

INDONESIA

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

Special 301 Recommendation: IIPA recommends that Indonesia be elevated to the Priority Watch List.

Executive Summary: Piracy problems in Indonesia, including mall piracy, CD-R and DVD-R burning, mobile device piracy, book piracy, end-user piracy, illegal camcording, optical disc piracy, and pay TV piracy, remain severe, and the Internet has emerged as the latest frontier for pirates in Indonesia. As a result, piracy levels in Indonesia remained among the highest in the world in 2008. Piracy robs authors of their rights to a livelihood in Indonesia, and places illegal proceeds in the hands of organized criminals who have no regard for rights, and have been detected of engaging in other organized criminal behavior, such as trafficking in persons, illegal logging and illegal gambling. Promising enforcement efforts continued in 2008, particularly against end-user piracy of software and optical disc pirate production. Unfortunately, other problems remained unchecked. Lack of transparency in enforcement, and corruption in the enforcement process, e.g., leaks, payments by pirates, and interference in the prosecutorial process, mar enforcement efforts. The court system also remains largely unworkable due to a generally inexperienced judiciary and systemic failures which slow cases down or doom them to unsuccessful conclusions (with some exceptions). The government continues to place barriers in the way of legal copyright business, including a new unfortunate requirement to locally manufacture film prints and home videos in Indonesia. The U.S. and Indonesia have a Trade and Investment Framework Agreement (TIFA) through which all of these issues should be more readily addressed and the U.S. Department of Justice presence in Indonesia has carried out helpful capacity building programs to foster better enforcement against copyright piracy in Indonesia.

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

Enforcement

- Strengthen enforcement aimed at eradicating rampant retail and mall piracy, including landlord liability for mall owners, so that actions taken can have the desired deterrent effect.
- Effectuate enforcement efforts aimed at mobile device piracy.
- Tackle camcording piracy in movie theaters.
- Take actions against book piracy, to protect local and foreign publishers from illegal photocopying on and near university campuses, print piracy, and unauthorized translations.
- Take actions against corporate end-user piracy, to protect local and international business software industry from the use of unlicensed business software for any commercial purpose.
- Address corruption and transparency issues.
- Improve judicial processes, including capacity building to develop a cadre of well-qualified, IP-literate judges so that copyright cases move quickly through the system and result in needed deterrence.
- Expedite the establishment by the Directorate General of IPR (DGIPR) of a "Directorate of Investigation" so that Civil Servant Investigators are authorized to enforce all IP laws and not just handle IP applications and registrations.
- Broaden the work of the National IP Taskforce to include conducting enforcement raids against hard-goods, Internet, and piracy and corporate end-user piracy.

Legislation

- Immediately lift market access restrictions on the 1) alarming new requirement to locally replicate all theatrical prints and home video titles released in Indonesia; 2) direct distribution of audiovisual products; and 3) ban on the broadcast of most foreign programming in Indonesia.
- Enact a modern copyright law to provide for an effective enforcement system in Indonesia, including establishing liability on mall landlords, providing minimum criminal penalties, encouraging service providers to help enforce against Internet and mobile copyright piracy, criminalizing the act of camcording in cinemas, extending term of protection,

establishing special IP courts, establishing IP-related cybercrime provisions, and providing appropriate IP-related border measures.

- Ensure copyright infringement is included in list of crimes which are predicates for being treated as organized crimes, i.e., as grounds for broader criminal investigations, seizure/freezing of assets, deportation, etc.
- Make optical disc regulations more effective, including by 1) making inspections routine, unannounced and off-hours, 2) enforcing against SID Code violations, including gouging off SID Codes and/or total non-use of SID Codes, 3) providing transparency in raids and results, and 4) ensuring that the Department of Industry collects exemplar disks from each plant.

INDONESIA										
Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2004-2008 ¹										
INDUSTRY	2008		2007		2006		2005		2004	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Business Software	302.0	86%	226.0	84%	191.0	85%	153.0	87%	100.0	87%
Books	NA	NA	32.0	NA	32.0	NA	32.0	NA	32.0	NA
Records & Music	20.0	95%	20.2	92%	17.2	91%	13.8	88%	27.6	80%
Motion Pictures	NA	NA	NA	NA	NA	NA	NA	87%	32.0	92%
Entertainment Software	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
TOTALS	322.0		255.2		240.2		209.5		191.6	

PIRACY CHALLENGES IN INDONESIA

Retail Piracy/Mall Piracy: In 2008, retail piracy in kiosks and malls remained open and blatant, including factory and burned-to-order CDs, VCDs, DVDs and CD-ROMs of music, movies (including pirate movies in BluRay format), software, and published materials, as well as mobile device piracy (loading illegal copyrighted files onto various mobile devices or carriers) and hard disk loading (in which computers are loaded with the latest software – all of it unauthorized – at the point of sale of the hardware). Major cities including Jakarta, Semarang, Makassar, Bandung, Jogjakarta, Pekanbaru, and Surabaya have hotspots replete with pirate materials (notorious spots include Ratu Plaza, Pinangsia Plaza, Glodok, and Ambassador Mall).

Highly Organized Criminal Syndicate “Burning” Operations: In 2008, pirate “burning” of content by syndicates onto recordable optical discs overtook factory production as the chief form of optical disc pirate production in Indonesia. All indicators suggest that criminal syndicates support illegal production and distribution, with some control by ethnic Chinese groups, and suggest that Singaporean, Hong Kong and Taiwan based operations have influence with several manufacturers in the country. Burned discs are less expensive to produce in non-industrial numbers and thus are an attractive vehicle for less technically proficient or wealthy investors to produce and sell for a lower price than factory-produced discs. Such home-based groups further decrease overhead costs, and many rental houses in Jakarta and other cities have been identified as “home industries” for optical disc burning.

Mobile Device Piracy: The unauthorized loading or preloading of illegal copyright content (songs, movies, TV shows, books and journals, ring tones, etc.) onto mobile devices such as mobile telephones, iPods, other MP3 players, and recordable media such as flash drives and memory sticks, has rapidly increased in Indonesia. Mobile device piracy is a highly organized and sophisticated criminal activity, with main business services even offering franchises to smaller vendors. In the ITC Roxy Mas retail mall, Blok M Plaza, and Blok M Mall, where the majority of shops sell handheld phones and handheld phone accessories, more than 90 stalls have been detected engaging in such uploading.² Similar

¹ 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. BSA's 2008 statistics are preliminary, representing U.S. software publishers' share of software piracy losses in Indonesia. 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. For more details on Indonesia'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>.

² Market surveys in 2007 indicated that ITC Roxy Mas had 49 such stalls, Blok M Plaza had 2 stalls, and Blok M Mall had 39 stalls.

setups are seen in many shopping malls including Mangga Dua Square, and ITC Mall Kuningan. Shop owners use the illegal loading of copyright content onto these devices as a selling point. In addition, other devices, such as karaoke devices, either in the form of microphone tools or players, are being preloaded with massive numbers of songs without authorization. The Indonesian government started taking some targeted actions in 2007, which continued into 2008.

Book Piracy: Piracy of published materials, especially academic books and journals, in Indonesia remained a major issue in 2008. Significant problems included commercial-scale photocopying (mainly on and near university campuses), print piracy, and unauthorized translations. 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, where photocopied books not only flood the local market but are carried into Jakarta. Most copy centers provide catalogs to facilitate the very open business of copying academic texts for students, and increasingly shops are operating on a "print to order" basis to avoid stockpiling. Illegal operators also take orders from students on campuses and distribute their wares there, even in cases where they are not actually making the copies on campus. The problem is of significant magnitude, and growing. A February 2007 raid in Pondok Gede yielded thousands of photocopies, although the pirate in this case reportedly was arrested and tried, receiving a jail term of two years and seven months.

Camcording Piracy: Camcording piracy is a serious problem in Indonesia, aggravated by the absence of anti-camcording legislation. Seven cases in all were detected between 2007 and 2008 of illegal camcording, in which movies are stolen right off the screen by professional camcorder pirates, who use video cameras to illicitly copy a movie during exhibition in a movie theatre. This usually occurs very early in a movie's theatrical release window or may even occur prior to the film's release (e.g., at a promotional screening). Camcorder pirates typically sell the master recordings to illicit "source labs" where they are illegally duplicated, packaged and prepared for sale on the black market, then distributed to bootleg "dealers" throughout the world. As a result of camcorder piracy, many motion pictures become available over the Internet on peer-to-peer networks, file transfer protocol (FTP) sites, Internet Relay Chat (IRC) rooms, or auction sites, as well as on street corners and night markets around the world well before their intended legitimate debuts. The Indonesia experience demonstrates that at least some of the market for theatrical films is being lost due to camcording, and the government should quickly adopt anti-camcording legislation and implement the same to avoid becoming a haven for this harmful activity.

Business Software End-User Piracy and Government Legalization: The willful use of unlicensed or pirate software in the workplace continues to cause the greatest losses to business software companies in Indonesia. The software piracy rate in Indonesia improved slightly from 85% to 84% between 2006 and 2007, but still exceeds the Asia regional average of 59%. Failure to deal with software piracy harms Indonesia's local economy. A January 2008 study done by the International Data Corporation (IDC) with the Business Software Alliance concluded that decreasing Indonesia's software piracy rate by ten percent over a four year period to 2011 would add US\$1.8 billion to Indonesia's economy, create 2,200 new high-wage high tech jobs and generate an additional \$90 million in tax revenue. Failure to deal with software piracy in the government sphere sets entirely the wrong example. Thankfully, the government of Indonesia has promised to legalize the public sector's use of software, following through on the January 13, 2006 Indonesian Ministry of Communication and Information (MOCI) and Microsoft Memorandum of Understanding (MOU) to legalize government use of its products on government computers. Implementation of the MOU, and legalizing all government software usage, will strengthen the government and law enforcement's credibility when conducting IP education and enforcement efforts.

Internet Piracy: Internet usage in Indonesia has exploded over the past several years, and there are now roughly 25 million Internet users throughout Indonesia as of May 2008 (according to Asosiasi Penyelenggara Jasa Internet Indonesia, APJII, Indonesia's Internet service provider association), or roughly 10.5% of all Indonesians (by contrast, only 2 million Indonesians had Internet access as of 2000). While broadband penetration remains relatively low, at 241,000 broadband connections as of May 2008 (according to the International Telecommunications Union, ITU), this represents a 123% growth year on year. There are now 78 known illegal download sites of great concern to the industry, although some of these sites are located outside Indonesia. There are also some indications that Internet sites are being used to advertise the distribution of hard goods pirate materials. While industry reports that a new Cyber Law was just enacted, and that generally ISPs are cooperating with right holders, the Ministry of Communication and Information needs to devise a strategy to deal with growing Internet piracy in 2009, including mechanisms to ensure removal of infringing content and dealing with illegal P2P file sharing.

Optical Disc Plants: There remains production overcapacity in the two to three dozen optical disc factories.³ The government has been responsive to this problem with some significant raids, as highlighted below.

Signal Theft/Pay TV Piracy: Signal theft – the unauthorized transmission of broadcast or pay TV signals – has gradually worsened in Indonesia. For example, in 2008, the Cable and Broadcasting Association of Asia (CASBAA) estimates there are between 500,000 to 1,000,000 illegal connections, a significant increase over 2007. 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. There have been reports over the past couple of years that the Indonesian Broadcasting Commission (KPI) considered 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.

Unlicensed Use of Music/Videos in Karaoke Lounges: Most karaoke lounges use videos and music without authorization or proper payments to right holders.

ENFORCEMENT CHALLENGES IN INDONESIA

Copyright owners in Indonesia obtained mixed enforcement results in 2008 in Indonesia. On the one hand, industry continued to enjoy fairly good relationships with the local authorities, from MABES (Markas Besar); the Federal Police and their economic crime unit at Bareskrim, at MABES Jakarta Headquarters; the Trade and Industry Crime Unit, KRIMSSUS (Jakarta Metro Special Economic Crimes); and the Department of Industry, Downstream Chemical Division.⁴ These relationships, and some positive support from the U.S. Department of Justice's "International Criminal Investigative Training Assistance Program" (ICITAP) advisors, resulted in some targeted enforcement actions in 2008 against key problem areas. Right holders also began to obtain some clearer results in 2008 in the way of criminal convictions in cases involving optical disc factory production piracy, mobile device piracy, and end-user piracy of business software. Cases are pending against pirate "burning" operations. These are hopeful developments.

On the other hand, there has been relative inattention to many piracy problems, such as mall piracy (and imposing landlord liability), camcording piracy, and book piracy and legalizing use of academic materials at educational institutions. The judiciary remains a problem area for right holders, as judges are generally inexperienced in handling copyright cases, there is lack of prioritization of such cases, cases take an unusually lengthy period of time to adjudicate, and there is a general lack of transparency leading to less than ideal results in many cases. Finally, other systemic problems persist among police and prosecutors, including corruption, leaks prior to raids, payments by pirates, and other interference by pirates between the time of the raid and the decision by the public prosecutor to take action to criminal court. Another abiding problem is lack of resources, as Police in Indonesia have literally only a few dollars per case, which is woefully inadequate. Other issues include the lack of will from the Attorney General's Office in some cases to prosecute once a raid has been run, or prosecutors rejecting various aspects of the police case file.

Optical Disc Factory Raids Result in Seizures, But Improvements in Methods Sought:⁵ Anecdotal enforcement results for the record industry in 2008 include: 112 cases pending prosecution; 13 arrests; 78 stampers seized; almost 3.5 million pirate optical disks seized; 1,170 CD-R/DVD-R burners seized; 8 injection molding machines seized; 2 bonding machines seized; and 34 sacks of optical grade polycarbonate seized. In one case, an August 2007 raid on registered optical disc manufacturer, PT Multimedia Replikasi Plastikatama, resulted in the criminal conviction of the plant operator, who was sentenced to 30 months imprisonment in 2008. The integration of a new optical disc forensics lab installed at the National Police Central Forensic Laboratory (PusLabFor) will hopefully lead to more raids, and some have

³ Previous reporting indicates the existence of as many as 31 plants, with a potential to produce many hundreds of millions of discs per year. Indonesia has also been home to manufacturing facilities for "stampers" and masters used to mass produce discs. Past issues have included factory-sourced pirate product found in Indonesia and having been exported with source identification code (SID Code) gouged off to hide the identity of the plant, or product with no code at all. This is an issue that should be resolved by Department of Industry in its implementation (and revision) of the Optical Disc Regulations (2004).

⁴ MABES (Markas Besar), the Federal Police, and their economic crime unit, Bareskrim, at MABES Jakarta Headquarters, have been helpful on raids, including raids against end-users of business software. The Trade and Industry Crime Unit also works well with copyright owners, and have obtained some criminal convictions. KRIMSSUS (Jakarta Metro Special Economic Crimes) has been principally involved in conducting operations against pirate retailers. The Department of Industry, Downstream Chemical Division, is empowered to regulate optical disc plants and has "Plant Monitoring Teams."

⁵ In its 2008 Special 301 report on Indonesia, IIPA reported in detail "three significant optical disc factory raids" conducted by *Bareskrim*.

noted that raids have resulted in driving down prices for legitimate product and worsened the availability and quality of pirate products in the Indonesian market. IIPA has at the same time noted five areas in need of improvement: 1) factory visits must be routine, unannounced and at varying hours; 2) source identification (SID) code violations including obscuring or gouging of the SID code, and the non-use of SID code, are not being punished; 3) inspection actions are not being reported to right holders (lack of transparency); 4) notices of temporary suspension of licensed plants caught in the act should be made permanent, unless and until such time as the plant is adjudicated not to have violated the optical disc plant regulation; and 5) the Department of Industry should complete building a comprehensive library of exemplars of discs from the plants.

Several Raids Against Burning Operations Commence: According to recent reports, several CD-R and DVD-R burner operations were shuttered in 2008 (with at least one focused on software and games and another on movie and music titles). Specifically, in August 2008, the Special Crimes United of Jakarta's Metropolitan Police undertook three raids during a twelve-day period in and around Jakarta. Thousands of pirate movies were seized during the raids as well as more than 400 CD-R/DVD-R burners, with one target alone supplying 280 burners. The police detained 17 suspects during the raid and prosecutions are ongoing. While pirate "burning" operations remain in business in Indonesia, these raids represent a significant start toward driving the problem underground.

Targeted Enforcement Against Mobile Device Piracy Commences: In late 2007, *Bareskrim* in Jakarta took initial actions against operators engaging in mobile device piracy. In one set of raids in late 2007, law enforcement officers seized more than 60 computers, each holding an average of 28,000 illegal music files. In May 2008, following a survey on the availability of illegal music downloads conducted by the recording industry, the Indonesian police took enforcement actions against the largest operator called Download Mania in Roxy Mas Mall in Jakarta. Subsequently, three other franchises of the same company were raided. It was reported that on June 4, 2008, the operator, "Download Mania" was convicted of copyright infringement and sentenced to eighteen months in prison and had all the equipment involved in the infringing activities (including 40 computers) confiscated. IIPA members report one other conviction for mobile device piracy including a jail term, which is currently on appeal. IIPA welcomes the recent raids but notes that given the magnitude of the problem, even more activity will be required to get mobile operators in Indonesia to cease supplying pirate materials.

Government Proactive in Business Software End-User Piracy Raids: Some 37 raids against corporate end-user piracy ensued in 2008, resulting in three arrests, and the commencement of 15 criminal cases (24 cases in all remain pending according to the Business Software Alliance).⁶ Specifically, the Indonesian National Police proactively enforced the Copyright Law through various *ex officio* raids against end-user software piracy in business settings. Some regional police commands in certain provinces signed Memoranda of Understandings with the Business Software Alliance to run joint enforcement programs. Some big companies were targeted in 2008, including state-owned corporations and multinational companies, a major achievement. To increase public awareness and as part of their public relations campaigns, the police publicly announced raids run in 2008 by holding press conferences or media briefings. However, as noted below, lack of transparency remains an issue in Indonesia for the business software industry.

Book Piracy and Legalizing Use of Academic Materials at Educations Institutions Should be Addressed More Effectively: IIPA calls upon the government of Indonesia to take swift effective actions against book piracy, to protect local and foreign publishers from illegal photocopying on and near university campuses, print piracy, and unauthorized translations. As one step, the Indonesian government should work with rights holder groups, such as the local publishers group, IKAPI, to tackle this problem effectively and take steps to legitimize the use of published materials at schools and universities. Active roles should be taken by university administrations, including formal policies mandating use of legitimate materials on campus as well as campus based anti-piracy campaigns. In 2008, there were some improvements in faculty attitudes toward copying, and more must be done in this regard. A 2007 anti-piracy campaign by the University of Indonesia's business faculty set a good example that should be augmented and expanded. Publishers report that some lecturers at universities have continued to encourage students to use legitimate materials in their classrooms, and this should be encouraged through official channels. Especially commendable are efforts of particular

⁶ Industry reports there were two criminal convictions in 2008 in cases involving end-user piracy of business software.

campuses, departments and lecturers under the direction of Bina Nusantara University and Master of Management University of Gadjah Mada.

Judiciary Capacity Building Needed: As the number of criminal piracy cases before the courts increase, the judiciary must become more nimble and address some systemic concerns. It is imperative that steps be taken in 2009 to improve judicial processes, including capacity building to develop a cadre of well-qualified, IP-literate prosecutors and judges so that copyright cases can be decided justly and move quickly through the criminal system and result in needed deterrence. A website to report the status of cases in the system would allow right holders to assist and provide necessary transparency for right holders and deterrence against pirates in these cases. Trainings specifically focused on special problems in copyright cases could be helpful. Issues might include mobile device piracy, Internet based infringements, camcording piracy, end-user software piracy, “mod chip” or other circumvention device manufacture or distribution, and book piracy.

Transparency Issues Remain Unresolved: Lack of transparency in the enforcement system hinders effective enforcement and deterrence in Indonesia.⁷ For example, Customs regularly fails to inform right holders of instances of pirate imports. In many cases, right holders are not informed about raids when they happen, seizures at the borders, and even court decisions involving their products. As another example, in some jurisdictions, end-user software raids do not get reported to right holders, and there are no formal records of criminal convictions. In many instances, once the Business Software Alliance representative has assisted in the police investigation, the communication ends, with police frequently failing to notify BSA of the results of their investigations and simply dropping or closing the cases. This lack of transparency results in right holders not being able to assist in raiding preparations before they occur or help prepare case files after raids occur. These transparency issues should be resolved, so that the government of Indonesia can clarify its enforcement record, and increase deterrence.

TRAINING AND PUBLIC AWARENESS

Various Industry Trainings Provide Capacity Building Assistance in 2008: In 2008, as in previous years,⁸ the copyright industries conducted and participated in various training and public awareness activities in Indonesia. Throughout 2008, the local record industry group, ASIRI, held various trainings, including one on piracy investigations for the National Police Detective School. The recording industry group participated in anti-piracy campaign through mass media and by giving speeches in several seminars/workshops in 2008.

- In May 2008, the Business Software Alliance (BSA) jointly hosted a seminar with the U.S. Commercial Service for about 50 public prosecutors on software piracy.
- In June and July 2008 the BSA and Indonesian National Police hosted two capacity building events in Bandung, West Java, on corporate end user piracy. These seminars were attended by more than 225 participants, including police, prosecutors, judges and civil service investigators.
- In 2008, BSA lectured at the CID Training Center of the National Police for the second time on software piracy. This was attended by about 35 police where are taking courses on IP crimes.
- MPAA undertook two anti-camcording training exercises for theater personnel in Indonesia in 2008.

U.S. Department of Justice Training Assistance Brings Attention to Optical Disc Piracy Problem: IIPA members note some positive effects emerging from a pilot training program from the United States. Beginning in October 2006, the U.S. established as a pilot program the “International Criminal Investigative Training Assistance Program” (ICITAP). This program, comprising an anti-piracy enforcement initiative, and an optical disc piracy initiative, has led to some concrete positive results, in terms of facilitating better enforcement against copyright infringements, and building

⁷ For example, in the 2008 Special 301 report on Indonesia, IIPA reported, “the Police reported in 2007 that one of the operators of a factory raided in early 2006 by *Markas Besar* (MABES) had been prosecuted and jailed,” and “the *Krimsus* Jakarta Police have apparently processed many cases against pirate burner operators and pirate disc retailers” but without informing right holders. In addition, some IIPA members have not enjoyed significant cooperation with Indonesian Customs, which has not been transparent, as evidenced by the small number of seizures reported over the years.

⁸ Training activities in 2007 are highlighted in the 2008 Special 301 report on Indonesia, but included motion picture industry programs on illegal camcording in cinemas, record industry trainings on identifying pirate product and optical disc piracy forensics, and business software industry trainings on software asset management for businesses, capacity building for police, and general copyright matters for students in the “BSA Goes to Campuses” program.

capacity, mentoring, and providing technical assistance to optical disc factory inspection teams that include officials from the Department of Industry (DOI), Police, Customs, the Department of Trade and the Directorate General of Intellectual property Rights in implementing the provisions of the optical disc regulations. In particular, on the training side, ICITAP has conducted hundreds of man hours of training during 2006 and 2007, to hundreds of recipients, on topics ranging from methodologies of infringers, product identification addressing pirate optical disks; police operational training as a step-by-step guide on investigating, interdicting, prosecuting and reporting on intellectual property theft, database development for case management; and Department of Industry training on the use of digital photography equipment, sample collection, and the inspection of machinery and records at factories. IIPA appreciates all that has been done under the auspices of this program, and hopes that its benefits can be replicated in future years, and expanded to other countries in need of such training and assistance.⁹

COPYRIGHT LAW AND RELATED ISSUES

Copyright Law Implementing Regulations Still Lacking: Copyright protection in Indonesia is governed by the Law of the Republic of Indonesia, Number 19 Year 2002 Regarding Copyright (Copyright Law) (effective July 29, 2003) (Undang-Undang RI No. 19 Thn 2002 Tentang Hak Cipta). Regulations dealing with “rights management information” (RMI) were finalized in 2005, 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.¹⁰ Indonesia was the first country to join the WCT, on June 5, 1997 (in force March 6, 2002), and Indonesia joined the WPPT on February 15, 2005.

Amendments Needed to Modernize Protection: Reform of the Copyright Law has been in the works for a couple of years, and IIPA understands that a draft set of amendments emerged in 2008. IIPA encourages the Indonesian Government to ensure that any proposed changes are open for public consultation and comment. The following issues should be dealt with in any amendment, to ensure that the law meets the needs of the modern copyright system and keeps abreast of the latest in international and WCT and WPPT obligations:

- **Provide Rights for Producers of Sound Recordings, Including Those in Line with WPPT:** Producers of sound recordings must be granted exclusive rights to control the dissemination of their products over the Internet; these include an exclusive communication to the public right including all forms of wire and wireless transmissions (including broadcast) as well as exclusive distribution and public performance rights (see below regarding “publication” right). Producers also need the ability to authorize or prohibit importation into Indonesia of copies of phonograms, and the right to control the distribution of copies of phonograms.
- **Modernize Term of Protection:** Term of protection should be provided consistent with international trends and U.S. standards (e.g., life of the author plus 70 years, or in the case of works whose term is calculated based on the date of publication or for which authorship is corporate, 95 years).
- **Provide TRIPS-Compatible Protection for Pre-Existing Works/Related Rights:** While Article 74 confirms that prior regulations shall remain in effect except where contradictory with the new law, and Article 75 confirms the continued validity of previously issued copyright registrations, provisions should be added in an amendment or regulation to provide Berne/TRIPS-compatible protection for existing works, as well as for producers of sound

⁹ Some of the assistance delivered under the program in 2008 included:

- The development of a database on the extent and availability of pirate optical disks in the Indonesian marketplace, collated through monthly market surveys, and regularly distributed to the Indonesian National Police, leading to some successful raid activities.
- The reported donation of specialized equipment for the integration of an optical disc forensic lab at PusLabFor (the Indonesian police’s forensic testing facility), which should enable police, the Department of Industry and the Judiciary to positively identify the source of pirate product both in the domestic market and export shipments intercepted around the world.
- Commencement of a point of contact system for industry interaction with Police.
- Practical training in addition to classroom training. For example, during 2007, ICITAP reportedly assisted the Department of Industry with inspections of the then 30 registered optical disc factories that had been issued source identification (SID) codes. In all, 50 inspections were carried out, with 14 production lines being sealed for non-compliance.

¹⁰ 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. IIPA is unaware of any articles that deal with TPMs in the Patent Law.

recordings and performers. (We note that Indonesia is already under a bilateral obligation to provide a TRIPS-compatible term to all pre-existing works of U.S. origin.)

- **Ensure Right of “Publication” Encompasses WCT and WPPT “Making Available” Concept:** The author’s right of “publication” in the Copyright Law explicitly includes an exclusive right of “dissemination of a Work, by utilizing whatever means including the Internet, or by any manner so that such Work is capable of being read, heard or seen by any other person.” It appears that the drafters intended this broad right, as applied to works, to satisfy the requirements of the WCT with respect to “communication to the public.” The phrase “read, heard, or seen by any other person” appears to be an attempt to express the “making available” concept and the government of Indonesia should confirm that this phrase covers the making available of a work so that it can be accessed “from a place and at a time individually chosen or selected” by the user. This provision should then be made applicable, *mutatis mutandis*, to related rights.
- **Limit Private Copy Exception to Single Lawfully Obtained Copy:** Article 57 of the Law provides an exemption for non-commercial possession (i.e., would exempt from civil liability anyone who possesses “any work,” as long as the person “obtain[s]” the work “solely for his own need and not using it for any commercial purposes and/or any interests related to commercial activities”), but may amount to an overly broad limitation on liability for copyright infringement, since there does not appear to be any limitation on the number of copies of the work, the format (i.e., analog versus digital), the method of obtaining (i.e., by importation, purchase, off the Internet). This exception must be limited to a single lawfully obtained copy.
- **Fix Adaptation Right Which is Curtailed in Indonesia Law (a Violation of the Berne Convention):** Authors have an adaptation right in Indonesia, but it is curtailed in Indonesia by Article 24(2) and (3) give the author (and the author’s heirs) the right to refuse to authorize *any* “changes” including any change to the “title” or “subtitle” of a work regardless of whether the copyright in that work has been assigned. This right violates the Berne Convention as it would impinge upon the ability to exercise (and to assign) the exclusive right of adaptation in Article 12 of the Berne Convention.
- **Provide for Landlord Liability:** Landlords that do not directly infringe but control infringement of tenants and financially benefit from such infringement should be held liable in Indonesia. This would ensure that all mall owners would be responsible to clean their premises of piracy. We understand the government may be considering something appropriate to hold landlords liable, and we would applaud this move.
- **Provide Minimum Criminal Penalties for Copyright Infringement:** There is a continuing need to provide a minimum criminal penalty clause, including for end-user piracy, and to maintain current maximum sentencing provisions. We understand there is a draft criminal code being considered, but IIPA has not been given an opportunity to review such a draft (and it may be that the minimum penalties will be dealt with directly in the copyright law).
- **Include Anti-Camcording Piracy Provisions:** The vast majority of movies that are pirated are stolen right off the screen by professional camcorder pirates, who use video cameras to illicitly copy a movie during exhibition in a movie theatre, usually very early in its theatrical release or even prior to the film’s release (e.g., at a promotional screening). Preferably standalone legislation, but at least a provision in the proposed copyright amendments, should be enacted to define the act of camcording or recording in cinemas as a strict liability criminal offence. This would enable Indonesian authorities to arrest and prosecute individuals who record a movie in the theaters, without needing to establish subsistence of copyright, copyright ownership, or copyright infringement.
- **Establish Statutory Damages.**
- **Maintain *ex officio* powers of authorities to act upon suspicion of infringements.**
- **Ensure Service Providers Fall Within Copyright Liability, and Provide for Notice and Takedown:** With Internet piracy, including P2P downloading, increasing in Indonesia, it is imperative that proper incentives be put into place to ensure service providers cooperate with right holders to curtail such infringing activities. Service providers need to be reminded of potential liability for infringements occurring over their networks, and mechanisms need to be available to ensure removal of infringing content, and ensure assistance to right holders in identifying and removing infringing content and P2P piracy. The new Cyber Law (see immediately below) apparently deals in part with service providers in a horizontal (non-copyright-specific) way.

New Cyber Law Enacted: The government of Indonesia has reportedly just enacted a new Cyber Law, which apparently contains some provisions related to service providers. IIPA has not had an opportunity to review this law, but looks forward to doing so to compare it against the Council on Europe Cybercrime Convention.¹¹ Reportedly, the law requires some technical implementing regulations including those related to ISP liability, although it is already apparently being employed to prosecute cases involving online pornography or distribution of false information through Internet media, although unfortunately not involving copyright piracy.

Need for Organized Crime Statute: It has been established that criminal syndicates behind pirate enterprises which manufacture and distribute optical disks are also involved in many other forms of crime such as trafficking in persons, illegal logging and illegal gambling. As such, the government of Indonesia needs to ensure that copyright infringement is included in litany of crimes which are predicates for organized crime law, i.e., grounds for broader criminal investigations, seizure/freezing of assets, deportation, and other remedies.

Implementing Regulations on New Customs Law: Law No. 17 of 2006 amended Law No. 10 of 1995 apparently improved border and customs measures in Indonesia. The government is apparently now reviewing implementing regulation on this law, which will cover intellectual property enforcement issues; IIPA would hope to be able to review such regulations prior to their issuance.

Electronic Information and Transactions Bill: The government has reportedly enacted the Law on Electronic Information and Transactions, No. 11 (2008) which may prove helpful to right holders. Specifically, Article 5 of the Law allows electronic material (e.g., screenshots, music files downloaded from the Internet, etc.) to be admissible as evidence in court. Implementing regulations remain pending.

Optical Disc Regulations Should be Strengthened and Made GATT/WTO-Consistent: The "Government Regulation Number 29 of 2004 Concerning High Technology Production Facilities for Optical Discs" (in force April 5, 2005) can be strengthened by:

- making inspections routine, unannounced and off-hours.
- expressly prohibiting the unlawful use of or manipulation of source identification (SID) code, and enforcing against SID code violations, including gouging off SID Codes and/or total non-use of SID codes.
- ensuring that the Department of Industry collects exemplar disks from each plant.
- provide for centralized licensing of production of prerecorded or blank optical discs.
- remove immediately the Regulations' requirement that imported, pre-recorded discs be marked with identification code, which violates GATT/WTO rules and could have other negative ramifications.
- adequately covering stampers and masters.
- expressly covering exports of discs, equipment and raw materials.
- expressly authorizing forcible entry in an inspection in case a suspect target refuses entry.
- requiring the government to keep records of "permits" and raids run.
- expressly imposing 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,¹² and another on reporting by registered producers.¹³ 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 remains a fear that this importation Decree will be used as a tool

¹¹ 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."

¹² 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.

¹³ 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.

to keep legitimate copyright owners or authorized distributors from importing discs into Indonesia. The government of Indonesia should give assurances that such is not the case.

MARKET ACCESS ISSUES

Indonesia remains one of the most closed markets in the world to legitimate U.S. copyright businesses. The situation considerably worsened in 2008 due to the imposition of a new and totally unacceptable requirement – namely, a local manufacturing requirement for the replication of film prints and DVDs released in Indonesia.

Local Printing Requirement: On November 25, 2008, Indonesia's Minister for Culture and Tourism issued a regulation requiring all theatrical prints and home video titles (e.g., on DVD) released in Indonesia to be replicated locally with effect from January 1, 2009. The Motion Picture Association has met with and written to the Minister of Trade opposing this requirement. IIPA opposes this requirement in the strongest possible terms since it severely interferes with the industry's ability to engage in its business on free contractual terms. There are many concerns, chiefly among them being that existing local facilities are unable to handle both the volume and quality output requirements of the motion picture industry, and that the industry cannot be assured that all security issues have been properly identified and dealt with. The MPA has also met with the Director of the Ministry of Culture and Tourism, the Director of Film of the Ministry of Culture and Tourism, and has written to the Minister seeking another meeting to discuss this most serious issue.

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. IIPA notes the longstanding promise made by the government of Indonesia that it would open investment in media companies to foreigners as soon as the Indonesian market was opened to the direct distribution of any other foreign goods (such opening which occurred many years ago).

Broadcast Law Ban on Broadcasting of Foreign Programming: The "Broadcast Law"¹⁴ bans the broadcast of most foreign programming in Indonesia.¹⁵ The Independent Regulatory Commission (KPI) created by the new Broadcast Law has 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 was challenged as unconstitutional by KPI.¹⁶ Regardless of which regulations govern, the law is onerous and the various market access restrictions and bans on broadcasting should be lifted.

¹⁴ Law of the Republic of Indonesia, No. 32 Year 2002, Regarding Broadcasting (in force February 2003).

¹⁵ 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.

¹⁶ Of particular concern to foreign broadcasters is that the Kominfo regulations (issued on November 16, 2005) were reported to have a number of negative features, including a "made in Indonesia" requirement for pay-TV advertising, which would prohibit regional advertising pass-through. 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 had to be used). Article 24(6) required foreign advertising to be replaced by domestic advertising, and cross-media and foreign ownership restrictions. Support from members of Parliament for KPI's position is believed to have led to the postponement, and likely amendment, of the regulations.

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 2007, \$2.24 billion worth of Indonesian goods entered the U.S. under the duty-free GSP code, accounting for 15.6% of its total imports to the U.S. During 2008, almost \$2.2 billion worth of Indonesian goods, or almost 13.8% of Indonesia's total imports to the U.S., 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.