

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2008 SPECIAL 301 REPORT

### NIGERIA

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

#### **EXECUTIVE SUMMARY**

Piracy is so bad in Nigeria that local artists and filmmakers now refuse to release their latest albums and movies into the retail market,<sup>1</sup> and recently, industry actually called for a total ban on the importation of music CDs.<sup>2</sup> Fifteen optical disc replication plants and four mastering plants have rapidly transformed Nigeria from a haven for pirate retailers into a haven for pirate producers. The plants are mainly owned by Southeast Asian nationals' whose companies have been displaced by enforcement against them in their home countries. 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.

Fortunately, the government enacted the Copyright (Optical Disc Plants) Regulation 2006, which went into effect on December 20, 2006. The Regulation provides a very strong legal framework for regulating optical disc production, 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 calls upon the Nigerian government to employ the Regulation to deal with the optical disc piracy problem as an urgent matter. Other piracy problems must be dealt with as well through strong enforcement by the Nigerian Copyright Commission (NCC) and Nigerian Customs. Use of publications (as well as other copyright materials) by universities and libraries must be legalized.

#### **ACTIONS TO BE TAKEN IN 2007**

- Enforcement of the Copyright (Optical Disc Plants) Regulation 2006 to regulate the 15 known optical disc plants and 4 mastering facilities to take deterrent action against any plants found to operating outside the scope of the Regulation.
- 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,

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<sup>1</sup> At a press conference announcing the enactment of the Copyright (Optical Disc Plants) Regulation 2006, Eddie Ugbomeh (OON), actor and film producer, was quoted as saying,

I no longer release videos or DVDs into the Nigerian market. What I do now with my films is premiere them and take them to select film halls and after I've made my money, I simply retire them to the shelves. The last time I released VCDs to video rental outlets across the country, they never gave me any returns. In Port Harcourt, Rivers state, these rental operators even threaten to kill me if I come for my money. Same thing at Warri, Delta state. So I've made up my mind not to release VCDs in the present circumstances.

See Miebi Senge, AAGM: NCC's Copyright Regulation 2006 Seeks to STRAP Pirates Out of Business, Vanguard (Nigeria), April 11, 2007.

<sup>2</sup> 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."

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 and journals.
- 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.”

NIGERIA ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY (IN MILLIONS OF U.S. DOLLARS) AND LEVELS OF PIRACY: 2003-2007 <sup>3</sup>										
INDUSTRY	2007		2006		2005		2004		2003	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music	55.0	95%	52.0	95%	52.0	95%	50.0	99%	NA	NA
Business Software <sup>4</sup>	65.0	82%	59.0	82%	46.0	82%	30.0	84%	29.0	84%
Books	NA	NA	8.0	NA	6.0	NA	4.0	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
<b>TOTALS</b>	<b>120.0</b>		<b>119.0</b>		<b>104.0</b>		<b>84.0</b>		<b>29.0</b>	

## 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 Southeast Asia and operate to supply Central and West Africa. The plants have 70 production lines, including at least 3 DVD compatible lines, capable of producing over 240 million discs per year (a conservative estimate). 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, and were raided again in 2006. However, to date there has been no outcome with respect to actions against these plants.<sup>5</sup> The massive production overcapacity is not only used 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 for legitimate copyright business, but the country is overrun with pirate materials domestically. Pirate CD-Rs containing copyright materials, for example, compilations of up to 300 songs by local and international artists, sell for less than the equivalent of US\$1 in the local market. Notwithstanding the increased production capacity in the market,

<sup>3</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2008 Special 301 submission at [www.iipa.com/pdf/2008spec301methodology.pdf](http://www.iipa.com/pdf/2008spec301methodology.pdf). For information on the history of Nigeria under Special 301 review, see Appendix D at ([http://www.iipa.com/pdf/2008SPEC301\\_USTRHISTORY.pdf](http://www.iipa.com/pdf/2008SPEC301_USTRHISTORY.pdf)) and Appendix E at (<http://www.iipa.com/pdf/2008SPEC301HISTORICALSUMMARY.pdf>) of this submission. Please also see previous years’ reports at <http://www.iipa.com/countryreports.html>.

<sup>4</sup> BSA’s 2007 statistics are preliminary. They represent the U.S. software publishers’ share of software piracy losses in Nigeria, and follow the methodology compiled in the Fourth Annual BSA and IDC Global Software Piracy Study (May 2007), available at <http://w3.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 2006 piracy statistics were preliminary at the time of IIPA’s February 12, 2007 Special 301 filing and were finalized in June 2007 (see <http://www.iipa.com/statistics.html>) as reflected above.

<sup>5</sup> There are even unsubstantiated claims that the evidence related to the Nasinma plant has been destroyed to thwart attempts to prosecute those responsible for piracy at that plant.

an influx of imported pirate CDs from unknown locations in Asia continues to harm the market in Nigeria's main cities.

**Book Piracy:** Book piracy continues to be a serious problem, due in part to the Nigerian government's decision in 2003 to cut 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 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.<sup>6</sup> Tear gas had to be used to quell the violence. Several thousand pirate CDs and VCDs were seized and four men were arrested.<sup>7</sup> 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**

**Commencement of Optical Disc Raids:** The Nigerian government, in cooperation with industry, began acting against piracy in the country in 2007. The Nigerian Copyright Commission has teamed up with the Economic and Financial Crimes Commission (EFCC), and private sector to form a collaborative campaign called the Strategic Action Against Piracy (STRAP). Two major raids were carried out targeting optical disc piracy in 2007.

- On April 13, 2007, operatives of both NCC and EFCC, along with the record and motion picture industry's representative, and a contingent of the Nigerian Police Mobile Force, launched a simultaneous anti-piracy operation on two large-scale replicating plants, namely, Magnet Integrated Ventures Company Limited, in Ajah; and Akina Music International Company Limited, in Ikeja.<sup>8</sup> This was reportedly the first utilization of the Copyright (Optical Disc Plants) Regulation 2006. At the time of the raid, employees were caught in the act of producing pirate discs, including music discs, VCDs and DVDs. According to NCC, two truck loads of suspected pirated products estimated at NN32 million (US\$276,000) were impounded during the raid. The authorities arrested the Managing Director of Akina Music, and five employees of Magnet, while a search was launched for the Managing Director of Magnet Ventures.<sup>9</sup> The Commission sealed the premises of Magnet pending the conclusion of post-raid investigations. Even though indictments have been brought, reportedly, Magnet unilaterally opened its premises again for operation in 2007.
- On July 25, 2007, 16 Economic and Financial Crimes Commission (EFCC) operatives and 20 armed police officers, along with assistance from the record and motion picture industry representative, raided CVL Technology Ltd., a plant with five production lines. The plant operatives were caught in the act during the night manufacturing unauthorized optical discs. The authorities seized 714 stampers, containing international music repertoire and Hollywood movies.

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<sup>6</sup> IFPI Enforcement Bulletin, September 2006 (on file with IIPA). Fortunately all those wounded have recovered.

<sup>7</sup> 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.

<sup>8</sup> See NCC, *EFCC Raid Two Piracy Coys*, All Africa, April 30, 2007.

<sup>9</sup> It has been reported to IIPA that two managers of Magnet were arraigned in court in February 2008 by the NCC.

Officials also found 5,000 copies of the 'Respect 2' album, by popular Nigerian Artist K1, as well as 8,000 other CDs and VCDs. The EFCC also recovered documents showing orders for and production of several local and foreign works including 'Grass 2 Grace' album from 2Face.<sup>10</sup> The EFCC arrested the company's head of marketing and an investigation was launched.

**Destruction Event:** According to another press report, the Solicitor General of Nigeria, the Commissioner of Police, and the NCC Director General presided over a destruction event at the Kaduna State Trade fair complex ground involving over N150 million worth of pirate CDs, DVDs, videocassettes, books and implements used to infringe.

There is little enforcement activity in Nigeria for other industries.<sup>11</sup> The Nigerian Copyright Commission (NCC), which, by practice reports to the Ministry of Justice, has responsibility in Nigeria for anti-piracy activities, and, as noted, the Economic and Financial Crimes Commission (EFCC) has teamed up with the NCC to fight optical disc piracy. The National Customs Service (NCS), as the nation's gateway police, also has a significant role to play in anti-piracy enforcement, although NCS has never to our knowledge seized product on its own initiative. NCC's effectiveness is hampered by a lack of funding. The courts in Nigeria 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 Law:** 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.

**Copyright (Optical Disc Plants) Regulation 2006:** As the Nigerian government has come to recognize the severity of the optical disc piracy problem,<sup>12</sup> it is positive that the government has issued the Copyright (Optical Disc Plants) Regulation 2006. The law establishes a specific enforcement mechanism that includes:

- 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.
- The establishment of a registration system for commercial CD-R/DVD-R "burning" (i.e., for the purpose of sale, distribution, or other commercial dealing), i.e., burning of copyrighted materials onto recordable optical discs undertaken in back rooms of traditional optical disc manufacturing plants or outside of such plants (the latter which is fast becoming a major problem).
- 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

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<sup>10</sup> Among the wide variety of foreign artists whose works were found were R. Kelly, Wyclef, Luther Vandross, Celine Dion, Phil Collins, Westlife, Toni Braxton, Boys II Men, 50 Cent, Backstreet Boys, Akon, 2Pac, Beyonce, Kent Village, Lucky Dube and Whitney Houston. The works were mostly titled 'Platinum' or 'Best of' indicating that they contained selected songs from each artist. The foreign films on the recovered VCDs and stampers included *Love Don't Cost*, *Blood Diamond*, *Spiderman 3*, *Desperado 3*, *Contractor*, *Black Snake*, *Naked Weapon*, *The Big Boss*, *300*, *Passion of Christ*, *Power House*, *The Marine*, *Final Contract*, and *Cyborg*.

<sup>11</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>12</sup> 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.

production and forensic evidence should such be needed). CD-R burning registration also entails 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.
- 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).

The Regulation also imposes the requirement of a permit for the importation of discs into Nigeria (Section 2(1)). The U.S. copyright industries do not endorse this provision and believe that it should be removed, if for no other reason than a permit requirement on the importation of legitimate optical discs may be a GATT-incompatible restriction on trade.

## **GENERALIZED SYSTEM OF PREFERENCES**

Nigeria currently participates in the U.S. GSP program, offering duty-free imports of certain products into the U.S. from developing countries. In order to qualify for such unilaterally granted trade preferences, USTR must be satisfied that Nigeria meets certain discretionary criteria, including whether it provides “adequate and effective protection of intellectual property rights.” During the first 11 months of 2007, \$858,000 of Nigeria’s total exports entered the U.S. under the duty-free GSP code. Nigeria should not continue to expect such favorable treatment at this level unless it can meet the discretionary criteria in this U.S. law.

## **TRAINING**

**Industry Training:** On September 21, 2007, 25 participants from the Nigerian Copyright Commission, Nigerian Police, Nigerian Customs Service and Standards Organisation attended a training by the motion picture and record industry representatives to build capacity for tackling the serious problem of optical disc piracy in Nigeria. Later, the training session switched to Lagos where a further 41 officers drawn from the same four organizations attended. Participants were taken on visits to 11 optical disc replicating plants as part of the training. These plant visits enabled each participant to gain hands-on practical knowledge of what was taught in the training room.

**U.S. Government Training:** The Nigerian Copyright Commission (NCC) in collaboration with the United States Department of Justice (USDOJ) held a training program on “Investigative Skills for Intellectual Property Crimes,” held in Abuja from November 6 to 9, 2007. The aim of the training was to equip enforcement officers with the requisite skills to sustain the ongoing fight against piracy and counterfeiting. Participants were drawn from Nigerian government agencies with a mandate for enforcement, administration and prosecution of IP crimes.

**Coordinator of the EFCC Fix Nigeria Initiative:** Chido Onumah, Coordinator of the Economic and Financial Crimes Commission (EFCC) Fix Nigeria Initiative, spoke at the Nigeria International Book Fair, the International Children Book Day, World Book & Copyright Day (WBCD), and Earth Day (ED) at the Multipurpose Hall of the University of Lagos. His message was to say no to all forms of corruption and to say no to book piracy.<sup>13</sup>

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<sup>13</sup> Damieta Braide and Folake Quadree, *Waging War Against Book Piracy*, May 16, 2007, at <http://www.sunnewsonline.com/webpages/features/arts/2007/may/16/arts-16-05-2007-001.htm>.