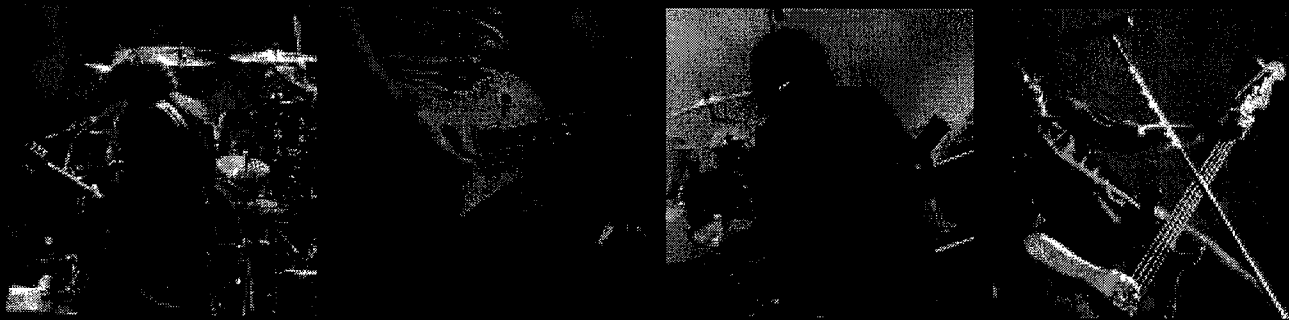


RIAA Ex. C-105-DP



THE RECORDING INDUSTRY 2006  
**PIRACY REPORT**

PROTECTING CREATIVITY IN MUSIC



representing the  
recording industry  
worldwide

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THIS REPORT CAN BE DOWNLOADED IN FULL AT NO COST FROM [WWW.IFPI.ORG](http://WWW.IFPI.ORG)

# INTRODUCTION



JOHN KENNEDY, CHAIRMAN & CEO, IFPI

“This report is issued against the backdrop of an unprecedented settlement between the unauthorised p2p operator Kazaa and a large percentage of the music industry. This is an extraordinarily positive development in the global fight against piracy.”

## TACKLING PIRACY – PROTECTING CREATIVITY IN MUSIC

This report – “Protecting Creativity in Music” – is the most comprehensive and authoritative report on what piracy is doing to the music industry internationally. Yet even as someone who is closely involved with the report, I approach its publication with mixed feelings.

This report performs a very important educational role. It aims to bring home to the public, to the media and to politicians the scale of the problem and the enormity of the challenges that we face as an industry in trying to reduce piracy in all its forms.

We need each country and region to know the problems that are faced locally and more importantly what can be done to improve the future of the local music industry.

Even so it is not a pleasurable task compiling statistic after statistic of doom and gloom for an industry that gives so many so much pleasure.

Occasionally we have to remind everyone that we are an industry – one that provides enjoyment, employment, creativity and innovation. One that pays taxes. It is an industry that, in many countries, is more likely to provide jobs for the future than local manufacturers.

We are committed to making our music available anywhere, any time, to any consumer, through any device and in any format.

We have tried to educate our consumers, our customers, the media and government but we do this in the knowledge that piracy continues to eat away at our business.

And we also know that the pirates make considerable profit for themselves. The Pirate Bay, one of the best-known names in digital music piracy, sells one-day advertisements on its site for 120,000, while passing itself off as an anti-establishment champion of “free music”.

This report it is not just about doom and gloom. This report gives me more pleasure than most as it is issued against the backdrop

of an unprecedented settlement between the unauthorised p2p operator Kazaa and a large percentage of the music industry. This is an extraordinarily positive development in the global fight against piracy.

There have been many challenges in the online environment for the music industry in the last few years – many of which were described as “unwinnable”. Conventional wisdom had it that none of the illegal services could be successfully tamed. First, it was said, the original illegal incarnation of Napster could not be beaten. Then, when it was, we were told we would not be able to do anything about the so-called decentralised services.

The settlement with Kazaa, reported as this publication goes to press, shows we should never give up the battle.

I am realistic – this is only one further step in the battle against piracy. But it is a major step. Kazaa will not only pay very significant damages – it will also be making the transition to a legal model. This is the best possible outcome for the success for the music industry. The deterrent message to other would-be services, which want to try to build a business on copyright infringement, is clear. But at the same time Kazaa plans to go legitimate and our industry will have a new business partner. A win-win scenario.

This report documents a lot of what our industry is doing to curb internet piracy. In this area, I would like to think that when we publish again next year I will be able to report on 12 months of successful collaboration and co-operation with internet service providers.

For a long time I have believed that ISPs hold the key to substantially reducing online piracy. When I first asked the ISPs for help many of them made promising noises but the discussions went nowhere and they have sought to hide behind laws which were designed to ensure that the internet flourished as it evolved. But times have moved on – it is no longer a time for safe havens for socially unacceptable or illegal or criminal behaviour. The internet is no longer in danger of being

strangled by anyone. The time has come to look again at who should have responsibility for what.

I am sure those running ISPs are decent people who embrace their moral, legal, social and commercial responsibilities. In this connection I have been encouraged to hear that in the UK Cable and Wireless – one of the big ISPs – has said “we will take whatever steps are necessary to put the matter right.” What an encouraging step forward! I hope their peers will follow.

P2p operators and ISPs are in the front line of our fight against piracy. So of course are governments. This report outlines a list of top 10 priority countries where actions – not lip-service – are most pressingly needed.

Those countries are: Brazil, Canada, China, Greece, Indonesia, Italy, Korea, Mexico, Russia and Spain. Some of these governments have made progress in 2005. Much more is needed and it is outlined in this report.

Our industry is fighting piracy to protect creativity in music. Now we will look forward to what else can be done to create the right environment for licensed music. The challenges ahead are still enormous but for today we will look forward with a cautious spring in our step.

### An Anti-Piracy Vision

Piracy of content on the Internet continues its metamorphosis as users shift to new file-sharing programmes that are capable of obfuscation. Anti-piracy technology is addressing this, but inevitably the costs are escalating. With growing video piracy consuming massive amounts of bandwidth, ISPs are looking for solutions that optimize their business. Common to file transfer on peer to peer and via ISPs is a unique file fingerprint that points to a bright future for anti-piracy efforts on the web. To find out what the future may hold visit [www.ifpi.org](http://www.ifpi.org) to read Kevin Bermeister, CEO of Brilliant Digital Entertainment.

# THE MANY FACES OF MUSIC PIRACY



IFPI estimates the trade of pirate discs was worth US\$4.5 billion globally in 2005. At the same time, almost 20 billion tracks were illegally swapped or downloaded on the internet in 2005.

## PHYSICAL PIRACY SHOWS NO SIGNS OF ABATING

More than one in three of all music discs purchased around the world is thought to be an illegal copy. It is estimated that some 37 per cent of all CDs purchased (legally or otherwise) in 2005 were pirate – 1.2 billion pirate CDs in total. Pirate CD sales outnumbered legitimate sales in 2005 in a total of 30 markets.

The majority of pirate discs sold are CD-Rs copied on highly efficient burner machines in small commercial labs. DVD music video piracy is also expanding, affecting the format's growth in many markets.

Global overcapacity in the optical disc industry remains a major contributor to music piracy. Global disc capacity totalled 60 billion units in 2005, compared to a legitimate demand of only 20 billion units, according to research firm Understanding and Solutions. Taiwan remains the largest supplier of blank CD-Rs, accounting for just over a third of global supply.

IFPI estimates that the global traffic of pirate product was worth US\$4.5 billion in 2005 based on pirate prices.

With help from IFPI's anti-piracy teams, national enforcement authorities around the globe seized a record amount of discs in 2005 – some 80 million in all. This is double the amount seized in 2004. In addition, 78 disc manufacturing lines were seized (representing a production capacity of 340 million discs) as well as a record 40,000 CD burner machines, up from 28,000 the previous year. There was a significant increase registered in every region.

## INTERNET PIRACY: LOSSES TO THE INDUSTRY

IFPI estimates that almost 20 billion songs were illegally downloaded in 2005. This is based on consumer research in 10 music markets (including the US, Germany, UK and Brazil) and third party surveys.

While this shows an extremely high piracy rate for online music, it also illustrates the vast potential for legal digital music. Record company revenues from digital music tripled in 2005 to US\$1.1 billion and have continued to grow strongly in 2006.

### Illegal websites

The term 'internet piracy' covers several different ways in which infringing music is distributed or downloaded illegally.

Websites such as allofmp3.com host large amounts of music but do not have permission to copy it or deliver it over the internet. These sites generally offer music either for free or at very low prices because they do not pay artists or other rights holders for their work.

This form of internet piracy thrives in particular in countries where intellectual property rights are not effectively enforced or where such rights are weak.

### P2P Networks

"Peer to peer" (P2P) networks facilitate file-sharing directly between individual users allowing distribution of a music file to millions of others. Uploading copyrighted files onto P2P networks without the permission of the

rights holder is illegal virtually everywhere in the world. P2P network operators have been found liable for copyright infringement in countries around the world.

Services such as Grokster (now shut down after the US Supreme Court ruling in 2005) and Kazaa (found infringing by the Australian Federal Court) became well-known engines of copyright infringement. In early 2006 the Belgian and Swiss authorities took action and closed down Razorback, at the time the world's biggest eDonkey P2P server.

### BitTorrent

One new development in file-sharing technology is BitTorrent, which was designed to distribute large amounts of data between users without consuming costly server and bandwidth resources.

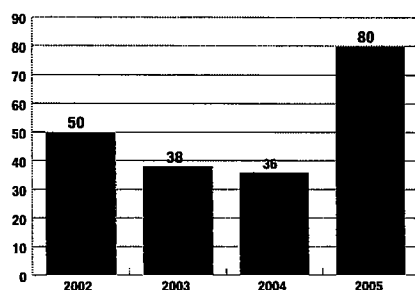
Action was recently taken by the Swedish authorities against one of the largest BitTorrent services in the world – The Pirate Bay.

### Other forms of internet piracy

FTP (or file transfer protocol) sites are one of the 'traditional' forms of internet piracy and typically the first place where pirate copies of new recordings appear. Users can make material available on FTP sites enabling music and other files to be downloaded from the 'server' computer by thousands of people.

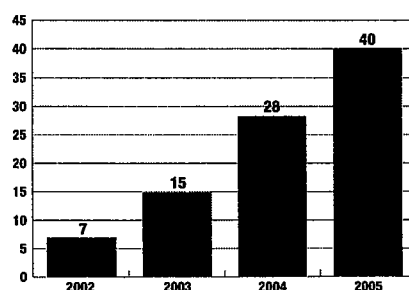
Internet relay chat (IRC) was designed to facilitate communication in discussion forums such as news groups and fan sites but has also become a vehicle for music piracy.

DISCS SEIZED 2002-2005 (m)



Source: IFPI

CD BURNERS SEIZED 2002-2005 (000's)



Source: IFPI

"They tell me what I do is beautiful and ask why I am not more popular. Then they hand me a pirate disc to sign."

Carmen Paris,  
Spanish singer-songwriter.

## NEW FORMS OF DIGITAL PIRACY

### Local Area Network (LAN) file-sharing

LAN-based file-sharing involves users who are connected via a local area network – typically on a university campus or in a business.

With several thousand students on a typical campus, a LAN based file sharing network can easily contain a substantial amount of unlicensed music, movies and other content.

In the US, the music and film industries are tackling this issue directly with universities, launching a systematic programme to identify and curtail campus LAN piracy.

### Digital Stream Ripping

“Stream ripping” is the process of converting streamed music into a stored file and represents a significant potential threat to record company and music publisher revenues.

Stream ripping devices and software allow radio or internet webcasts to be converted into permanent copies of individual songs, each labelled with artist and track information, creating a library that substitutes legitimately purchased music. The user effectively creates a collection of songs in MP3 format from what was a commercial radio broadcast.

### Mobile music piracy

Mobile music piracy is emerging as a threat to the legitimate industry. Mobile phones can be used to obtain free music, for example by means of Bluetooth transfers that enable files to be transferred from phone-to-phone and memory card swapping.

### Numerous research studies have shown that internet piracy has had a negative impact on music sales:

⊙ NPD research in the US among internet users aged 13+ (NPD Digital Music Study, Dec 2005) suggests that a quarter (26%) of the decline in CD units in 2005 was replaced by music consumption via illegal file-sharing.

⊙ In the April 2006 edition of the Journal of Law & Economics, economist Stan Liebowitz concludes that illegal file-sharing “has brought significant harm to the music industry”. His extensive studies show that there is a “close linkage between changes in file-sharing and changes in record sales”.

The full article can be seen at [www.journals.uchicago.edu/JLE/journal](http://www.journals.uchicago.edu/JLE/journal)

⊙ Research by IFPI/Jupiter in November 2005 among European Internet users found that more than one third (35%) of illegal file sharers are buying fewer CDs as a result of their downloading.

### New Research on CD Piracy in UK

UK recording industry body the BPI commissioned IPSOS to conduct a study into piracy in the UK in March 2006, based on interviews with 2,000 adults aged over 15.

The report found that around 55 per cent of “most CDs” purchased illegally were bought from the traditional commercial piracy sources, such as markets, street sellers and ‘car boot’ sales.

The remaining 45 per cent were sourced from friends, work colleagues or ‘someone who collects orders’ from work but who was unknown to the buyer.

The report estimated that some 3.5 million adults, seven per cent of the UK population, buy pirate music CDs.

### ISPs Can Help Combat Piracy

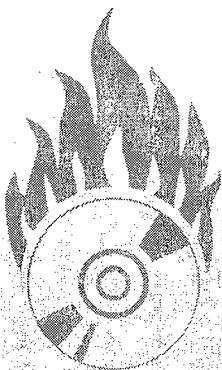
Internet Service Providers (ISPs) have a key role to play in substantially reducing online piracy. Most ISPs forbid customers from using the internet for copyright infringing purposes in their terms of service and threaten suspension or disconnection as a penalty, but it is rare that this clause is actually invoked.

IFPI is calling on ISPs to enforce the terms of their contracts and disconnect individuals identified as large volume uploaders of copyrighted music.

The BPI wrote in July to two ISPs in the UK, Tiscali and Cable & Wireless, to ask them to suspend 59 users who were illegally uploading copyrighted material onto the internet. In Denmark, the Supreme Court confirmed in February that ISPs can be obliged to terminate the connections of customers engaged in internet piracy, ruling in a case brought by the Danish AntiPiracyGroup against telecoms firm TDC.

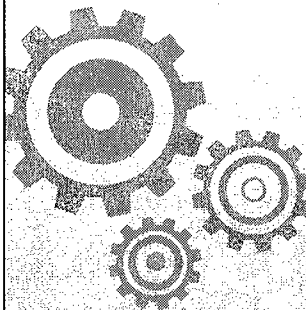
## PIRACY HAS DIVERSIFIED INTO MANY DIFFERENT FORMS

### CD-R PIRACY



Dominant fake disc format – 40,000 burners seized

### PRESSED CD PIRACY



78 disc manufacturing lines seized

### INTERNET PIRACY



Nearly 20 billion songs were illegally swapped or downloaded in 2005

### NEW FORMS OF DIGITAL PIRACY



LAN File Sharing



Digital Stream Ripping



Mobile Piracy

# TACKLING INTERNET PIRACY – PROMOTING LEGAL SERVICES



The legitimate digital music business is emerging fast, offering consumers diverse channels for obtaining music online or via mobile devices. The greatest threat to this new market is piracy. The music industry is tackling it by various means.

## PROVIDING NEW LEGAL SERVICES

The emergence of legitimate digital music services is playing a key role in pushing back of online piracy. Today consumers are offered the vast catalogue of record companies' repertoire via diverse channels. In 2005 this amounted to a fast-growing US\$1.1 billion market.

There are now more than 360 legal digital music services offering over three million songs to consumers in over 40 countries.

## ENFORCEMENT

The recording industry has taken action against illegal services and P2P networks to give the legitimate market the space to grow. Actions have been brought against illegal file-sharers in 17 countries outside the US. The latest wave of nearly 2,000 cases was announced in April 2006.

These actions have been taken against large-volume uploaders who are distributing hundreds or thousands of copyrighted files on P2P networks. Profiles of these individuals vary markedly. They come from all walks of life ranging from a French chef to a Finnish carpenter. Settlements have averaged 12,633.

Independent research from market analysts Jupiter carried out in November 2005 suggests that legal action is having an impact. More than a third of Europeans who file-share said they have cut back or stopped their activities. This research also found that in the

two biggest European markets, the UK and Germany, more people regularly buy music from legitimate services (5%) than regularly download music illegally (4%).

Research by TNS in the UK conducted in March 2006 suggests that more than half of people (56%) who have begun downloading in the last six months are using legal services, compared with just two-in-five people (41%) who have been downloading for more than a year.

## EDUCATION: A JOB FOR INDUSTRY AND GOVERNMENTS

Education about copyright has a vital role to play in promoting a digital music business. IFPI runs multi-country educational projects aimed at enhancing awareness of copyright and issues surrounding music on the internet. These have been cited as best practice by the European Commission, endorsed by the International Chamber of Commerce and jointly launched with governments including Austria, Italy, Ireland, Hong Kong and Netherlands. They include:



**Young People, Music and the Internet** is a clear and simple guide aimed at parents. It explains "file-sharing" and "peer-to-peer" as well as how the technology works, helping them to keep their children safe, secure and legal on the internet. It has been translated into six

languages and is available from [www.pro-music.org](http://www.pro-music.org) and on the charity Childnet's website [www.childnet-int.org/music](http://www.childnet-int.org/music). Most recently a Chinese language version of the guide has been launched in partnership with the Hong Kong government.



**Digital File Check** is freely-available software for all computer users to download from [www.ifpi.org](http://www.ifpi.org). It can help remove or block any of the unwanted file-sharing programmes commonly

used to distribute copyrighted files illegally. It allows consumers to avoid becoming unwitting illegal file-sharers.



**www.pro-music.org** is a website branded "everything you need to know about music online" available in six languages, that acts as a gateway to more than 350 legitimate sites and is a central

resource of information about music on the internet.

**Instant messages** have been sent to more than 53 million heavy illegal music uploaders in 17 countries, warning them to stop their activities.

**Copyright Use and Security for Companies and Governments** is a guide for employers, clarifying their responsibilities to keep their computer networks free from copyright infringement. The guide is produced jointly with the Motion Picture Association and International Video Federation and is endorsed by the International Chamber of Commerce. Copies can be obtained from IFPI.



**National campaigns** have been run by various IFPI national affiliates, such as the 'Truefan' kite mark for legal music websites in the

Netherlands; a film aimed at young people called 'A thousand jobs in the music industry' in France and a lesson pack for schools produced in cooperation with the Ministry of Education in Finland.

## INTERNET DOWNLOAD SALES (MILLION UNITS)

	Q1 2005	Q1 2006	Annual Growth
<b>US</b>			
Single Tracks	76.2	144.0	89%
Single Tracks Album Equivalent	7.6	14.4	89%
Albums	3.0	7.4	144%
<b>UK</b>			
Single Tracks	4.5	11.5	152%
<b>Japan</b>			
Internet Downloads	1.1	5.9	434%

Source: SoundScan, OCC UK/BPI, RIAJ. Note: Online downloads only, excludes mobile.

## P2P LEGAL LANDSCAPE IMPROVES

The legal landscape for P2P networks changed significantly in 2005 and early 2006. A string of court judgements across the world established liability of P2P operators for the infringement that they promote and benefit – from rejecting the notion that unauthorised file-sharing is innocent, legal or victimless. There were also key judgements against other unlicensed services:

⊗ In June 2005 the US Supreme Court ruled (in *MGM v Grokster*) that file-sharing services that distribute software with the object of promoting its use to infringe copyright can be held liable for the resulting infringements.

### allofmp3.com: Setting the Record Straight

Allofmp3.com is a Russian-based website that is not licensed to offer IFPI members' recordings for download, either in Russia or anywhere else.

Music fans should choose from the many legal services available which pay artists, rather than supporting an illegal service that exploits others' creative efforts solely for its own gain.

Proceedings are being taken against allofmp3.com both in Russia and internationally.

The company claims to have a license from alleged Russian collecting society ROMS. However this society has not been authorised by IFPI members and is not recognised nationally or internationally.

Ronald Mooij, the secretary-general of BIEM, the international organisation that represents rights societies, says "Allofmp3.com is a notorious website which is illegally making available music internationally without paying composers and songwriters. ROMS, the body in Russia which allofmp3.com claims has licensed it, does not have any mandate whatsoever to licence allofmp3.com for our members' mechanical rights."

In Russia, the criminal trial of allofmp3.com's former director is underway, and more criminal investigations are ongoing.

Outside Russia, a German court has granted an injunction against the site. In the UK, the first court action is also being taken against allofmp3.com. In June 2006 the UK High Court issued proceedings against the operator of the site and was given permission to serve those proceedings in Russia.

⊗ In August 2005 Seoul District Court ordered Soribada a Korean P2P service to prevent its users to swap copyrighted songs, or shut down.

⊗ In September 2005 the Federal Court of Australia held that Kazaa was guilty of copyright infringement and ordered it to shut down or implement copyright filters.

⊗ Also in September 2005, a Taiwanese court issued a criminal conviction to the directors of the Kuro P2P service which was in breach of intellectual property rules.

⊗ November 2005 saw the Grokster P2P network agree to shut down operations in light of the US Supreme Court's ruling.

⊗ In February 2006 the Danish Supreme Court ruled that under EU law, ISPs can be obliged to terminate the connections of customers who illegally upload material.

⊗ May 2006 saw the American operators of BearShare agree to cease to operate any music or film download services and sell its assets to the legal file-sharing service iMesh.

⊗ In June 2006 the Dutch Court of Appeals ruled against zoekmp3.com, effectively declaring that deep linking to infringing mp3 files is illegal in the Netherlands.

## VIRUS FEARS SURROUND ILLEGAL P2P

Concern about P2P spyware, viruses and threats to privacy have played a significant part in deterring illegal file-sharing as well as legal actions by the music industry.

StopBadware.org, an organisation based in Harvard and Oxford Universities, says that 60 million people's computers in the US now have software that hampers the machine's performance. The group named Kazaa, one of the most popular P2P networks, as a prime source of such spyware.

Research from TruSecure concluded that 45 per cent of the executable files downloaded through Kazaa contain malicious code like viruses and Trojan horses after testing 4,500 such files.

P2P network worms also spread using these services. The most widespread are Kazaa P2P network worms which usually locate a Kazaa client shared folder and copy themselves there with an attractive name, of a popular song for example. Sometimes such worms replace real sound files and can host dangerous viruses.

Many users find themselves downloading the wrong files as the names and descriptions for them can be misleading and users can end up with inappropriate material. In some cases

paedophiles have used P2P communities to distribute pornographic materials and make contact with children.

Research by analysts Jupiter showed that of those Europeans who said they have given up or cut down their illegal file-sharing activity, 35 per cent did so because they were worried about the effects of viruses on their computers.

## Landmark Victory in Kazaa Case

In September 2005 the Federal Court of Australia issued a landmark ruling that file-sharing service Kazaa, one of the biggest engines of copyright theft and one of the most well-known brands in music piracy worldwide, was liable for massive copyright infringement and ordered it to implement filtering.

Kazaa had been the world's biggest single internet piracy operation with 2.4 million users worldwide.

Victory over Kazaa in the courts was a major development in the evolution of a healthy legitimate market. The legitimate sector cannot compete on price with illegal sites that pay no royalties or copyright fees and so legal action is needed to clear a path for growth for such music services.

The decision was a resounding signal to other unauthorised file-swapping networks. They should adapt their systems and go legitimate now.



## THE SPREAD OF PRE-RELEASE PIRACY

New releases are the lifeblood of the music industry and pre-release piracy has a serious effect on legal sales and on record companies' ability to reinvest in new artists.

Pre-release piracy is a growing problem for the music industry. New recordings can be posted on the internet through a range of distribution platforms including websites and peer-to-peer (P2P) networks. They have the potential to reach mass distribution within hours. Already in 2006, key new releases by Placebo, Franz Ferdinand, The Strokes, The Flaming Lips and, most recently, The Red Hot Chili Peppers, were available illegally online weeks before release.

The Family Entertainment and Copyright Act (2005) in the US singled out pre-release piracy as a problem and allowed for penalties to be imposed on those who pirate copyrighted works before they are released into the legitimate market.

The new generation of web-based pirate distribution – web and FTP sites – are frequently the first source of illegal music on the internet. News of the leak quickly spreads over blogs and chat rooms and files begin to appear in P2P networks. This has a multiplying effect over the subsequent period of weeks.

IFPI and its member record companies actively combat pre-release piracy, concentrating as closely as possible on the source of the problem. The priority is to tackle the first leaks on the internet, thereby limiting the subsequent spread of illegal copies, and potentially stopping millions of illegal downloads.

### Ten Weeks in the Life of a Pirate Pre-Release

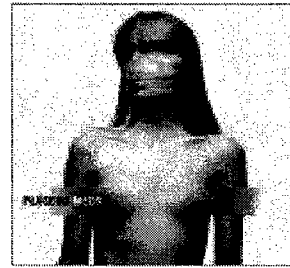
In early 2006, IFPI tracked the illegal distribution of Placebo's new album 'Meds', via the internet and as physical copies, over

a period of 10 weeks from the day of the first leak. The release saw an intense and co-ordinated pre-release anti-piracy effort by IFPI and its national affiliates. A large number of "notice and take-down" warning letters were sent to facilitate the removal of the infringing content.

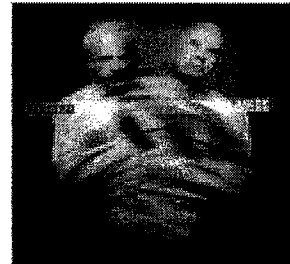
The industry's anti-piracy effort focused immediately and effectively on the first leaks via web/FTP sites. Within only the first two weeks of the leak of 'Meds', these actions potentially prevented some 450,000 illegal downloads, based on an assumption of average downloads per day. This figure would have multiplied rapidly in subsequent weeks, with files being transferred to other channels of distribution and further proliferating.

The subsequent proliferation of copies of 'Meds' onto P2P networks was controlled as a result of industry action. By release week, some 14,000 uploaded copies of 'Meds' had been made available for download on P2P networks – far less than would have been available without the anti-piracy measures in the early weeks.

Pre-release piracy is not restricted to the internet. Four weeks after appearing online, pirate discs of 'Meds' were being sold around the world; first being found in Lithuania, then Mexico, Thailand and Ukraine. In most cases these pirate copies originated in Russia.



ORIGINAL ARTWORK

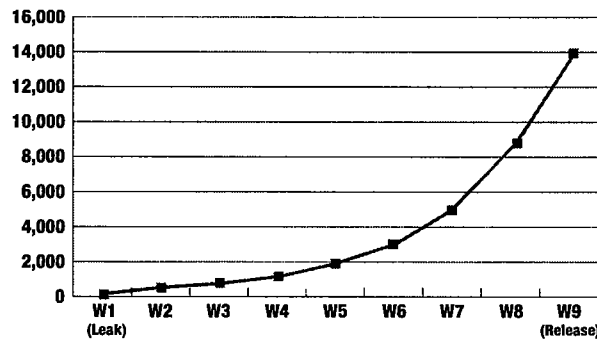


INFRINGING ARTWORK



INFRINGING ARTWORK

### ILLEGAL ALBUM FILES UPLOADED ON P2P NETWORKS



### TIMELINE OF EVENTS

The first single from Placebo's 'Meds' leaked via a German-based website ten weeks prior the official release of the album. A week later the entire album could be found on web/FTP sites and then on P2P networks.

Single 'Because I Want You' leaks on websites	Album leaks on websites	Peak take-down of illegal files on websites by anti-piracy team		Physical pirate copies found in Eastern Europe	Physical pirate copies found in Latin America	Physical pirate copies found in Asia. P2P availability booms	
Single Leak	Album Leak	Album Reaches P2P					Release Week
10-Jan X	17-Jan X	18-Jan	24-Jan	9-Feb	21-Feb	1-Mar	13-Mar X

### Geographic spread of illegal files via web / FTP sites

Germany	US	Netherlands	Taiwan	Sweden	France	Belgium
		Russia	UK	Hungary	Portugal	Korea
		Canada		Latvia	Italy	
		Ukraine		Estonia	Lithuania	

An initial leak of infringing files in two countries, Germany and the US, snowballed into files being found in 20 countries by the week of official release of the album.



# PHYSICAL PIRACY – THE INDUSTRY TAKES ACTION



The recording industry works with law enforcement agencies around the world to support them in the frontline battle against piracy. IFPI provides training to officers as well as logistical and forensic support for operations. From Mexico to Germany, IFPI has helped in operations that have led to the closure of illegal disc factories, the seizure of smuggled discs and the arrest of the criminals behind this trade.



## NEW TACTICS PROVE SUCCESSFUL IN MEXICO

The recording industry has taken a new approach to fighting piracy in some markets by focusing resources intensely in a specific area with the aim of making a very appreciable dent in pirate sales. The experiment started in Guadalajara, Mexico where the recording industry and the city's authorities came together to launch a major operation branded "Mexico Plus".

Guadalajara was chosen for the initiative because of the willingness of the local authorities and business community to work with the recording industry to address the piracy problem. Around 300 of the 2,000 stands in the city's flea markets were dedicated to selling pirate music with an output of approximately 20,000 CD-Rs per day.

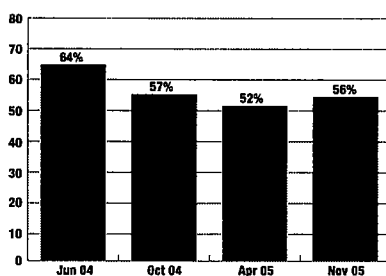
The programme aimed to convert pirate stands into legitimate music retailers. Local wholesalers provided legal product and credit lines to those pirates who were prepared to go legitimate. Record companies also released additional budget lines to meet the need for less expensive products.

At the same time, city authorities changed local laws to make selling pirated music grounds for revoking a trader's license.

More than 70 licenses were cancelled as a result of this rule change. A consumer education and awareness campaign was also launched.

The programme has been effective. The number of pirate stands fell by 80 per cent from more than 300 to 58 across both flea markets over the course of 2005. According to research by Ipsos/Bimsa, legitimate sales in the area increased by about 27 per cent, compared to a national figure of 10 per cent. Increased seizures netted more than five million CD-Rs.

PIRACY RATE IN GUADALAJARA



Source: IPSOS / BIMSA

## MASS RAIDS IN BRAZIL

More than 700 agents from the Federal and State fiscal agencies were involved in mass raids against the biggest pirate commercial centres in São Paulo in December 2005.

50 stores were raided and over 20 tons of product that was either pirated or illegally imported was seized. A significant proportion of this product was recorded and blank CD-Rs.

This action was coordinated by Brazil's National Anti-Piracy Council (NAPC), a new organisation formed by the government to combat the major problems of piracy, contraband and tax evasion that are hitting legal businesses in the country.

## PIRATES RAIDED AT DUTCH RECORD FAIR

One of the largest record fairs in the world, 'Mega Platen-en CD-beurs', was raided by Dutch anti-piracy investigators in November 2005. Dutch anti-piracy group BREIN raided 14 stands at the fair and seized more than 1,600 illegal music products.

Although the inspections were widely publicised, a further seven dealers were caught on the weekend of the show and an additional 600 pirate CDs and DVDs were confiscated. Most of the seized goods were bootlegged CDs, but there were also music DVDs and films.

All 21 pirates who were caught signed a voluntary declaration in which they stated they will no longer sell pirated goods, with a penalty sum of 1,500 per illegal copy. They then surrendered all the counterfeit material they possessed.

**“Piracy affects the entire music industry...all the employees that work at labels, the recording studios and also the artist himself. Let's care about music, it's the most valuable thing we have.”**

**Gustavo Santaolalla, Argentine musician and producer**

## CUSTOMS OFFICIAL ARRESTED IN PARAGUAY



A Paraguayan customs official was arrested in September 2005 after he offered a US\$2,000 bribe to the director of the country's Special Intellectual Property Rights Unit (UTE).

The official was seeking the release of a shipment that had been seized by the authorities and which contained more than 700,000 blank CD-Rs and 520,000 blank DVD-Rs. The seizure was part of a programme by the Ministry of Commerce and Industry to stop the import of blank media into Paraguay which fuel the market for pirate music products.

### Forensics

IFPI's forensics teams use the latest laboratory techniques to trace pirate production from source.

Investigators recently found a legitimate Dutch retailer was unwittingly selling CDs made by one of Europe's most notorious pirate CD factories. Research showed that the firm had bought nearly 130,000 pirate units through a 'front' company.

IFPI also gave forensic assistance to police in California, who took action against more than a dozen plants manufacturing illegal discs over the past 18 months. The team matched seized discs against exemplars from these plants – proving them the source of illegal material.

In January 2006 a case against one of the owners of these plants was brought to court. The defendant tried to deny that the pirate discs came from his factory, but IFPI was able to show that its scientific analysis was correct and that there was no way to tamper with the evidence at any stage in its investigations. The defendant changed his plea to guilty. The DA of the LA County Sheriff's Department wrote to IFPI saying the case would not have been cracked without its support.

Forensic research also enables IFPI to monitor the source of pirated material found around the world. Armed with forensic evidence, IFPI can work with the relevant governments to get these illegal plants closed down.

The team can be contacted at [forensics@ifpi.org](mailto:forensics@ifpi.org)

## SPANISH POLICE SMASH PIRACY SYNDICATE

Police in Spain smashed a syndicate that was believed to be responsible for releasing over one million pirate music and film discs onto the Spanish market every month.

In the largest operation against music and film piracy ever undertaken in Spain, police arrested 75 people in October 2005 in raids on nine addresses.

The former Minister of the Interior, José Antonio Alonso, praised the police for their work and pointed out the damage that music pirates were causing and the fact that they were using their profits to fund drug related offences and money laundering.

Massive amounts of material were seized by the authorities including more than 60,000 recorded CD-Rs, nearly 50,000 DVD-Rs and more than 130,000 inlay cards. The pirated music included works by both Spanish and international artists. The raids also found 21 counterfeit identity cards and four stolen passports.

## TAIWANESE PIRATES TACKLED

The industry and local authorities in Taiwan are combining internet and traditional investigation techniques to tackle illegal music websites.

In June 2005 the government's Integrated Enforcement Taskforce raided the residence of a website operator in Taipei. They found no illegal music files in the computers onsite, but they did locate more than 20 optical discs carrying infringing software.

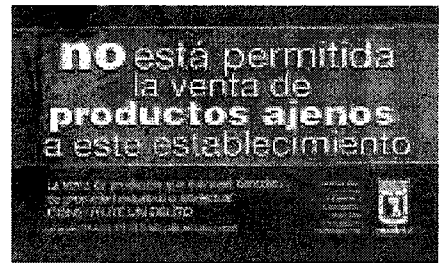
The operator was subsequently found to have stored all the music files on servers in Shanghai and to be funded by a well-known file-sharing service in Taiwan. Computers containing suspect materials and bank account books were also seized.

## ITALY'S ANTI-TERRORIST SQUAD SEIZES PIRATE CDS

Italy's anti-terrorist squad conducted a series of raids in December 2005 aimed at dismantling an arm of the Algerian-based GIA Islamic terrorist group.

The raids took place in Naples, Ventimiglia and Milan. They led to the seizure of warehouses controlled by the organisation and containing a large number of counterfeit products. Colonel Grimaldi, who coordinated the raids, said the investigation proved that the group was obtaining funding by selling pirated and counterfeit DVDs, CDs and fashion goods.

## NEW FRONTLINE: BARS AND RESTAURANTS



Restaurants and bars have become the new frontline in southern Europe's battle against physical piracy. In a technique known as "top mochila" (rucksack) hawkers approach patrons and attempt to sell them pirate music and films.

The Spanish record industry has conducted education campaigns to raise the awareness among bar and restaurant owners and managers, as well as the general public, that the buying and selling of such material is illegal.

In April 2006 Madrid's local authorities launched a poster campaign warning of jail sentences for pirate CD sellers in bars and restaurants.

### Training Anti-Piracy Officers

The frontline in the battle against piracy around the world are local enforcement agencies. Recording industry teams advise and train them and this is an important enforcement priority for IFPI.

In 2005, IFPI investigators trained more than 1,000 law enforcement officers in 21 countries.

Multimedia training programmes are available in a variety of different languages, providing up-to-date information about the identification of pirated products.

A web learning project and resource library developed in 2005 has now been translated into Portuguese and Spanish to give training staff access to more resources when tackling the crucial Latin American territories.

A pocket guide jointly designed by IFPI and the Motion Picture Association (MPA) has been translated and published in 12 languages and many tens of thousands have been distributed to law enforcement officers worldwide.

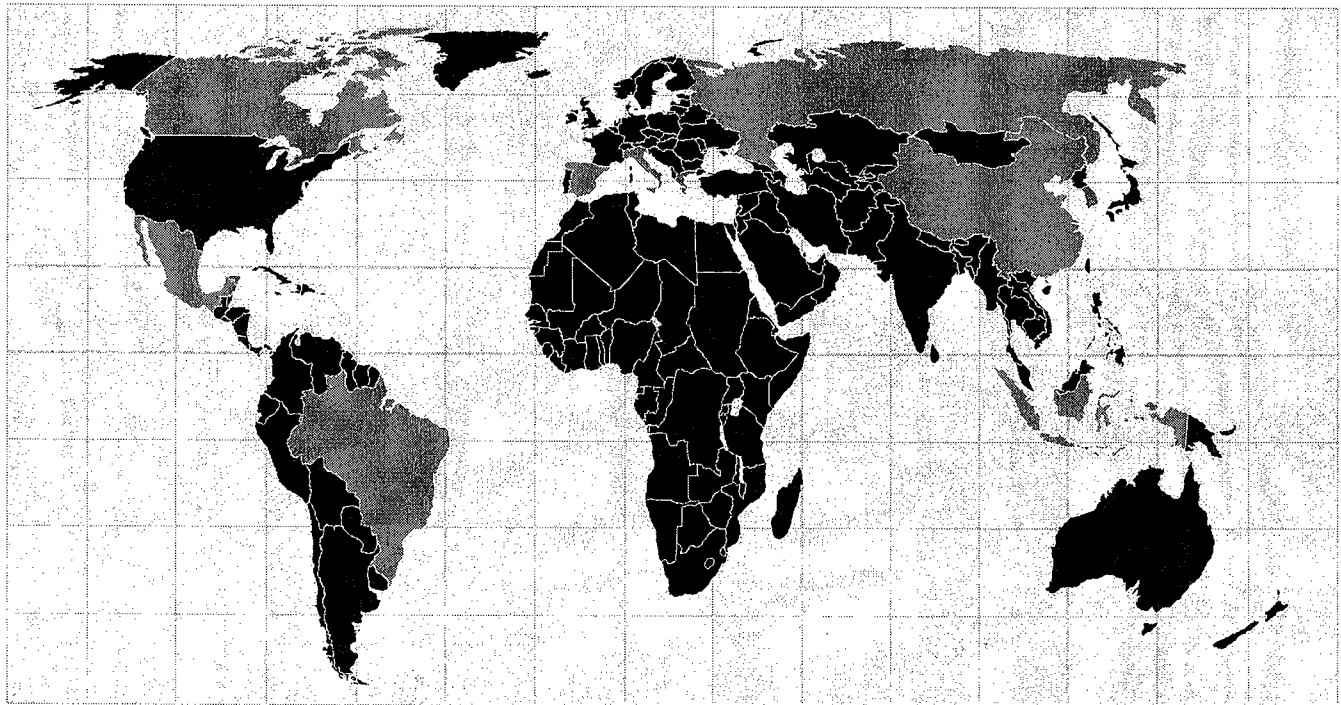
For further information please contact [training@ifpi.org](mailto:training@ifpi.org)

# PRIORITY COUNTRIES



IFPI monitors progress in tackling piracy around the world. Below are outlined ten “priority countries” based on three criteria: the importance of their legitimate market, the local trend in piracy and the degree of action their governments are taking to counter the problem. An additional four territories merit “special focus” status because of the particular nature of their piracy problem.

<b>BRAZIL</b>		<b>CANADA</b>		<b>CHINA</b>		<b>GREECE</b>		<b>INDONESIA</b>	
<b>80,000 jobs lost in the music industry since 1997</b>		<b>Estimated over one billion illegal songs downloaded</b>		<b>Largest physical pirate market and growing internet piracy</b>		<b>Growing CD-R piracy</b>		<b>Pirate disc exports to Australia</b>	
Legal market retail value	US\$ 395m	Legal market retail value	US\$ 730m	Legal market retail value	US\$ 120m	Legal market retail value	US\$ 415m	Legal market retail value	US\$ 70m
CD album value change 00-05	-47%	Legal audio market retail value change 2000-05	-33%	Pirate discs sold 2005	>350m	Total market value change 00-05	-21%	Pirate discs sold 2005	170m
Physical piracy level	40%	Top 10 sales 00-05	-28%	Physical piracy level	85%	Physical piracy level	50%	Physical piracy level	88%
Physical piracy value	US\$ 85m	Legal downloads	10m	Physical piracy value	US\$ 410m	Physical piracy value	US\$ 45m	Physical piracy value	US\$ 70m



<b>ITALY</b>		<b>MEXICO</b>		<b>RUSSIA</b>		<b>S.KOREA</b>		<b>SPAIN</b>	
<b>Organised crime drives physical piracy</b>		<b>110 million pirate products sold</b>		<b>Pirate discs in 27 countries traced to Russia</b>		<b>Revenues more than halved in 5 years</b>		<b>500 million songs swapped illegally</b>	
Legal market retail value	US\$ 670m	Legal market retail value	US\$ 410m	Legal market retail value	US\$ 390m	Legal market retail value	US\$ 135m	Legal market retail value	US\$ 555m
CD album value change 00-05	-11%	CD album value change 00-05	-26%	Pirate discs sold 2005	175m	CD album value change 00-05	-55%	CD album value change 00-05	-36%
Physical piracy level	26%	Physical piracy level	65%	Physical piracy level	67%	Domestic repertoire value change 00-05	-67%	Physical piracy level	22%
Physical piracy value	US\$ 80m	Physical piracy value	US\$ 180m	Physical piracy value	US\$ 450m	International repertoire value change 00-05	-71%	Physical piracy value	US\$ 75m

# PRIORITY COUNTRIES



## BRAZIL

Brazil's music industry has lobbied the government for many years to undertake a nationwide anti-piracy campaign. In 2004, these efforts began to pay off as the authorities woke up to the scale of the problem and created a National Anti-Piracy Council.

This Council began operation in 2005 and consists of officials from the Justice and Economic Ministries, as well as the Federal Police, Customs and participants from private industry.

There have been some encouraging signs that the Council's efforts are starting to have an impact. Major operations have taken place at the border with Paraguay and raids were conducted across the country mainly in São Paulo and Rio de Janeiro.

The raids cut the number of pirate music stands in both major cities. Across the country CD piracy fell from 52 per cent in 2003 to 40 per cent in 2005, according to the latest survey conducted by the national record industry.

There are still major problems however. Despite the high number of operations on the Paraguay border the illegal importation of blank optical discs into the country continues as well as the offer of illegal products in flea market (it is estimated 300 million blank CD-Rs were smuggled into Brazil last year).

The Brazilian courts still seem apathetic to the pirate threat – the recent raids produced a large number of arrests but a negligible number of convictions with deterrent prison sentences. The São Paulo State High Court is expected to rule later this year on the important precedent judgment handed down in 2002 by a lower court against Novodisc and Trace Disc Multimedia, CD manufacturers found jointly liable for making tens of thousands of pirate CDs featuring music by major international artists. If the decision is upheld this would demonstrate the Brazilian judiciary's commitment to effective anti-piracy enforcement.



In addition to the commercial physical piracy problem faced by the Brazilian music market, illegal downloading of music files through P2P international networks seems to be growing at an alarming rate.

Research by IPSOS in March 2006 shows that one billion songs were downloaded illegally in 2005 in the country. This combination of internet and physical piracy poses a massive and continuing threat to the legitimate music industry in Brazil. The legal market saw a drop of 19.5 per cent in units and 13.4 per cent in local currency sales in the course of 2005.

### Priorities:

- ⊗ Continue to implement the National Plan Against Piracy including additional actions in the major markets of São Paulo and Rio de Janeiro;
- ⊗ Continue to take actions to prevent the smuggling and illegal importations blank CD-R's and DVD-R's;
- ⊗ Implement anti-piracy Education Campaigns.



## CANADA

Legitimate online services have struggled in the face of outdated copyright laws and the resulting widespread digital piracy. It is estimated that more than one billion music files were swapped online in Canada in 2005.

The Canadian government has a key role to play to address the threat to the country's cultural and creative economy. Canada has yet to fulfill its longstanding commitment to ratify the 1996 WIPO Treaties to protect digital copyright. The Supreme Court of Canada, in a landmark case on online music, lamented that Canadian courts will continue to "struggle" to apply outdated copyright laws until Canada ratifies the WIPO Treaties.

The Organisation for Economic Co-Operation and Development ("OECD") reports that Canada has the highest per capita incidence of unauthorised file swapping in the world. Consequently, digital music sales account for less than three per cent of recorded music revenue, compared to an average of six per cent across the developed world.

For Canada's music industry, the rise of file swapping has coincided with a 42 per cent – or CAD\$558 million – decrease in annual retail sales between 1999 and 2005 and a 20 per cent loss in employment. National surveys revealed that of those Canadians spending less on music products, by far the largest single reason cited was downloading/file sharing/CD burning.

The cause of the underperforming digital market is clear from the experience of Canadian artist Jilly Black. Ms. Black witnessed 2.8 million illegal file swapping requests for her music in the first two weeks of her album's release in 2005, while she struggled to sell 15,000 copies of the same album.

Physical piracy has also played a part, with inadequate enforcement resources and lax border controls allowing the infiltration of pirated physical products.

Canada's failure to take effective steps to control digital and physical piracy has raised international concerns. The United States Trade Representative (USTR) has placed Canada on an international Watch List in 2006, and the United States will conduct an Out-of-Cycle Review to monitor Canada's progress on intellectual property rights (IPR) issues under the leadership of its new government. The USTR reports that "key areas for action include the ratification and implementation of the WIPO Internet Treaties," "amendment of the copyright law to provide adequate and effective protection of copyrighted works in the digital environment," and improvements to Canada's IPR enforcement system, including addressing weak border measures that allow international trade in pirated products.

The Canadian Recording Industry Association (CRIA) has called on the Canadian government to adopt updated copyright laws, comparable to those of Canada's global competitors, and in accordance with international treaties. It has commissioned research that illustrates the clear damage that illegal file swapping is doing to Canada's copyright industries and the widespread support among Canadians for modernising Canada's copyright laws, and it has launched a national campaign to protect and promote 'products of the mind'.

Eight years after committing to prompt WIPO Treaty ratification, the outgoing Canadian government finally introduced legislation to do so in the summer of 2005. The bill died when an election was called last autumn. The new Heritage Minister has publicly stated Canada's commitment to ratification of the WIPO treaties.

**Priorities:**

- ⊗ Modernise copyright laws to protect copyright in the digital age and ratify the WIPO internet treaties;
- ⊗ Educate Canadians about the importance of intellectual property rights and the dangers of illegitimate P2P services;
- ⊗ Strengthen border enforcement and provide additional resources and training to customs officers and domestic law enforcement personnel.

## CHINA

Physical piracy levels in China continue to be among the highest in the world, with over 85 per cent of the units sold in the market being pirate.

Digital piracy is progressively worsening as the number of internet users increases and broadband penetration rises dramatically. In 2005 alone over 10 million broadband lines were added in China according to Point Topic, making it the second biggest broadband market in the world after the US, which establishes the potential for a booming legal digital market but also for more online piracy.



Such piracy is driven by hundreds of websites offering streams, downloads or links to unauthorised song files and the seven or so specialised 'MP3 search engines' that offer deep-links to thousands of infringing song files for instant download or streaming. The largest of these search engines is Baidu, which has been sued by the international record companies in Beijing.

There are also at least eight Chinese-based P2P services assisting in large-scale illegal file-sharing. Most of these illegal sites or services offer songs for free, generating income from advertising and other services. China has sent public signals in 2005 and 2006 indicating a willingness to address its rampant piracy problem – they need to be translated into a meaningful change on the ground through a programme of sustained enforcement.

The recording industry in China has sent out more than 1,500 warning notices to ISPs calling for them to take down illegal sites; a further 10,000 notices to remove infringing files and has filed more than 80 civil suits against internet pirates since 2003.

It has increased anti-piracy action by assisting the authorities with raids and the seizure of pirate music CDs. Such enforcement actions in 2005 helped lead to the closure of six CD plants and suspension of business licences of eight others. This will hopefully be the foundation of a more fruitful long-term partnership.

To date, there have been few criminal cases brought against music pirates and the penalties are far too low. The profit requirement in the criminal code and the high thresholds for applying criminal penalties also make it difficult or even impossible for criminal action to be taken against pirates.

**Priorities:**

- ⊗ Take criminal actions against infringers, both for physical and internet piracy, with severe sentences imposed;
- ⊗ Remove the profit requirement and high thresholds for taking criminal action;
- ⊗ Simplify censorship regulations so that legitimate releases are not held up while their pirate clones have easy and immediate access to the market;
- ⊗ Allow foreign record companies access to the market so that they can assist in the fight against piracy by providing legitimate products in a timely manner, to the Chinese market.

## GREECE

Greece's piracy problem largely takes the form of pirate CD-Rs being sold by street vendors many of whom are illegal immigrants. The physical piracy rate is around 50 per cent, with local and international repertoire being hit, while internet piracy is also a rapidly growing problem.

The industry is stepping-up its own anti-piracy efforts in Greece. Investigators work with the police, providing them with information about duplication plants and distribution networks, identifying pirated products and testifying for them in court.



The Greek industry also works with the Ministries of Culture, Public Order, Justice and Commerce, the Hellenic Police, the Fiscal Police and the Judges Association on behalf of the creative community.

Greece's Ministry of Public Order and the police are cooperating in the fight against piracy. Last year, the Hellenic Police arrested more than 2,000 people for copyright crimes in nearly 2,000 raids.

Yet these actions are undermined by the leniency of the Greek judicial system and the insufficient application of Copyright Law provisions in the courts. The Fiscal Police also remain largely inactive in the fight against music piracy.

**Priorities:**

- ⊗ Introduce substantial deterrent penalties for infringers. Criminal records should be updated more quickly and notices of arrests and convictions sent to the immigration authorities;
- ⊗ Introduce thorough spot checks by the Ministry of Commerce on people employed in the black market;
- ⊗ Impose administrative fines for both buyers and sellers of pirate music products using the Fiscal Police;
- ⊗ Tighten its border controls and step-up the monitoring of organised crime rings which are largely using illegal immigrant labour. Illegal immigrants who commit copyright crimes should be considered for deportation;
- ⊗ Apply the strict tax audits it applies to Greek nationals to all workers in the country.

# PRIORITY COUNTRIES



## INDONESIA



Physical music piracy is endemic in Indonesia with rates at nearly 90 per cent. There are more than 40 CD plants in the country and nearly half of them are not even registered with the Ministry of Industry as required. At the same time, large numbers of illegally imported discs from Taiwan are in circulation in the country.

The government has shown it understands the problem at a conceptual level and is showing some promising signs of stepping-up enforcement. However, this has yet to translate into real changes on the ground. IFPI is training local authorities to enforce their new powers under the Optical Disc Law. This initiative has included recent sessions in Jakarta, Yogyakarta, Surabaya and Batam.

Unfortunately, central government has barely begun to get a grip on the problem. Many of the agencies and departments that deal with the piracy problem fail to coordinate on their operations and initiatives.

The Ministry of Industry has been slow at monitoring pirate CD plants on the ground and seems content to simply register and licence them – and only 24 plants are currently licensed.

The police however are stepping-up their anti-piracy activity in many areas. In late 2005 Jakarta police undertook raids against high-profile targets, such as the most notorious shopping malls and markets. In one day 800,000 discs were seized from two major malls.

In a concerted raid on street vendors in February 2006, the Polda Metro Jaya Police arrested more than 200 people on various copyright infringement charges and seized in excess of a quarter of a million discs of all formats.

The police have tended not to cooperate with the industry in these raids, although they are willing to consider forensic evidence from IFPI to initiate or support enforcement action. They have also requested further training in the recognition of pirate product and evidence handling procedures.

In March 2006, the long-anticipated Intellectual Property Task Force was finally established by presidential decree. It is hoped that this will provide the coordinated response to intellectual property enforcement that has been lacking so far from the Indonesian government.

There is no doubt that Indonesia is a country wrestling with big problems, there are almost daily demonstrations in the capital, but there are signs that the authorities realise they need to clean up their act on intellectual property.

### Priorities:

- ⊗ Improve the coordination between the various ministries and agencies involved in the fight against piracy;
- ⊗ Step-up the role of the Ministry of Industry from mere registration to the enforcement of intellectual property rules;
- ⊗ Work in conjunction with the industry when conducting raids on pirate optical disc plants to help secure evidence.

## ITALY

Italy continues to have one of the biggest physical piracy problems in Western Europe, backed by organised crime. This is now compounded by increasing digital piracy, calling for stepped-up actions against illegal file-sharing and p2p operations.

CD-R and DVD-R burning are a major problem and new technology means that the manufacturing base and distribution networks are becoming harder to trace.

The Italian recorded music industry has lobbied the government to introduce legislative changes to strike back at the pirates and called for more rigorous law enforcement. Indeed successive Italian governments have tried to combat the problem, passing anti-piracy amendments to the Copyright Law in 2000, implementing the EU Copyright Directive in 2003 and issuing the Urbani Decree against anti-P2P abuse in 2004.

The Anti-Piracy Law has raised maximum fines from 1,550 to 15,500 and minimum prison sentences were increased from three to six months, although they can still be suspended. At the same time, maximum prison sentences were raised from three to four years. The government has also implemented the 2005 Competitiveness Decree which means that consumers who buy pirate goods can face a fine of up to 10,000.



Police have also stepped-up their level of enforcement with a series of raids in 2005 in which they seized a greater number of pirate products and subsequently brought an increased number of prosecutions.

The police have developed an excellent relationship with FPM (the Italian Music Industry Anti-Piracy Federation) and this has helped them be more proactive about tackling piracy than many other police forces in the world.

At the same time, some judges have begun to impose more deterrent sentences on those caught and this has led to greater publicity and subsequent public awareness of copyright crimes. There is however a real and continuing problem with the judicial system under which many prosecutions take years to come to trial.

There is no doubt though that Italy needs to go further to crackdown on the organised gangs that are running much of the pirate music trade in the country.

### Priorities:

- ⊗ Incorporate meaningful deterrent sentencing for copyright crimes into the Italian judicial system;
- ⊗ Educate judges about the serious nature of breaking intellectual property rules and the network of criminals behind the physical pirate music trade;
- ⊗ Continue its high-profile police crackdowns against gangs engaged in the pirate music trade and illegal P2P networks.

## MEXICO

Music piracy in Mexico is a problem of alarming proportions. Independent research shows that 108 million pirate products were sold last year compared to 67 million legitimate products. The number of pirate stands remained constant at around 50,000. Anti-piracy campaigns in Mexico City, Guadalajara and Monterrey saw the number of stands reduced, but the number increased in areas that only see sporadic anti-piracy action, such as much of the south of the country.

Internet piracy is also beginning to gain ground. Independent research by IPSOS showed that 570 million songs are downloaded illegally every year. More than 60 per cent of illegal downloaders accessed their music at internet cafes and at least 40 per cent of them said they downloaded music to burn onto a CD-R.

The industry is working with the government who seem committed to turning the tide against piracy. The seizure numbers for 2005 reflect this ongoing partnership. The total number of optical products seized reached 33 million units, while at the same time more than 7,000 burners were taken out of circulation and 25 people were convicted of copyright infringing offences. These seizures were the result of campaigns that were limited to Mexico's major cities, due to the limited funding that was available to the Attorney General's Office.

In addition to these actions, the industry is working with local and regional government on a special project in Guadalajara called 'Mexico Plus' (see page 9). The scheme combines intense enforcement, lobbying and communicating with consumers.

### Priorities:

- ⊗ Allocate enough resources to the Attorney General's Office to run a nationwide enforcement campaign;
- ⊗ Secure approval for a bill in Congress that provides for ex officio actions in cases of piracy;
- ⊗ Introduce a bill that would eliminate the "for profit" requirement in cases of piracy to crackdown on illegal file-sharing;
- ⊗ Urge municipal authorities to copy Guadalajara's successful license revocation campaign for the vendors of pirated product;
- ⊗ Develop education campaigns in schools and colleges that address the detrimental effects and legal risks of copyright infringement.

## RUSSIA

Russia has the world's second biggest physical pirate market and is also host to a number of copyright infringing websites, such as allofmp3.com, that are hurting the music industry in Russia and internationally.

The country has 56 active optical disc plants and mastering facilities that can make almost 700 million discs per year, a figure that is substantially higher than the overall legitimate domestic demand. Not surprisingly, counterfeit music CDs made by 21 of these plants have been found in 27 countries over the last three years.



At least nine plants are located in restricted access regime enterprises ('RARE'), which are state-controlled enterprise zones. In 2005, the Russian trade minister German Gref acknowledged that there may actually be as many as 18 of these plants in RARE sites. While plants are regularly raided, none of their owners have ever been convicted and only conditional sentences have been passed on some of their workers.

The recording industry has been involved in 41 large cases against optical disc plants and large warehouses in the past three years. Three-quarters of these cases have not been resolved as investigations have either dragged on indefinitely or been terminated on dubious legal grounds.

In the few cases that did proceed to court, no deterrent sentences were issued and only a small number of pirate CDs were destroyed. These enforcement measures clearly have not yet had a deterrent effect on reducing piracy in Russia - commercial pirates need to receive prison sentences.

There are some promising signs of a potential change in approach in enforcement. These include the participation of officials from the General Prosecutor's office and federal law enforcement agents as well as the active involvement of FSB in some raids against optical disc plants.

The new Federal Service charged with ensuring compliance with licensing regulations (Rosokhrankultura) started to use new measures against optical disc plants available

under licensing regulations. A raid in November 2005 on the Roff plant near Moscow led to a suspension of a license while a criminal prosecution proceeds.

### Priorities:

- ⊗ Appoint a coordinating body in the fight against physical and digital piracy with a senior political figure in charge of operations;
- ⊗ Take firm actions against online piracy, including the unauthorised websites selling music to consumers in Russia and abroad;
- ⊗ Step-up raids on pirate optical disc plants and follow these up with vigorous prosecutions and deterrent sentencing;
- ⊗ Make the legal process faster and more transparent to avoid the endless delays that mean pirates are free to continue their business;
- ⊗ Tighten border controls to prevent the large-scale illegal export of pirate and counterfeit discs.

## SOUTH KOREA

Internet piracy is rife in South Korea and is severely hampering the development of the legitimate music market in the country. However, there are some signs of improvement so this situation may change in the future.

With exceptionally high rates of broadband and mobile wireless penetration, South Korea has become one of the world's most advanced digital music markets, with high levels of online and mobile music sales but considerably higher levels of internet piracy.



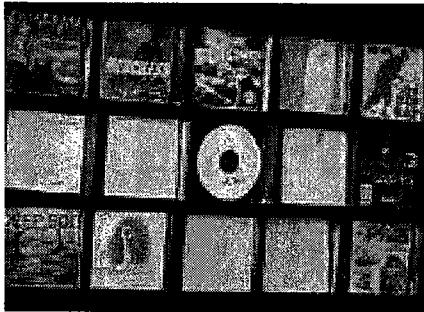
There are hundreds of websites offering unauthorised music files for download to computers or mobile devices and numerous illegal music file-sharing services. There is also widespread use of music on blog sites and other streaming services.

# PRIORITY COUNTRIES



New technology has allowed the growth of a number of digital broadcasting services (DMB) that transmit high-quality music videos to mobile phones via satellite without the right holders' permission. Record producers gained a victory in 2005 when they were granted exclusive transmission rights in a new copyright law.

In April, the National Assembly passed the Music Industry Promotion Act, which aims to regulate service providers offering music on the internet.



In August 2005 the courts granted an injunction against Soribada, the largest local P2P service in Korea, leading to the complete shut down of the service towards the end of the year.

Despite this progress, the South Korean government's enforcement actions against internet pirates remain sporadic due to the lack of a centrally coordinated enforcement agency with the power and resources to deal effectively with infringements.

There have been proposals to amend the Copyright Law but these do not go far enough to address the concerns of the record industry with regard to challenges posed by internet piracy and the unauthorised DMB services. The passage of an effective copyright amendment bill has been stalled in the National Assembly for the last year.

## Priorities:

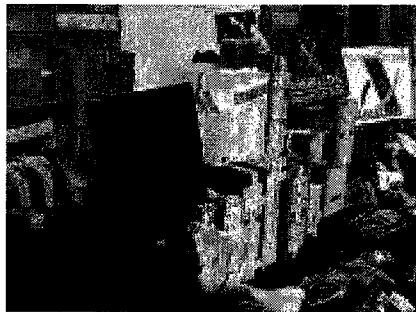
- ⊗ Set up an effective enforcement framework to address internet piracy by working with the industry to enforce the Music Industry Promotion Act;
- ⊗ Amend the Copyright Law to effectively protect the rights of the recording industry in the digital era.

## SPAIN

Spain's piracy rate remains unacceptably high for the sixth consecutive year. Major police activity helped contain physical piracy, but internet piracy is continuing to spiral.

By February 2006 more than four million homes were connected to broadband services, sadly many were being used to obtain music illegally rather than purchase music online. Over the course of 2005 there were more than 500 million illegal downloads in Spain. A combination of new technology and police crackdowns on physical counterfeiting is driving music piracy onto the internet.

Physical piracy is far from dead however. A new class of 'entrepreneurs' has emerged in the last few years, mainly from China and Taiwan, who specialise in the import of illegal recordable CDs and DVDs. These pirate traders, whose companies often give the appearance of being legal, have imported 230 million units of counterfeit product and are using the profits from selling them to fund other serious crimes.



The music industry has been working with the government and other elected representatives to promote policies to curb music piracy. The resulting Integral Plan to combat this problem involves eleven ministries and is coordinated by the Ministry of Culture. It covers the legal, judicial, police, training and educational aspects of the fight against piracy.

A series of raids across Spain, of which Operation "Madrid Plus" was the flagship, saw the authorities take more than 15,000 actions and seized nearly 5.5 million carriers and 3,577 CD and DVD burners. Nearly 3,500 people were arrested by the police for copyright related offences. The streets of Madrid were largely clear of counterfeit products by the end of 2005 for the first time in a generation.

The industry wants an amendment to the Intellectual Property Law to take into account technological developments and close loopholes that have permitted digital piracy to flourish.

The General Prosecution Office has sent a Notice addressed to all Spanish prosecutors setting out the considerations of how to apply the penal code in the case of offences against intellectual property.

This recent notice has been strongly criticised by the music and film industries as they consider it to be flawed, especially with regard to prosecuting internet piracy. These industries are requesting the General Prosecution Office to change its approach and combat these types of cyber offences much more effectively.

## Priorities:

- ⊗ Continue high-profile anti-piracy campaigns such as operation "Madrid Plus" to drive counterfeit products from the streets;
- ⊗ Amend intellectual property laws to close the loopholes that have allowed digital music piracy to flourish;
- ⊗ Support the industry's legal action against mass file-sharers who are illegally distributing copyrighted material on the internet and educate consumers about the perils of illegal P2P networks.

**“Creative genius has been part of Spain's identity throughout its history. For this reason, the battle against illegal activities that threaten this cultural richness is extremely important.”**

**Carmen Calvo,  
Spain's Minister of Culture**





## BULGARIA

Internet piracy in Bulgaria is rising sharply and physical piracy remains a serious problem with pirate CDs easily available in all the country's major cities. This widespread copyright crime is severely hampering the growth of the legitimate music industry in Bulgaria.

A key issue is that Bulgaria's criminal code does not outlaw the possession of pirated materials for commercial purposes.

Prosecutors and courts consistently refuse to treat copyright offences as serious crimes. The legal process is long and drawn out with unjustified delays permeating a system that lacks transparency. When a few cases have made it through to final judgement, the authorities have failed to issue deterrent sentences.

Bulgarian courts require cumbersome proof requirements, including demands for expert opinions on infringement that only one understaffed and under-equipped government agency (the Copyright Office of the Ministry of Culture) is allowed to provide.

Another major problem is the lax enforcement of Bulgaria's optical disc plant licensing system. The legitimacy of foreign orders for optical disc manufacturing is not properly verified by the authorities.

A new optical disc law, passed last year, failed to include key amendments proposed by several copyright industry sectors to strengthen the framework of Bulgaria's intellectual property rules. As a result, the capacity of Bulgaria's optical disc plants continues to grow without any apparent commercial justification.

While the overall level of music piracy is estimated at 65 per cent, piracy of foreign repertoire in Bulgaria stands at a staggering level of 80 per cent, inflicting millions of dollars in damages on the legitimate industry, which is barely able to survive in the country.

The pirate music business is, like many other industries in the country, run by organised criminal syndicates. Bulgaria's trading partners should continue to exercise strong pressure until the rule of law is effectively applied in the country.

The government has proposed to amend the law to address the fact that the possession of pirated materials for criminal purposes is not illegal. It has also recently launched a number of raids connected with internet piracy. These are signs of a recent improved positive attitude from the authorities, but there is clearly a long way to go before Bulgaria has a stable framework for intellectual property rights.

### Priorities:

- ⊗ Amend the criminal code to outlaw the possession of pirated materials for commercial purposes;
- ⊗ Educate judges and prosecutors about the impact of copyright crime to ensure they take such cases seriously;
- ⊗ Reform the judicial system to make it more transparent and remove some of the more cumbersome proof requirements;
- ⊗ Tighten regulation of optical disc plants.

## PAKISTAN

Pakistan was until recently one of the largest exporters of pirate discs in the world with an estimated 230 million discs exported in 2004 alone.

At that time, there were nine known optical disc manufacturing plants operating in the country. With annual local legitimate demand estimated at less than 30 million units in all formats, the vast majority of what Pakistan produced was exported. Illegal discs were also found in neighbouring countries as well as Europe, Africa and the USA.

Pakistani piracy affected both domestic and international repertoire and included numerous pre-releases. Pre-release piracy is particularly damaging to the music industry as it affects the most important phase in the lifecycle of a sound recording.

There have been recent positive developments however. The government took action against optical disc plants in May 2005. In a wave of raids, the Federal Investigation Agency (FIA) arrested nine people, seized 400,000 pirate discs and more than 11,000 stampers and closed down five plants.

The Central Board of Revenue issued a directive requiring customs officers to inspect every shipment for export to ensure it contains only Pakistani repertoire. The customs authorities of Karachi enforced this directive and pirate exports were temporarily disrupted.

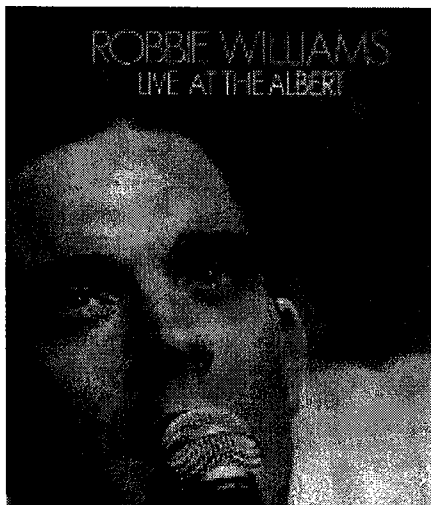
Seizures at transshipment points, such as Dubai airport, however revealed that the smuggling of discs in hand luggage and courier services continues. In total more than 900,000 pirate optical discs were seized during 2005.

The authorities have demonstrated clear political will to act against IP infringement. The raids had a marked effect with a drastic reduction in the availability of industrially manufactured pirate optical discs. Pressure must be maintained to ensure the progress made is sustained.

Shortly after the raids several plant owners, with their financial muscle and political connections, formed a political lobby which would test the resolve of the authorities and place judges and the FIA under pressure to ease the current pro-active enforcement regime. Their objective is to resume massive production, which, if permitted, would once again put Pakistan among the top of pirate optical disc source countries.

### Priorities:

- ⊗ Pass a comprehensive optical disc regulation to ensure that Pakistan is never again transformed into a pirate optical disc production haven;
- ⊗ Ensure the effective prosecution and sentencing of the plant operators who currently face indictment;
- ⊗ Clamp down on widespread retail piracy in order to finally create a level playing field for the legitimate music industry;
- ⊗ Maintain and expand high-profile customs operation directed against the covert export of pirate and counterfeit optical discs;
- ⊗ Resist the pressure from counterfeit and pirate plant owners to relax the current pro-active enforcement regime.



Pirate product found in Bulgaria

# SPECIAL FOCUS COUNTRIES



## TAIWAN

The rate of physical piracy in Taiwan has continued to drop since 2002, but online piracy continues to grow relentlessly.

In 2005, the physical piracy rate was 26 per cent. This was accounted for by the traditional stalls in the country's night markets, often staffed by minors to avoid arrest by the police, as well as the growing illegal home delivery services.

The internet has become a major source for the acquisition of music, both illegally and through legitimate services. Infringing music files are available in various formats including MP3, midi, WAV and RAM through a variety of channels including FTP sites, streaming sites and P2P file-sharing services.

The police launched criminal actions against two of the largest P2P services, Kuro and EzPeer. Kuro and its principal directors were initially found liable for criminal infringements and both cases are now at the appeal stage.

IFPI raided more than 20 large illegal music sites between May 2004 and March 2006, including one which provided around 500,000 songs for illegal downloading. Unfortunately, the law does not require ISPs to take down illegal websites and rights holders have no power to force them to cooperate if they are reluctant to do so.

The government is taking copyright crimes more seriously than in the past. It declared that 2005 was 'Internet Anti-Piracy Year' and also stepped-up enforcement against physical piracy in the notorious night markets. Its actions against stallholders reduced the number of operations to 50 across the country and these were largely run by organised gangs who put minors in charge of them to evade police arrest.

### Priorities:

- ⊗ Press ahead with reforming the Copyright Act and tighten loopholes in the law regarding P2P networks;
- ⊗ Continue to firmly police the night markets and break-up the organized gangs behind the pirate music stalls;
- ⊗ Reform the law to oblige ISPs to block access to illegal websites.

## UKRAINE

There has been some progress made against physical piracy in Ukraine, but recently digital piracy has revealed itself as a major problem. Estimated piracy levels for international recorded music are around 60 per cent. The resulting loss to the legitimate industry is around US\$35 million.

Law enforcement agencies have not succeeded in cleaning up the many pirate street selling points or the massive open air markets, such as the Petrovka Market in Kiev where more than 300 stands are selling illegal material.

Ukraine hosts at least seven optical disc plants with an estimated annual capacity of around 100 million units. The legitimate demand for discs in Ukraine is less than one-third of that amount. Ukraine's inability to properly control these plants means that production of unauthorised material will continue in the near future.

In 2005 the copyright sector's lobbying campaign paid off and the government adopted significant amendments to its optical disc laws, improving the legal tools of its enforcement regime.

The government also announced it would enhance its cooperation with the copyright industries on intellectual property enforcement in a move that will include joint surprise inspections of all optical disc plants on a regular basis.

This partnership is also expected to provide private sector experts with access to the state's optical disc production depository, which has two exemplars of each optical disc production run that took place in the licensed plants in Ukraine since 2003. These initiatives should improve legal production and distribution of optical media material in Ukraine.

The government still needs to improve effective criminal enforcement against copyright theft. Concrete results evidenced by a measurable reduction in piracy are sorely needed. These improvements are also necessary for Ukraine to fully comply with the TRIPS obligations of the World Trade Organization.

### Priorities:

- ⊗ Take action against the pirate stalls on street corners and in open air markets;
- ⊗ Use the new enforcement rules to crackdown on pirate optical disc manufacturers;
- ⊗ Train prosecutors and judges to understand the implications of copyright crime and urge them to push for tougher sentences;
- ⊗ Improve border controls to stop the illegal export of counterfeited materials.

**“The ideal way of educating people about intellectual property is to start teaching it to students in schools.”**

Zayin, Taiwanese rock band



Pirate product found in Ukraine

# THE CALL TO GOVERNMENTS



Piracy and counterfeiting are not just a problem for the music industry – virtually every sector from pharmaceuticals to clothing has been hit by this criminal activity.

Piracy results in job losses, undermines creativity and deprives governments of tax revenues.

Adequate intellectual property rights and effective enforcement are the bedrock of a modern economy. Above all, deterrent penalties, effective prosecutions and education are key areas for governments.

Governments can take effective action and work with the music industry to turn the tide against piracy. This involves:

## **Ensuring Deterrent Penalties for Copyright Crimes**

Copyright crimes should be treated on a par with other criminal activity such as theft, fraud and trademark infringement. In most cases even the most serious copyright crimes are penalised with fines and rarely ever with a custodial sentence. Governments must ensure that deterrent penalties are available and awarded for criminal infringements of copyright. Otherwise, criminals will accept the possible monetary penalties as a cost of doing business.

## **Investing Resources to Enforce Intellectual Property Laws**

Intellectual property violations are too often seen as 'victimless crimes'. In fact, the victims include the artists, other rights holders, governments and civil society itself which is damaged when the law is flagrantly ignored.

Governments need to direct resources to tackle these crimes and ensure perpetrators are brought to court to face charges. Appropriate resources include specialised courts and enforcement units, as well as customs officers who are able to spot infringing goods and liaise with rights holders.

IFPI works with many government agencies around the world to run education programmes and is always keen to talk to governments about helping them with this vital work.

## **Making Sure the Civil Court System Works**

In cases where infringement of intellectual property rights is dealt with by the civil courts, governments need to ensure that system works fairly for rights holders. In particular, sensible presumptions of copyright ownership should apply and deterrent damages should be awarded. In many countries legal proceedings are too slow. The record industry can help governments train judges and provide the background on the private sector involvement in the enforcement of rights.

## **'Joined-up' Anti-Piracy Campaigns**

Where there are several different government departments and agencies involved in the fight against piracy there is often a lack of effective communication. Governments should appoint a strong leading agency to coordinate anti-piracy activities with the political will to drive through successful campaigns.

## **Enforcing Regulation of Optical Disc Factories**

Too many countries have optical disc manufacturing capacities that far outstrip demand from their legitimate markets. Governments in many cases do run a licensing scheme and promote good business practices, but they do not enforce these programmes on the ground and in many cases licensed plants are churning out pirate material year-after-year. It is time these countries enforced their rules.



## **Updating Intellectual Property Laws**

Many countries still have vinyl-era copyright laws in a digital age. They need to update their rules for the protection of copyright to ensure that loopholes are closed. Governments need to ratify and implement international copyright treaties, including the World Trade Organisation (WTO) TRIPS agreement and the World Intellectual Property Organisation (WIPO) Treaties. Such measures will help secure the long-term development of the knowledge economy in their countries.

## **Educating the Public About the Importance of Copyright**

Copyright is a long-standing concept that promotes creativity and underpins sustainable economic growth but is still widely misunderstood. Governments could follow the recent example of the Attorney-General of Australia who used his role as a platform to explain the vital importance of copyright to his country's economy. The Finnish government provides schools with packs that they use to teach children about copyright. Other governments should put copyright on the curriculum.

## **Getting Cooperation From Internet Service Providers (ISPs)**

ISPs have a key role to play in counteracting web-based piracy. In most customer contracts it clearly states that users will be cut off if they infringe copyright regulations. In practice this has happened in all too few cases. Governments should remind ISPs of their responsibilities and enshrine this "cut off" clause in legislation in territories where it is not already legally binding.

Many governments are acting. EU countries adopted a Customs Regulation to stop pirated and counterfeited goods at the EU borders and a Directive listing the minimum set of civil measures that have to be available to enforce intellectual property rights.

Other governments should engage in active partnerships with the creative industries to help secure the long-term health of their economies. The music industry is a sector that promotes culture, provides jobs and brings pleasure to billions of people. It only asks for a fair legal framework properly enforced under which it can continue to survive.

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