other Things
- Establish an Anti-Piracy Force and Take Actions (Including *Ex Officio*) Against CD-R “Burning,” Book Piracy (Photocopy Shops and Print Piracy), Theft of Theatrical Prints, Stolen Theatrical Motion Picture Prints, and Broadcast/Cable Piracy
- Establish IPR Cell Within Bangladesh Customs

For more details on Bangladesh’s Special 301 history, see IIPA’s “History” Appendix to this filing at <http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years’ country reports, at <http://www.iipa.com/countryreports.html>.

BANGLADESH Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2005-2006⁴				
INDUSTRY	2006		2005	
	Loss	Level	Loss	Level
Motion Pictures	NA	NA	NA	NA
Records & Music	40.0	70%	NA	NA
Business Software	NA	NA	NA	NA
Entertainment Software	NA	NA	NA	NA
Books	8.0	NA	6.0	NA
TOTALS	48.0		6.0	

PIRACY AND ENFORCEMENT IN BANGLADESH

Optical Disc Production in Bangladesh: There are currently six optical disc plants in Bangladesh (lines for the sixth plant have recently been imported from Singapore but it is

enforcement statistics, but that “efforts are being made for collecting such data,” that the records/data in relation to seizure or confiscation are maintained by Bangladeshi Customs manually in a register, but that there are other enforcement agencies like BDR (Bangladesh Rifles), Coast Guard and Police who are also responsible for enforcement of copyright regulations within their respective jurisdictions, and can supply such information “when available and [when] a request is received.” In addition, the government noted that “since several agencies are involved in enforcement of copyright, no consolidated information [on raids, prosecutions, convictions, etc.] is available right now.” With respect to optical disc plants and piracy, the government indicated that it took note of the concerns expressed in the report regarding optical disc manufacture in Bangladesh and would place the matter “under investigation.” See World Trade Organization, Trade Policy Review Body, 13 and 15 September 2006, WT/TPR/M/168/Add.1 (published November 10, 2006).

⁴ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2007 Special 301 submission at www.iipa.com/pdf/2007spec301methodology.pdf. For information on the history of Thailand under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

unclear whether this plant is operational yet). With a total of at least 14 production lines (including four dedicated DVD lines),⁵ and a production capacity of 49 million discs, and four mastering facilities (i.e., the ability to use a “clean room” and produce the glass master that is then converted into the metal stamper used on the mold), the optical disc production problem must be addressed with immediacy. It is confirmed that at least some of these plants are owned by Pakistani nationals who ran plants in Pakistan prior to that government’s crackdown over the past two years.

All of these plants are involved in large-scale piracy operations, and at least four of the six are engaged in production of pirate international music, software, and U.S. movies. The main market for these pirate products is Bangladesh,⁶ although some of the pirated discs are being smuggled into India and Europe. Relatively small shipments of 900 to 1,000 discs are apparently being “smuggled” out of the country via parcel shipments using the main post office in Dhaka. Apparently the export shipments are focusing on the Indian and European market, but also to countries like Sri Lanka. However, industry has few details regarding the content and exact quantities of pirate exports. As an example of the efficiency and modernization of these plants, one plant with three lines is known to be able to deliver orders in as little as seven days and can produce about 40,000-50,000 discs per day (all formats). Industry knows where these plants are located and has informed the government of Bangladesh. The massive pirate production has destroyed any domestic market (even local music, for example, is 85% pirate while international or Indian repertoire is virtually 100% pirate). Industry has met with government representatives about the OD piracy and other problems.⁷

“Burning” on Recordable Discs: The problem of CD-R burning of content onto recordable discs is becoming increasingly severe in Bangladesh. It is estimated that the Bangla market for audio and video CDs is catered by the CD-R facilities and that there are as many as 60 CD-R duplicating facilities operational in Bangladesh. They range from sophisticated European standalone duplicators to PC workstation duplicators. It has also been confirmed by different sources that Bangladesh is importing approximately one million blank CD-Rs from China and Taiwan per month. The price of a blank CD-R is US\$0.10.

Importation of Pirate Optical Discs: It appears there is some pirate importation of optical discs (indications are that discs are coming in from Malaysia), but the Bangladesh Board of Film Censors is working with industry to investigate suspected rights verification documents proffered by questionable importers.

Book Piracy: The book publishing industry continues to face unchecked piracy in the form of illegal commercial photocopying and print piracy. Any book having the potential to sell

⁵ Four of the plants are in Dhaka (including one in Uttara and one in Kodamtali), one of the plants is in Konobari, Gazipur, and one is in the Kajpur area. There are four dedicated DVD lines (three DVD-9 and one DVD-5 line). In addition, there are as many as 10 CD lines. In some of the plants, it is confirmed that the best technology available is being used. For example, molding and finishing lines from one plant are a combination of Swedish and Dutch technology, under the banner of TOOLEX and ODME respectively, while printing is done using German technology, KAMMANN Machines.

⁶ The overall piracy situation in Bangladesh has worsened with the increase of sales of pirate CDs and DVDs in urban cities and especially Dhaka. CD and DVD players are becoming increasingly popular and cheap and demand for pirate CDs, VCDs and DVDs has increased as a result. The growing usage of computers in households is also contributing to consumer purchases of pirate CD-ROMs and other optical discs.

⁷ For example, in February 2006, record industry representatives met with officials from the National Board of Revenue, Dhaka, Commissioner of Customs, Dhaka Airport, and U.S. officials. Through the meetings, the members of Customs welcomed support and assistance from industry and indicated limitations in the detection process of pirated products and shortage of equipment to detect pirated products.

more than 100 copies is subject to nearly 100% piracy. This especially affects the university textbook and English language teaching book markets. Bangladeshi government-funded libraries openly buy and stock pirated books, with the active or tacit approval of authorities. Medical books and other professional titles are also pirated, as are computer books, trade fiction, dictionaries, and the like. These books can be found throughout the country at universities, professional schools and international schools as well as in book markets in cities such as Dhaka, Chittagong, Rajshahic and Khulna. Local pirate producers call their versions “local editions” and operate with impunity, destroying the market for legitimate producers.

Theatrical Print Piracy: The motion picture industry has experienced repeated instances of stolen prints fraudulently cleared through Customs and the Board of Film Censors and then contracted for exhibition in Bangladesh. Right holders are often unaware of the presence of these pirated theatrical prints until they are notified by legitimate distributors in the affected territories.

Cable Piracy: Several cable television distributors in Bangladesh are showing international and Hindi movies on their channels without authorization. The Ministry of Information is including provisions in a new anti-piracy law to take action against such theft.

COPYRIGHT LAW AND RELATED ISSUES

Copyright protection is afforded under the Copyright Act, 2000,⁸ as amended in 2005.⁹ The law prior to amendment was adequate for basic anti-piracy purposes, although it did not implement the WIPO “Internet” Treaties.¹⁰ We are still ascertaining the effect of the changes from the 2005 amendments (which we have not been provided for review), but we understand that the Bangladesh government is well aware of the TRIPS issues involved, although claims the 2013 transition period,¹¹ and there was concern that pirate producers lobbied the government for exceptions that would have the effect of permitting pirate exports to neighboring markets such as India. Notwithstanding the 2013 transition, we note that Bangladesh is a member of the Berne Convention (since May 4, 1999) and thus must adhere to the rules and principles set forth in that Convention, including abiding by the three-part test for exceptions. IIPA looks forward to reviewing the amendments and providing comments.

In Bangladesh’s recent WTO review, the government was called upon to explain the various protections and remedies available under the current law. While this may not comport with actual practice on the ground for right holders, it is useful that the government’s

⁸ Act No. 28 of 2000, Act for the Amendment and Assimilation of Copy Right Act, Bangladesh National Parliament Dhaka, 18 July, 2000/3 Shraban, 1407.

⁹ The Bangladeshi government, in a recent WTO review, indicated that the Copyright Amendment, 2005 is currently only in Bengali, but is being translated into English. See *supra* note 3. In the WTO review, the government of Bangladesh reported that it had amended its Copyrights Act (2000) in May 2005 to reduce piracy “in the domains of computer software, motion pictures, pharmaceutical products, CDs/DVDs, and audio- and videocassettes.” The government indicated it had publicized the law widely throughout Bangladesh, sending it “to all district offices and requested them to take necessary measures to enforce the law,” and noted, “[t]he Government has also taken initiatives to amend the Copyright Rules, 1967 to make it consistent with the Copyright Act, 2005.”

¹⁰ See *id.*, in which the government of Bangladesh indicated “Bangladesh has not yet made any decision about joining WIPO Internet treaties.”

¹¹ See *id.* The WTO Secretariat Report noted that work was under way to bring Bangladesh intellectual property rights laws into line with the WTO TRIPS Agreement, and noted that “Bangladesh benefits from an extended time limit (until July 2013) for the full implementation of the Agreement.” The government of Bangladesh indicated that “considering the extended transition period to implement TRIPS Agreement until 1 July 2013 the Government of Bangladesh is examining the whole gamut of issues relating to patent, trademark and copyright protection.”

explanations of civil,¹² administrative/border,¹³ criminal,¹⁴ and provisional¹⁵ remedies have been set out in writing.

GENERALIZED SYSTEM OF PREFERENCES

Bangladesh participates in the Generalized System of Preferences (GSP) program which includes, as one of its criteria of eligibility, that a country provides “adequate and effective” copyright protection. In 2005, \$21.4 million worth of goods from Bangladesh entered the United States under the GSP duty-free code, accounting for 0.8% of its total exports to the U.S. During the first 11 months of 2006, \$19.1 million worth of goods from Bangladesh (or 0.6% of Bangladesh’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code.

¹² See *id.* The government indicated the following as to civil remedies under the current law:

Civil suits provide remedy for claiming compensation for infringement of copyright and loss of profits as well. The owner of the copyright can bring civil action in which relief’s such as Search order injunction, Accounts and damages can be sought. A suit or other civil proceedings relating to infringement of copyright is to be filed in the court of district judge within whose jurisdiction the plaintiff resides or carries on business or where the cause of action arose irrespective of the place of residence or place of business of the defendant.

The government also said the following about compensatory damages:

The court determines the types and extent of compensatory damages considering the claims of the complainant and the circumstances. The existing laws on trade marks and patents give the authority to the court to determine the types and extent of compensatory damages, while the Copyright Act, 2000 gives the same authority to the court as well as copyright Board constituted there under.

¹³ See *id.* The government indicated the following about administrative/border measures:

Administrative remedies consists of moving to the Registrar of copyright to ban the import of infringing copies into Bangladesh, when the infringement is by way of such importation and the delivery of the confiscated infringing copies to the owner of the copyright. ... [T]hey can destroy counterfeit/pirated goods, if the act of infringement is proved by the court of Law.

¹⁴ See *id.* The government indicated the following as to criminal remedies under the current law:

Criminal remedies provides for the imprisonment of the accused or imposition of fine or both, seizure of infringing copies. Criminal proceedings are available in order to punish the persons who have violated the copyright law. The infringement of copyright is a cognizable offence and is punishable with imprisonment for a period extending form six months to four years and a fine ranging from TK 50,000 (US\$725) to TK 200,000 (US\$2900). The Act also provides for seizure of infringing copies and confiscation of all duplicating equipments used for manufacturing counterfeit copies. However if the court is satisfies that infringement is committed without having an intention for profit or non-commercial purpose the court may give lesser punishment which may be imprisonment for less than 6 months and fine for less than TK 50,000. However, in case of piracy of computer programs the amount of fine is extended by an amendment to the Copyright Act, which is now minimum TK 100,000 (US\$1450) and maximum TK 400,000 (US\$5800) if it is committed for commercial purpose. In case of mere use of infringing copy or if the court is satisfied that it is committed for non-commercial purpose, the court may impose lesser punishment and lesser fine as well... For a second conviction of infringement, imprisonment could extend to three years, with or without a fine; and for copyrights imprisonment may extend to a maximum of four years (up to five years for the film sector) with a fine of TK 200,000 (TK 100,000 to TK 500,000 for films).

Helpfully, the government clarified the following regarding the criminal threshold for prosecutions:

A case is initiated after taking into cognizance by the court on receipt of a written complaint from an aggrieved party in case of willful trademark counterfeit/copyright piracy on a commercial scale. There is no pre-determined threshold to initiate a criminal action against someone who makes or sells counterfeit/pirated goods.

¹⁵ See *id.* The government indicated the following as to provisional measures under the current law:

As a temporary measure, court can issue injunction prohibiting sale, distribution and marketing of the goods on which an order has been sought. The court can also issue an order for seizure and temporary restraint. The court can also seize counterfeit/pirated goods before litigation in order to preserve evidence. Decision on infringed goods is taken by the court, and it differs from case to case.