

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

INDONESIA

Special 301 Recommendation: IIPA recommends that Indonesia remain on the Watch List. However, we recommend that USTR conduct an out-of-cycle review (OCR) (to be concluded by September 2007) to ensure that the Indonesian government sustains the progress made to date in combating optical disc piracy, follows up with deterrent arrests and successful prosecutions of the main perpetrators of these piracy operations (i.e., plant managers and owners, not mere employees), and improves enforcement against photocopy piracy (mainly on and near university campuses), print piracy, and unauthorized translations, end-user software piracy (where piracy levels are among the worst in the world), and signal theft piracy, among other piracy concerns.

EXECUTIVE SUMMARY

In recognition of the government of Indonesia's efforts to combat optical disc piracy, IIPA recommended, in an OCR conducted in September 2006, and USTR agreed in November 2006, to lower Indonesia from the Priority Watch List to the Watch List.¹ The efforts over the past two years include large seizures of pirated goods as well as machinery (including large-scale optical disc factories and CD-R burning operations) used to make them. IIPA commends the government of Indonesia for its cooperation and initiative in this regard. The job remains unfinished, both with respect to successful prosecutions of key piracy offenders, and in dealing with other forms of piracy which, left unchecked, will continue to result in Indonesia having among the highest piracy levels in the world and causing significant losses to U.S. copyright owners. It is too early to declare victory in the fight against piracy in Indonesia and meaningful follow-up activity is required.

U.S. industry lost well more than US\$205.2 million due to copyright piracy in Indonesia, and piracy rates in Indonesia remain among the highest within Asia and in the world.

PRIORITY ACTIONS REQUESTED IN 2007

- **Prosecute Pirate Optical Disc Plant Owners, Financiers, and Managers, with Imposition of Deterrent Sentences:** In 2006, the Indonesian National Police ran a series of unprecedented raids against pirate optical disc plants. In 2007, prosecutors should swiftly prosecute in order to render those raids deterrent against further pirate OD production in Indonesia, and to make piracy an unwelcome activity in Indonesia.

¹ On April 28, 2006, USTR chose to maintain Indonesia on the Priority Watch List and conduct an Out-of-Cycle Review (OCR). Specifically, USTR indicated that the OCR would be conducted "to monitor Indonesia's progress on IPR issues," in particular, to

assess Indonesia's progress on ... enforcing its IPR laws effectively and in a deterrent manner against piracy and counterfeiting, including through raids on pirate optical disc factories; by conducting seizures of pirated goods and the machinery used to make them; by arresting and prosecuting IPR infringers; and by ensuring that courts impose jail sentences for IPR crimes and that offenders actually serve such sentences.

- **Take Earnest Action Against Book Pirate Operations:** Piracy of published materials (both local and foreign content) runs rampant in Indonesia, including illegal photocopying (mainly on and around university campuses), print piracy, and unauthorized translations. The Indonesian government should include such piracy operations in its ambit of raids and work with right holder groups such as IKAPI to tackle this problem effectively. The Indonesian government should also implement an approach to legitimize use of published materials at schools and universities, including directives to ensure legal adoption of textbooks.
- **Prosecute End-User Software Piracy Cases and Publicize Results:** Indonesia remains one of the world's worst software markets in terms of end-user piracy of business software, with a piracy rate of 85%. The Indonesian government added a provision to its Copyright Law criminalizing end-user piracy, and began carrying out a few raids in 2006. The government also continued bringing retail software piracy cases in 2006, with some significant criminal convictions. However, the piracy rate remains the same. Thus, the government should seek more significant convictions (and public announcements of such) as part of an overall campaign to eradicate this form of piracy. In addition, more should be done to improve the Indonesian government's software asset management.
- **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 (back 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 Indonesian government should lift various stifling market access restrictions.
- **Curb Pirate Exports:** The Directorate General of Customs & Excise has not gotten sufficiently involved in 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.

For more details on Indonesia'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>.

INDONESIA
Estimated Trade Losses Due to Copyright Piracy
(in millions of U.S. dollars)
and Levels of Piracy: 2002-2006²

INDUSTRY	2006		2005		2004		2003		2002	
	Loss	Level								
Business Software³	156.0	85%	153.0	87%	100.0	87%	94.0	88%	109.6	89%
Books	32.0	NA	32.0	NA	32.0	NA	30.0	NA	30.0	NA
Records & Music	17.2	91%	13.8	88%	27.6	80%	44.5	87%	92.3	89%
Motion Pictures⁴	NA	NA	NA	87%	32.0	92%	29.0	92%	28.0	90%
Entertainment Software	NA	NA								
TOTALS	205.2		209.5		191.6		197.5		259.9	

PIRACY UPDATES IN INDONESIA

Book Publishing Industry: Piracy of published materials runs rampant in Indonesia, including photocopying (mainly on and near university campuses), print piracy, and unauthorized translations, and in 2006, there was little good news from Indonesia regarding the fight against these forms of piracy. Most universities in Java actively or tacitly condone students' photocopying activities. Photocopy kiosks litter the areas around major universities such as Bandung Technology Institute, Parahyangan University and Padjajaran University. Book piracy is completely out of control in Bandung, and photocopied books are not only flooding the market in Bandung but coming into Jakarta. Most copy centers provide catalogs to facilitate the very open business of copying academic texts for students. The industry reports the presence of multiple photocopy centers inside the campuses. Illegal operations are also taking orders from students on campus and distributing their wares there, even in cases where they are not actually making the copies on campus. Teachers are aware of the problem but to date have taken no action to encourage use of legitimate materials in their classrooms. Educational authorities, enforcement authorities, and university and school administrations must work together to bring attention to, and action against, this growing problem.

In addition to the university-oriented 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.

² 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 Indonesia 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.

³ BSA's 2006 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Indonesia, and follow the methodology compiled in the Third Annual BSA/IDC Global Software Piracy Study (May 2006), 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 2005 piracy statistics were preliminary at the time of IIPA's February 13, 2006 Special 301 filing; the 2005 data was revised and posted on the IIPA website in September 2006 (see <http://www.iipa.com/statistics.html>), and the 2005 revisions (if any) are reflected above.

⁴ MPAA's trade loss estimates and piracy levels for 2006 are not yet available. However, such numbers will become available later in the year and, as for 2005, will be 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 the 2006 loss numbers and piracy levels become available, they will be posted on the IIPA website, <http://www.iipa.com>.

Unlike the response to optical disc piracy, publishers report that authorities have not shown willingness to partner with book publishing groups to effectively raid pirate booksellers, photocopy shops and offset printing facilities, and to take an active approach to legitimizing use of published materials at schools and universities.

Optical Disc Piracy, Both Factory-Produced and “Burned”: There remain 28 registered optical disc plants, and we know of two unregistered plants. Data supplied by Departamen Perindustrian (Department of Industry) and industry reveal that there are as many as 145 licensed replicating machines operated by registered OD plants.⁵ Total annual disc manufacturing capacity conservatively estimated at 10,000 discs per machine per day, gives an approximate production capacity of 500 million discs per annum. Efficient operation of these machines would give a potential capacity of 1 billion discs per annum. Industry estimates the size of the legitimate market to be less than 15 million discs per year.

There are at least three registered plants in Indonesia with manufacturing facilities for the “stampers” and masters (key production parts needed to mass-produce optical discs that contains the copyright content and therefore must be covered in the optical disc regulations, and must be subject to the SID Code requirement and seizure). It is believed that three stamper manufacturing machines have been imported to Indonesia during 2005/2006, but not all of those machines have been registered by the regulatory authority and their whereabouts is unknown. 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 2006 in Australia, New Zealand, the Philippines, the United Kingdom and elsewhere in Europe. In 2005, the EU reported that 10% of all IP cases arising from pirate imports of copyright products involved imports from Indonesia.⁶ Local “burning” of pirate product onto recordable discs is also becoming a major problem.

Notwithstanding the stark figures suggesting massive over-capacity in Indonesia, in 2006, the scope of motion picture piracy seems to have leveled, or perhaps even declined to some extent compared with previous years. While industrially replicated product used to be the norm, the motion picture industry now sees a mix of both factory product and burned product.

Business Software End-User Piracy and Government Legalization: The willful use of unlicensed or pirate software in the workplace continues to be the greatest source of losses to business software companies. The software piracy rate remained unacceptably high at 85% in 2006; only Vietnam in the Asia Pacific region had a higher piracy rate. Piracy in Indonesia has seriously compromised the business of resellers and distributors of genuine software. The piracy rate in 2006 actually represents a slight decline from the previous year, and despite the seemingly insignificant percentage change, it reveals that there is some law enforcement occurring in Indonesia, with some illegal merchants being sentenced by the courts in recent years. The software industry local representatives continue to work with the Indonesian government on the use of legal software within government ministries. On January 13, 2006, the Indonesian Ministry of Communication and Information (MOCI) and Microsoft signed a Memorandum of Understanding (MOU) to legalize government use of its products on government computers.⁷ Implementation of the MOU will strengthen the Government and its law enforcement’s credibility when conducting IP education and enforcement efforts.

⁵ The government indicates that there are 143 production lines; but industry has information that there may be as many as 145.

⁶ *DG TAXUD European Commission.*

⁷ See Phelim Kyne, *Microsoft Indonesia Ink Anti-Piracy Price Deal*, February 23, 2006, Dow Jones International News.

Signal Theft/Pay TV Piracy: In the 2006 Special 301 report, IIPA noted that the cable and satellite television industry in Indonesia remains in its infancy in part due to significant levels of piracy,⁸ and that while both the Broadcast Law and the Copyright Law of 2002 provide a degree of protection for broadcast signals, enforcement to date has been virtually non-existent. Unfortunately, there is little good news out of Indonesia on addressing signal theft piracy. There were reports that the Indonesian Broadcasting Commission (KPI) was considering the initiation of anti-piracy programs and enforcement actions in this area, but, to IIPA's knowledge, no enforcement actions have been taken thus far.

Unauthorized Public Performance (Exhibition) of Motion Pictures: IIPA is also concerned about the growth of outlets engaged in unauthorized public performance of motion pictures. Some of the outlets have expanded into franchise operations, with some even advertising themselves in national entertainment publications. IIPA encourages the Indonesian authorities to take actions against such outlets as they have a damaging effect on the market for theatrical exhibition in Indonesia.

Unauthorized "Preloading" of Mobile Devices: The unauthorized preloading of mobile devices is a growing problem for the recording industry. Sound recordings/musical works are being directly loaded to handheld phones, flash drives and recordable media. In the Roxy Mas retail mall, where the majority of shops sell handheld phones and handheld phone accessories, more than 80 such stalls that engage in such uploading were recently counted in the public areas. Apparently not linked to the shops in the mall, operators draw power from the mall supply and use stand-alone desktop computers to download the recordings/musical works by USB transfer. Similar setups are seen in many shopping malls including Mangga Dua Square, and ITC Mall Kuningan.

ENFORCEMENT UPDATES FOR INDONESIA

Retail Raids Continued, While End-User Software Raids Commenced: IIPA commends the Indonesian government for the raids run in late 2005 and 2006 against retail piracy. These concerted actions led to a decline in blatant retail piracy in some chief piracy locations in Indonesia. The Indonesian authorities have been more willing to publicize such raids, for example, through press conferences. In June 2006, a set of large-scale retail and street raids occurred once pirates attempted to retake to the streets (i.e. after a hiatus between the early 2006 raiding). The June raids resulted in large numbers of discs being seized, which indicates an increasing and welcome resolve among Indonesian authorities to go after the "big fish" pirate operators, including the major retail malls, but also unfortunately indicates the large scope of the piracy problem in Indonesia. While the authorities are to be commended for their largely sustained enforcement actions in 2006, it is of concern that key malls such as Ratu Plaza, Mangga Dua and more recently Ambassador Mall remain relatively immune to follow-up prosecutions, and as a result, these malls are often partially or fully open within days of being raided.

Industry estimates that in 2006, (including a three-month-long anti-piracy campaign), the Indonesian authorities have, through concerted raid efforts, netted seizures of well over 8 million

⁸ 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.

pirate optical discs and almost 600 optical disc burners capable of producing millions more.⁹ As in late 2005, raids included multiple actions being carried out on Ratu Plaza.¹⁰ IIPA is very encouraged that the Indonesian authorities have taken *ex officio* actions in several cities in Indonesia, such as in Bali and Jakarta. One Jakarta raid in November 2006 was conducted by the Cybercrime Unit based in Indonesia Police. Another raid was conducted by the same Unit in December. Relations with the Economic Crimes Division of the Jakarta Metropolitan Police have also improved. Regarding end-user piracy of business software, the Business Software Alliance worked with the Indonesian Police to conduct four end-user raids in 2006, three in Jakarta and one in Surabaya.

Progress Made in Fight Against Unauthorized Optical Disc Production: As with retail raids and raids on CD-R or DVD-R “burning” facilities, the Indonesian Government appears to have gotten serious about addressing the optical disc piracy problem in 2006. IIPA commends the government for raids in February and August 2006. In these raids, a total of 19 optical disc production lines were sealed on site, and 6 replicating machines were seized.¹¹ The raid pictures below speak volumes about the organized nature of the operation (shared courtesy of IFPI).¹²



DVD line sealed by Police



Hidden doorway to illegal plant

⁹ For example, from January through December 2006, the motion picture industry conducted 661 investigations and participated in more than 600 raids, resulting in the seizure of 171,600 VCDs, 5,944,084 DVDs, 1,565,200 CD-Rs, 831,371 DVD-Rs, and 589 DVD-R burners.

¹⁰ Ratu Plaza recently reopened after a lengthy closure prompted by the seizure in a raid late last year of hundreds of thousands of pirated optical discs, and on June 23 Krimsus officers responded to the return of pirate traders with a raid that netted 410,000 pirate DVDs, a record for seizures of pirated discs from a single retail location in Indonesia.

¹¹ Of the sealed machines, 12 were in a factory that was raided twice during the year in the district outside of Jakarta. In the second raid on that factory, police seized 20 bags of polycarbonate, 30 stampers and 74,000 pirated DVDs, VCDs and CDs and arrested 16 suspects. In the first raid in February, Jakarta Regional Police raided an optical disc factory in the Jakarta suburb of Kapuk, sealing seven VCD/CD replicating lines (as only four were licensed), and seizing 54,000 pirated optical discs, around 70 percent of which were infringing U.S. motion picture titles. Production records showed these machines had been producing 100,000 optical discs per day. Two other raids against licensed facilities resulted in the sealing of a replicating machine in one facility and the seizure of a replicating machine from the other. In the August raid, officers from the Special Economic Crimes Division (Krimsus) of the Jakarta Metropolitan Police conducted an *ex officio* operation and raided a warehouse and factory in the Tangerang area of Jakarta, arresting five men and seizing five factory production lines, nineteen 750-kilogram sacks of optical grade polycarbonate, a DVD bonding machine and around 750,000 optical discs in various stages of production.

¹² John McGuire, IFPI's regional investigator who attended the scene to assist the local officers, said: "From an examination of the facility it is very evident this was a sophisticated and large scale illegal replication facility that had been established to produce very significant quantities of pirate optical discs. The presence of a concealed escape hatch inside a nondescript cupboard indicates the plant owners were fully aware and prepared for raid action by the authorities"

IIPA has learned that in November 2006, the Ministry of Industry determined that it would run inspections of 26 registered plants in Indonesia, albeit they warned the plant owners in a letter. The results of those visits are still in the reporting stage. IIPA is heartened by news of these actions against optical disc plants, but notes that they lacked the element of surprise.¹³ As a result, we understand that nearly all plants were running below capacity or were idle during the inspections, although intelligence gathered during the operation does point to widespread pirate production. It is premature to conclude whether these recent visits will have the desired effect of driving down optical disc pirate production in Indonesia.

Some Prosecutions Against Retail Pirates: Notwithstanding the successful raiding, it remains to be seen whether raids in Indonesia will have longstanding deterrent effects, both as to the specific defendants whose piracy businesses were subject to the raids, or to society at large. One factor in judging the success is the extent to which raid targets are prosecuted criminally with resulting deterrent sentences. Finally, in 2006, reports from industry indicate the Indonesian government's intent to prosecute arrested persons for copyright piracy. IIPA now has statistics on some significant prosecutions and criminal convictions, especially in the area of retail piracy. For example, at least 14 criminal retail software piracy cases have been concluded successfully, with some cases resulting in prison sentences without probation (others have resulted in fines and some with probation in lieu of prison sentences).¹⁴ The time lag between a retail raid against pirate software and the case appearing in court is now only a few months (whereas in the past cases dragged on for years without resolution). As an example of shorter time frames, shops raided in Mall Ambassador in March 2006 were in the District Court by June. The motion picture industry reports that a total of 115 new criminal prosecutions were initiated. However, to date, none of those cases have led to successful convictions.

¹³ See, e.g., *Four Optical Disc Producers May be Imposed with Sanctions*, *Bisnis Indonesia*, September 15, 2006. The article quotes Abdul Bari Azed, Secretary of the National Team for Intellectual Property Rights Violation, as indicating at least four CD/VCD/DVD production plants are suspected of violating the optical disc production regulations. The article lists the four plants as PT Medialine (Jakarta), PT Winer Starindo (Cikande), PT Panggung Elektronika (Surabaya), and a plant in Surabaya (which has no production code and whose machines are not registered). PT Medialine is reported to have no licenses, while all the products of PT Winer Starindo are noted to be pirated. PT Panggung Elektronika is cited as having no content review certificates or licenses from copyright owners.

¹⁴ For example, the following sentences resulted from the cases listed (initials used to denote each defendant):

- Defendant J.R.: three years imprisonment without probation and an order to destroy seized products.
- R.S.: three years imprisonment (trial court had initially imposed sentence of one year imprisonment, suspended for two years probation, destruction of the pirated product (2,708 CDs), and expenses of Rp. 1,000–(US\$11), but on appeal the court increased the sentence).
- Defendant E.: one year imprisonment, suspended for a probation period of two years. The defendant did not appeal.
- M.K.: three years imprisonment and a fine of Rp. 10 million (approximately US\$1,105) or an additional sentence commuted to three months imprisonment in lieu of the fine.
- J.B.: one year imprisonment without probation and a fine of Rp. 3 million (approximately US\$332) (and an additional month in prison in case the fine is not paid).
- E.L.: two years imprisonment without probation.
- N.S.: one year and seven months imprisonment without probation. The defendant did not appeal.
- L.M.: two years imprisonment without probation. The defendant did not appeal.
- H.T.H.: two sentences, one in 2005, for ten months imprisonment without probation (on appeal). And one in 2006, for eight months imprisonment without probation.
- W.L.: one year and three months imprisonment without probation and a fine of Rp. 10 million (approximately US\$1,105). The defendant did not appeal.
- E.A.: two years and six months imprisonment.
- B.S.: two years imprisonment without probation.
- D.: two years imprisonment and a fine of Rp. 3 million (approximately US\$332).

Some Problems Remain in Raids and Seeking Prosecutions: There remain some problems with raids. For example, there have been some suspected tip offs before retail raids. In addition, some industry representatives report problems seeking prosecutions in piracy cases. For example, in relation to the *ex officio* actions in Bali regarding piracy of software, it appears the case was dropped by police/prosecutors notwithstanding overwhelming evidence of a copyright violation. Unfortunately, an end-user software piracy raid in 2005 (based on an earlier raid) has not resulted in a prosecution since the prosecutor has refused to accept the case (we believe this refusal was due more to a lack of knowledge on the part of the prosecutor of IP cases than to a lack of evidence).¹⁵ The overall bureaucratic nature of the process toward a prosecutor taking a case results, from a practical point of view, in unnecessary delays in preparing dossiers and increased costs.

Industry maintains that even more key prosecutions must commence against the owners of pirate facilities and distributors, as well as owners and managers of high profile malls that continue to harbor pirate outlets. There are several key owners of piracy operations who remain untouched.¹⁶ Without tackling key piracy operations, it will be difficult for the piracy rate (or losses) to decrease for any industry.

IP Task Force Decree Signed: In March 2006, President Susilo Bambang Yudhoyono finally issued the decree establishing the “National Task Force for IPR Violation Prevention.”¹⁷ According to the Decree, the Task Force’s aims are to:

- Formulate a national policy to prevent IPR infractions;
- Determine national efforts needed to prevent IPR violations;
- Assess and determine measures for resolving strategic problems concerning IPR infractions, including prevention and law enforcement activities in accordance with the main duties of participating agencies;
- Educate and socialize related government institutions and society about IPR matters through various activities; and
- Improve bilateral, regional and multilateral cooperation to prevent IPR violations.

The Task Force is responsible directly to the President, and must “report in writing” to the President at least every six months or when needed. IIPA understands that the first meeting of the Task Force occurred in June 2006, however we do not know if the Task Force addressed these issues or indeed what, if anything, it did decide to do. One outstanding issue is funding for the Task Force and its activities. According to the Decree, all costs associated with IPR Task

¹⁵ The business software industry reports that there is no common understanding of the concept of end-user piracy among public prosecutors and police, notwithstanding industry efforts to explain the concept at numerous trainings. In particular, public prosecutors are insisting on proof of end-users’ intent to infringe and are imposing a very high proof requirement in that regard.

¹⁶ Two known large suppliers of pirate software products in Indonesia, several owners of illegal facilities producing pirated VCDs and DVDs and software, and several of the large distributors with outlets in Glodok and Harco Mangga Dua remain untouched by enforcement efforts in Indonesia.

¹⁷ Presidential Decree No.4/2006, March 27, 2006, On: Establishment of the National Task Force for IPR Infraction Prevention.

Force activities are to be levied on the Ministry of Justice and Human Rights budget, however, it does not appear the Task Force has an independent budget at this stage.

With the establishment of the National IP Task Force, the software industry has devised a proposed three-year plan and IIPA agrees that many of the following tasks, at a minimum, should be accomplished by this group:

- a. Establish and implement a 3-year Intellectual Property Protection and Awareness Roadmap or Blueprint that consists of short term and long term strategies
- b. In the short term, the National IP Task Force should immediately launch a Nationwide educational and enforcement campaign. Two proposals for short term action are:
 - i. The National IP Task Force to declare 2007 an “IP Action Year” and work with the industry to coordinate awareness and enforcement activities across the country
 - ii. The National IP Task Force to consider making it mandatory for new computers to be loaded with only genuine software
- c. In the long term, the National IP Task Force may wish to consider the following goals:
 - i. Education: Reach businesses, schools and the general public to promote respect for IP
 - ii. Legislation: Review and enhance IP legislations periodically
 - iii. Enforcement: Conduct sustained enforcement efforts to tackle both retail and business software end-user piracy

TRAINING

In 2006 as in previous years, the copyright industries conducted and participated in various training and public awareness activities in Indonesia:

- ASEAN-ECAPII-USPTO Workshop on Intellectual Property Protection and Enforcement in the Digital Environment, December 7-8, 2006 (BSA).
- The International Federation of Phonographic Industries conducted four training programs in 2006 (and a further two training programs were funded by USAID in February 2006).
- The motion picture industry has undertaken a total of five training sessions in Indonesia between January 1 – October 31, 2006
- The Business Software Alliance has been very active in training the relevant authorities (such as police officers) in relation to software piracy in Indonesia. In 2006, BSA conducted several training programs in Indonesia, including the following:
 - “Management of Copyright Infringement Cases Involving Optical Disk Media and Software Infringement by the Corporate End User,” in Bali, November 24-26, 2005, hosted by the Police Criminal Investigation Department of Indonesia. The trainees were the heads of economic units for each of the provincial police departments;

- Training program for Police on software product identification, in Megamendung, on February 27, 2006;
- “Training on Corporate End-User Piracy,” October 9, 2006, Jakarta. The trainees were officers of the Indonesian Police’s Industry and Trade Unit;
- “Training on Corporate End-User Piracy,” October 10, 2006, Jakarta. The trainees were officers of the Cybercrime Unit of the Indonesian Police.

MARKET ACCESS BARRIERS

There is no good news out of Indonesia on market access issues, and the country remains one of the most closed markets in the world to legitimate U.S. copyright businesses. Problems remaining include the following.

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. IIPA understands that the Law overrides the Presidential Decree. It is believed the draft Film Law also contains a 20% foreign ownership cap.

Broadcast Law: The “Broadcast Law”¹⁸ bans the broadcast of most foreign programming in Indonesia.¹⁹ The Independent Regulatory Commission (KPI) created by the new Broadcast Law has now been installed and 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.²⁰ Support

¹⁸ Law of the Republic of Indonesia, No. 32 Year 2002, Regarding Broadcasting (into force February 2003).

¹⁹ 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.

²⁰ 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

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 2006, but at the time of writing, their status was unclear.

Film Law: Separate draft Film Laws were submitted to Parliament for consideration in December 2006 by the Ministry of Tourism and the government advisory board on Film Issues, BP2N. Industry has only recently obtained translations of these drafts and has not had the chance to fully review them at the time of this report. It is hoped that earlier plans to impose screen quotas and limits on foreign participation in the film industry, among many other market access restrictions of real concern, do not come to pass.²¹ Again, it is also highly unfortunate that neither the Ministry nor BP2N considered the views of foreign film producers or related associations' views in their discussions. It is suspected that these drafts will follow the Broadcast Law and limit foreign participation in the industry. There have also been some suggestions that consideration is being given to scrapping the Film Law entirely.

COPYRIGHT LAW AND RELATED ISSUES

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

Copyright Law Implementing Regulations Still Missing: IIPA has commented on the improvements in the Law of the Republic of Indonesia, Number 19 Year 2002 Regarding Copyright (Copyright Law) (effective July 29, 2003) and has recommended further changes that should be made to that law.²² IIPA understands that regulations dealing with "rights

had to be used). Art 24(6) requires foreign advertising to be replaced by domestic advertising, and cross-media and foreign ownership restrictions.

²¹ 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.

²² 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).
- Delete Article 18(1) which appears to amount to 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 deterrent effect.

management information” (RMI) were finalized in 2005,²³ but implementing regulations regarding technological protection measures (TPMs) (as covered in Article 27 of the Copyright Law) are still missing and are needed to fully implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.²⁴

Meanwhile, the press reports IP Director General Ansori Sinungan at the Justice and Human Rights Ministry as indicating the 2002 Copyright Law will be amended, in particular to provide an additional chapter establishing a collective management society.²⁵ IIPA encourages the government to take the opportunity, if indeed the law is being amended, to make the changes advocated in the past to produce in Indonesia a truly modern copyright statute. IIPA also encourages the Indonesian Government to ensure that any proposed changes are open for public consultation and comment. We note our concern at reports in early 2007 that the Ministry was considering some controversial amendments, including the reduction of the maximum penalties available for criminal copyright infringements. Amendments such as these would be steps backwards from the positive progress Indonesia has made in recent years in enforcing intellectual property rights, and IIPA strongly urges that such amendments not be enacted.

In addition to the issues previously discussed in IIPA submissions, one issue which should be addressed in any amendment to the Copyright Law is landlord liability for copyright infringement carried out by tenants (of a retail mall, for example). The issue of landlord liability for copyright infringement (committed by tenants) remains unclear in Indonesia, and is a growing concern for industry and the enforcement authorities in Indonesia.²⁶ Another issue is the lack of a specialized IP court with judges that have been adequately trained to deal with IP cases.²⁷ A third issue is the need to confirm that end-user piracy of software is criminalized (at present, Article 72(3) provides a criminal remedy against one who illegally reproduces software with “a commercial purpose”). The courts and prosecutors in Indonesia remain unclear as to whether this includes end-user software piracy. This should be confirmed or the law should be amended to confirm it.

New Border Measures Enacted: Law No. 17 of 2006 amended Law No. 10 of 1995 on border and customs measures. While IIPA has not reviewed the legislation as passed, the provisions apparently represent an improvement compared with the 1995 law (the 1995 Customs Law established a judicial seizure system and allowed for *ex officio* action, but no

²³ 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.”

²⁴ An April 2003 Report issued by the Indonesian government 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.

²⁵ Ridwan Max Sijabat, *Govt Revising Law on Intellectual Property Rights*, Jakarta Post, November 23, 2006, at 9.

²⁶ It should be confirmed that it is illegal in Indonesia to induce, facilitate or aid and abet infringement, including by distributing or providing a facility, program, device, or technology to members of the public with the object of facilitating, promoting or encouraging its use to infringe copyright.

²⁷ Both civil and criminal IP cases are currently heard in the commercial courts.

implementing regulations ever followed passage of the law).²⁸ According to industry, the term "District Court" was replaced with "Commercial Court" to take into account the IP Law's shift in court jurisdiction. The issue of the "District Court" being listed in the 1995 law was a major block to the government issuing implementing regulations for customs enforcement. It is hoped that implementing regulations will be forthcoming soon in 2007.

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.²⁹ In the absence of a statute dealing with cybercrime, industry has to resort to general principles of criminal or civil law in dealing with cases involving Internet piracy or cybercrime.

OD Regulations Remain Deficient on Their Face: 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 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:

- There is no centralized licensing of prerecorded or blank optical discs.
- The Regulations require imported pre-recorded discs to be marked with identification code, which violates GATT/WTO rules and could have other negative ramifications.
- The Regulations do not adequately cover stampers and masters, e.g., it is not clearly stated that penalties specifically apply against illegal stampers or moulds alone.
- The Regulations do not expressly cover exports of discs, equipment and raw materials.
- The Regulations do not expressly prohibit unlawful uses/manipulation of identification code.

²⁸ In practice, seizures are occasionally made on the basis of an incorrect declaration or under-declaration.

²⁹ 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."

- The Regulations do not expressly authorize forcible entry in an inspection.
- The Regulations do not require the government to keep records of “permits” and raids run.
- The Regulations do not provide for plant closure (although IIPA understands that since business licenses can be revoked, technically, factories cannot operate without the license).
- The Regulations do 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,³⁰ and another on reporting by registered producers.³¹ 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 2005, \$1.6 billion worth of Indonesian goods entered the U.S. under the duty-free GSP code, accounting for 13.4% of its total exports to the U.S. During the first 11 months of 2006, \$1.8 billion worth of Indonesian goods (or 14.6% of Indonesia’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code. Indonesia needs to continue to endeavor to meet the adequate and effective test under the statute to remain eligible to continue to receive favorable treatment under the GSP program.

³⁰ 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.

³¹ 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.