

# BANGLADESH

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA submits this Special Mention report on Bangladesh to highlight continuing piracy problems there. With recent elections on December 28, 2008, and a new President coming into power,<sup>1</sup> the government of Bangladesh has an opportunity to strengthen protection and enforcement of copyright, in line with its international obligations and to promote the economic development of local copyright sectors in Bangladesh.

**Executive Summary:** The market in Bangladesh continues to be severely hampered by piracy, with piracy rates among the highest in the world. In its 2008 Special 301 Report released in April 2008, the United States Trade Representative named Bangladesh as one of the countries that “still need to adopt and implement legislation or improve existing measures to combat pirate optical disc production,” as it has “not made sufficient progress in this area.” Piracy problems abound, including unchecked book piracy in the form of print piracy and illegal commercial photocopying, especially on or around university campuses. Bangladesh hosts several optical disc factories, most of which migrated from Pakistan, and the production capacity for which far exceeds legitimate demand. Pirate discs not only destroy the domestic market but are exported to India and elsewhere, harming markets outside Bangladesh. Other problems include CD-R “burning,” including both large-scale “burning” in the optical disc plants and small-scale burning, and the sale of pirate music cassettes. The harm from piracy in Bangladesh is not only to U.S. and other foreign right holders but is felt keenly by Bangladeshi booksellers, record producers, and others. Recently, Bangladeshi record 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, and noting in an article in 2006, “[i]n the last four years alone, as many as 10 big and respected companies have had to close because of piracy.”<sup>2</sup>

**Priority Actions Requested in 2009:** IIPA requests that the government of Bangladesh take the following actions, which would result in the most significant near term commercial benefits to the copyright industries:

### Enforcement

- Establish an anti-piracy force and take actions (including *ex officio*) against book piracy at photocopy shops and those who engage in offset printing and against rampant CD, DVD, CD-R, DVD-R and CD-ROM piracy.
- Establish a cell within the Bangladeshi Customs to intercept imports and exports.
- Inspect all optical disc plants, collecting exemplars and closing down plants engaged in piracy, seizing pirate discs and materials, and prosecuting owners and managers of pirate plants.

### Legislation

- Pass and implement an effective optical disc regulation, including licensing requirements, mandatory plant visits, exemplar collection, and use of Source Identification Code master (LBR) and mold code.

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<sup>1</sup> *Awami League's Senior Leader Zillur Rahman to Become Bangladesh's Next President*, Xinhua News, January 4, 2009, at [http://news.xinhuanet.com/english/2009-01/04/content\\_10598556.htm](http://news.xinhuanet.com/english/2009-01/04/content_10598556.htm).

<sup>2</sup> *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>.



BANGLADESH								
Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2005-2008 <sup>3</sup>								
INDUSTRY	2008		2007		2006		2005	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	NA	NA	NA	NA	NA	NA	NA	NA
Records & Music	NA	90%	NA	NA	40.0	70%	NA	NA
Business Software	56.0	92%	55.0	92%	54.0	92%	NA	NA
Entertainment Software	NA	NA	NA	NA	NA	NA	NA	NA
Books	NA	NA	NA	NA	8.0	NA	6.0	NA
TOTALS	56.0		55.0		102.0		6.0	

## PIRACY AND ENFORCEMENT CHALLENGES IN BANGLADESH

**Book Piracy – Enforcement Actions and Institutional Legalization Efforts Rare:** The book publishing industry grapples with significant illegal commercial photocopying and print piracy affecting a wide range of products, including academic textbooks, English language teaching (ELT) materials, medical and other professional reference books, computer and technical books, dictionaries, and commercial bestsellers. Any book with significant sales potential is subject to high piracy rates. Neelkhet Market in Dhaka is famous for pirate sales, and other book markets in cities such as Dhaka, Chittagong, Rajshahic and Khulna teem with illegal “local reprints” as well. This is a disturbing trend in a region where legitimate local reprints are offered for sale at a very low cost, and it not only harms the market for foreign publishers but also curbs potential business for Bangladesh’s booksellers and local producers. Local booksellers and producers have begun taking steps to defend their market, and in the past couple of years, several bookseller-initiated raids of pirate enterprises in places like Neelkhet and Banglabazar have produced some success. Taking advantage of the high government taxes (which should be abolished) on legally imported books, many pirates use sophisticated technologies to reproduce and distribute pirate copies instead of importing legitimate copies. Open and blatant illegal commercial-scale photocopying of textbooks and ELT materials abounds in and around Bangladesh’s universities and schools. Photocopies or illegal reprints of textbooks sell for approximately US\$2.00 each.

The government of Bangladesh’s response to book piracy issues has been inadequate, both in terms of the results from any enforcement actions taken and from the standpoint of working with universities to ensure that they are not condoning illegal reproduction. Regarding the educational market, the authorities and universities should take proactive measures to curb piracy of academic materials, and a very select number of universities have started this process. Others, however, actively engage in or espouse illegal copying, including Dhaka University. Clearly, more needs to be done, including ensuring that publishers can participate in setting priorities for the National Education Policy, increasing awareness for users of academic materials, and, above all, encouraging integrity and transparency in the “tender system” that governs purchases of books for government institutions. Furthermore, the authorities, both from Bangladesh and abroad, must ensure that aid moneys earmarked to bolster Bangladesh’s educational system are used only for legitimate copies of learning materials.

**Pirate Optical Disc Production in Bangladesh – No Regulation Enacted, and No Enforcement, Despite Good Intelligence on Location and Nature of Operations:** There are several optical disc plants in Bangladesh, while as of 2007, only one plant had given industry access to the plant. Based on the most recent data (from 2007), Bangladesh had more than a dozen production lines<sup>4</sup> having a production capacity of 49 million discs, and four mastering facilities. IIPA

<sup>3</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2009 Special 301 submission at [www.iipa.com/pdf/2009spec301methodology.pdf](http://www.iipa.com/pdf/2009spec301methodology.pdf). BSA’s 2008 statistics are preliminary, representing U.S. software publishers’ share of software piracy losses in Bangladesh. They follow the methodology compiled in the Fifth Annual BSA and IDC Global Software Piracy Study (May 2008), available at <http://global.bsa.org/idcglobalstudy2007/>. 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. The music rate is blended between Indian repertoire (which has a piracy rate around 60%) and international repertoire (which has a piracy rate of close to 100%). For more details on Bangladesh’s Special 301 history, see IIPA’s “History” Appendix to this filing at <http://www.iipa.com/pdf/2009SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years’ country reports, at <http://www.iipa.com/countryreports.html>.

<sup>4</sup> As of 2007, four of the plants were in Dhaka (including one in Uttara and one in Kodamtali), one of the plants was in Konobari, Gazipur, and one was in the Kajpur area. There were four dedicated DVD lines (three DVD-9 and one DVD-5 line). In addition, there were as many as 10 CD lines. In some of the plants, it has been confirmed that the best technology available was being used. For example, molding and finishing lines from one plant were a combination of Swedish and Dutch technology, under the banner of TOOLEX and ODME respectively, while printing was done using German technology, KAMMANN Machines.

has confirmed that Pakistani nationals who ran plants in Pakistan prior to that government's crackdown own some of the plants in Bangladesh. Pirate discs destroy the local market for music, movies and software, as inexpensive CD and DVD players are becoming increasingly popular and where computer usage in households has grown. Disturbingly, some pirate discs (relatively small shipments of 900 to 1,000 discs) have been detected being "smuggled" out of the country via parcel shipments using the main post office in Dhaka, destined for India, Sri Lanka, or the European market.

Bangladesh has no effective optical disc regulation, including licensing requirements, mandatory plant visits, exemplar collection, and use of Source Identification Code master (LBR) and mold code. Nonetheless, optical disc piracy could be dealt with through business licensing regulations in conjunction with the Copyright Act. On the occasions industry has met with Bangladeshi government officials about the optical disc piracy and other problems, the government of Bangladesh has expressed its support for copyright protection and encouraged assistance from industry but indicated limitations in the detection process of pirated products and shortages of equipment to detect pirated products. It is hoped that the government will establish a national IP enforcement task force which can deal effectively with plant visits, inspections, seizures of pirate discs and equipment, closures (where necessary), and prosecutions where warranted.

**"Burning" of Pirate Material on Recordable Optical Disks:** The problem of CD-R burning of content onto recordable discs has become increasingly severe in Bangladesh. It is estimated that the Bangla market for audio and video CDs is catered by as many as sixty 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 approximately US\$0.10 or less.

**Importation of Pirate Optical Disks:** It appears there is some importation of pirate 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.

## **TRAINING AND PUBLIC AWARENESS**

Industry has offered training on copyright and copyright enforcement to the government of Bangladesh several times. In addition, on November 2, 2008, the European Commission and the World Intellectual Property Organization launched a project which aims to modernize the intellectual property system in Bangladesh and to help the country maximize the benefits of IP protection.<sup>5</sup> The project is designed, through various capacity-building measures, to promote effective management of the intellectual property systems (mainly focusing on industrial property), but will also address the challenges faced by Bangladesh in meeting its international obligations. The project will also roll out a public outreach program to promote IP awareness in key sectors including universities, R&D institutions, small and medium-sized enterprises, creative industries and the business community, and will promote IP teaching and education through fellowships, course development and linkages with WIPO's distance learning programs. IIPA supports programs such as these and hopes that, through this program, the governments and WIPO can raise public awareness and increase capacity to enforce IP rights in Bangladesh for the sake of all stakeholders.

## **COPYRIGHT LAW AND RELATED ISSUES**

**Copyright Act Amended in 2005 – Still No WIPO Treaties Implementation, and Bangladesh Claims TRIPS Transition Until July 1, 2013:** Copyright protection is afforded under the Copyright Act, 2005 (which is only available in Bangla).<sup>6</sup> The 2000 Act (prior to amendment) was adequate for basic anti-piracy purposes, although it did not implement

<sup>5</sup> The project was launched in Dhaka, on November 2, 2008, in the presence of Ms. Rasheda K. Choudhury, Advisor, Ministry of Cultural Affairs, Mr. Debapriya Bhattacharya, Ambassador and Permanent Representative, Permanent Mission of the People's Republic of Bangladesh to the United Nations Office and other International Organizations in Geneva and Mr. Stefan Frowein, Ambassador and Head of the Delegation of the European Commission to Bangladesh. The ceremony was also attended by Mr. Sheikh Enayet Ullah, Secretary, Ministry of Industries and other senior officials from the Government of Bangladesh.

<sup>6</sup> The Copyright Act 2005 (Act No. 14 of 2005) on May 18, 2005, amending the Copyright Act 2000 (Act No. 28 of 2000), available in Bangla at [http://www.copyrightofficebd.com/copyright\\_act.php](http://www.copyrightofficebd.com/copyright_act.php). The Bangladeshi government, in a recent WTO review, indicated that the Copyright Amendment, 2005 is currently only in Bangla, but is being translated into English. 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

the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, and the government has indicated it has not yet made any decision about joining the WIPO Treaties. The Bangladesh government claims the 2013 transition period for Least Developed Countries (LDCs) to implement the TRIPS Agreement.<sup>7</sup> There are some concerns that those engaged in pirate production in Bangladesh may have lobbied the government for exceptions in the 2005 amendment that would run afoul of WTO obligations by effectively permitting pirate exports to neighboring markets such as India. Bangladesh is still a member of the Berne Convention (since May 4, 1999), and as such, must adhere to the rules and principles set forth in that Convention, including abiding by the three-step test. IIPA looks forward to reviewing the amendments and providing comments.

**WTO Trade Policy Review Body Report on Copyright Law and Enforcement:** In Bangladesh's Trade Policy Review at the World Trade Organization in September 2006 (minutes released in November 2006), 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 explanations of civil,<sup>8</sup> administrative/border,<sup>9</sup> criminal,<sup>10</sup> and provisional<sup>11</sup> remedies have been set out in writing. Also, regarding enforcement,

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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." See World Trade Organization, Trade Policy Review Body, 13 and 15 September 2006, WT/TPR/M/168/Add.1 (published November 10, 2006).

<sup>7</sup> 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."

<sup>8</sup> 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.

<sup>9</sup> 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.

<sup>10</sup> 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 from 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 satisfied 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.

<sup>11</sup> See *id.* The government indicated the following as to provisional measures under the current law:

the government of Bangladesh essentially indicated that it does not keep regular copyright enforcement statistics, but indicated that "efforts are being made for collecting such data" and that the records/data in relation to seizure or confiscation are maintained by Bangladeshi Customs manually in a register. The government indicated that there are other enforcement agencies like BDR (Bangladesh Rifles), the Coast Guard, and the Police which are also responsible for enforcement of copyright regulations within their respective jurisdictions, and that it 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."

We recommend that the United States take the opportunity to request information including enforcement statistics, since the government has indicated a willingness to share such data when "a request is received."

## **GENERALIZED SYSTEM OF PREFERENCES**

Bangladesh participates in the Generalized System of Preferences (GSP) program, a trade benefits program that provides duty-free access to the United States for certain products. The criteria of eligibility to enjoy this benefit includes that a country provides "adequate and effective" copyright protection. A small percentage of products coming into the United States from Bangladesh qualify for this duty-free treatment. Specifically, during 2007, \$23.8 million in goods, or about 0.7% of all of Bangladesh's imports to the United States, entered under the duty-free GSP code. During 2008, more than \$21.6 million in goods, or almost 0.6% of all of Bangladesh's imports to the United States, entered the United States under the duty-free GSP code. In order for Bangladesh to continue to qualify for this trade benefit, it must be able to demonstrate that it meets the eligibility criteria.

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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 infringing goods is taken by the court, and it differs from case to case.