

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2008 SPECIAL 301 REPORT

INDONESIA

Special 301 Recommendation: IIPA recommends that Indonesia remain on the Watch List.

EXECUTIVE SUMMARY

IIPA views the Special 301 process as a way to monitor and reward progress in improving IP protection and enforcement, and in that vein, in September 2006, IIPA recommended that Indonesia be lowered to the Watch List in an out-of-cycle review (OCR), in recognition of the government of Indonesia's efforts to combat optical disc piracy. Unfortunately, the situation since then has worsened for copyright owners in several respects. Piracy losses have increased and piracy levels remain some of the highest in the region, if not the world. Despite several government raids on optical disc plants, optical disc piracy remains rampant, and the sheer volume of piracy and number of pirate distributors, particularly in notorious piracy hotspots, has increased since the end of 2006. Emerging problems, such as mobile device piracy – in which copyright materials are either downloaded illegally to mobile devices, or uploaded-to-order by vendors to mobile devices – have gotten worse in Indonesia with little sign that the government is equipped to tackle the problem. Existing piracy problems have persisted or gotten worse, as well. Cable piracy (signal theft), has worsened, with pirate distributors reaching more households than ever and more pirate individual connections being established. Piracy of book and journals has stayed largely the same, despite some modest efforts by relevant officials. Enforcement efforts, while remaining strong in certain respects, including major raids on optical disc factories and CD-R and DVD-R “burning” operations, have not begun to make a dent in the overall piracy losses and levels. In fact, piracy rates and losses increased in 2007 compared to 2006. Meanwhile, enforcement resources, already limited or scarce, are being diverted to other issues. Corruption remains a serious issue in the country, beating back efforts at effective enforcement through compromises in enforcement (e.g., leaks and payments by pirates).

PRIORITY ACTIONS REQUESTED IN 2008

- **Re-Engage in Strong Enforcement Campaign Against Rampant Retail and Mall Piracy, Including Landlord Liability for Mall Owners:** Enforcement campaigns in 2006, which were so successful in curbing retail and mall piracy, waned in 2007. The government of Indonesia needs to re-energize its efforts to scale back uncontrollable piracy in the malls. While there is some evidence of arrests and prosecutions in retail piracy cases, there is no evidence that mall owners have been held liable, and even less evidence that any enforcement has had a deterrent effect.
- **Prosecute Pirate Optical Disc Plant Owners, Financiers, and Managers, with Imposition of Deterrent Sentences:** In 2007, there was little evidence that prosecutors took action against plant owners engaged in piracy (either out of the 2006 actions or the few 2007 raid actions).
- **Fix Implementation of OD Regulations:** Several aspects of implementation of the optical disc regulations are ineffective, including failure to 1) make inspections routine, unannounced and off-hours, 2) enforce against SID Code violations, including gouging off SID Codes and/or total non-use of SID Codes, 3) provide transparency in raids and results, 4) suspend and/or revoke licenses permanently as provided for by the statute, and 5) ensure DOI collects exemplars.

- **Focus on Large Businesses in End-User Software Piracy Actions:** Indonesia remains one of the world's worst software markets in terms of end-user piracy of business software. The Indonesian government added a provision to its Copyright Law criminalizing end-user piracy, and began carrying out a few raids in 2006 and 2007, but focuses on small and medium targets. The government should seek more significant targets, and seek prosecutions of the same.
- **Enact Modern Copyright Law and Ancillary Regulations:** It has been five years since the Copyright Law of Indonesia went into force. Amendments have reportedly been drawn up to modernize the law. Such amendments should 1) impose liability on landlords for copyright infringement occurring in malls, 2) provide minimum criminal penalties and maintain maximums, 3) define the act of camcording or recording in cinemas as a strict liability criminal offence, 4) establish statutory damages, 5) maintain *ex officio* powers of authorities to act upon suspicion of infringements, 6) add ISP liability provisions to include notice and takedown and address Internet piracy including P2P downloading, 7) extend term of protection to life plus 70 years and to 95 years (for motion pictures and sound recordings), 8) establish special IP courts, 9) establish appropriate IP-related cybercrime provisions (consistent with the Council on Europe Cybercrime Convention), and 10) provide appropriate IP-related border measures.
- **Take Actions Against Book Pirate Operations:** Piracy of published materials continues to plague foreign and local publishers alike. Problems include illegal photocopying, mainly on and near university campuses, print piracy, and unauthorized translations. The Indonesian government should work with rights holder groups, such as IKAPI, to tackle this problem effectively and take steps to legitimize the use of published materials at schools and universities.
- **Lift Market Access Restrictions:** Indonesia's investment bans and barriers to a foreign role in creating and distributing copyright products, leave it one of the most restricted markets in the world to copyright owners. Such bans and barriers also violate Indonesia's bilateral pledge to the U.S. that direct distribution of audiovisual product would be permitted as soon as the market was opened to the direct distribution of any other foreign goods.

For more details on Indonesia'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>.

INDONESIA Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2003-2007 ¹										
INDUSTRY	2007		2006		2005		2004		2003	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Business Software ²	203.0	85%	191.0	85%	153.0	87%	100.0	87%	94.0	88%
Books	32.0	NA	32.0	NA	32.0	NA	32.0	NA	30.0	NA
Records & Music	20.2	92%	17.2	91%	13.8	88%	27.6	80%	44.5	87%
Motion Pictures ³	NA	NA	NA	NA	NA	87%	32.0	92%	29.0	92%
Entertainment Software	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
TOTALS	255.2		240.2		209.5		191.6		197.5	

¹ 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.

² BSA's 2007 statistics are preliminary. They represent the U.S. software publishers' share of software piracy losses in Indonesia, 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.

³ MPAA's trade loss estimates and piracy levels for 2006 and 2007 are not available.

PIRACY UPDATES IN INDONESIA

Retail Piracy/Mall Piracy: In 2007, piracy levels increased in terms of the number of outlets in the notorious pirate shopping malls providing optical discs of all kinds, including factory and burned-to-order CDs and DVDs, and piracy in the form of loading illegal copyrighted files onto various mobile devices or carriers (see below for further description). A survey carried out by the Motion Picture Association in July 2007, noted a 30% increase in the number of outlets in the same 28 malls surveyed in January 2007. Piracy activities have worsened once again in Ratu Plaza, where the number of pirate retailers had fallen during 2006, and in Pinangsia Plaza, a computer/electronics mall adjacent to the notorious Glodok market, which accommodates ever increasing numbers of pirate outlets and, which is full of hundreds of thousands of replicated pirate discs, many with obscured (gouged)⁴ SID codes. Police retail actions provoke immediate closure of stalls by nervous tenants, but shut-downs are generally short-lived, as the pirate grapevine is extremely efficient, and police retail actions in one location lead to temporary closures across the city of Jakarta.

Optical Disc Piracy, Both Burned and Factory-Produced: In 2007, pirate burning of content onto recordable optical discs joined factory production as a chief form of optical disc pirate production in Indonesia. Burned discs are less expensive to produce in non-industrial numbers and thus are an attractive vehicle for less technically proficient or wealthy investors to produce and sell for a lower price than factory-produced discs. Therefore, production on a massive scale has become attractive to those wishing to engage in this high profit, low risk enterprise. Many rental houses in Jakarta and other cities have been identified as “home industries” for burnings and OD piracy. In 2007, the Indonesian Police raided many locales, finding thousands of burner machines and millions of burned discs.

There also remains a massive over-supply of factory replicated, pirated discs in the Indonesian market. Disappointingly, the number of registered optical disc plants increased in 2007 from 28 to 31, and we know of one unregistered plant. Data supplied by Departamen Perindustrian (Department of Industry) and industry in 2006 revealed that there were as many as 145 licensed replicating machines operated by 28 registered OD plants, suggesting a potential production capacity in excess of one billion discs per year, while industry estimated the size of the legitimate market in 2006 to be less than 15 million discs per year. At least four registered plants in Indonesia have manufacturing facilities for the “stampers” and masters, (key production parts needed to mass-produce optical discs that contains the copyright content and therefore must be covered in the optical disc regulations, and must be subject to the SID Code requirement and seizure), although one of these factories reportedly ceased production in early December 2007. Nonetheless, during the year police seized in excess of 270 infringing stampers. Indonesia remains an export base for pirate CDs, VCDs, and DVDs. Pirate product sourced from Indonesia was found in 2007 in Australia, the Philippines, the United Kingdom and elsewhere in Europe.

One particularly serious problem has been that the vast majority of pirate ODs sampled from the market, clearly display marks of SID code removal or gouging. There is little doubt that these pirate discs are being domestically manufactured (due to other evidence amassed). Even more serious is the increasing number of discs in the market, which display neither mould codes, nor marks where the codes have been obscured or gouged. This means that finished discs are being produced in Indonesia without SID codes; several factories have been found in possession of uncoded molds, adding evidence of this phenomenon. This problem must be eradicated in 2008.

Mobile Device Piracy: The unauthorized loading or preloading of illegal copyright content onto mobile devices such as: mobile telephones, iPods, other MP3 players, and recordable media such as flash drives and memory sticks, has emerged in 2007 as a major problem for the copyright industries in Indonesia. In the ITC Roxy Mas retail mall, Blok M Plaza, and Blok M Mall, where the majority of shops

⁴ The obscuring of codes by Indonesian plants is generally carried out by the application of a water-based resin to cover the mold code etched onto the mirror block. This ensures that each disc is manufactured with the mold code already obscured, rather than having the pirates resort to obliterating the code after the disc has been molded.)

sell handheld phones and handheld phone accessories, more than 90 stalls engage in such uploading.⁵ Apparently, not linked to the shops in the mall, operators draw power from the mall supply and use stand-alone desktop computers to download the recordings/musical works by USB transfer. Similar setups are seen in many shopping malls including Mangga Dua Square, and ITC Mall Kuningan. Shop owners use the illegal loading of copyright content onto these devices as a selling point. In addition, other devices, such as karaoke devices, either in the form of microphone tools or players, are being preloaded with massive numbers of songs without authorization.

The criminal investigation division of the Indonesian Police (*Badan Reserse Kriminal* or *Bareskrim* for short) in Jakarta, after being given a detailed brief on the situation and having demonstrated to it the obvious syndication of some of the larger vendors, has taken action against the operators. Not only have the stalls been targeted by *Bareskrim*, but the branches of the operation identified by Police during their investigation. IIPA commends *Bareskrim* for their comprehensiveness, in what is believed to be the first of their kind against organized illegal digital download providers in the region.

Book Publishing Industry: Piracy of published materials remained a major issue in 2007. Significant problems included commercial-scale photocopying (mainly on and near university campuses), print piracy, and unauthorized translations. Most universities actively or tacitly condone students' photocopying activities, although a recent anti-piracy campaign by the University of Indonesia's business faculty is a welcome development. Photocopy kiosks litter the areas around major universities such as Bandung Technology Institute, Parahyangan University, and Padjajaran University. Book piracy is completely out of control in Bandung, where photocopied books not only flood the local market but are carried into Jakarta. Most copy centers provide catalogs to facilitate the very open business of copying academic texts for students. Illegal operations are also taking orders from students on campuses and distributing their wares there, even in cases where they are not actually making the copies on campus. The problem is of significant magnitude, and growing—a February 2007 raid in Pondok Gede yielded thousands of photocopies.⁶ Lecturers themselves seem to be increasingly aware of the issue, and are starting to encourage students to use legitimate materials in their classrooms. This needs to continue, and should be supported and augmented by action by educational authorities, enforcement authorities, and university and school administrations.

In addition to the university-oriented street stalls and copyshops, mainstream bookselling chains are in some cases openly stocking pirated books.⁷ The Pondok Indah mall in Jakarta is well known for featuring pirate sellers. Publishers report some increased willingness by authorities to partner in raiding pirate enterprises during 2007, and IIPA hopes this type of cooperation is significantly expanded in 2008.

Business Software End-User Piracy and Government Legalization: The willful use of unlicensed or pirate software in the workplace, continues to be the greatest source of losses to business software companies. The software piracy rate remained unacceptably high at 85% in 2007. Piracy in Indonesia has seriously compromised the business of resellers and distributors of genuine software. The Indonesian authorities have begun taking more cases involving end-user piracy of business software, including on an *ex officio* basis. For example, in December 2007, authorities referred 70 requests to the Business Software Alliance (BSA) program directors for assistance in investigations. As will be detailed below, while cooperation remains good with *Bareskrim* and the Civil Service Investigation Officers (PPNS), there remain some problems with effective enforcement against end-user software piracy in Indonesia. These problems include a lack of successful and deterrent court decisions and uncertain raid and arrest powers of the PPNS. These problems will hopefully be solved or will move toward resolution in 2008.

⁵ Recent market surveys indicate ITC Roxy Mas has 49 such stalls, Blok M Plaza has 2, and Blok M Mall has 39.

⁶ Reports from the publishers' group in Indonesia indicate that the pirate in this case received a jail term of two years and seven months.

⁷ Publishers note recent cooperation by some, however. Gramedia, in particular, has cooperated with publishers in removing pirated editions and pursuing suppliers of pirated materials.

The software industry's local representatives continue to work with the Indonesian government on the use of legal software within government ministries. On January 13, 2006, the Indonesian Ministry of Communication and Information (MOCI) and Microsoft, signed a Memorandum of Understanding (MOU) to legalize government use of its products on government computers. Implementation of the MOU will strengthen the Government and its law enforcement's credibility when conducting IP education and enforcement efforts.

Signal Theft/Pay TV Piracy: Signal theft worsened once again in 2007, with an estimated 300,000 illegal connections from pirate cable distributors (and 47,000 illegal individual connections). The total estimated losses to copyright owners and cable channels, due to signal theft in Indonesia, were US\$37.6 million in 2007. While both the Broadcast Law and the Copyright Law of 2002 provide a degree of protection for broadcast signals, enforcement to date has been virtually non-existent. There have been reports over the past couple of years that the Indonesian Broadcasting Commission (KPI) was considering the initiation of anti-piracy programs and enforcement actions in this area, but to IIPA's knowledge, no enforcement actions have been taken thus far.

Internet Piracy: Indonesia boasts 20 million Internet users (as of 2005), an 8.5% penetration rate, and almost 560,000 individual Internet hosts (as of 2007).⁸ While broadband Internet penetration remains relatively low, at an estimated 108,000 broadband connections nationwide, Internet piracy is already starting to rear its head. The publishing industry, as an example reports online trading in pirate copies of books and journals, especially those related to science and technology. Lawmakers in Indonesia need to remain vigilant to avoid Internet piracy becoming an even larger problem in years to come.

Unauthorized Public Performance (Exhibition) of Motion Pictures: IIPA is also concerned about the growth of outlets engaged in unauthorized public performance of motion pictures. Some of the outlets have expanded into franchise operations, with some even advertising themselves in national entertainment publications. IIPA encourages the Indonesian authorities to take actions against such outlets, as they have a damaging effect on the market for theatrical exhibition in Indonesia.

ENFORCEMENT UPDATES FOR INDONESIA

INDONESIA: CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS 2007		
	SOUND RECORDINGS⁹	MOTION PICTURES
	2007	2007
NUMBER OF RAIDS CONDUCTED	10 (73)	110
NUMBER OF VCDs SEIZED		153,205
NUMBER OF DVDs SEIZED		334,079
NUMBER OF CD-Rs/DVD-Rs SEIZED		257,098
NUMBER OF INVESTIGATIONS		136
NUMBER OF VCD LAB/FACILITY RAIDS	3 (30)	NA
NUMBER OF CASES COMMENCED	3	109
NUMBER OF ARRESTS	21 (230)	NA
NUMBER OF DEFENDANTS CONVICTED (INCLUDING GUILTY PLEAS)		28
ACQUITTALS AND DISMISSALS		0
NUMBER OF CASES PENDING	4	

⁸ See The World Factbook, Indonesia, at <https://www.cia.gov/library/publications/the-world-factbook/geos/id.html>. See also Internet World Stats, at <http://www.internetworldstats.com/stats3.htm>. These statistics are up-to-date as of November 30, 2007, are based on Census Bureau data, while usage numbers come from various sources, mainly from data published by Nielsen/NetRatings, ITU, and other trustworthy sources. See also Internet World Stats, Indonesia, at <http://www.internetworldstats.com/asia.htm#id> (reporting that there were 20,000,000 Internet users as of May 2007, representing an 8.5% penetration rate, per Asosiasi Penyelenggara Jasa Internet Indonesia APJII; and 108,200 broadband Internet connections as of September 30, 2007, per Internet World Stats).

⁹ Recorded above are figures relating to cases initiated or supported directly by the IFPI. Figures in brackets include numbers taken from reports by police. None of these figures include raids against digital download operations conducted in the latter half of 2007. It would be helpful if the national task force would produce consolidated figures on enforcement action by the various involved agencies, most of which do not publish or circulate their statistics.

NUMBER OF FACTORY CASES PENDING	3	
TOTAL NUMBER OF CASES RESULTING IN JAIL TIME		28
SUSPENDED PRISON TERMS		
MAXIMUM 6 MONTHS		0
OVER 6 MONTHS		0
OVER 1 YEAR		0
TOTAL SUSPENDED PRISON TERMS		0
PRISON TERMS SERVED (NOT SUSPENDED)		
MAXIMUM 6 MONTHS		1
OVER 6 MONTHS		1
OVER 1 YEAR		26
TOTAL PRISON TERMS SERVED (NOT SUSPENDED)		28
NUMBER OF CASES RESULTING IN CRIMINAL FINES		NA
UP TO \$1,000		NA
\$1,000 TO \$5,000		NA
OVER \$5,000		NA
TOTAL AMOUNT OF FINES LEVIED (IN US\$)		NA

IIPA had hoped that the major enforcement actions carried out by Indonesian authorities in 2006 would be carried over into 2007, and would have had a lasting deterrent effect on piracy in the market. Unfortunately, neither appears to be the case. While some impressive raiding activity continued in the first half of 2007, including several raids against factories engaged in production of optical discs, optical disc burning labs, and mobile piracy targets,¹⁰ enforcement efforts waned in the second half of 2007. Emphasis shifted to counterfeit pharmaceuticals and away from copyright piracy in general. There are exceptions to this, as the Business Software Alliance has worked with Indonesian authorities on dozens of end-user software piracy cases initiated by the authorities. In general, IIPA calls upon the Indonesian authorities to refocus efforts on enforcement actions against large-scale pirate production or distribution targets, leading to effective prosecutions of key owners, directors, and landlords (in the case of piracy being carried out in malls), and weeding out any irregularities or corruption within the enforcement authorities. The following represents some of the high points and, unfortunately, low points in enforcement against piracy in Indonesia in 2007.

Some Actions Against Optical Disc Pirate Factory Production, Continue to Impress: During 2007, *Bareskrim* conducted three significant optical disc factory raids. The first two raids took place on July 1, 2007 and were conducted *ex officio* by an investigation team under the direction of General Hendarso, head of *Bareskrim*, with intelligence and operational support from the local record industry group. The first, against a company called PT MGS, netted over 90,000 pirate discs, and 92 infringing stampers from a concealed room inside the factory. Production records recovered indicated more than 1.5 million discs had been manufactured during June 2007, but only 45,000 legitimately licensed discs. The second, against a company called PT SCC, netted the remains of several thousand pirate discs destroyed before the police could gain entry, and about 70 infringing stampers. On previous factory inspections, neither factory had been in operation, as the staff claimed a lack of orders, but in the July raids, both factories had increased their production capacities with apparently unregistered equipment, with PT MGS adding two injection molding machines, amounting to a 60% increase in production capacity, and PT SCC adding a complete DVD line, molding machine, a DVD bonder/metallizer (“downstream”) and a printer. No legitimately licensed product was found in the production areas of either factory.

The third raid, carried out on August 16, 2007 against a company called PT MRP also revealed material discrepancies in manufacturing equipment (i.e., unregistered with the Department of Industry), as one injection molding machine had been removed while two others had been installed. Recording

¹⁰ For example, record industry statistics show that there were 10 enforcement actions in the Capital Territory of Jakarta, and 1 enforcement action in Muarabungo, Jambi, in the first half of 2007. Of these, five involved CD-R/DVD-R burning, two involved digital downloads, ringtones, or uploading to MP3 players, and four involved pirate retailers (the one in Jambi involved a retailer). Total seizures from these raids were 800,000 pirate optical discs, 789 CD-R/DVD-R burners, and 3 computers/servers. There were 143 cases according to the record industry in which industry was called upon to be an expert witness; most of those were retail cases.

industry records show that the two new lines had previously been in operation in a factory in Singapore. Well over 100 infringing stampers were located, and production records suggested output of over 100,000 discs per day. No legal discs were found inside the factory.¹¹ While these plants have had their licenses temporarily suspended, until court cases are concluded, and while some of the machines were sealed,¹² this is not enough. Under the authority of the Department of Industry, the plants' licenses should have been revoked, given the *prima facie* evidence of piratical activities occurring on the plant sites. In addition, to IIPA's knowledge, the authorities have not commenced prosecution of the plant owners or key directors of the plants.

The local record industry also reports a fourth raid conducted in March 2007, against one unlicensed optical disc factory in Sunter, North Jakarta by the local Police. Unfortunately, industry was not permitted to participate in the raid or obtain detailed information about the raid. Lack of transparency in this raid rendered it less valuable than others since industry could not assist and the raid results could not be publicized for deterrent effect. The authorities should be encouraged to make industry aware of these actions and allow industry to assist.

The Krimsus Division of the Jakarta Polda Metro Jaya Police was also prolific in the first half of 2007, targeting a significant number of CD-R/DVD-R burner operations. IIPA is aware of 22 burner raids in the Greater Jakarta area, which by the end of July netted seizure of approximately 180 DVD-R burners and 610 CD-R burners. Unfortunately, after July, little enforcement has occurred and throughout 2007, there were few reports of optical disc anti-piracy actions by subordinate police formations in 2007.

One issue occurring in late 2007 was the cessation of raids due to the Police's claim that storage room in which to store seized discs had run out. Industry representatives contacted the appropriate person in the Attorney General's office, explaining that the discs could be destroyed after sampling them for evidentiary purposes. This information led to a destruction ceremony on September 12, 2007 to destroy many of the optical discs and related machinery seized since December 2006. However, the clearing out of storage was not followed by any major actions against pirate retail or factory operations.

Optical Disc Regulatory Structure and Enforcement Problems: While the factory raids are welcome, there are some fundamental flaws in the optical disc regulatory structure and the manner in which the Department of Industry Monitoring Teams are carrying out their mandate, which must be remedied in 2008.

- First, factory visits have not been routine to ensure compliance with the implementing rules and regulations – as of late November 2007, not all registered plants had been visited. Indications are that, what are supposed to be unannounced visits are being notified to the plants. In addition, inspections are not being conducted off-hours. Instead, inspections are generally conducted during office hours from Monday to Friday, giving less-than-scrupulous factories the ability to plan down times during office hours, and to restrict illegal or questionable production runs to weekends and off-hours.
- Second, DOI has not adequately enforced against SID Code violations. These violations take two forms, 1) the placement on but then immediate obscuring or gouging of SID Code of discs produced in Indonesia, and 2) the complete non-use of SID Code on finished discs being

¹¹ Each of the factories is reportedly still sealed and pending prosecution, and the DoI have issued letters of temporary suspension of PT MRP's OD replication licenses.

¹² The Department of Industry has made use of equipment intended to seal manufacturing lines which fail to comply with legislation, and the recording industry representatives have witnessed such use on one occasion in a May 2007 DoI Plant Monitoring Team factory inspection. At that time, two machines which were obviously in use were sealed when operators said they could not be operated until repaired. Hundreds of finished CD substrates (the clear plastic disc produced by the molding machine which requires metallization and printing before completion) with obscured or gouged SID Codes were found in sacks adjacent to the machines. It is unclear whether any action was taken by DOI to address the mold code tampering issue. It is also unclear when seals may be removed, and with lack of transparency, it is unknown whether those machines sealed in that raid, or others sealed in other raids, remain out of operation or are back in use.

produced in Indonesia. As noted, several factories have been found in possession of uncoded moulds, adding evidence of this phenomenon. These problems must be eradicated in 2008.

- Third, there is an overall lack of transparency in raids being carried out. The local recording industry representatives have attended several plant visits during 2007, in which areas of non-compliance or poor anti-piracy procedures by the plants, and in some cases offenses, were disclosed. However, in other cases, the Department of Industry's responses to violations of the implementing rules and regulations have not been transparent.
- Fourth, as noted, in respect of the three registered factories raided during the year, the DOI has issued notices of temporary suspension of licenses to the licensee plants. While this is to be commended, the letters themselves suggest that the suspension is to be enforced until such time as the court cases against each of the plants are concluded. IIPA contends that, under DOI's authority, having been presented with *prima facie* evidence of pirate production, the plants' licenses should have been suspended, amended or revoked without reference to the courts.
- Fifth, DOI has collected many exemplar discs (sample discs from each factory's injection molds) and shared them with the record industry's international group (the International Federation of Phonographic Industries or IFPI) for forensic examination. However, it remains unclear whether DOI is itself building, as it should, a comprehensive library of exemplars for domestic use. Given the potential restrictions on admissibility of test purchase discs made by rights holders in criminal proceedings, this potential shortfall in data should be addressed. The recording industry has seen of a recent DOI publication regarding their activities during 2007. Much of the content relates to police actions, not those of the DOI, and raises questions about the ability of the DOI to identify such essential OD manufacturing components as stampers.

Retail and Mall Raids Also Slow in Second Half of 2007, and Effect of Enforcement Lessened by Lack of Transparency: While IIPA understands that Police retail actions continued to occur in 2007, conducted by the same Police unit, *Krimsus*, that conducted the source piracy raids mentioned above, retail outlets were relatively undeterred in part due to lack of reporting or publicizing such actions. Industry reports that their relationship with *Krimsus* remains good, but that *Krimsus* ceased providing statistical data regarding raids and stopped inviting industry to attend and record raid actions in July 2007. In addition, industry reports that after July, *Krimsus'* focus shifted to fighting counterfeit pharmaceuticals and other matters.¹³ As noted, no major retail raids have occurred in the second half of 2007.

Enforcement Against Business Software Piracy Focusing on Small Targets, Lacking Deterrence: For the business software industry, which wishes to see enforcement against large-scale unauthorized users of business software in business settings, the enforcement results in Indonesia have been mixed. On the one hand, *Bareskrim* and local Police, for example, the East Java Regional Police,¹⁴ the Jakarta Regional Police, the Riau Islands Regional Police, and others, are to be commended for initiating end-user investigations *ex officio*, leading to 70 requests as of mid-December 2007 from various police stations for assistance or experts in end-user cases. About 10 end-user cases have been heard by various district courts. On the other hand, enforcement efforts have generally been focused on illegal software usage at Internet cafés, illegal rentals of computer programs, mobile phone uploads of software, while only small to medium sized distributors of pirate software and hard disk loaders have been targeted.

¹³ IIPA is aware of a large raid against counterfeit pharmaceuticals carried out in August 2007 by Indonesian Police. While IIPA congratulates the government for taking an aggressive stance against such pharmaceuticals, there remains a need for more Police resources and staffing to be directed to copyright enforcement, and IIPA contends that copyright piracy and counterfeit pharmaceuticals could both be aggressively targeted if adequate funding and resources were provided by the government.

¹⁴ The Business Software Alliance (BSA) has signed a memorandum of understanding (MOU) on enforcement cooperation with the East Java Regional Police.

The Business Software Alliance (BSA) has established a good relationship with civil servant investigators (PPNS) at the Directorate General of IPRS, and it is hoped that the DG of IPRS will establish a new directorate of investigation in 2008, authorizing PPNS to investigate IP violations and conduct raids; it is hoped that this will also solve technical problems PPNS has faced such as lack of personnel, lack of budget, and, to date, inadequate training.

Lack of Transparency as to Judicial Processes: Lack of transparency is a problem in the judicial processes in Indonesia. Industry has received some reports from the Police regarding prosecutions involving piracy actions taken by it. For example, the Police reported in 2007 that one of the operators of a factory raided in early 2006 by *Markas Besar* (MABES) had been prosecuted and jailed. While this may be the case, industry has neither been informed of, nor located any formal record of the conviction or sentence. While it is commendable that Police report having submitted numerous prosecution files to prosecutors' offices, results have rarely been reported or made available to right holders. For example, the *Krimsus* Jakarta Police have apparently processed many cases against pirate burner operators and pirate disc retailers. It is important for right holders to receive information about these cases, so that they may assist where helpful or necessary, and receive information as to the results of these cases to fully evaluate the piracy and enforcement situation in-country.

Fighting Corrupt Practices: IIPA notes intermittent reports indicating some instances of corruption in enforcement agencies, for example, some unconfirmed reports of Police receiving money from small raid targets such as Internet cafés in exchange for not enforcing unauthorized use in such premises. To the extent this is reflective of larger societal problems in the area of undue influence of officers in Indonesia, IIPA recommends that the government explore enforcement of laws prohibiting such corrupt practices, bribery of government officials, extortion, and the like.

In March 2006, President Susilo Bambang Yudhoyono finally issued the decree establishing the "National Task Force for IPR Violation Prevention."¹⁵ IIPA members have had little contact with the IP Task Force, but are aware that the Task Force and its working groups are intended to coordinate IPR enforcement strategy among agencies as well as to conduct public awareness campaigns.

TRAINING

In 2007 as in previous years, the copyright industries conducted and participated in various training and public awareness activities in Indonesia:

- The Motion Picture Association's local program provided a program on illegal camcording in cinemas, exposing participants to the new methods/trends/technology used by pirates to record the latest movies in cinemas using camcorders. Participants were briefed on steps to take when they detect camcording piracy. There were three separate training sessions for industry representatives (for Cinema 21 staff) during June and July 2007 involving a total of 400 trainees.
- The local record industry group, Sound Recording Industry Association of Indonesia (ASIRI), employed mass media and sent speakers to several seminars or workshops.
- ASIRI has also trained Officers and others of The National Police Detective School, in February 2007 in a program entitled "Copyrights and How to Identify a Pirate Product," and in November 2007 in a program entitled "Copyright and Related Rights Seminar."
- On March 12, 2007, the Business Software Alliance (BSA) provided a general lecture at the Police Criminal Investigation Division Training Centre at Megamendung, Bogor.

¹⁵ Presidential Decree No.4/2006, March 27, 2006, On: Establishment of the National Task Force for IPR Infraction Prevention.

- On March 27, 2007, BSA hosted a capacity building meeting for all Police investigators of the East Java Regional Police.
- In May and November 2007, BSA hosted two seminars on software asset management (SAM) to increase public awareness on software copyright. The May seminar was conducted in conjunction with U.S. Commercial Services at the U.S. Embassy.
- Since November 2007, BSA has run a new program called “BSA Goes to Campuses,” where their representatives visit various universities providing general lectures on copyright for students to increase their awareness of IP matters.
- BSA is planning capacity building for PPNS under the Directorate General of IPRS and public prosecutors under the supervision of the Attorney General's office in early 2008.
- On September 7, 2007, IFPI conducted training for the provincial heads of MABES Polri, the National CID, in Jakarta, on the identification and recognition of pirate optical discs and the use of optical disc forensics in identifying the origin of pirate discs.

COPYRIGHT LAW AND RELATED ISSUES

Previous years' reports have described in detail the legal framework for copyright in Indonesia. The following is intended to provide a summary of latest developments only.

Copyright Law Implementing Regulations Still Missing: IIPA has commented on the improvements in the Law of the Republic of Indonesia, Number 19 Year 2002 Regarding Copyright (Copyright Law) (effective July 29, 2003) (Undang-Undang RI No. 19 Thn 2002 Tentang Hak Cipta) and has recommended further changes that should be made to that law. Regulations dealing with “rights management information” (RMI) were finalized in 2005,¹⁶ but implementing regulations regarding technological protection measures (TPMs) (as covered in Article 27 of the Copyright Law) are still missing and are needed to fully implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty.¹⁷

Copyright Law reform has been in the works, given the five year anniversary of the current law. A draft amendment to the Copyright Law has been selectively made available to some local industry representatives. IIPA encourages the government to take the opportunity, if indeed the law is being amended, to make the changes advocated in the past, to produce a truly modern copyright statute in Indonesia. IIPA also encourages the Indonesian Government to ensure that any proposed changes are open for public consultation and comment.

In addition to the issues previously discussed in IIPA submissions, key issues, which should be addressed in any amendment to the Copyright Law, include the following:

¹⁶ The 2004 proposed RMI Regulations we reviewed appeared successful at implementing the RMI provision in the Copyright Law (Article 25). The stated “purposes” of RMI in the new draft include “Maintain[ing] the access control and the using of Work” as well as “Manag[ing] every access, the using, and integration of protected Work.” Essentially, Article 4(1) of the draft Regulations identify two infringements of “The Management Information of Author Rights”: “Destroy[ing] or chang[ing] The Management Information of Author Rights without any permission from the Author”; or “Distribut[ing], import[ing] to distribut[e], announc[ing], or communicat[ing] to the society upon a certain Work, or multiplication result that the Management Information of Author Rights has been changed or eliminated without any rights.”

¹⁷ An April 2003 Report issued by the Indonesian government indicates that

The Law No. 19 does not provide detailed provisions on the safeguard of technological measures. Rather, such provisions have been accommodated by Law Number 14 of 2001 regarding Patents.

We are unaware of any articles that deal with TPMs in the Patent Law.

- Landlord liability for copyright infringement carried out by tenants (of a retail mall, for example). The issue of landlord liability for copyright infringement (committed by tenants) remains unclear in Indonesia, and is a growing concern for industry and the enforcement authorities in Indonesia.¹⁸
- The need to provide a minimum criminal penalty clause, including for end-user piracy,¹⁹ and the maintenance of current maximum sentencing provisions. At this time, the minimum criminal penalty is stipulated in Article 72 (1) of the copyright law but this is not applied for defendants in end-user piracy cases.
- Inclusion of anti-camcording provisions. The vast majority of movies that are pirated are stolen right off the screen by professional camcorder pirates, who use video cameras to illicitly copy a movie during exhibition in a movie theatre – usually very early in its theatrical release or even prior to the film’s release (e.g., at a promotional screening).²⁰ An Anti-Camcording Law should define the act of camcording or recording in cinemas as a strict liability criminal offence, enabling Indonesian authorities to arrest and prosecute individuals who record a movie in the theaters, without needing to establish subsistence of copyright, copyright ownership, or copyright infringement.
- Establishment of statutory damages.
- Maintenance of *ex officio* powers of authorities to act upon suspicion of infringements.
- ISP liability provisions, which include a notice and takedown system, as well as means to address Internet piracy including P2P downloading. Such a system should provide appropriate incentives for ISPs to cooperate with right holders pursuing justice against online infringements or online-related infringements (such as Internet advertising sites).
- Term protection consistent with international trends and U.S. standards (e.g., life of the author plus 70 years, or in the case of works whose term is calculated based on the date of publication or for which authorship is corporate, 95 years).
- Establishment of a specialized IP court with judges that have been adequately trained to deal with IP cases.²¹

New Border Measures Enacted: Law No. 17 of 2006 amended Law No. 10 of 1995 on border and customs measures. While IIPA has not reviewed the legislation as passed, the provisions apparently represent an improvement compared with the 1995 law (the 1995 Customs Law established a judicial seizure system and allowed for *ex officio* action, but no implementing regulations ever followed passage of the law).²² The government is apparently now reviewing implementing regulation on this law, which will cover intellectual property enforcement issues; IIPA would hope to be able to review such regulations prior to their issuance.

Electronic Information and Transactions Bill: The Ministry of Communication and Informatics has proposed a law on electronic information and transactions (the latest was in the form of a “Draft of the

¹⁸ It should be confirmed that it is illegal in Indonesia to induce, facilitate or aid and abet infringement, including by distributing or providing a facility, program, device, or technology to members of the public with the object of facilitating, promoting or encouraging its use to infringe copyright.

¹⁹ IIPA understands that Article 72(3), which provides a criminal remedy against one who illegally reproduces software with “a commercial purpose,” can be interpreted to criminalize end-user piracy of business software.

²⁰ The master recordings are sold to illicit “source labs” where they are illegally duplicated, packaged and prepared for sale. As a result of camcorder piracy, many motion pictures also become available over the Internet – on peer-to-peer networks, file transfer protocol (FTP) sites, Internet Relay Chat (IRC) rooms, or auction sites – as well as on street corners and night markets around the world during the U.S. theatrical release and well before their international debuts.

²¹ Both civil and criminal IP cases are currently heard in the commercial courts.

²² In practice, seizures are occasionally made on the basis of an incorrect declaration or under-declaration.

Law of Indonesia, No. __, Year __, Regarding Electronic Information and Transaction”). Unfortunately, the draft has been pending for several years and Parliament does not seem to consider this draft law to be urgent or priority legislation. The Bill would represent an essential component of the broader vision to address ICT needs under the “Government of Indonesia’s Five-Year Action Plan to Overcome the Digital Divide for the Development and Implementation of Information and Communication Technologies (ICT) in Indonesia” of May 2001. The Bill IIPA has reviewed, focuses mainly on electronic transactions and digital signatures, but contains, in Article 24, the general provision on copyright stating that “Electronic information composed in an intellectual creation, internet website design and intellectual creation contained within, are protected as an Intellectual Property Right, based on prevailing law and legislations.” As a potentially useful tool to combat cyber crimes, a provision, which essentially implements the copyright provision of the Council of Europe Cybercrime Convention, should be added.²³ In the absence of a statute dealing with cybercrime, industry has to resort to general principles of criminal or civil law in dealing with cases involving Internet piracy or cybercrime.

OD Regulations Remain Deficient on Their Face: On October 5, 2004, outgoing Indonesian President Megawati Soekarnoputri signed the “Government Regulation Number 29 of 2004 Concerning High Technology Production Facilities for Optical Discs.” The Regulations entered into force on April 5, 2005. The successful enforcement of these regulations is crucial to reducing endemically high piracy levels in Indonesia. The Regulations allow the government to: inspect and seize suspected pirate goods and tools, implement actions against methods used to produce them, and prosecute plant owners for violation of the Regulations or other laws (e.g., the Copyright Law). Nonetheless, IIPA notes the severe shortcomings in these Regulations, several of which have already been referred to in the report above:

- The Regulations do not expressly prohibit unlawful uses/manipulation of identification code.
- There is no centralized licensing of production of prerecorded or blank optical discs.
- The Regulations require imported, pre-recorded discs to be marked with identification code, which violates GATT/WTO rules and could have other negative ramifications.
- The Regulations do not adequately cover stampers and masters, e.g., it is not clearly stated that penalties specifically apply against illegal stampers or moulds alone.
- The Regulations do not expressly cover exports of discs, equipment and raw materials.
- The Regulations do not expressly authorize forcible entry in an inspection.
- The Regulations do not require the government to keep records of “permits” and raids run.
- The Regulations do not provide for plant closure (although IIPA understands that since business licenses can be revoked, technically, factories cannot operate without the license).
- The Regulations do not expressly impose corporate liability on individuals.

²³ Article 10 of the Council on Europe Cybercrime Convention (Sept. 10, 2001) provides that a party to the Convention will “establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed wilfully, on a commercial scale and by means of a computer system.”

Two Ministerial Decrees were issued by the Minister of Trade and Industry, one relating to the importation of machinery, raw material, and optical discs,²⁴ and another on reporting by registered producers.²⁵ The former sets forth requirements as to the importation of optical disc production machinery, raw materials (optical grade polycarbonate) and, unfortunately, finished discs (in addition to blank discs). It is feared that this importation Decree will thus be used as a tool to keep legitimate copyright owners or authorized distributors from importing discs into Indonesia.

Generalized System of Preferences: Indonesia currently participates in the Generalized System of Preferences (GSP) program, a U.S. trade program, which offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provides “adequate and effective protection for intellectual property rights.” In 2006, almost \$1.79 billion worth of Indonesian goods entered the U.S. under the duty-free GSP code, accounting for 14.6% of its total exports to the U.S. During the first 11 months of 2007, almost \$2.1 billion worth of Indonesian goods, or 15.5% of Indonesia’s total exports to the U.S. from January to November 2007, entered the U.S. under the duty-free GSP code. Indonesia needs to continue to endeavor to meet the adequate and effective test under the statute to remain eligible to continue to receive favorable treatment under the GSP program.

MARKET ACCESS BARRIERS

Indonesia remains one of the most closed markets in the world to legitimate U.S. copyright businesses. Problems remaining include the following.

Trading and Distribution Rights, and Media Investment Ban: Indonesia maintains a blanket prohibition on foreign company participation in, or even investment in, importation, direct distribution, exhibition, or retailing in most copyright products in Indonesia. Presidential Decree 118 of 2000 remains in force and stipulates that all importation and distribution of films and video product be restricted to wholly-owned Indonesian companies. An annexure to the Decree lists those media sectors that are closed to foreign investment, including:

- Radio and television broadcasting service providers, radio and television broadcasting subscription service providers, and print media information service providers;
- Film making businesses, film technical service providers, film export and import businesses, film distributors, and movie houses operators and/or film showing services.

However, the Broadcast Law allows foreign ownership up to a 20% cap. IIPA understands that the Law overrides the Presidential Decree. It is believed the draft Film Law also contains a 20% foreign ownership cap.

Broadcast Law: The “Broadcast Law”²⁶ bans the broadcast of most foreign programming in Indonesia.²⁷ The Independent Regulatory Commission (KPI) created by the new Broadcast Law has now been installed and has issued implementing regulations, but a competing set of regulations was issued by the Ministry of Communication and Information Technology (Kominfo), and the latter are being challenged

²⁴ Regulation of Minister of Trade of the Republic of Indonesia 05/M-DAG/PER/4-2005 (May 2005) (which repealed Ministerial Decree of the Minister of Trade and Industry of Republic of Indonesia, Number 645/Mpp/Kep/10/2004 (October 18, 2004), Regarding Stipulations on Importation of Machinery, Machine Equipments, Raw Material and Optical Disc.

²⁵ Ministerial Decree of the Minister of Trade and Industry of Republic of Indonesia, Number 648/Mpp/Kep/10/2004 (October 18, 2004), Regarding Reporting and Monitoring of Optical Disc Industrial Company.

²⁶ Law of the Republic of Indonesia, No. 32 Year 2002, Regarding Broadcasting (in force February 2003).

²⁷ Specifically, the law requires that private broadcasting institutions be established initially without any foreign investment. Subsequent foreign investments can then be made, but only up to a 20% ownership cap shared by a minimum of two shareholders. Additional restrictions in the draft legislation include: (1) a restriction on foreign managers, (2) cross ownership limitations, (3) a local content quota of 60% on broadcast television and 10% on pay-television, (4) a 30% dubbing quota on foreign programs, (5) advertising limits of 20% of total broadcasting time for private broadcast stations and 15% for public stations, and (6) a total ban against the establishment of foreign broadcast institutions in Indonesia.

as unconstitutional by KPI.²⁸ Support from members of Parliament for KPI's position is believed to have led to the postponement, and likely amendment, of the regulations. Even with KPI's regulations, the law is onerous and the various market access restrictions should be lifted. IIPA understands that the Koinfo regulations were scheduled to be finalized after consultation with KPI by 2006, but at the time of writing, their status was unclear.

Film Law: Separate draft Film Laws were submitted to Parliament for consideration in December 2006 by the Ministry of Tourism and the government advisory board on Film Issues, BP2N. Industry has only recently obtained translations of these drafts and has not had the chance to fully review them at the time of this report. It is hoped that earlier plans to impose screen quotas and limits on foreign participation in the film industry, among many other market access restrictions of real concern, do not come to pass.²⁹ Again, it is also highly unfortunate that neither the Ministry, nor BP2N considered the views of foreign film producers or related associations in their discussions. It is suspected that these drafts will follow the Broadcast Law and limit foreign participation in the industry. There have also been some suggestions that consideration is being given to scrapping the Film Law entirely.

²⁸ Of concern to foreign broadcasters is that the Koinfo regulations, issued on November 16, 2005, are reported to have a number of negative features, possibly including a "made in Indonesia" requirement for pay-TV advertising. Article 24(5) of Government Regulation of the Republic of Indonesia No. 52 of 2005 Regarding Broadcasting Provided by Subscriber Broadcasting Institutions requires advertising to use a "domestic resource," although it is not clear if this requires the advertising to be made in Indonesia (e.g., it may simply mean Indonesian talent or resources had to be used). Article 24(6) requires foreign advertising to be replaced by domestic advertising, and cross-media and foreign ownership restrictions.

²⁹ The draft was expected to install an Independent Film Commission made up of local members, and set import and screen quotas, higher entertainment taxes on film admissions to imported films, requirements that all prints be made locally, and possible restrictions on foreign direct investment in the film industry. In addition, under the draft, it was reported that only local Indonesian companies would be permitted to operate a "Film Business" or a "Film Professional Service." Another provision of the draft apparently provides that film businesses are "obliged to use national potential to the maximum limit while paying attention to the principles of efficiency, effectiveness and quality." The draft also apparently specifies that only national film companies would be permitted to make film commercials, that imported films are expected to be supplementary to national product and imports should be "in proportion to local production," and although the existing film law permits films approved for all ages to be dubbed into Bahasa Indonesian, the new draft would apparently prohibit any form of dubbing except for educational, research, or information purposes, and require that all films be subtitled in Bahasa Indonesian.