



October 20, 2008

**VIA ELECTRONIC MAIL ([FR0811@ustr.eop.gov](mailto:FR0811@ustr.eop.gov))**

Ms. Gloria Blue  
Executive Secretary, Trade Policy Staff Committee  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street, NW, Room F516  
Washington, DC 20508

Re: African Growth and Opportunity Act  
Implementation Subcommittee of the Trade  
Policy Staff Committee; Public Comments on  
Annual Review of Country Eligibility for  
Benefits Under the African Growth and  
Opportunity Act, 73 Fed. Reg. 54639-40  
(September 22, 2008)

To the Trade Policy Staff Committee:

The International Intellectual Property Alliance (IIPA) submits these comments in response to the September 22, 2008 request for public comments circulated by the African Growth and Opportunity Act (AGOA) Implementation Subcommittee of the Trade Policy Staff Committee, chaired by the U.S. Trade Representative, in connection with the annual review of the eligibility of sub-Saharan African countries for AGOA benefits.

This submission explains IIPA's views on the importance of the Administration examining countries' copyright laws and enforcement practices under the AGOA's intellectual property rights (IPR) eligibility criteria. While we appreciate that the Subcommittee discussed, if briefly, AGOA countries' copyright situations (laws and in some cases enforcement) in its May 2008 report, we would strongly encourage the Subcommittee to draw upon recent reports (such as those prepared by the IIPA in its annual Special 301 process) to enrich the record in future reports.<sup>1</sup> It is important to reflect steps the beneficiary countries are taking to ensure that the AGOA IPR criteria for eligibility are being met, but where piracy problems persist or get worse, it is important to note instances in which the AGOA criteria may not be being met at present.

<sup>1</sup> The May 2008 USTR report very briefly mentioned IPR in Benin, Burkina Faso, Burundi, Cameroon, the Central African Republic, Comoros, Congo (Democratic Republic of), the Gambia, Ghana, Kenya, Madagascar, Mali, Namibia, Nigeria, Senegal, and Sierra Leone, and South Africa. See United States Trade Representative, "2008 Comprehensive Report on U.S. Trade and Investment Policy Toward Sub-Saharan Africa and Implementation of the African Growth and Opportunity Act," May 2008, at [http://www.ustr.gov/assets/Trade\\_Development/Preference\\_Programs/AGOA/asset\\_upload\\_file203\\_14905](http://www.ustr.gov/assets/Trade_Development/Preference_Programs/AGOA/asset_upload_file203_14905).



## **DESCRIPTION OF THE IIPA AND ITS MEMBERS**

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. IIPA is comprised of seven trade associations,<sup>2</sup> each representing a significant segment of the U.S. copyright community. These member associations represent 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media). The core U.S. copyright industries contributed an estimated 6.56% of the U.S. gross domestic product (GDP) in 2005.<sup>3</sup>

The U.S. copyright-based industries are one of the fastest-growing and most dynamic sectors of the U.S. economy. Inexpensive and accessible reproduction technologies, however, make it easy for copyrighted materials to be stolen – pirated – in other countries. The most recent statistics indicate that global copyright piracy cost the U.S. economy at least \$58 billion in total output in 2006, costs American workers 373,375 jobs and \$16.3 billion in earnings, and costs federal, state, and local governments \$2.6 billion in tax revenue.<sup>4</sup> IIPA's goals in foreign countries include the establishment of legal and enforcement regimes for copyright that deter piracy, thus creating an adequate framework for trade in IIPA members' creative products, as well as fostering technological and cultural development, thus encouraging investment and employment in the creative industries.

## **THE INTELLECTUAL PROPERTY RIGHTS CRITERIA IN THE AGOA**

The African Growth Opportunity Act amended the U.S. trade law in 2000 to authorize the President to designate sub-Saharan African countries as eligible for duty-free tariff treatment for certain products under the Generalized System of Preferences (GSP) trade program.<sup>5</sup> Title I of the Trade and Development Act of 2000 contains provisions for enhanced trade benefits for sub-

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<sup>2</sup> IIPA's members are: Association of American Publishers (AAP), Business Software Alliance (BSA), Entertainment Software Association (ESA), Independent Film & Television Alliance (IFTA), Motion Picture Association of America (MPAA), National Music Publishers' Association (NMPA), and Recording Industry Association of America (RIAA).

<sup>3</sup> See the 2006 economic report prepared for the IIPA by Stephen Siwek of Economists Inc., Copyright Industries in the U.S. Economy: the 2006 Report, available at [http://www.iipa.com/pdf/2006\\_siwek\\_full.pdf](http://www.iipa.com/pdf/2006_siwek_full.pdf).

<sup>4</sup> In 2007, for the first time, data became available which allowed Steve Siwek, who also authors the IIPA economic studies, to measure the losses to the U.S. economy from global piracy. That recent study was completed for the Institute for Policy Innovation (IPI). See Institute for Policy Innovation, IPI Center for Technology Freedom, "The True Cost of Copyright Piracy to the U.S. Economy," at [http://www.ipi.org/ipi/IPIPublications.nsf/PublicationLookupFullTextPDF/02DA0B4B44F2AE9286257369005ACB57/\\$File/CopyrightPiracy.pdf?OpenElement](http://www.ipi.org/ipi/IPIPublications.nsf/PublicationLookupFullTextPDF/02DA0B4B44F2AE9286257369005ACB57/$File/CopyrightPiracy.pdf?OpenElement).

<sup>5</sup> See Generalized System of Preferences, Title V of the Trade Act of 1974, as amended, 19 USC 2461 *et seq.*



Saharan African countries.<sup>2</sup> At present, 40 African countries are beneficiary countries eligible for AGOA benefits.<sup>7</sup> Eight sub-Saharan countries are not presently eligible.<sup>8</sup>

Country eligibility criteria under the AGOA are found in two places – Section 104 of the Trade and Development Act of 2000 (which appears in Subtitle A containing the provisions of AGOA itself) and in Section 111 of that Act (which appears in Subtitle B – in effect amendments to the GSP Act adding AGOA to GSP through adding Section 506A).

First, the specific AGOA criterion for intellectual property is found in Section 104 (a)(1)(C)(ii) (19 USC 3703(a)(1)(C)(ii)) which provides:

(a) In General.— **The President is authorized to designate a sub-Saharan African country as an eligible sub-Saharan African country if the President determines that the country —**

**(1) has established, or is making continual progress toward establishing—**

[...]

(C) The elimination of barriers to United States trade and investment,

including by—

(i) The provision of national treatment and measures to create an environment conducive to domestic and foreign investment;

**(ii) The protection of intellectual property; and**

(iii) The resolution of bilateral trade and investment

disputes;

*(emphasis added).*

Second, Section 111 of the AGOA (also Section 506A of the GSP statute, 19 USC 2466a) provides the following regarding eligibility designation:

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<sup>6</sup> See Trade and Development Act of 2000, Title 1 of the Trade and Development Act of 2000, Pub. L. 106-200, 19 USC 3721 *et seq.*

<sup>7</sup> The following 40 sub-Saharan African countries were designated as beneficiary sub-Saharan African countries as of May 2008: Angola; Republic of Benin; Republic of Botswana; Burkina Faso; Burundi; Republic of Cape Verde; Republic of Cameroon; Republic of Chad; Republic of Congo; Democratic Republic of Congo; Republic of Djibouti; Ethiopia; Gabonese Republic; The Gambia; Republic of Ghana; Republic of Guinea; Republic of Guinea-Bissau; Republic of Kenya; Kingdom of Lesotho; Republic of Liberia; Republic of Madagascar; Republic of Malawi; Republic of Mali; Republic of Mauritius; Islamic Republic of Mauritania; Republic of Mozambique; Republic of Namibia; Republic of Niger; Federal Republic of Nigeria; Republic of Rwanda; Sao Tome & Principe; Republic of Senegal; Republic of Seychelles; Republic of Sierra Leone; Republic of South Africa; Kingdom of Swaziland; United Republic of Tanzania; Republic of Togo; Republic of Uganda; and Republic of Zambia.

<sup>8</sup> Countries not eligible for AGOA benefits include: Central African Republic; Federal Islamic Republic of Comoros; Republic of Cote d'Ivoire; Republic of Equatorial Guinea; State of Eritrea; Somalia; Republic of Sudan; and Republic of Zimbabwe.



(a) Authority to Designate.—

- (1) In general.— Notwithstanding any other provision of law, the President is authorized to designate a country listed in section 107 of the African Growth and Opportunity Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b)—
- (A) if the President determines that the country meeting the eligibility requirements set forth in section 104 of that Act [*which contains the above quoted intellectual property eligibility criterion*], as such requirements are in effect on the date of enactment of that Act; and
- (B) subject to the authority granted to the President under subsections (a), (d), and (e) of section 502, **if the country otherwise meets the eligibility criteria set forth in section 502.** (*emphasis added*)

Thus, reading together the two provisions above (Section 104 of the AGOA and Section 506A of the GSP Act), **it seems clear that countries that do not meet the GSP criteria in Section 502 cannot become beneficiaries under AGOA.** As this committee already knows, Section 502(c)(5) of the GSP program provides that the President “shall take into account” in “determining whether to designate” a country under GSP, “the extent to which such country is providing adequate and effective protection of intellectual property rights” (see 19 USC 2462(c)(5)).

Furthermore, Section 506A of the GSP Act provides that if the President determines that a beneficiary country is not making “continual progress” in meeting the eligibility requirements, he must terminate that country’s AGOA designation (see 19 USC 2466a(a)(3)).

**“Adequate and Effective” in Light of TRIPS and the WIPO Internet Treaties**

This criterion requiring the provision of “adequate and effective” protection of intellectual property rights, including copyright protection and enforcement, is a flexible one that changes over time. For example, in the program adopted at the same time as AGOA – the Caribbean Basin Trade Partnership Act (CBTPA)<sup>9</sup> – Congress specifically defined the intellectual property criteria in that Act (similar to the GSP Act criteria) to require “TRIPS or greater” protection and enforcement.<sup>10</sup> In defining what might be meant by “greater” protection, Congress noted in the Conference Report that such protection rises to the level of that provided in the U.S.’ “bilateral intellectual property agreements.”<sup>11</sup> **Therefore, sub-Saharan African countries that wish to**

<sup>9</sup> Title II, Trade and Development Act of 2000, Pub. L. 106-200 (May 18, 2000) (also known as the United States-Caribbean Basin Trade Partnership Act).

<sup>10</sup> Section 213(b)(5)(B)(ii) of the United States-Caribbean Basin Trade Partnership Act, 19 U.S.C. §2703(b)(5)(B)(ii).

<sup>11</sup> See Conference Report of the House of Representatives on the Trade and Development Act of 2000 [to accompany H.R. 434], Joint Explanatory Statement of the Committee of Conference on Subtitle B—Trade Benefits for Caribbean Basin Countries.



**become eligible for the enhanced benefits under AGOA must at least meet TRIPS requirements for both copyright protection and enforcement.**

While the TRIPS Agreement represents the floor of protection that must exist under AGOA and other U.S. preferential trade programs, **TRIPS alone is not sufficient given the flexible standard embodied in the “adequate and effective” standard in Section 502 of the GSP statute.** One of the copyright industries’ biggest challenges in the area of substantive copyright law reform is to elevate the levels of protection to account for changes in the digital environment, not only in fighting optical media piracy but piracy that occurs over digital networks. The Internet fundamentally transforms copyright piracy from a mostly local phenomenon to a potential global plague. It makes it cheaper and easier than ever for thieves to distribute unauthorized copies of copyrighted materials around the globe.

Modern copyright laws must respond to the changes in the Internet distribution of unauthorized copies of copyrighted materials by providing that creators have the basic right to control distribution of copies of their creations. Many of these legal changes are contemplated by the two “Internet” treaties of the World Intellectual Property Organization (WIPO): the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). In fact, the U.S. government has worked at all levels to encourage countries to sign, ratify and implement these two treaties. These treaties provide the essential legal framework for the continued growth of e-commerce in coming years by ensuring that valuable content is protected from piracy on the Internet.

So far, nine countries in Africa (excluding North Africa) have deposited their instruments to join the WCT: **Benin, Botswana, Burkina Faso, Gabon, Ghana, Guinea, Mali, Senegal and Togo.** In addition, eight of the nine countries (**Benin, Botswana, Burkina Faso, Gabon, Guinea, Mali, Senegal and Togo**) have deposited their instruments to join the WPPT (**Ghana** passed legislation to accede to the WPPT as well on August 25, 2004, and deposited the legislation with WIPO on August 18, 2006).<sup>12</sup> A number of other countries in Africa are actively considering ratifying the treaties, and many more have already taken steps to implement them.

**COPYRIGHT PROTECTION AND ENFORCEMENT IN SUB-SAHARAN AFRICA**

Few of the countries in sub-Saharan Africa come close to meeting the TRIPS-mandated levels of protection, particularly in the enforcement area. This fact must be taken into account in determining whether to keep those countries so designated as beneficiaries of AGOA, and whether to so designate more countries.

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<sup>12</sup> Thus, while we believe the effective date of accession to the WPPT for Ghana is November 18, 2006, the WIPO website does not yet reflect this accession.



## **Copyright Legislation in Sub-Saharan Africa**

The U.S. government needs to make these countries immediately aware that these IPR criteria are not met at this time and indicate that they should bring their regimes into compliance before determining whether to change the designation. IIPA encourages the U.S. government to work through the embassies in the region to exchange detailed accounts of what these governments are doing in the legislative area as well as in the area of enforcement of copyright to meet their AGOA eligibility criteria.

For example, several countries have either enacted legislation or are considering the same to implement these more complex provisions of the WIPO treaties.

- **Botswana** enacted legislation (the Copyright and Neighboring Rights Law (2000)), which seeks to implement these provisions in the WIPO treaties (though not entirely successfully, in our view).
- **Namibia** enacted the Copyright Act, 2002, and this Bill contains measures intended to implement the WIPO treaties.
- While legislation to bring South Africa's copyright law closer into line with TRIPS stalled in 2000, in 2002, the government of **South Africa** enacted the Electronic Communications and Transactions Act, 2002 (No. 25 of 2002), which contains some reasonably good provisions on service provider liability, although this was not copyright-specific legislation.

As part of the annual review process, we strongly suggest that USTR request that the eligible AGOA countries provide a brief update on the status of their current copyright legislation as well as their plans, if any, to amend their copyright legislation. Such information would be most useful at this stage of the review, before the final report is issued.

## **Trade Policy and Copyright Enforcement in Sub-Saharan Africa**

In IIPA's 2008 Special 301 submission, we reported on copyright-related developments in **Nigeria**, as well as Egypt in North Africa.<sup>13</sup> Some IIPA members have been able to provide estimated trade losses in these countries, which in the aggregate, conservatively amounts to at least **\$367 million in 2006 alone**.<sup>14</sup>

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<sup>13</sup> The IIPA's 2008 Special 301 country reports for these countries are posted and available at [http://www.iipa.com/2008\\_SPEC301\\_TOC.htm](http://www.iipa.com/2008_SPEC301_TOC.htm).

<sup>14</sup> IIPA's 2007 statistical data for these countries is available on the IIPA website at <http://www.iipa.com/pdf/2008SPEC301LOSSLEVEL.pdf>.



USTR, in its annual Special 301 review of countries' intellectual property practices, again noted the importance of enforcement in the Administration's trade policy approach:

In this year's review, USTR highlights the need for significantly improved enforcement against counterfeiting and piracy, Internet piracy, counterfeit pharmaceuticals, transshipment of pirated and counterfeit goods, requirements for authorized use of legal software by government ministries, proper implementation of the TRIPS Agreement by developed and developing country WTO members, and full implementation of TRIPS Agreement standards by new WTO members at the time of their accession.<sup>15</sup>

The Special 301 process has not resulted in inclusion of any (non-North) African countries on the current USTR lists. Nevertheless, widespread copyright piracy remains a very serious problem among all African countries. As a result, it may be the case that many copyright-based sectors and companies are still reluctant to invest in these smaller markets where piracy is, in effect, uncontrollable.

## **CONCLUSION**

IIPA appreciates this opportunity to provide the TPSC and the AGOA Subcommittee with its views on the AGOA. It is essential that the intellectual property rights criteria be considered as these countries are evaluated to maintain their current AGOA eligibility and others considered for designation as new beneficiaries. We look forward to working with you to foster improved copyright protection in this region.

Respectfully submitted,

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International Intellectual Property Alliance

Attachment

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<sup>15</sup> Office of the U.S. Trade Representative, "Executive Summary of the 2007 Special 301 Decisions," at [http://www.ustr.gov/assets/Document\\_Library/Reports\\_Publications/2008/2008\\_Special\\_301\\_Report/asset](http://www.ustr.gov/assets/Document_Library/Reports_Publications/2008/2008_Special_301_Report/asset) (April 25, 2008).

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2008 SPECIAL 301 REPORT

### NIGERIA

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

#### **EXECUTIVE SUMMARY**

Piracy is so bad in Nigeria that local artists and filmmakers now refuse to release their latest albums and movies into the retail market,<sup>1</sup> and recently, industry actually called for a total ban on the importation of music CDs.<sup>2</sup> Fifteen optical disc replication plants and four mastering plants have rapidly transformed Nigeria from a haven for pirate retailers into a haven for pirate producers. The plants are mainly owned by Southeast Asian nationals' whose companies have been displaced by enforcement against them in their home countries. Reports from neighboring countries suggest that large quantities of pirate discs are being exported from these plants in Nigeria across the region. As such, Nigeria has unfortunately earned the dubious distinction of becoming an optical disc piracy hotspot.

Fortunately, the government enacted the Copyright (Optical Disc Plants) Regulation 2006, which went into effect on December 20, 2006. The Regulation provides a very strong legal framework for regulating optical disc production, including a licensing (and revocation/renewal system), with source identification code requirements for discs, stampers, and masters, license of import of raw materials and equipment, inspection authority, and sanctions for plants violating the law. IIPA calls upon the Nigerian government to employ the Regulation to deal with the optical disc piracy problem as an urgent matter. Other piracy problems must be dealt with as well through strong enforcement by the Nigerian Copyright Commission (NCC) and Nigerian Customs. Use of publications (as well as other copyright materials) by universities and libraries must be legalized.

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

- Enforcement of the Copyright (Optical Disc Plants) Regulation 2006 to regulate the 15 known optical disc plants and 4 mastering facilities to take deterrent action against any plants found to operating outside the scope of the Regulation.
- A campaign by the Nigerian Copyright Commission (NCC), including *ex officio* actions (traditionally complaints have been required), to sweep the markets clear of piracy, as well as duplicators,

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

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

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

<sup>2</sup> All Africa Lagos, *NARI Advocates Ban On Importation of Recorded Music*, March 13, 2006 (noting that with an 85% piracy level for music/records, the chairman of the Nigerian Association of Recording Industries (NARI), Toju Ejueyitchie, called for the ban on the importation of prerecorded music or film carriers into Nigeria). In the article, the chair of NARI also admitted to the existence of "about 15 optical disc factories, and the number increasing by the day," and posited that virtually 100% of works imported were pirated. The press conference also announced the seizure of 1.7 million CDs in Cotonou, and raids on suspected IP pirates Akina and Nassinma. The head of NARI also called for a serious purge of the Alaba International Market, which he described as a "notorious haven for pirates, and their nefarious activities."

photocopy equipment, other equipment and tools used to pirate, and to inspect businesses to ensure they are not engaged in unauthorized use of business software.

- An enforcement campaign by Nigeria Customs Service (NCS) to interdict pirate imports coming in at the ports as well as those coming to Nigeria to pick up pirate exports.
- Reinstate funding to universities and libraries to purchase books and journals.
- More prosecutorial attention to copyright cases, ensuring that cases go to trial and result in judgment with deterrent penalties actually imposed.
- Enactment of an amendment to prohibit unauthorized (parallel) and pirate imports, and to limit any exception to import of “a legal copy of a work by a physical person for his own personal purposes.”

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

## PIRACY UPDATES IN NIGERIA

**Pirate Optical Disc Plant Production:** As noted, there are a reported 15 optical disc plants that have been in operation in Nigeria, some of which have migrated to Nigeria from Southeast Asia and operate to supply Central and West Africa. The plants have 70 production lines, including at least 3 DVD compatible lines, capable of producing over 240 million discs per year (a conservative estimate). Many of the plants are not licensed to produce any kind of copyright content. Two of these plants (Akina and Nasinma) were raided in June and July 2004, and were raided again in 2006. However, to date there has been no outcome with respect to actions against these plants.<sup>5</sup> The massive production overcapacity is not only used for domestic consumption but also for export (or “take out” as it is called, as people come from all over West Africa to buy pirated discs from the Alaba International Market in Lagos). Pirated product from Nigeria has been found in Algeria, Senegal, Ghana, Zambia and South Africa.

**Retail Piracy:** Nigeria is a very large potential market for legitimate copyright business, but the country is overrun with pirate materials domestically. Pirate CD-Rs containing copyright materials, for example, compilations of up to 300 songs by local and international artists, sell for less than the equivalent of US\$1 in the local market. Notwithstanding the increased production capacity in the market,

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

<sup>4</sup> BSA’s 2007 statistics are preliminary. They represent the U.S. software publishers’ share of software piracy losses in Nigeria, and follow the methodology compiled in the Fourth Annual BSA and IDC Global Software Piracy Study (May 2007), available at <http://w3.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA’s 2006 piracy statistics were preliminary at the time of IIPA’s February 12, 2007 Special 301 filing and were finalized in June 2007 (see <http://www.iipa.com/statistics.html>) as reflected above.

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

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

**Book Piracy:** Book piracy continues to be a serious problem, due in part to the Nigerian government's decision in 2003 to cut funding for university and library purchases. This decision has created a climate fostering illegal photocopying, which plagues the academic market. Furthermore, Nigeria has for years been a destination for pirate book imports, primarily from Asia (China and Malaysia). Customs authorities should increase vigilance in seizing pirate product before it has a chance to saturate the local market.

**Business Software Piracy:** For the business software industry, hard-disk loading of pirate software and unauthorized use of software in businesses remain significant problems. The piracy rate is unacceptably high.

**Organized Crime/Violence Associated with Piracy:** There are disturbing trends in terms of the level of violence associated with piratical activities in Nigeria. In June 2006, Nigerian police raided the Alaba International market in Lagos, during which pirates shot two police officers, burned a police vehicle, and threw stones and bottles, injuring the industry coordinator when he was struck on the head by a stone.<sup>6</sup> Tear gas had to be used to quell the violence. Several thousand pirate CDs and VCDs were seized and four men were arrested.<sup>7</sup> This raid demonstrates the serious criminal nature of pirate enterprise in Nigeria and that a coordinated approach focused on criminal enforcement must be mounted.

## **ENFORCEMENT UPDATES IN NIGERIA**

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

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

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

<sup>7</sup> The raid was led by the Director of Special Operations of the National Copyright Commission (NCC) and an industry representative. More than 100 anti-riot policemen surrounded the market while 10 armed officers took up positions on the rooftops. They supported the 12 Copyright Inspectors and 15 packers who went into the Alaba market to inspect suspect merchandise.

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

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

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

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

There is little enforcement activity in Nigeria for other industries.<sup>11</sup> The Nigerian Copyright Commission (NCC), which, by practice reports to the Ministry of Justice, has responsibility in Nigeria for anti-piracy activities, and, as noted, the Economic and Financial Crimes Commission (EFCC) has teamed up with the NCC to fight optical disc piracy. The National Customs Service (NCS), as the nation's gateway police, also has a significant role to play in anti-piracy enforcement, although NCS has never to our knowledge seized product on its own initiative. NCC's effectiveness is hampered by a lack of funding. The courts in Nigeria provide no sure relief, as bringing civil claims continues to be an expensive and risky remedy for right holders.

## **COPYRIGHT LAW AND RELATED ISSUES**

**Copyright Law:** Copyright protection in Nigeria is governed by the Copyright Act (Cap 68 Laws of the Federation of Nigeria, 1990) as amended. The law, while by no means perfect, provides a solid basis for enforcing copyright and combating piracy.

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

- The establishment of a competent licensing authority to grant licenses to optical disc production facilities as well as to deny, suspend, or revoke a license if that should become necessary.
- The establishment of a registration system for commercial CD-R/DVD-R "burning" (i.e., for the purpose of sale, distribution, or other commercial dealing), i.e., burning of copyrighted materials onto recordable optical discs undertaken in back rooms of traditional optical disc manufacturing plants or outside of such plants (the latter which is fast becoming a major problem).
- The requirement to use source identification (SID) Codes to trace pirate discs to their source of production.
- The establishment of licensee record-keeping requirements in the application process and after a license is granted, to provide governments with the means to judge whether an applicant qualifies for a license, and to provide maximum transparency after a license is granted (e.g., exemplars will be provided from each plant for every disc produced, allowing for transparent accounting of licensed

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

<sup>11</sup> The port of Lagos is inadequately policed against piracy and has become a major transshipment site for pirated product to enter Nigeria and nearby countries.

<sup>12</sup> See Ruby Rabi, at <http://allafrica.com/stories/200611290465.html>, Daily Trust (Abuja), November 28, 2006 (reporting that NCC admitted there are "14 replicating plants in Lagos used to manufacture pirated CDs, DVDs and books," and noting that ten years ago, Nigeria had just two replicating plants). The NCC indicated that it intends to re-introduce the "hologram" as a means to determine authenticity.

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

- The ability to inspect plants (in addition to traditional search and seizure) and burning facilities, including nighttime inspections, to ensure that plants/facilities are engaging in legal activities.
- Government record-keeping of all plants/facilities and all actions taken with respect to them (e.g., inspections, searches).
- The establishment of adequate penalties for violations of a license (or burning without registering) including criminal penalties and possibility of plant/burning facility closure.
- Controls to track the export of discs, and export and import of equipment and raw materials, including the masters or stampers which are the key components for producing pre-recorded content (an automatic license is one common approach).

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

## **GENERALIZED SYSTEM OF PREFERENCES**

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

## **TRAINING**

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

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

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

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