

# PAKISTAN

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

**Special 301 Recommendation:** IIPA recommends that Pakistan remain on the Priority Watch List due to failure to adequately address piracy of books and journals, failure to resolve the cases involving pirate optical disc factories dating back to 2005, and the overall dearth of enforcement actions in Pakistan against all forms of piracy.

**Executive Summary:** For many industries, the piracy situation in Pakistan is out of control. Pakistan remains the world's most blatant pirate market for books, with the government taking little action to combat rampant piracy in the Urdu Bazaars. Politically connected pirates seem to overrun what otherwise seem to be well-intended efforts by the Federal Investigation Agency (FIA). The National Book Foundation continues to claim that it is taking advantage of a Berne-incompatible compulsory license. Much more must be done to curb book piracy. Piracy of other copyright materials remains rampant. The recent article, "*Pakistani Cinemas Shut Down to Protest Piracy*,"<sup>1</sup> speaks volumes about the piracy situation in Pakistan with respect to films, for example. The article documents the strike in 2007 by the local Pakistani cinema owner association to protest the government's failure to curb film piracy, and, e.g., noted that street piracy, cable and signal theft, and the ban on showing Bollywood films, all compounded the business problems for cinema owners; the article also notes that the number of cinemas in Pakistan has fallen from about 750 in the 1970s to about 300 by early 2007, with many having been converted into shopping malls. The music market for international repertoire has experienced similar disintegration. While cooperation and enforcement by the FIA and Pakistani Customs has been commendable in the past, especially with respect to stopping factory-pressed optical disc pirate production and exports, recent results have not been promising, and as a result, the piracy situation domestically remains dire.

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

### Enforcement

- Undertake significant action against retail piracy throughout Pakistan, including pirate booksellers in the Urdu bazaars, and pirate resellers of CDs, DVDs, and CD-ROMs, followed by prosecutions of cases leading to deterrent penalties.
- Conclude cases against optical disc manufacturing pirates arrested years ago, with imposition of deterrent remedies.
- Take actions against business software end-user and hard-disk loading piracy, including inspections against businesses suspected to be engaged in the unauthorized use of software, prosecutions brought where warranted, and deterrent sentences at court.
- Take action against cable and satellite piracy, which in 2007 caused over \$110 million in losses to legitimate channels due to illegal distribution to an estimated 4.6 million unauthorized subscribers.

### Legislation

- Repeal the TRIPS-incompatible royalty-free compulsory license under Article 36(3) of the copyright law, and ensure that the National Book Foundation ceases all reproduction thereunder.
- Amend the Pakistan Copyright Ordinance to enhance enforcement; create deterrence, including mandatory minimum sentences including fines and imprisonment for committing a crime of copyright infringement; provide exclusive rights for sound recordings including an exclusive communication to the public/making available right; and protect against circumvention of technological protection measures, circumvention services, and trafficking in circumvention devices.
- Pass and implement an optical disc regulation to license optical disc production, provide for inspections (including by representative organizations), closure of plants in violation, monitoring and control on imports of production equipment and raw materials (including optical grade polycarbonate), and requirements to use unique source identification codes (SID mastering/LBR codes and mold codes) to track the location of production.
- Fully implement and join the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.
- Amend the Motion Picture Ordinance to more clearly cover home video products.

<sup>1</sup> Reuters News, *Pakistani Cinemas Shut Down to Protest Piracy*, March 15, 2007.



PAKISTAN										
Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2004-2008 <sup>2</sup>										
INDUSTRY	2008		2007		2006		2005		2004	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Business Software	77.0	85%	63.0	84%	78.0	86%	26.0	86%	14.0	82%
Records & Music	NA	NA	25.0	100%	25.0	100%	25.0	100%	70.0	100%
Books	NA	NA	55.0	NA	55.0	NA	55.0	NA	52.0	NA
Entertainment Software	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Motion Pictures	NA	NA	NA	NA	NA	NA	NA	NA	12.0	NA
TOTALS	77.0		143.0		158.0		106.0		148.0	

## PIRACY CHALLENGES IN PAKISTAN

**Book Piracy Situation in Bazaars Not Improving:** Pakistan remains perhaps the worst book piracy haven in the world. Large-scale photocopying and print piracy make the Pakistani market virtually untenable for legitimate publishers. The Urdu Bazaars in Karachi (featuring 350 booksellers and wholesalers) and Lahore (featuring 700 sellers), are the main sources of pirated books in the country. Periodic raids run at the request of rights holders seem to yield no outcomes and no deterrence. Pirate booksellers are highly organized and well-connected, and often succeed in bullying authorities into dropping cases immediately after any enforcement action (or avoid enforcement action altogether). All types of books are pirated – practically anything that can sell more than a few hundred copies is a target for the pirate market. English language novels and other trade books are popular among pirates, and as a result, U.S. publishers of mainstream commercial fiction and non-fiction are struggling. Some pirate enterprises are now able to produce fairly high-quality copies that are more difficult to differentiate from the legitimate versions than previous low-quality versions were. Meanwhile, publishers report exports of pirated product flowing into nearby and regional markets as well as decimating the local market.

**Educational Sector Likewise Experiencing Significant Piracy:** The potential market for elementary and high school materials in English is immense, given the number of families in Pakistan who are sending their children to English-language schools. Nonetheless, the academic and professional markets are completely overrun by piracy. Elementary and high school courses taught in English routinely feature pirate versions of books. Piracy at the university levels is even worse, with rates soaring over 90%. Among the worst offending universities in this respect are the College of Business Management in Karachi, Punjab College of Business Education in Lahore and NED University in Karachi. Often, one student will purchase the required reading for a class and then organize the photocopying for the entire class, or lend the book to other students for them to copy any material they require. U.S. publishers receive routine and suspicious requests for free supplementary materials from professors who have apparently adopted the book when there are absolutely no legitimate sales. Unauthorized compilations in the form of course packs are on the rise as well. Some medical titles have been pirated, usually in one color, so they have misleading and inaccurate illustrations. By contrast, publishers report a higher rate of legitimate sales of reference materials to libraries. This is likely attributable to the high cost of producing these materials and the relatively small market over which to spread production costs, making it unattractive to pirates looking to turn a large profit. This may also be due to the Pakistani government's "National Education Policy 1998-2010" which states in part, "School, college and university libraries shall be equipped with the latest reading materials/services."

**National Book Foundation Must Cease Allowing Unauthorized Reproductions of Books:** The Ministry of Education's National Book Foundation (NBF) has at times sent signals that it was prepared to cease the unauthorized reproduction of books under the guise of a royalty-free compulsory license (under Section 36(3) of the Copyright Act as amended in 2000, which clearly violates the Berne Convention and TRIPS). However, reports also indicate that NBF is still

<sup>2</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 Pakistan. 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 Pakistan'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>.

using the compulsory license. The periodic overtures of NBF were accompanied by fervent lobbying of foreign publishers and their governments to grant NBF license agreements. Such voluntary licensing is made impossible by the NBF's continued unauthorized activities. As a start to any discussion, IIPA expects: 1) immediate cessation of all unauthorized reproduction of U.S. publishers' titles; and 2) a written commitment from the NBF to use legitimate product and engage in transparent business practices, accompanied by a commitment from the government to repeal Section 36(3) of the Copyright Ordinance.

**Business Software End-User Piracy Is Endemic:** Despite significant public awareness and enforcement drives by the business software industry over the past two years, the piracy situation for this sector remained serious in 2008. At 85%, Pakistan holds the dubious distinction of having one of the highest PC software piracy levels in the world. The government has taken some steps over the years to legalize government use of software, and software procurement rules are in place to ensure that legitimate software prices are quoted with tender offers to supply hardware.

**"Burned" Pirate Discs Greatly Outnumber Factory Produced Pirate Disks:** With the near eradication of factory produced discs in Pakistan after 2005 enforcement activities, the chief optical disc piracy problem in Pakistan involves the burning of pirate content onto recordable CD-Rs and DVD-Rs with at least one industry describing the problem as rampant (although nowhere near the levels when factory production was fully operational). Small quantities of unauthorized factory DVDs remain available, although these are generally thought to have been imported into Pakistan.

**Government Stands Idly By Watching Growth of Rampant Cable and Satellite Piracy:** Piracy of cable and satellite broadcasting signals remains out of control in Pakistan, with cable companies estimated to transmit the vast majority of the programming they provide to end users without authorization. The illegal cable piracy operations are serviced by "lead *walas*" who obtain cable feeds from a cable operator with a hardware facility (head end). There were an estimated 4.6 million unauthorized subscribers causing over \$110 million in losses to legitimate channels in 2007. The pirates are organized, run their operations openly like a business, and essentially earn tax-free revenue with impunity. The pirates have always used the latest technologies, from "smart splitters" earlier this decade (allowing one legitimate or hacked "smart" card to be used to supply ten end-users with programming, and now "dream box" technology which uses an off-the-shelf technology that blocks fingerprinting and cannot be detected or descrambled. The pirate cable operators are even earning advertising revenues from their own in-house ads!

**Mobile and Internet Piracy:** Mobile piracy, whereby illegal vendors upload pirate content (ring tones, music, and published materials, etc.) onto mobile telephones, MP3 devices, flash drives, recordable optical discs, and computer hard drives, has taken hold in Pakistan, and is set to grow more serious, since mobile penetration now stands at 51% in the country. There are slightly more than 88 million mobile users in Pakistan, according to the Wireless Federation.<sup>3</sup> To date, nothing has been done to combat this growing piracy phenomenon, with increasing losses to U.S. industry (not reflected in the losses reported above). Internet penetration exploded in Pakistan in 2008, with roughly 17.5 million Internet users as of March 2008 (according to the International Telecommunications Union), representing roughly 10.4% penetration. Nonetheless, piracy on the Internet in Pakistan remains low, since only 128,700 broadband connections exist in the country, although this represents a 100% increase in broadband connectivity over 2007, so it is not unreasonable to begin working on enforcement capacity and regulatory solutions.

## **ENFORCEMENT CHALLENGES IN PAKISTAN**

IIPA expresses its disappointment that the government of Pakistan has failed to date to deal with piracy phenomena, such as book piracy in the bazaars and in the educational sector, end-user piracy of business software, music, movie, and game piracy, and rampant cable and pay TV piracy. The Intellectual Property Office has not yet lived up to its intended mission as a forum for dialogue and coordination between private sector representatives and government officials, and has not come forward with a comprehensive plan for tackling Pakistan's outstanding piracy issues. The Federal Investigation Agency has provided an occasional bright spot in an otherwise bleak picture, spearheading the raids and closures of optical disc factories in 2005 and following up with some successful raids in 2006 and 2007 against

---

<sup>3</sup> *Mobilink Leads as Mobile Penetration in Pakistan Surpasses 50% in Q2'08 (Pakistan)*, July 23, 2008, at <http://wirelessfederation.com/news/mobilink-leads-as-mobile-penetration-in-pakistan-surpasses-50-in-q208-pakistan/>.

“burning” lab operations, leading to a few criminal convictions.<sup>4</sup> The FIA has continued to be in touch with relevant rights holders about targets for anti-piracy action. The following anecdotally and non-exhaustively, lists some of the key challenges to right holders in seeking effective enforcement of their rights in Pakistan:

- **Lack of *Ex Officio* Authority in IPO and FIA Raids:** One key issue in Pakistan remains the lack of *ex officio* authority being employed by FIA or IPO. At present, a formal complaint must be lodged by a copyright owner or an authorized representative before FIA will take any action. The industries have met with the Intellectual Property Office (IPO) Pakistan through seminars and trainings and are trying to convince law enforcement authorities to take more *ex officio* actions against blatant piracy.
- **Leaks Within the Enforcement Units:** In November 2007, after thorough investigation, the recording industry group lodged a complaint against five pirate audio cassette manufacturing factories and warehouses. FIA raided all five sites but pirated goods were found at only one site. It is believed that there have been instances such as this one described in which FIA has leaked the information before the raid. Security techniques must be adopted, such as removal of mobile devices from the enforcement officials prior to raids, and only having the head of the enforcement party know about the time and location of a raid, in order to avoid leaks and other irregularities.
- **Lack of Government Will:** In many instances, it is the lack of government will to stand up to piracy that ultimately dooms enforcement efforts. For example:
  - **Book Piracy:** While publishers have been in touch with FIA and have been pleased with FIA willingness to discuss potential book piracy targets, IIPA has received no information about FIA actions since those conversations. A police-assisted raid in 2006 in Karachi at a book market also illustrates the lack of will among some authorities in Pakistan. Pirate books were seized and some offenders were taken to the neighborhood police station. In reaction, a band of pirate booksellers surrounded the police station demanding that the police release the offenders and refrain from filing the “First Information Report” (FIR) against them. The police folded under the pressure and asked for a written undertaking from the offenders that they would not engage in piracy, whereupon they released the defendants without filing an FIR.
  - **Cable and Pay TV Piracy Enforcement in Pakistan:** The Pakistan Electronic Media Regulatory Authority (PEMRA), the regulatory body established in Pakistan in 2002 to facilitate and regulate the establishment and operation of all private broadcast media and distribution services in Pakistan, has utterly failed to exert political will to deal with cable and pay TV piracy (although the group has not been shy about banning or censoring foreign channels in the past). It has become painfully clear that the authorities in Pakistan do not care whether copyright authorization has been obtained for “head end” establishment by cable pirates, and are not interested in the taxes lost due to unaccounted-for revenues of the pirates (which would include business income taxes, personal income taxes, withholding tax and taxes on allied industries such as advertising and production).
  - **Business End-User Software Piracy:** Inspections are not being run against businesses suspected to be engaged in the unauthorized use of software, and prosecutions are not being brought where warranted. In addition, while many prosecutions were brought in previous years against those engaging in hard-disk loading of pirate software onto computers, the slow pace of court processes and lack of deterrent sentences has meant those engaging in this activity will not be deterred. Steps should be taken to reverse this trend.
- **Lack of Deterrence at Court (Including Failure to Conclude Cases Against Pirate Optical Disc Manufacturers):** The minimal number of criminal prosecutions and the low level of fines when cases do proceed to conclusion results in non-deterrence in the Pakistani market. It is telling that cases against optical disc manufacturing pirates who were arrested years ago remain pending. The plant owners filed a Constitutional Petition (CP) in the Pakistani High Court challenging the legislation under which they were arrested back in 2006. Copyright cases are also marred by procedural hurdles such as excessive documentary requirements and delays. The maximum fine a pirate has received from a prosecution for publishing piracy was PKR15,000 (US\$189) in 2004, hardly a deterrent, and most cases involving publishers resulted in far lower fines.

---

<sup>4</sup> The FIA Crime Circle in Rawalpindi obtained convictions in 2007 in cases commenced in 2006 against three major wholesalers of pirated optical discs on CD-R and DVD-R formats. In one raid, run in February 2007, the FIA Crime Circle, Rawalpindi raided a retailer and wholesaler of pirate burned optical discs in Rawalpindi and seized over 169,000 pirate discs. The FIA registered a criminal case against the owner of the shop. The case was pending in the Judicial Magistrate Court, Rawalpindi, which heard the first oral argument in February 2008.

## **COPYRIGHT AND RELATED LAWS**

**Penalties in Copyright Law Fail to Deter Piracy:** Copyright protection in Pakistan is generally provided under the Copyright Ordinance, 1962 (as last amended in 2000), which provides generally strong tools to fight piracy.<sup>5</sup> The Ordinance includes, as an example, provisions enabling the Registrar to monitor exports, with the ability to inspect and seize pirated goods leaving Pakistan.<sup>6</sup> Remaining problems in the ordinance include criminal fines that remain far too low to deter piracy, and in part to remedy this, the Ordinance should be amended to provide minimum jail sentences and fines for crimes involving copyright infringement. For example, the minimum fine might be increased to PKR500,000 (US\$6,300), which is reasonable by any estimation. There also exist some overly broad exceptions to protection and unclear full retroactive protection for works and sound recordings as required by TRIPS.

**Royalty-Free Compulsory License for Books Is Out of Step with International Standards:** One of the most significant deficiencies in the Ordinance as amended was the addition of Section 36(3) that allows a royalty-free compulsory license of books. Specifically, it provides, “[t]he Federal Government or the Board may, upon an application by any government or statutory institution, in the public interest, grant a license to reprint, translate, adapt or publish any textbook on non-profit basis.” Included in “government or statutory institution” is the National Book Foundation (NBF), which, as noted, has engaged in the unauthorized reproduction of books under the guise of this license. This royalty-free compulsory license violates the Berne Convention and TRIPS and Pakistan must delete it from the Ordinance.

**Pakistan Should Implement the WCT and WPPT:** Pakistan should fully implement and join the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, which establish the framework for the protection of copyrighted works in the online environment. Pakistan should also adopt the 1971 (Paris) text of the Berne Convention and should join the Geneva (Phonograms) Convention. In particular, the Ordinance should be amended to include broadcasting and public performance rights for phonogram producers and provide an exclusive making available right and protection of technological protection measures and rights management information. Finally, the Ordinance should provide proper incentives for service providers in the online space to cooperate with right holders, through adequate provision of liability for P2P file sharing, adequate liability for service providers engaging in direct infringement or facilitating infringement, and should in addition include a robust notice and takedown system. IIPA has shared with the IPO its thoughts on these issues in the past, including more detail than is contained in this report. IIPA hopes IPO will take the opportunity to amend its Ordinance to fully modernize the law.

**Motion Picture Ordinance Should Cover Home Video Products:** IIPA encourages Pakistan to amend its Motion Picture Ordinance to more clearly cover home video products, and understands that the Ministry of Culture has announced plans to do this. The motion picture industry has reviewed and provided comments on drafts of the proposed amendments, which would require licensing of video shops and would include minimum penalties for infringements, all of which would be helpful in the fight against this form of piracy.

**Pakistan Should Pass and Implement an Effective Law to Curtail Pirate Optical Disc Production:** To ensure that optical disc pirate production does not return to Pakistan, the government should enact effective plant control measures, giving the government and right holders the ability to track the movement of optical media production equipment and parts, as well as the raw materials (including optical grade polycarbonate), and compelling plants to use unique source identifiers (SID code including both mastering LBR code and mold code) to track location of production.<sup>7</sup> Such regulations will give Pakistani authorities a needed tool to license any new plants wishing to produce and proving they have a right to produce content in Pakistan, to conduct spot inspections and raids on plants, to seize infringing copies

---

<sup>5</sup> Three essential remedies exist in Pakistan for copyright infringement: i) civil remedies, including permanent injunctions, damages and wrongful profits, seizure of goods, etc.; ii) administrative remedies through IPO Pakistan, Customs, or the FIA); and iii) criminal prosecutions through the Police. Criminal penalties for knowingly infringing or aiding and abetting infringement of copyright include imprisonment of up to 3 years, and/or a fine of up to PKR100,000 (US\$1,260) (double for a recidivist). Section 74-A provides for restitution to the complainant (50% of the fine) in addition to any civil damages. In case an offense is committed by a company, every person who was in charge of and responsible to the company for the conduct of the business at the time the offence was committed is deemed guilty of the offence and punished accordingly.

<sup>6</sup> Please see the 2003 Special 301 report on Pakistan, at <http://www.iipa.com/rbc/2003/2003SPEC301PAKISTAN.pdf>, for a full discussion of the Pakistan Copyright Ordinance.

<sup>7</sup> The global copyright community has agreed on the key elements of an effective optical disc law; please see the 2003 Special 301 report on Pakistan, at <http://www.iipa.com/rbc/2003/2003SPEC301PAKISTAN.pdf>, for a full discussion of what is needed in Pakistan’s optical disc regulation.

of product and machinery, and to impose administrative and criminal penalties to deter the organized manufacturing and distribution of pirate product. IIPA understands that draft legislation remained pending as of February 2009; it is hoped that this draft will proceed to passage in early 2009.

**Cybercrime Legislation Should Be Amended to Include Copyright Crimes:** On December 31, 2007, the President of Pakistan (in the absence of a National Assembly, which was dissolved at the time) passed the Prevention of Electronic Crime Ordinance, 2007. The Ordinance criminalizes certain computer activities, including some forms of reverse engineering of software. The Ordinance does not provide a remedy for copyright infringement consistent with the Council on Europe Cybercrime Convention (2001) (to which the United States is a party). Article 10 of the Council on Europe Cybercrime Convention 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 willfully, on a commercial scale and by means of a computer system.”

It would be helpful if the government of Pakistan revised the Ordinance to implement this provision of the COE Cybercrime Convention.

## **MARKET ACCESS CONCERNS**

**Import Duties:** The recording industry reports very high import duties on U.S. sound recordings that severely restrict access to the Pakistani market. IIPA urges the government of Pakistan to substantially lower the import duties and related taxes.

## **GENERALIZED SYSTEM OF PREFERENCES**

Pakistan 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 Pakistan meets certain discretionary criteria, including whether it provides “adequate and effective protection of intellectual property rights.” In June 2004, the United States Trade Representative agreed to accept IIPA’s petition to evaluate whether Pakistan remained eligible to retain its GSP trade benefits. On January 24, 2005, IIPA endorsed the termination of the Generalized System of Preferences (GSP) piracy investigation of Pakistan by USTR due largely to successful enforcement efforts against optical disc piracy. IIPA called upon the Pakistani government to remain vigilant against book piracy. Specifically, IIPA, in making its recommendation, noted,

“Vigilance will be needed, however, to ensure that the problem of massive optical disc piracy does not return to Pakistan. The plants must remain closed and the Government should implement mechanisms to ensure that optical disc piracy remains in check. In addition, other forms of piracy, especially book piracy, remain serious problems in Pakistan. The Pakistani Government must continue to address these outstanding issues, and the U.S. Government should continue to press to resolve these issues.”

As a result of termination, Pakistan enjoys duty-free status for imports of certain products into the United States. During 2007, \$135.1 million worth of products came into the United States duty-free from Pakistan, or 3.8% of its total imports to the U.S. In 2008, the number spiked to \$183.9 million that entered the United States duty-free, or 5.1% of its total imports to the U.S. The government of Pakistan must meet the discretionary criteria in this U.S. law if it expects to continue receiving favorable treatment at this level.