

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2008 SPECIAL 301 REPORT

BRUNEI DARUSSALAM

Special 301 Recommendation: Brunei Darussalam should be placed on the Watch List.

EXECUTIVE SUMMARY

While having one of the highest per capita incomes of any country in the developing world (purchasing power parity \$25,600 as of 2005),¹ piracy still dominates the small country. The music piracy rate stands at approximately 99%, while the home video piracy rate has been 90-95%, meaning almost all copyright product sold in the markets is illegal. Both factory optical discs and “burned” CD-Rs are readily available throughout the country. Of great concern, pirates in Brunei now produce discs for export, transported by road to Sarawak, Malaysia (on the island of Borneo). Brunei boasts Internet penetration of 47%, thus, the problem of Internet piracy may loom on the near horizon.

PRIORITY ACTIONS FOR 2008

- Have Commercial Crime Unit (CCU) commence sweep of the pirate retail market, including *ex officio* and *ex parte*, and develop responsive core of officers to industry concerns and complaints lodged by right holders.
- Have Attorney General’s chambers, in conjunction with CCU and Police, develop target cases for court, including targeting most commercially damaging pirate activity.
- Amend Electronic Transactions Order (2000) to provide adequate incentives for service providers to cooperate with right holders in upholding their rights in the online and digital environments, including notice-and-takedown, and preserving liability should third parties fail to cooperate with right holders or otherwise facilitate infringement.

Based on data available to industry, trade losses to the recording industry in 2007, due to copyright piracy in Brunei, are estimated at roughly US\$150,000.

PIRACY AND ENFORCEMENT UPDATES IN BRUNEI

Pirated optical discs containing music are openly offered for sale in retail outlets (46 retail outlets have previously been identified selling pirated audio products). Local (Malay) and international repertoire are widely available in the music stores in Brunei, and as a result, local record companies in Brunei report no revenue – a completely lost market due to piracy and lack of enforcement.

It is estimated that there are between 75 and 200 retail shops selling pirated optical disc media in fixed locations throughout Brunei. The largest are clustered primarily in the capital, Bandar Seri Begawan, and its metropolitan area. Pirate DVD-Rs and VCDs are locally “burned” on recordable discs. Certain titles have been 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). 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.

¹ See World Factbook, Brunei, at <https://www.cia.gov/library/publications/the-world-factbook/geos/bx.html>.

Brunei boasts Internet penetration of 47%, as 176,000 of its nearly 375,000 inhabitants now have Internet access (a nearly 500% growth rate over the past seven years),² and 15,347 separate Internet hosts (2007 data).³ Thus, the problem of Internet piracy may loom on the near horizon.

While Brunei has an adequate copyright law for enforcement purposes (see below), the government's resources are limited, as there have been only seven officers in the CCU 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.⁴ 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 leak of information to the targets, all of whom were either closed or cleared of pirate product by the time the warrants were put into effect.

COPYRIGHT LAW AND RELATED ISSUES

Copyright Ordinance: The Emergency Copyright Ordinance (2000), 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 content review law 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.

Electronic Transactions Ordinance: 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 Section 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 (broadband penetration in Brunei remains relatively low, with the Authority for Info-communications Technology Industry, AiTi, reporting that as of June 30, 2007, there were only 11,181 broadband Internet connections), 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.

"P-4" Negotiation: On February 4, 2008, USTR announced that the United States would join negotiations on two sectoral areas (investment and financial services) in March 2008 among Singapore, Chile, New Zealand, and Brunei, known as the "P-4" group of countries. The United States also

² See Internet World Stats, at <http://www.internetworldstats.com/stats3.htm>. These statistics are up-to-date as of November 30, 2007, are based on Census Bureau data, while usage numbers come from various sources, mainly from data published by Nielsen/NetRatings, ITU, and other trustworthy sources.

³ See *supra* note 1.

⁴ 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.

announced that it would “begin a detailed exploratory process to determine whether it should participate in the full Trans-Pacific Strategic Economic Partnership.” If it does so, opportunities will arise to introduce intellectual property standards similar to those included in the various free trade agreements (FTAs) entered into between the United States and several trading partners, including Singapore and Chile. IIPA supports this process, and hopes that the government of Brunei (as well as that of New Zealand) will be prepared to negotiate FTA standards on intellectual property (similar to those in force in Singapore and Chile). IIPA expects that the IPR texts in these agreements will follow the high standards already in place in the FTAs negotiated to date.