

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301

SPECIAL MENTION

BRUNEI

Piracy and Enforcement: While having one of the highest per capita incomes of any country in the developing world (purchasing power parity \$23,600 as of 2003), the small country is still dominated by piracy, as approximately 90-95% of the home video and music markets appear to be pirate. It is estimated there are between 75 and 200 retail shops selling pirated optical disc media in fixed locations throughout Brunei, though the largest are clustered primarily in the Bandar Seri Begawan metropolitan area. Forty-six of these outlets have been identified selling pirated audio products. DVDs appear to have been imported from Malaysia and Pakistan, while invariably all of the VCDs are locally burned CD-Rs. Certain titles are offered in the same shop in three different formats: cellophane sleeved CD-Rs for B\$3 (approximately US\$1.80), boxed DVD-5s offered for B\$8 (approximately US\$4.90) and high-quality deluxe packaged DVD-9s for B\$20 (approximately US\$12). New compression technologies have resulted in two-title (2-on-1), three-title (3-on-1), or even four-title (4-on-1) DVD compilations becoming more common.

While Brunei has an adequate copyright law for enforcement purposes (see below), the government's resources are limited, as there are presently only seven officers in the Commercial Crime Unit for all of Brunei. There is virtually no enforcement, and little political willingness in Brunei to conduct enforcement actions, despite the fact that the Police can technically take actions *ex officio* as well as *ex parte* under the law.¹ However, despite assurances of support, the Bruneian authorities have shown reluctance to undertake criminal enforcement actions even when complaints have been made. After extensive liaison with the Police and Attorney-General's Office throughout 2005, coordinated efforts by the motion picture and recorded music industries to undertake joint raids against identified targets were effectively compromised by unduly excessive delays and the suspected leakage of information to the targets, all of whom were either closed or cleared of pirate product by the time the warrants were effected.

Copyright Law and Related Issues: The Emergency Copyright Ordinance (2000). Copyright Ordinance, modeled on the 1988 UK Act, took effect May 2000, and addresses key WCT/WPPT issues (e.g., it provides protection for temporary copies, a WIPO treaties-compatible definition of "communication to the public" including the "making available" right, and prohibitions against trafficking in circumvention devices which partially, but not fully, implements the WCT and WPPT requirements). The enforcement provisions, while not perfect, are adequate to combat copyright piracy, including civil and criminal remedies and the confiscation and destruction of infringing equipment and materials. Brunei has a censorship law

¹ There have been instances in which industry has tried but been thwarted in achieving positive enforcement action from the Bruneian authorities. Industry representatives have repeatedly been assured that raids could be taken *ex officio* and on an *ex parte* basis (without notice to the defendant), however, on certain occasions, it turned out the Police would not act without the laying of a complaint, and uncertainty expressed by authorities about whether raids can be taken on an *ex parte* basis, and delays and mistakes in warrants have led to unsuccessful actions (i.e., leaks occurred, and product had been cleared from the shelves before investigators arrived). These examples demonstrate a general lack of understanding about the laws and will on the part of Police to run successful enforcement in Brunei.

administered by the Board of Review which empowers the Board with *ex officio* authority to impose severe penalties against guilty offenders; however, the law is presently limited to films (and other works/performances) that are intended for public exhibition and does not presently extend to home video products.

Unfortunately, the Electronic Transactions Order, 2000 provides a near-total exemption from civil or criminal liability for a service provider that provides infringing materials over its services. Under § 10 of the Order, “A network service provider shall not be subject to any civil or criminal liability under any rule of law in respect of third-party material in the form of electronic records to which he merely provides access if such liability is founded on ... the infringement of any rights subsisting in or in relation to such material.” Section 10 leaves open the possibility of a contractual arrangement to take down infringing materials, or a “written law or by a court to remove, block or deny access to any material.” While the Internet is still in its relative infancy in Brunei, the Order does not create adequate incentives for service providers to cooperate with right holders in upholding their digital rights. The Order should be amended to provide notice-and-takedown.