

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2008 SPECIAL 301 REPORT

### BANGLADESH

**Special 301 Recommendation:** IIPA recommended that Bangladesh be placed on the Watch List in 2008. The situation has not improved, and IIPA therefore once again requests placement of Bangladesh on the Watch List.<sup>1</sup>

#### **EXECUTIVE SUMMARY**

In its 2007 Special 301 Report, the United States Trade Representative noted,

[C]ountries still need to adopt and implement legislation or improve existing measures to combat pirate optical disc production, including Bangladesh ... which have not made sufficient progress in this area. The United States continues to urge its trading partners who face pirate optical media production within their borders to pass effective legislation and aggressively enforce existing laws and regulations.

Bangladesh hosts six (6) optical disc factories, most of which migrated from Pakistan. The production capacity for these plants far exceeds any rational legitimate demand. Industry continues to see exports to India and perhaps Europe, as well as saturation of the local market with pirate product. Other piracy problems abound, including unchecked book piracy in the form of print piracy and illegal commercial photocopying, stolen theatrical motion picture prints which are illegally contracted for exhibition in Bangladesh, and broadcast/cable piracy (i.e., unauthorized showing of international and Hindi movies on channels without authorization), which should be addressed as well. CD-R "burning" piracy remains a problem, from large-scale "burning" in the plants to small-scale burning. The use of pirate music cassettes continues to dominate the music market in Bangladesh and the music cassette piracy rate is 90% for domestic, Indian and international repertoire.

The harm from piracy in Bangladesh is not only to U.S. and other foreign right holders but is felt keenly by Bangladeshi nationals.<sup>2</sup> Recently, Bangladeshi record/music 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 that "[i]n the last four years alone, as many as 10 big and respected companies have had to close because of piracy."<sup>3</sup> Likewise, booksellers are fighting for their livelihoods amidst rampant book piracy. The government's response has been inadequate, both in terms of the results from enforcement actions taken and from the standpoint of publicizing results of actions in order to create necessary deterrence.<sup>4</sup>

<sup>1</sup> Curiously, one press article suggests that the Bangladesh government believes it is already on the Watch List. See *B'desh on US Watch List for IPR Violation: Report*, Organisation of Asia-Pacific News Agencies, September 30, 2007 (reporting out of Dhaka that "Bangladesh has been put on the United States' watch list of countries that allow production of pirated versions of multi-media compact disks (CDs) and digital video disks (DVDs) in violation of intellectual property rights"; the Star newspaper also indicated that "the National Security Intelligence, on the request of U.S. authorities, carried out an investigation and found that two companies owned by Pakistani citizens, AKA World Com and Sonic Enterprise Bangladesh Limited, were owned by two Pakistanis, one of whom set up a Tk 2 crore [approximately US\$300,000] plant which can produce 50,000 discs a day").

<sup>2</sup> The local music companies regularly complain about growing piracy problems, especially the piracy of music albums of the leading Bangladeshi music labels in the outskirts of key urban areas.

<sup>3</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>.

<sup>4</sup> In Bangladesh's Trade Policy Review at the World Trade Organization in September 2006 (minutes released in November 2006), the government of Bangladesh essentially indicated that it does not keep regular copyright enforcement statistics, but that "efforts are being made for collecting such data," that the records/data in relation to seizure or confiscation are maintained by Bangladeshi Customs manually in a register, but that there are other enforcement agencies like BDR (Bangladesh Rifles), Coast Guard and Police who are also responsible for enforcement of copyright regulations within their respective jurisdictions, and 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."

## **PRIORITY ACTIONS REQUESTED IN 2008**

- **Inspect Optical Disc Plants, Closing Down Those Found to be Engaged in Piracy and Prosecuting Owners of Pirate Plants**
- **Pass and Implement an Effective Optical Disc Regulation, With Plant Visits/Mandatory Exemplars and Mandatory Use of SID Master (LBR) and Mold Code, Among Other Things**
- **Establish an Anti-Piracy Force and Take Actions (Including *Ex Officio*) Against CD-R “Burning,” Book Piracy (Photocopy Shops and Print Piracy), Theft of Theatrical Prints, Stolen Theatrical Motion Picture Prints, and Broadcast/Cable Piracy**
- **Establish IPR Cell Within Bangladesh Customs**

For more details on Bangladesh's Special 301 history, see IIPA's "History" Appendix to this filing at <http://www.iipa.com/pdf/2008SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' country reports, at <http://www.iipa.com/countryreports.html>.

<b>BANGLADESH</b> <b>Estimated Trade Losses Due to Copyright Piracy</b> <i>(in millions of U.S. dollars)</i> and Levels of Piracy: 2005-2007 <sup>5</sup>						
INDUSTRY	2007		2006		2005	
	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	NA	NA	NA	NA	NA	NA
Records & Music	NA	NA	40.0	70%	NA	NA
Business Software	NA	NA	NA	NA	NA	NA
Entertainment Software	NA	NA	NA	NA	NA	NA
Books	NA	NA	8.0	NA	6.0	NA
<b>TOTALS</b>	<b>NA</b>		<b>48.0</b>		<b>6.0</b>	

## **PIRACY AND ENFORCEMENT IN BANGLADESH**

As can be seen from the descriptions below, rampant piracy essentially closes the domestic market to legitimate copyright owners, and evidence of export piracy of optical discs makes matters worse. No single law enforcement agency in Bangladesh has been tasked with engaging in anti-piracy activities. Enforcement agencies in Bangladesh simply do not have piracy on their agendas. In addition, due to frequent transfers of enforcement officers, it is difficult to develop effective working relations between industry and government. One helpful step would be the establishment of an IPR unit within the Police. Police would then need to be trained for the unit, and hopefully, other problems such as corruption within local Police units, can be resolved (some industries have reported difficulties with confidentiality when it comes to operational information).

**Optical Disc Production in Bangladesh:** There are currently six (6) optical disc plants in Bangladesh (lines for the sixth plant have recently been imported from Singapore but it is unclear whether this plant is operational yet), while only one plant has given industry access to the plant. With a total of at least 14 production lines (including four dedicated DVD lines),<sup>6</sup> and a production capacity of 49 million

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

<sup>5</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2008 Special 301 submission at [www.iipa.com/pdf/2008spec301methodology.pdf](http://www.iipa.com/pdf/2008spec301methodology.pdf).

<sup>6</sup> Four of the plants are in Dhaka (including one in Uttara and one in Kodamtali), one of the plants is in Konobari, Gazipur, and one is in the Kajpur area. There are four dedicated DVD lines (three DVD-9 and one DVD-5 line). In addition, there are as many as 10 CD lines. In some of the plants, it is confirmed that the best technology available is being used. For example, molding and finishing lines from one plant are a combination of Swedish and Dutch technology, under the banner of TOOLEX and ODME respectively, while printing is done using German technology, KAMMANN Machines.

discs, and four mastering facilities (i.e., the ability to use a “clean room” and produce the glass master that is then converted into the metal stamper used on the mold), the optical disc production problem must be addressed with immediacy. It is confirmed that at least some of these plants are owned by Pakistani nationals who ran plants in Pakistan prior to that government’s crackdown over the past two years.

All of these plants are involved in large-scale piracy operations, and at least four of the six are engaged in production of pirate international music, software, and U.S. movies. The main market for these pirate products is Bangladesh,<sup>7</sup> although some of the pirated discs are being smuggled into India and Europe. Relatively small shipments of 900 to 1,000 discs are apparently being “smuggled” out of the country via parcel shipments using the main post office in Dhaka. Apparently the export shipments are focusing on the Indian and European market, but also Sri Lanka. However, industry has few details regarding the content and exact quantities of pirate exports. As an example of the efficiency and modernization of these plants, one plant with three lines can deliver orders in as little as seven days and can produce about 40,000-50,000 discs per day (all formats). Industry knows where these plants are located and has informed the government of Bangladesh.

The massive pirate production has destroyed any domestic market (even local music, for example, is 60% pirate, while international and Indian repertoire is virtually 100% pirate). Industry has met with government representatives about the OD piracy and other problems.<sup>8</sup>

**“Burning” on Recordable Discs:** 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 the CD-R facilities and that there are as many as 60 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 Discs:** It appears there is some pirate importation of 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.

**Book Piracy:** The book publishing industry grapples with significant illegal commercial photocopying and print piracy affecting a wide range of products—from academic textbooks to 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 appallingly high rates of piracy.

Neelkhett Market in Dhaka is famous for pirate sales, and other book markets in cities such as Dhaka, Chittagong, Rajshahi and Khulna, teem with illegal “local reprints” as well. This is a disturbing trend in a region in which legitimate local reprints are offered for sale at a very low cost. This not only decimates the market for foreign publishers; it also curbs potential business for Bangladesh’s booksellers and local producers, who are starting to take steps to defend their fledgling but foundering market. Several bookseller-initiated raids of pirate enterprises in places like Neelkhett and Banglabazar have produced some success. The government should work with local companies affected by piracy, and encourage their efforts.

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<sup>7</sup> The overall piracy situation in Bangladesh has worsened with the increase of sales of pirate CDs and DVDs in urban cities and especially Dhaka. CD and DVD players are becoming increasingly popular and cheap and demand for pirate CDs, VCDs and DVDs has increased as a result. The growing usage of computers in households is also contributing to consumer purchases of pirate CD-ROMs and other optical discs.

<sup>8</sup> For example, in February 2006, record industry representatives met with officials from the National Board of Revenue, Dhaka, Commissioner of Customs, Dhaka Airport, and U.S. officials. Through the meetings, the members of Customs welcomed support and assistance from industry and indicated limitations in the detection process of pirated products and shortage of equipment to detect pirated products.

Government taxes on imported books drive up prices on all imports, including those from neighbor India, a hub of regional publishing production. Taking advantage, many so-called “importers” have taken up piracy, themselves, using fairly sophisticated technologies to reproduce and distribute pirate copies of books instead of importing legitimate copies.

Illegal commercial scale photocopying of textbooks and ELT materials abounds in and around Bangladesh’s universities and schools. Photocopies of textbooks sell for approximately US\$2.00 apiece. This is a more decentralized practice but is open and blatant. Educational authorities and universities should take proactive measures to curb piracy of academic materials, and a very select few universities have started this process. More needs to be done, however, including fostering representation of the publishing industry in setting priorities for the National Education Policy, increasing awareness programs for users of academic materials, including in schools and universities, and, above all, encouraging integrity and transparency in the “tender system” that governs purchases of books for government institutions.

**Theatrical Print Piracy:** The motion picture industry has experienced repeated instances of stolen prints fraudulently cleared through Customs and the Board of Film Censors and then contracted for exhibition in Bangladesh. Right holders are often unaware of the presence of these pirated theatrical prints until they are notified by legitimate distributors in the affected territories.

**Cable Piracy:** Several cable television distributors in Bangladesh are showing international and Hindi movies on their channels without authorization. The Ministry of Information is including provisions in a new anti-piracy law to take action against such theft.

## **TRAINING**

Training on copyright and copyright enforcement has been offered to the government of Bangladesh several times, but the government has not responded to such offers to date.

## **COPYRIGHT LAW AND RELATED ISSUES**

Copyright protection is afforded under the Copyright Act, 2000,<sup>9</sup> as amended in 2005.<sup>10</sup> The law prior to amendment was adequate for basic anti-piracy purposes, although it did not implement the WIPO “Internet” Treaties.<sup>11</sup> We are still ascertaining the effect of the changes from the 2005 amendments (which we have not been provided for review), but we understand that the Bangladesh government is well aware of the TRIPS issues involved, although claims the 2013 transition period,<sup>12</sup> and there was concern that pirate producers lobbied the government for exceptions that would have the effect of permitting pirate exports to neighboring markets such as India. Notwithstanding the 2013 transition, we note that Bangladesh is a member of the Berne Convention (since May 4, 1999) and thus must adhere to the rules

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<sup>9</sup> Act No. 28 of 2000, Act for the Amendment and Assimilation of Copy Right Act, Bangladesh National Parliament Dhaka, 18 July, 2000/3 Shrabani, 1407.

<sup>10</sup> The Bangladeshi government, in a recent WTO review, indicated that the Copyright Amendment, 2005 is currently only in Bengali, but is being translated into English. See *supra* note 4. 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 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.”

<sup>11</sup> See *id.*, in which the government of Bangladesh indicated “Bangladesh has not yet made any decision about joining WIPO Internet treaties.”

<sup>12</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.” Thus, while we had previous information that the government was considering an anti-piracy statute, that process may have been overtaken by events.

and principles set forth in that Convention, including abiding by the three-part test for exceptions. IIPA looks forward to reviewing the amendments and providing comments.

In Bangladesh's recent WTO review, 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>13</sup> administrative/border,<sup>14</sup> criminal,<sup>15</sup> and provisional<sup>16</sup> remedies have been set out in writing.

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<sup>13</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>14</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>15</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>16</sup> See *id.* The government indicated the following as to provisional measures under the current law:

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

## **GENERALIZED SYSTEM OF PREFERENCES**

Bangladesh participates in the Generalized System of Preferences (GSP) program which includes, as one of its criteria of eligibility, that a country provides "adequate and effective" copyright protection. During the first 11 months of 2007, \$22.37 million worth of goods from Bangladesh (or 0.7% of Bangladesh's total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code.