

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

NIGERIA

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

EXECUTIVE SUMMARY

Piracy is so bad in Nigeria that the local music industry has actually called for a ban on the importation of music CDs.¹ But Nigeria's problems are sadly just taking root in a more serious way, as Nigeria exports pirate product to other parts of Africa. In particular, IIPA knows of 15 optical disc factories that have been operational in Nigeria, having at least 52 lines, capable of producing at least 182 million discs (a conservative estimate). Some of these plants are owned by Asian companies displaced by enforcement against them in Asia. Reports from neighboring countries suggest that large quantities of pirate discs are being exported from these plants in Nigeria across the region. As such, Nigeria has unfortunately earned the dubious distinction of becoming an optical disc piracy hotspot, and IIPA calls upon the U.S. government to urge the Nigerian government to deal with this problem as an urgent matter. Namely, it is imperative that the Nigerian government swiftly implement regulations to control the illegal production of optical discs, including a licensing (and revocation/renewal system), with source identification code requirements for discs, stampers, and masters, license of import of raw materials and equipment, inspection authority, and sanctions for plants violating the law. IIPA understands that the Minister of Justice has signed new Optical Disc Regulations into law, and that these regulations will be published in the Government Gazette soon (we further understand the Nigerian Copyright Commission is working on this). Then, the Nigerian government must take urgent steps to stamp out pirate optical disc production in the country. Other piracy problems must be dealt with as well through strong enforcement by the Nigerian Copyright Commission (NCC) and Nigerian Customs, and use of publications (as well as other copyright materials) by universities and libraries must be legalized.

ACTIONS TO BE TAKEN IN 2007

- Enactment of draft optical disc regulations to require the 15 known optical disc plants and two mastering facilities to come forward and be licensed, to require the plants' use of SID codes (mastering LBR code and mould code) on all discs produced and sold in Nigeria, and to empower the government authorities to inspect plants and take deterrent action against any plants found to operating outside the law.

¹ All Africa Lagos, *NARI Advocates Ban On Importation of Recorded Music*, March 13, 2006 (noting that with an 85% piracy level for music/records, the chairman of the Nigerian Association of Recording Industries (NARI), Toju Ejueyitchie, called for the ban on the importation of prerecorded music or film carriers into Nigeria). In the article, the chair of NARI also admitted to the existence of "about 15 optical disc factories, and the number increasing by the day," and posited that virtually 100% of works imported were pirated. The press conference also announced the seizure of 1.7 million CDs in Cotonou, and raids on suspected IP pirates Akina and Nassinma. The head of NARI also called for a serious purge of the Alaba International Market, which he described as a "notorious haven for pirates, and their nefarious activities."

- 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.”

For more details on Nigeria’s Special 301 history, see IIPA’s “History” appendix to this filing at <http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years’ reports at <http://www.iipa.com/countryreports.html>.

NIGERIA 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	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music	52.0	95%	52.0	95%	50.0	99%	NA	NA	NA	NA
Business Software ³	59.0	82%	46.0	82%	30.0	84%	29.0	84%	4.3	67%
Books	8.0	NA	6.0	NA	4.0	NA	NA	NA	NA	NA
Motion Pictures	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Entertainment Software	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
TOTALS	119.0		104.0		84.0		29.0		4.3	

PIRACY UPDATES IN NIGERIA

Pirate Optical Disc Plant Production: As noted, there are a reported 15 optical disc plants that have been in operation in Nigeria, some of which have migrated to Nigeria from Asia and operate to supply Central and West Africa. IIPA is aware of at least 52 production lines capable of producing at least 182 million discs per year. Many of the plants are not licensed to produce any kind of copyright content. Two of these plants (Akina and Nasinma) were raided in

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 Israel 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 Nigeria, 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.

June and July 2004, and were raided again in 2006. 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.

Retail Piracy: Nigeria is a very large potential market, but the country is overrun with pirate materials domestically. Pirated CD-Rs containing copyright materials, for example, compilations of up to 300 songs by local and international artists, are being sold for less than the equivalent of US\$1 in the local market. There has also been a recent influx of imported pirate CDs from unknown locations in Asia.

Book Piracy: Book piracy continues to be a serious problem, due in part to the Nigerian government’s decision in 2003 to cut all funding for university and library purchases. This decision has created a climate fostering illegal photocopying, which plagues the academic market. Furthermore, Nigeria has for years been a destination for pirate book imports, primarily from Asia (China and Malaysia). Customs authorities should increase vigilance in seizing pirate product before it has a chance to saturate the local market.

Business Software Piracy: For the business software industry, hard-disk loading of pirate software and unauthorized use of software in businesses remain significant problems. The piracy rate, at 82%, is unacceptably high.

Organized Crime/Violence Associated with Piracy: There are disturbing trends in terms of the level of violence associated with piratical activities in Nigeria. In June 2006, Nigerian police raided the Alaba International market in Lagos, during which pirates shot two police officers, burned a police vehicle, and threw stones and bottles, injuring the industry coordinator when he was struck on the head by a stone.⁴ Tear gas had to be used to quell the violence. Several thousand pirate CDs and VCDs were seized and four men were arrested.⁵ This raid demonstrates the serious criminal nature of pirate enterprise in Nigeria and that a coordinated approach focused on criminal enforcement must be mounted.

ENFORCEMENT UPDATES IN NIGERIA

There is little enforcement activity in Nigeria,⁶ and cooperation between government agencies to implement and enforce the law, including law enforcement, is sparse and erratic.⁷ The Nigerian Copyright Commission (NCC) has responsibility in Nigeria for anti-piracy activities, and the National Customs Service (NCS), as the nation’s gateway police, has a significant role

⁴ IFPI Enforcement Bulletin, September 2006 (on file with IIPA). Fortunately all those wounded have recovered.

⁵ The raid was led by the Director of Special Operations of the National Copyright Commission (NCC) and an industry representative. More than 100 anti-riot policemen surrounded the market while 10 armed officers took up positions on the rooftops. They supported the 12 Copyright Inspectors and 15 packers who went into the Alaba market to inspect suspect merchandise.

⁶ 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.

⁷ For example, we understand the National Copyright Commission (NCC) launched a Strategic Action Against Piracy (‘STRAP’) campaign during 2005, and that while the goal of STRAP was to curb piracy and restore an environment conducive to a credible copyright system, very few actions were taken. We also understand that NCC accepts “Copyright Notifications,” a scheme designed to enable creators of copyright works or persons who have acquired rights in copyright works to give notice of their copyright. This system is largely ineffective, however, in combating piracy.

to play in anti-piracy enforcement, although NCS has never to our knowledge seized any product on its own initiative. There needs to be better coordination between these two enforcement entities. The NCC's Director General was suspended in November 2005 for several months over the de-certification of one of Nigeria's music collecting societies, the Musical Copyright Society of Nigeria,⁸ but has since been reinstated. 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. Meanwhile, the courts provide no sure relief, as bringing civil claims continues to be an expensive and risky remedy for right holders.

COPYRIGHT LAW AND RELATED ISSUES

Copyright protection in Nigeria is governed by the Copyright Act (Cap 68 Laws of the Federation of Nigeria, 1990) as amended. The law, while by no means perfect, provides a solid basis for enforcing copyright and combating piracy. Unfortunately, there is apparently a new broadcast compulsory license being proposed that would curtail the ability of U.S. channels to freely contract to show sporting events.⁹ This should not be imposed in Nigeria.

As the government has come to recognize the severity of the optical disc piracy problem,¹⁰ it is positive that it has issued an optical disc regulation. Effective prevention of optical disc piracy can only be achieved through targeted legislation and by the establishment of specific enforcement mechanisms. While IIPA has not reviewed the legislation, we note that essential provisions for an effective optical disc regulatory scheme include:

- The establishment of a competent licensing authority to grant licenses to optical disc production facilities as well as to deny, suspend, or revoke a license if that should become necessary. In addition, commercial CD-R/DVD-R "burning" (i.e., for the purpose of sale, distribution, or other commercial dealing) of copyrighted materials onto recordable optical discs undertaken by traditional optical disc manufacturing plants or outside of such plants (the latter which is fast becoming a major problem) should be subject to registration to ensure that unregistered commercial conduct is punishable.

⁸ 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/1snov250501.htm>.

⁹ IIPA understands that the Nigerian National Broadcasting Commission (NBC), under the supervision of the Federal Ministry of Information and National Orientation, resolved during August 2006 that NBC would not recognise exclusivity in sports transmission. Section 1.16.1 of the Code provides,

In Nigeria, the coverage of Sporting and Major National Events shall not be Exclusive to any Station. Such Programme shall be made available to other Operators on Mutually negotiated terms.

Section 1.16.2 of the Code further states that

Where the Commission needs to arbitrate its decision shall be final and binding on all parties.

¹⁰ See Ruby Rabi, at <http://allafrica.com/stories/200611290465.html>, Daily Trust (Abuja), November 28, 2006 (reporting that NCC admitted there are "14 replicating plants in Lagos used to manufacture pirated CDs, DVDs and books," and noting that ten years ago, Nigeria had just two replicating plants). The NCC indicated that it intends to re-introduce the "hologram" as a means to determine authenticity. IIPA is skeptical that a hologram purchase program will achieve anything other than foster fraudulent holograms and increase costs to right holders.

- The requirement to use source identification (SID) Codes to trace pirate discs to their source of production.
- The establishment of licensee record-keeping requirements in the application process and after a license is granted, to provide governments with the means to judge whether an applicant qualifies for a license, and to provide maximum transparency after a license is granted (e.g., exemplars will be provided from each plant for every disc produced, allowing for transparent accounting of licensed production and forensic evidence should such be needed). CD-R burning registration should also entail record-keeping of orders.
- The ability to inspect plants (in addition to traditional search and seizure) and burning facilities, including nighttime inspections, to ensure that plants/facilities are engaging in legal activities.
- Government record-keeping of all plants/facilities and all actions taken with respect to them (e.g., inspections, searches).
- The establishment of adequate penalties for violations of a license (or burning without registering) including criminal penalties and possibility of plant/burning facility closure.
- To put into place controls to track the export of discs, and export and import of equipment and raw materials, including the masters or stampers which are the key components for producing pre-recorded content (an automatic license is one common approach).