

the recording industry

# commercial<sub>2004</sub> piracy report



representing the  
recording industry  
worldwide



Commercial piracy of physical formats once again plagued the recording industry in 2003, accounting for an estimated US\$4.5 billion in illegal sales worldwide.

This illegal music trade is feeding the profits of international organised crime syndicates who are involved in drugs, money-laundering and other criminal activities (see pages 5-6). It is costing governments hundreds of millions of dollars in tax revenues. It is deterring companies in intellectual property related businesses from investing in countries they fear are not adequately protecting their intellectual property rights.

It is also destroying – indeed in large parts of the world *has destroyed* – local music cultures, local record companies and the careers of local musicians. This is particularly true of the developing world where, because of the failure to enforce intellectual property rights, countries that once bred international stars now find it hard to develop successful artists even at a local level.

Commercial piracy, contrary to what commentators mistakenly think, is just as important a problem for the music industry today as internet piracy. And in several of the music industry's very largest markets - countries with low rates of broadband penetration such as Brazil, Mexico and Russia - piracy of physical discs still dwarfs its internet equivalent.

In this report we highlight ten priority countries whose governments need to take firm action against commercial music piracy. The ten are chosen for their consistent failures in anti-piracy enforcement, and yet even among these countries there are some encouraging signs which help as models for action internationally.

At the time of publication, a Congressional Commission in Brazil has produced a damning assessment of piracy in Brazil, exposing the web of crime and corruption allegedly extending through government and civil service. The report is a big step forward in a country whose once vibrant music industry has been decimated by piracy. It now needs a decisive government response. Spain, Europe's fastest-growing piracy problem country in recent years, has made good progress in enforcement and legislation – but more needs to be done given its stubbornly high levels of CD-R piracy. Meanwhile, Poland's implementation of a good optical disc law

regulating CD plants has seen that country move out of the top ten priority territories. It is replaced in the list by Pakistan, a new piracy hotspot as a result of massive exports of unauthorised optical discs.

The stakes in this fight are far greater than just the health of the US\$32 billion recording industry. A huge entertainment and media sector worth US\$1 trillion, depends on governments enforcing proper laws, policies and practices in the area of intellectual property rights.

This report documents what the industry is doing, often with a lot of success, to fight piracy. It is impossible, however, to win this battle without very decisive support from governments. Governments of countries identified in this report need to take note of the recommendations. In

**“This illegal music trade is benefiting international organised crime.”**

addition, it is critical that the international community steps up pressure on those countries which are failing to meet international standards of intellectual property protection and enforcement. Piracy is emphatically a cross-border problem that requires cross-border, inter-governmental solutions.

In 2004, our industry's anti-piracy priorities are better enforcement, more education, effective optical disc laws proper deterrent sentencing and stepped-up international pressure on laggard countries. It is overwhelmingly in the interests of those governments' economies and cultures that they take action now.

A handwritten signature in black ink, appearing to read 'Jay Berman'. The signature is stylized and fluid.

Jay Berman

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# 2003 piracy statistics

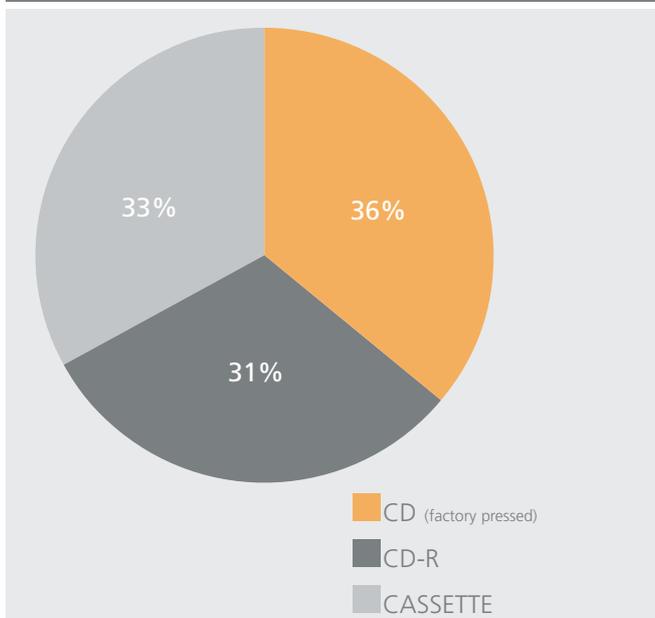
This section of the report covers illegal pirate sales of music CDs and cassettes in 2003<sup>1</sup>. This includes pressed discs, manufactured on factory production lines; CD-Rs, where music albums are copied from a variety of sources onto blank discs using CD burning equipment; and pirate cassettes.

IFPI's value estimate is based on the prices of pirate products sold around the world. It is an estimate of the value of the pirate market, and does not equate to the losses suffered by the music industry, which are likely to be far greater.

## Music piracy totals 1.7 billion units; disc piracy at a record 1.1 billion

The global pirate market for recorded music totalled 1.7 billion units in 2003. Disc piracy increased by 45 million units, a rise of 4% on 2002. The pirate cassette market fell by almost 25% as pirate discs continued to replace cassettes.

### Composition of pirate product in 2003



## Discs: 1 in 3 worldwide is pirate

An estimated 35% of music CDs sold in 2003 were pirate products. When cassettes are included, piracy amounts to 40% of all music products sold worldwide. With declining cassette sales, over two-thirds of pirate product sold is now on disc – either an illegal factory pressed disc or a CD-R copied from an original for commercial sale.



## The continuing growth of CD-R piracy:

- CD-R operations are more numerous, more concealed and more portable than CD plant operations.
- While larger CD plants focus on recordings by the major international artists which can be exported, smaller scale CD-R based operations have captured the market for domestic artists' recordings.
- Pirate music sold on CD-R tends to be slightly cheaper than the pressed disc variety, which has led to a reduction in the average price of pirate discs.

The format of pirate music products varies in different regions. Pressed discs continue to dominate the pirate disc market in Asia and Russia, but CD-R accounts for the vast majority of pirate product in Latin America, North America and Europe.

The rapid spread of CD-R piracy over the past four years has created new problems for the music industry. The duplication speed of CD-R burners has increased steadily over this period and has only now begun to reach a maximum level. CD burning machines can now burn a 74 minute disc in approximately three minutes.

### Domestic music piracy levels in 2003 (units)

< 10%	10 - 24%	25 - 50%	> 50%
Australia	Bahrain	Chile	Argentina
Austria	Belgium	Costa Rica	Brazil
Canada	Finland	Croatia	Bulgaria
Denmark	Hong Kong	Cyprus	China
France	Italy	Czech Republic	Colombia
Germany	Netherlands	Greece	Ecuador
Iceland	New Zealand	Hungary	Egypt
Ireland	Oman	India	Estonia
Japan	Qatar	Israel	Indonesia
Norway	Singapore	Philippines	Kuwait
Sweden	Slovenia	Poland	Latvia
Switzerland	South Korea	Portugal	Lebanon
UK	Spain	Saudi Arabia	Lithuania
USA	Turkey	Slovakia	Malaysia
	UAE	South Africa	Mexico
	Zimbabwe	Taiwan	Pakistan
		Thailand	Paraguay
			Peru
			Romania
			Russia
			Ukraine
			Uruguay
			Venezuela

<sup>1</sup>The rest of the report covers the period 2003 to date of publication (mid-2004)

Source: IFPI, National Groups

# 2003 piracy statistics

## Global pirate sales worth US\$4.5 billion at pirate prices

The value of the pirate market for recorded music was an estimated US\$4.5 billion in 2003, meaning that pirate sales now account for a record 15% of the legitimate music market, up from 11% in 1999. The pirate sales value in 2003 was down slightly on 2002 due to falling prices. The global pirate music market is bigger than any individual national legitimate music market except for the USA and Japan.

## Stepped-up enforcement: seizures of discs rise to 56 million

IFPI's strategy of raiding pirates at source has helped to reduce the growth in pirate product in 2003. Record quantities of discs and equipment were seized in 2003. An estimated 56 million pirate music discs – up from 13 million in 2001 - were taken, while seizures of all formats, including cassettes and music DVDs, totalled 64 million units. The vast majority of seizures were in South East Asia and Latin America.

Enforcement actions are being concentrated at the source of pirate operations, where raids and seizures can result in the confiscation of manufacturing or copying equipment, with remarkable results. In 2003, IFPI seized 12,021 CD 'stampers' – the 'master copy' used to press illicit CDs. This is six times the number seized in 2002. There was also a substantial increase in the number of CD-R burners seized – 14,745 in 2003 compared with just under 5,000 in 2002.



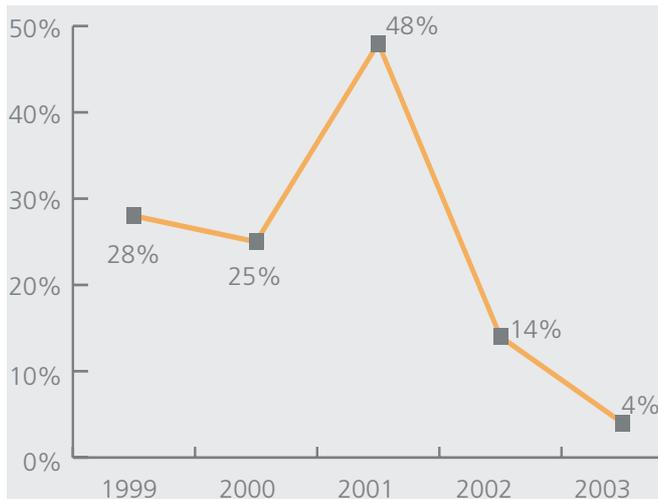
CD burning machines can now burn a 74 minute disc in about three minutes

## CD overcapacity

Rising global overcapacity for the manufacture of discs is a key factor behind the spread of disc piracy, affecting music, film and computer software. IFPI estimates that there are now approximately 1,040 optical disc plants worldwide. It is believed that around 300 new plants have been set up in the last four years.

This is a recipe for increasing illegal pirate sales, as supply of discs far outstrips legitimate demand. It also illustrates the lack of adequate regulation by governments of optical disc manufacturing. The ten examples below have a CD manufacturing capacity that is highly disproportionate to legitimate domestic demand. In these territories, estimated capacity outstrips local legitimate demand by no less than nine times and, in some cases, by more than 30 times.

### Disc piracy rate of growth 1999 - 2003



Source: IFPI, National Groups

## IFPI top ten priority territories

Ten priority territories are experiencing unacceptable levels of piracy and are urged to tackle the issue as a matter of urgency. The ten territories, which are examined in detail pages 7-13, are:

**BRAZIL, CHINA, MEXICO, PARAGUAY, PAKISTAN, RUSSIA, SPAIN, TAIWAN, THAILAND, UKRAINE**

### Estimated pressing capacity 2003 (all formats)

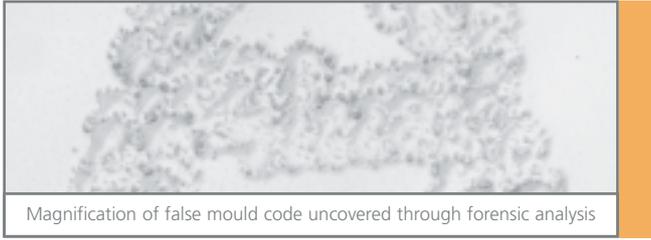
Territory	Estimated Capacity (M units)	Demand (M units)	Over-capacity (M units)
TAIWAN	7,900	270	7,630
CHINA	4,900	1,100	3,800
HONG KONG	2,500	140	2,360
INDIA	1,900	400	1,500
MALAYSIA	1,860	60	1,800
SINGAPORE	620	60	560
BRAZIL	630	140	490
THAILAND	570	27	540
POLAND	500	150	350
RUSSIA*	370	30	340
<b>TOTAL</b>			<b>19,370</b>

Total disc manufacturing overcapacity: 19.4 billion discs annually

Source: Understanding & Solutions Ltd. Formats include CD, DVD, CD-RW, DVD-RW, CD Rom, DVD Rom, Video CD

\*Source: IFPI estimates, CD and DVD only

**IFPI and its national affiliates have a global anti-piracy team of around 250 investigators, made up largely of ex-law enforcement personnel. They work in close collaboration with governments, police forces and customs departments worldwide.**



Magnification of false mould code uncovered through forensic analysis

## Seizures of pirate product

IFPI assisted in the seizure of over 56 million pirate discs in 2003, up from 50 million in 2002 and 13 million in 2001. Highlights of these activities include:

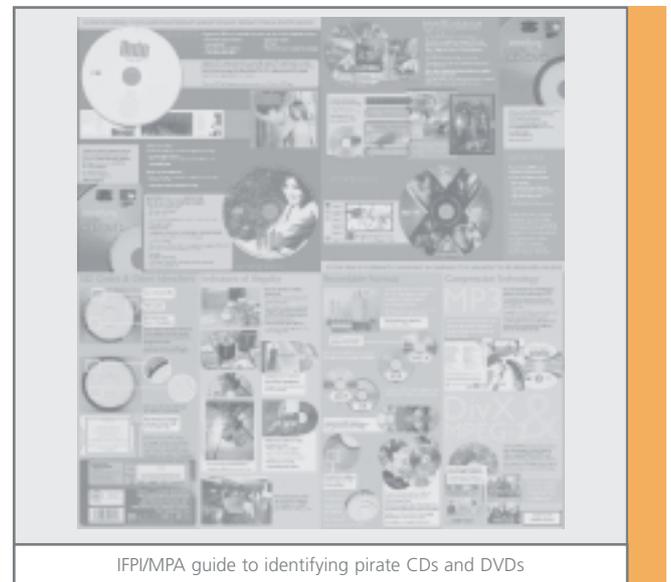
- **Some 21 million units of pirate CD-R discs were seized in Latin America, two thirds of the total seized worldwide.** A major raid involving 1,000 police in Peru netted 1 million burned CD-Rs. In Paraguay 40 trailers of illicit goods were seized, including more than 1 million pirate CD-Rs. Over 750,000 blank CD-Rs were seized en route from South East Asia. In Brazil, a total of 147 CD-R burners were destroyed following one raid on a laboratory in São Paolo, Brazil.
- **The vast majority of pressed pirate discs (around 80%) were found in South East Asia, source of most manufactured discs.**
- **In 2003 68 CD manufacturing lines were decommissioned globally.** This represents a production capacity of over 300 million units, bigger than any legitimate music CD market except the US. A significant raid in Malaysia, for example, resulted in the closure of an underground replication plant and the recovery of two replication lines, 277 stampers and thousands of infringing optical discs.
- **Seizures of CD-R burners rose to 14,745, more than twice the number of the previous year.** This represents capacity to make some 420 million pirate music CD-Rs.
- **Global seizures of blank discs and artwork inlays destined for pirate use also rose sharply.** In 2003 40 million blank discs were seized.
- **There were important actions in cassette markets.** Nearly two million counterfeit Arabic title music cassettes were recovered in the largest ever music piracy seizure in the Middle East. Egyptian police worked with IFPI and the Egyptian Central Association of Audio Producers (ECAAP) to confiscate almost two million counterfeit cassettes, one million inlays, one million tape covers, six duplication and two printing machines.
- **Other significant actions included** a major raid in Italy which led to 21 arrests and the seizure of 80 high speed CD-R burners, thousands of optical discs, inlays, printers and blank CD-Rs. A raid in Russia resulted in the closure of a clandestine DVD replication plant in Moscow, with a production capacity of 18 million DVDs per year.

## Forensic analysis

IFPI uses a unique forensics laboratory that traces the manufacturing source of pirate CDs through microscopic examination and measurement. This has helped link infringing discs to source factories and resulted in many raids on suspect plants worldwide.

In 2003-2004 the forensics unit identified several new target plants actively engaged in producing infringing materials. These are being followed up with criminal actions taken in collaboration with several governments who have established their own forensic programmes.

IFPI has also traditionally cooperated with the Motion Picture Association (MPA) in the area of forensics, with a number of plants identified as having manufactured pirate DVDs containing material of MPA member companies. Since the start of 2003 IFPI's forensic laboratory has been conducting examinations on behalf of MPA and the Business Software Alliance (BSA) in addition to IFPI-related investigations.



IFPI/MPA guide to identifying pirate CDs and DVDs

## International co-operation

IFPI works with government enforcement agencies and international crime investigation organisations. Interpol's Intellectual Property Crime Action Group (IIPCAG) was created in 2002 to respond to the growing incidence of counterfeit or copyright-infringing goods. IFPI, as part of its commitment to this group, has written an Interpol guide designed to assist police officers around the world in investigating intellectual property crimes. The guide includes details of how to recognise counterfeit products.

IFPI also maintains a crucial partnership with the World Customs Organisation's intellectual property strategic group to make intellectual property protection a priority for customs authorities worldwide. The WCO IPR Strategic Group stages several training missions each year designed to educate and inform customs officers in countries where piracy either directly affects them or the neighbouring region.

# organised crime & the industry response

There is a well-established link between piracy and organised crime. Counterfeiting of goods is estimated to yield more than 500 billion euro a year for criminal organisations (Interpol, May 2004). Confirmed links to international drug trafficking, illegal firearms, money laundering, massive tax and revenue evasion and more recently the funding of terrorist activities have been established. In some developing areas whole economies are being distorted, leading to loss of industry and government revenue and the failure of legitimate domestic enterprise to flourish.

In July 2003 the Secretary General of Interpol, Ronald Noble, told United States House Committee on International Relations:

*"The link between organised crime groups and counterfeit goods is well established. But Interpol is sounding the alarm that Intellectual Property Crime is becoming the preferred method of funding for a number of terrorist groups. There are enough examples now of the funding of terrorist groups in this way (intellectual property crime) for us to worry about the threat to public safety. We must take preventative measures now."*

There were several important successes against organised crime in 2003-2004 including the following:

- Mexican law enforcement authorities (LEAs) and the anti-piracy group APDIF Mexico conducted two raids on targeted locations in the notorious Tepito district which led to violent clashes with criminal gangs operating in the area. During the first raid a total of 128 burners, 230,000 recorded CD-Rs, cocaine, marijuana and weapons were seized. In the second raid a total of 44 burners and 5,500 recorded CD-Rs were confiscated. Around 100 people proceeded to violently attack the police removing the confiscated material, leading to a four-hour long confrontation. It is believed that well-known crime gangs involved in illegal firearms, drugs and merchandise trafficking took part in the clashes. 39 people were arrested for disruption of the peace.

## Characteristics of organised crime groups and their activities

- Collaboration by a minimum of three people.
- Criminal activity which has, or is intended to be, continued over a prolonged period.
- Commission of serious criminal offences, or offences which, taken as a whole, are of considerable importance.
- Motivated by the pursuit of profit or power.
- Operations are international, national or regional.
- Uses violence or intimidation.
- Uses commercial or other business-like structures.
- Engages in money laundering.
- Exerts influence upon politics, the media, public administration, judicial authorities or the economy.

National Criminal Intelligence Service (NCIS), UK

- Police in Italy dismantled a major organised ring involved in the mass duplication of music, movies and software in October 2003. The raids, in the Naples area, struck a significant blow against organised CD-R and DVD burning and distribution in the country. They followed months of investigation, and involved 50 of Italy's Fiscal Police who located and seized six undercover burning laboratories in the suburbs of Naples. The raids netted 496 CD and DVD burners, including 200 CD burners found at one location. Nine people were arrested.



Raids in Tepito, Mexico led to violent clashes between gangs and police

# organised crime & the industry response

- In September 2003 a series of co-ordinated raids were conducted by the police in Athens, following a lengthy investigation by IFPI and national group investigators into the duplication and distribution of large quantities of CD-Rs. The suspects were allegedly running an illegal immigrant ring. The raids recovered over 200,000 recorded discs and 123 CD-R burners.
- An internationally traded shipment of pirate CDs - from Asia into Africa - has been intercepted by South African authorities. Africa saw its biggest ever seizure of pirate CDs when authorities intercepted the container in transit from Singapore to Nigeria containing pirate CDs and other equipment. The customs anti-smuggling team of Durban harbour and the South African Police Service (SAPS) border police decided to open the container after scanning it and found 260,000 pirate CDs featuring music by both African and international artists.



Illegal DVDs spindle-packed for transit



South African police and customs examine the container

- Brazilian businessman Law Kim Chong was apprehended on June 1, 2004, when he allegedly attempted to bribe the chairman of Brazil's Congressional Anti-piracy Committee (CPI) set up in 2003 to tackle the huge problem of piracy in the country. The arrest came after two months of investigation by the Brazilian authorities. It is believed that a recent operation by CPI had dealt a severe blow to Law's business when tonnes of apparently counterfeited and smuggled goods were seized during raids in his shopping centres. Following the seizures Law was suspected of planning to bribe the CPI to keep him out of the Committee's report and leave his business intact.



IFPI's strategy of raiding pirates at source is paying off

## CD plant education and litigation

Civil claims against optical disc plants suspected of involvement in piracy are at the forefront of IFPI's litigation strategy. For the first time ever, in December 2003, IFPI filed seven separate claims for damages totalling US\$ 1,366,600 against Moscow-based manufacturing plant, Russobit-Soft. This was followed by further compensation claims against a second Russian plant, Roff Technologies. The plants are alleged to have manufactured counterfeit CDs by top-selling artists. IFPI is awaiting action on those complaints by the Russian authorities.



Source Identification Codes (SID) help investigators track down pirate products

# priority territories

For the second year running IFPI is publishing a list of ten top priority territories in the global fight against music piracy. These are territories that are failing to protect and enforce intellectual property rights and tackle unacceptable levels of piracy.

This report is intended to highlight the problems of physical commercial music piracy, although many of the countries also suffer from high levels of internet piracy.

The list has been compiled considering several factors, including intelligence from IFPI's global network of anti-piracy teams and national groups, measurement of quantitative criteria, an assessment of the impact of a country's piracy activity on neighbouring and international markets, and an evaluation of government action in 2003-2004.

The specific quantitative criteria reflect the relative size of each market, the extent of the piracy problem in 2003 and trends in the pirate and legitimate markets.

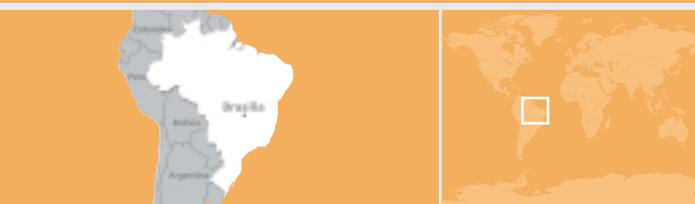
These criteria are: US\$pirate market value; total legitimate market size; piracy level; pirate unit growth from 2002; and legitimate unit growth from 2002.

The following ten markets, based on these criteria, are featured in this report:

- Brazil
- China
- Mexico
- Paraguay
- Pakistan
- Russia
- Spain
- Taiwan
- Thailand
- Ukraine

## BRAZIL

Pirate market value (US\$)	127 million
Legitimate market size (units)	58 million
Piracy level	52%
Pirate unit growth	9%
Legitimate unit growth	-25%



The legitimate Brazilian music market once again performed poorly in 2003, falling in value by 17%. Units sold dropped by 25%.

Brazil remains in the list of IFPI's top ten priority territories because of the inefficiency (or non-existence) of co-ordinated police efforts at a national level, and the government's meagre resources and lack of focus on piracy compared to other criminal activities such as drug and firearms trafficking. Police corruption is rife, and court judges are slow to use criminal procedures against pirates.

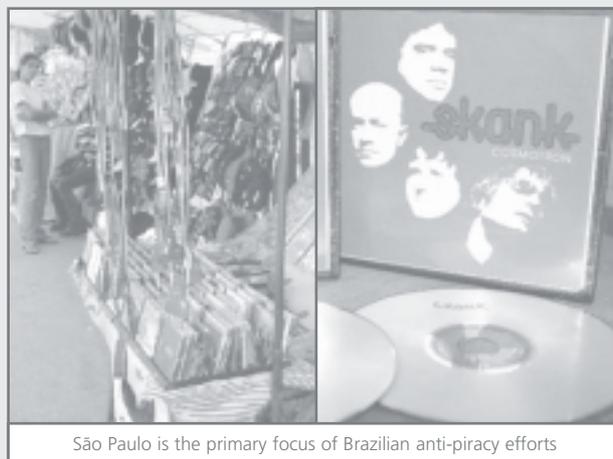
The Brazilian authorities' inaction, combined with the very low cost of CD-Rs and burning equipment mainly smuggled through Paraguay, has created a strong pirate market. Of 11.2 million music buyers in Brazil, only 56% buy solely legitimate products, with the remaining 44% buying either both pirate and legitimate, or only pirate, products. The average price of pirate CDs remained approximately US\$1.50, with no significant change compared to 2002.

Some action has been taken in the past year – mostly promoted by IFPI's affiliated national group in Brazil (ABPD) and the music industry anti-piracy unit (APDIF) – resulting in the seizure of some 5.7 million recorded pirate CDs, 11.5 million illegal blank CD-Rs and 4,800 CD burners. However piracy continues to grow, as evidenced by the sale of 72 million pirate CDs in 2003, up from 62 million in 2002.

The success of the music industry enforcement activities is most noticeable in São Paulo, the city with the highest consumption of music but also the hub of piracy in Brazil and therefore the primary focus of anti-piracy efforts. While São Paulo accounted for 18% of the total Brazilian music pirate market in late 2001, a survey undertaken early in 2004 indicated that this fell to 12%, thanks to the

reduced availability of pirate products in the streets and in illegal stores.

The most significant step in the anti-piracy campaign has come from a Congressional Anti-Piracy Commission set up to investigate piracy and counterfeit trade. The committee published a report detailing its results in June 2004, exposing a billion-dollar industry allegedly involving politicians, judges, civil servants and thousands of others. The report called for the indictment of over 100 people, including alleged heads of criminal organisations. This report has been forwarded to the Minister of Justice and the President of Brazil. Its recommendations need to be taken up decisively by the government. Among these is the immediate creation of a national anti-piracy plan, including the establishment of a centralised public organisation to co-ordinate the activities of government agencies and departments.



São Paulo is the primary focus of Brazilian anti-piracy efforts

## CHINA

Pirate market value (US\$)	591 million
Legitimate market size (units)	76 million
Piracy level	90%
Pirate unit growth	20%
Legitimate unit growth	40%



China has huge potential as a music market, with legitimate sales growing from a small base to a level where China is now the second biggest legal music market in Asia. However, China's piracy rates are still the highest in the world: over 90% of the units sold in the market are pirate. Legitimate sales of sound recordings stood at US\$198 million in 2003 while pirate sales are estimated to be worth US\$591 million. Pressing capacity in China has doubled from 2,400 million units to 4,900 million units in one year. Moreover, the recording industry has seen no significant improvement in enforcement nation-wide since China's WTO accession.

In this context, the main concerns of the record industry are the difficulties in securing criminal prosecution and the insufficient level of enforcement actions.

Under the current interpretation of existing laws, the manufacturing, distribution and selling of pirate sound recordings in China is not a criminal offence, unless the profits made by the pirate or the total value of the operation are in excess of specified high levels. The prescribed prison terms are also too low to have any deterrent effect. Furthermore, it is very difficult for the copyright owner to participate in criminal prosecutions, as copyright owners are forbidden under Chinese law from undertaking investigations. They also face many obstacles in obtaining information and statistics from Chinese authorities regarding related enforcement actions, the status of legal proceedings and final court results.

Government bureaus and departments responsible for law enforcement rarely initiate criminal investigations and Chinese customs do not criminally prosecute the seizures of pirate goods.

IFPI recommends the following:

1. The legal thresholds for criminal prosecutions of copyright pirates should be eliminated or lowered by a significant degree, and the level of penalties should be increased.
2. Other than the amendment of the criminal code it is necessary that the Chinese Supreme Court and State Council issue new interpretations, guidelines and instructions to judges, prosecutors and police to: (a) redefine standards for criminal prosecutions (b) permit and use privately gathered evidence, and (c) direct enforcement authorities, including customs, to investigate and criminally prosecute copyright piracy.
3. Changing the law is a first step in lowering the piracy rate in China. However it will be no use, unless the Chinese government sets up and co-ordinates nationwide enforcement efforts against piracy that include the full involvement of provincial and local enforcement authorities. This could usefully include a commitment from the Chinese government in the form of a public address to the nation, ideally from a top-ranking official of the National People's Congress.

## MEXICO

Pirate market value (US\$)	181 million
Legitimate market size (units)	56 million
Piracy level	61%
Pirate unit growth	-19%
Legitimate unit growth	3%



Piracy has robbed Mexico of its status as a top-ranking music market. In 2000, Mexico was the eighth largest music market in the world, valued at US\$665 million. By 2003, retail sales had fallen by nearly 50% to US\$346.5 million, and Mexico lost its place as the only Latin American country among the ten biggest music markets in the world.

Some 74 million illegally reproduced recordings were sold in 2003. A piracy rate of 61%, down from 68% in 2002, reflects more successful anti-piracy actions combined with a small recovery (3%) in legitimate sales. Almost 95% of pirate product is burned onto CD-Rs.

Research into pirate operations in 2003 revealed 51,000 points of sale for pirate music including street markets, street booths, public markets, and mobile vendors. To

address the problem the industry initiated a unique new programme in Guadalajara. The Street Vendors' Conversion Programme seeks to turn pirate stands into distribution points for legitimate product. The programme will be of utmost importance in fighting piracy effectively in Mexico.

However piracy is still endemic; of the 17 million CD consumers in Mexico, 54% buy only pirated CDs, mostly in pirate stands, and 8% buy both pirated and original CDs. Only 38% faithfully buy original CDs, illustrating the constraints on the legitimate market. As a result, legal points of sale have fallen dramatically by more than 60% over the last five years to less than 1,000 in the country. The impact on the industry is very visible: major releases have fallen by 50% in the last few years, and in the same period the industry has laid off no fewer than 50% of its employees.

# priority territories

## MEXICO [CONTINUED]

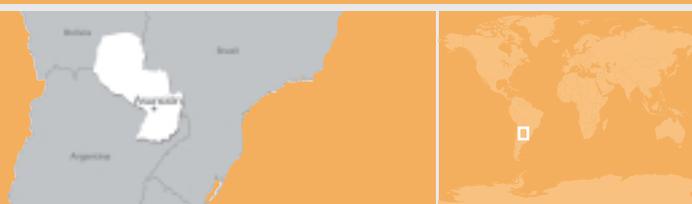
There are some important advances in fighting piracy. Under agreements with the Secretariat of the Treasury to carry out border control measures, all importers must now register their business with customs. There are only a limited number of entry points for blank CD-Rs, with anti-piracy personnel in each one of those points. Thanks to these new measures customs was able to seize over 20 million blank CD-Rs in 2003. These steps, combined with other actions taken by the local police authorities in co-ordination with the industry anti-piracy team, resulted in additional seizures of seven million units of recorded CD-Rs and sentences for over 25 pirates.

The industry recognises these efforts, but more needs to be done. In particular the Mexican authorities are urged to:

1. Address the proliferation of pirate music street vendors. The federal government should continue to support the Guadalajara conversion program and promote implementation in other key cities.
2. Reinforce border measures to reduce the importation of illegal blank CD-Rs.
3. Encourage the courts to correctly interpret the recently approved amendment to the organised crime law as it applies to piracy.
4. Approve the bill to crack down on piracy as a matter of public policy.

## PARAGUAY

Pirate market value (US\$)	32 million
Legitimate market size (units)	0.1 million
Piracy level	99%
Pirate unit growth	-25%
Legitimate unit growth	-52%



The border city of Ciudad del Este in Paraguay continues to serve as the export centre for the significant volume of blank and recorded CD-R units shipped into Brazil. Pirate product is transported by busloads of merchants, also known as *sacoleiros*, who travel in convoys of up to 40 buses with little control from customs authorities on both sides of the border. The *sacoleiros* are estimated to be moving over 70 million blank and recorded CD-R units per year and are a major factor in the piracy problem in Paraguay and Brazil. Paraguayan companies are also fuelling the problem – local information suggests that a number of Paraguayan companies imported over 150 million blank CD-Rs in 2003, mostly for export to Brazil or Argentina.

The Paraguayan authorities, with assistance from IFPI's anti-piracy staff, have conducted a number of raids against pirates that resulted in the seizure of 10 million units of recorded and blank CD-R contraband in 2003. In 2004 a major importer of blank CDs, who knowingly supplied discs to pirate organisations, was finally sentenced to seven years in prison for tax evasion and contraband. However, these actions have had little deterrence effect on the pirate market because of weak criminal penalties against pirates.

The government has taken steps to address piracy through presidential decrees that call for the following measures on the importation of blank CD-Rs:

1. An official register of importers.
2. Stricter importation documentation regarding source and product.
3. Prior import licenses.
4. Requirement for importers to identify and declare their customers and distribution networks.
5. Creation of a control unit within the Ministry of Industry and Commerce.

These requirements are being implemented and may become an important part of an overall anti-piracy campaign. However, to have any real chance of reducing piracy and ending its status as one of the major trans-shipment centres of South America, the Paraguayan government will need to:

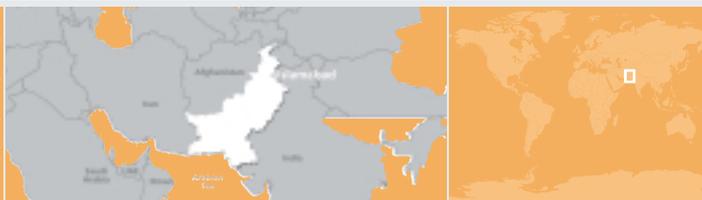
1. Regulate the movement of the *sacoleiros* at the border to interrupt the flow of recorded and blank pirate CD-Rs.
2. Increase criminal penalties for piracy to allow the courts to issue deterrent level sentences.



One of the huge shipments of blank CD-Rs in Paraguay

## PAKISTAN

Pirate market value (US\$)	30 million
Legitimate market size (units)	38 million*
Piracy level	59%
Pirate unit growth	-17%
Legitimate unit growth	n/a



Over the last three years, Pakistan has evolved into one of the largest manufacturers and exporters of pirate optical discs in the world. The total production output of the eight known optical disc plants in Pakistan in 2003 is estimated at 180 million discs, a 50% increase compared to 2002 when output was 120 million.

With an estimated total annual domestic demand of only 20 million discs, there is evidence that the remaining plant production is being exported to overseas markets. For 2003, the average monthly export of optical discs from Pakistan was a huge 13 million discs, a quantity exceeding the demand of many developed music markets. The vast majority of these discs is illegal. Through customs intelligence and seizures in overseas markets, Pakistan has been identified as a major source of infringing products harming markets in the Middle East, Europe, Africa and the USA.

Pirate optical discs from Pakistan are exported in hand luggage, as airfreight by 'courier-services' and in bulk quantities by sea and air, and have been found in at least 46 countries worldwide. In 2004, the US Trade Representative's office (USTR) placed Pakistan on the Priority Watch List under its 'Special 301' procedure, calling for the rapid introduction of an effective optical disc regulation, the effective enforcement and sentencing of Pakistan's numerous large-scale copyright pirates, and a substantial sharpening of its border controls.

The government of Pakistan has acknowledged the need to tackle this massive problem. This now needs to translate into concrete action and lasting results.

\* 95% cassettes

## RUSSIA

Pirate market value (US\$)	332 million
Legitimate market size (units)	116 million
Piracy level	64%
Pirate unit growth	-8%
Legitimate unit growth	2%



Russia is one of the world's largest producers and exporters of pirate CDs. A 64% piracy rate in 2003 has devastated the domestic Russian market, and exports of pirate Russian discs are causing serious damage to the legitimate music markets throughout Europe and the Middle East. Russian pirate discs have been traced to more than 26 countries.

In 1996 there were two known CD plants in Russia. Today there are 33 plants with more ready to come on line. Production capacity has nearly tripled over the past three years. Russia's annual manufacturing capacity now stands at 342 million CDs and 28 million DVDs, despite the fact that only 30 million legitimate music CDs were sold in Russia in 2003.

Russia's anti-piracy efforts are severely hampered by flawed legislation, ineffective enforcement by the Russian authorities and insufficient deterrent penalties in the courts. Organised criminal enterprises are involved in many aspects of optical disc piracy in Russia.

In 2003-2004, IFPI assisted in the investigating and raids on a number of suspected producers and distributors of illegal recorded material. Raids are, however, rendered meaningless when only a minimal amount of cases are submitted to court and no deterrent court decisions are taken.

The Russian government took a first step in addressing the growing piracy problem in October 2002 by establishing an Inter-Ministerial commission to combat piracy. But the commission has not met regularly and taken only small



Pirate optical discs found in a Russian warehouse

measures to address legislative reform, retail piracy, and optical disc production.

The Russian government must:

1. Immediately undertake continuous plant inspections, and shut down plants producing pirate product using the existing law – especially by withdrawing licenses for plants operating on government property. It must also implement effective border measures to stop the export of illegal product.
2. Introduce a comprehensive optical media regulatory and enforcement scheme.

# priority territories

## RUSSIA [CONTINUED]

3. Show significant improvement in the number and disposition of criminal investigations and raids against pirates engaged in commercial manufacture or distribution, while taking increased administrative procedures against street piracy.
4. Direct the Russian judiciary that deterrent criminal penalties are expected from the courts – this can be done via guidelines from the Supreme Court and from the relevant minister, as well as by amendments to the Penal Code.
5. Push for the necessary legal reforms in the copyright law, the criminal code, the criminal procedure code and the administrative code. The aim is to facilitate stronger and more effective enforcement compatible with the WTO TRIPs and the WIPO digital treaties.

## SPAIN

Pirate market value (US\$)	58 million
Legitimate market size (units)	56 million
Piracy level	24%
Pirate unit growth	-7%
Legitimate unit growth	-13%



Pirate music in Spain represented 24% of the market in 2003, approximately the same level as in 2002. There has been notable progress in enforcement by Spanish police, however. Over 2,800 people were arrested or charged with intellectual property offences, specifically those relating to the manufacture and distribution of illegal sound recordings – an increase of 44% over 2002. The number of pirate seizures increased by 12%, to a total of over 4.3 million units. The number of burners seized increased by more than 150%, with 2,607 burners seized in 2003 compared to 1,015 the previous year.

There have also been improvements on the legislative side, with the amendment of the Penal Code. The amendments related to intellectual property-related crimes – due to come into force in October 2004 – will increase economic and especially criminal penalties, and permit more pre-trial custody for this type of offence. This should help reduce the presence of illegal street vendors.

These efforts are hardly sufficient, however, given that thousands of illegal pirate music businesses operate in highly organised criminal networks. Penalties and deterrents are weak, and there is a patent lack of awareness or concern in Spain about the importance of intellectual property. Meanwhile the activities of street vendors persist, as criminal courts are saturated and court proceedings take a long time to produce results.

Spain's top artists have mobilised to help raise the problem to the highest level in the government. A large group of best-

selling artists met President José Luis Rodríguez Zapatero in June 2004 under the slogan '*Music is dying - help us*'.

The Spanish music industry has called for the Spanish authorities to focus on the following:

1. To undertake national awareness-raising programmes to educate the public about the importance of intellectual property.
2. To apply a zero-tolerance approach to illegal street sellers and stop them from becoming part of the city landscape.
3. To speed up the trials - which currently take up to a year – in order to deter illegal street vendors and enforce imposed penalties.



Spain's top artists mobilised to raise the problem of music piracy with President José Luis Rodríguez Zapatero

## TAIWAN

Pirate market value (US\$)	37 million
Legitimate market size (units)	15 million
Piracy level	42%
Pirate unit growth	-20%
Legitimate unit growth	-10%



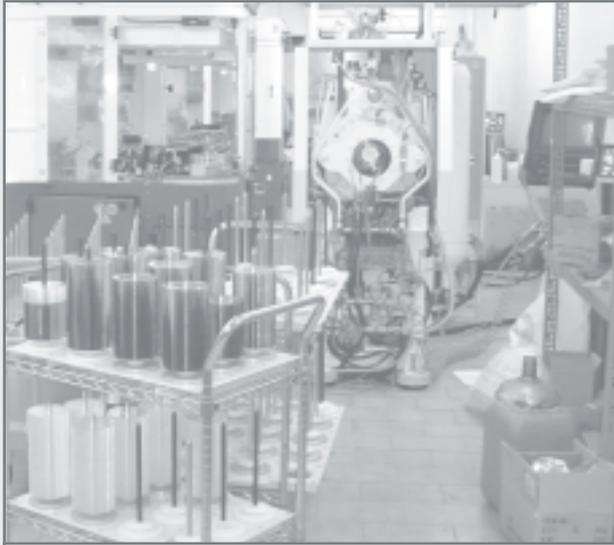
Taiwan is one of the Asian markets most affected by the spread of CD-R piracy in 2003. At least four in every five pirate discs seized were burned pirate CD-Rs. Taiwan is also a large-scale exporter of pirate pressed discs in the South East Asia region. In addition, the country is having to contend with a serious internet piracy problem.

There were some positive developments in 2003. The amendment of the copyright law made piracy a public crime, while enforcement action taken by the Taiwan law enforcement agencies against night market vendors increased, resulting in a drastic drop in the number of pirate hawker stalls from 250 to less than 50. In response however,

## TAIWAN [CONTINUED]

the pirates have turned to mail order, direct sales and internet orders, concluding their transactions through untraceable mobile phones or fax.

On the export front, major quantities of Taiwan-manufactured pirate CDs have been found elsewhere in the region. Industry intelligence has, for example, uncovered evidence that suggests that 1.75 million pirate pressed discs were exported to the Philippines in the second half of 2003.



Optical disc plant in Taiwan

More and more Taiwanese are also downloading and distributing unauthorised sound tracks through peer-to-peer (P2P) file exchanges or illegal MP3 websites. Ironically this activity has affected the physical pirate market.

Taiwan has two major P2P services; 'Kuro', which has an estimated 500,000 members in Taiwan and 250,000 members in China, and 'EzPeer', with approximately 300,000 members in Taiwan, IFPI Taiwan has brought

criminal charges against both Kuro and EzPeer for abetting copyright infringement. They were both criminally indicted in December 2003 and the cases are still pending in the courts. IFPI Taiwan has also secured civil court injunctions against both sites, but these businesses are still in operation.

Meanwhile Kuro has spent vast sums on advertisements in major portal sites and in the media, and is attempting to get legislation passed that would immunise its activities by introducing compulsory license provision for online music. Such a provision would be in violation of the WTO TRIPS Agreement.

The Taiwanese government needs to curb the damage that the combination of physical piracy and unauthorised internet music distribution is inflicting on the local industry. It must also promote a legitimate online music market that is struggling to surface. Specifically, it must:

1. Revise the flawed amendment passed in June 2003, in particular the decriminalisation of the offences committed without intending to profit from them; the unreasonable monetary or quantity threshold for criminal penalties currently set at US\$885 (NT\$30,000) or five copies; and most importantly that judges are no longer required to impose jail terms for most offences but may impose detention or a fine instead.
2. Shut down the two major unauthorised P2P sites immediately.
3. Amend the copyright law or introduce new legislation in order to deter unauthorised internet distribution of music.
4. Expedite the legislation establishing the IPR Special Police Task Force.
5. Effectively enforce the control of pirate CD-R production.
6. Effectively implement the optical disc law regulating the manufacture of pressed discs.

## THAILAND

Pirate market value (US\$)	28 million
Legitimate market size (units)	23 million
Piracy level	35%
Pirate unit growth	-16%
Legitimate unit growth	-20%



The enforcement efforts of the Thai government have shown some results since 2003 but despite these efforts, the piracy level for music continues to be a major cause of concern to the international recording industry. Piracy in 2003 stood at 35%, the same level as 2002, while the sale of legitimate recordings fell by 20% in 2003. Pirate music sales total US\$28 million annually.

The Thai government has shown some commitment to eradicating optical disc piracy and has begun establishing closer working relationships with rights holder organisations. It has also introduced an optical disc bill into the Thai Parliament. However, the bill passed by the lower house of the Thai Parliament is too diluted to be effective in controlling current levels of disc piracy. It needs to be strengthened to ensure that CD plants are

obliged to abide by specific registration procedures that discourage pirate manufacturing, to use internationally recognised source identification codes (SID) and to be subject to surprise inspections.

Piracy levels have begun to rise once again, and music pirates have capitalised on the lack of a sustained nationwide anti-piracy action plan. The overcapacity of optical disc plants and lack of an effective optical disc licensing law remain key factors.

In order to maximise its efforts, the Thai government needs to urgently pass an effective optical disc law to control illegal pirate production. It must also conduct an increased and sustained nationwide crackdown on optical disc piracy.

# priority territories

## UKRAINE

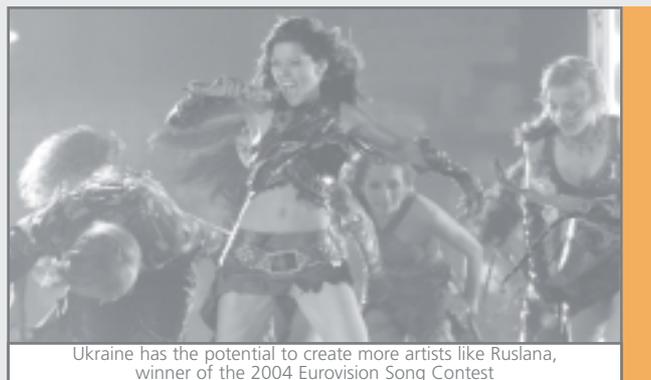
Pirate market value (US\$)	42 million
Legitimate market size (units)	18 million
Piracy level	68%
Pirate unit growth	16%
Legitimate unit growth	4%



Pressed CDs and DVDs still dominate the pirate market in Ukraine. A substantial number of these are imported from Russia and sold in markets, kiosks and street stalls. There are encouraging signs of increased, and geographically wider, police activity against piracy at retail level. However, this is totally insufficient to effectively reduce the availability of illegal recordings in Ukraine. Actions against sources and distribution networks feeding the retailing of these illegal materials remain rare. Border enforcement by Ukrainian Customs is also inadequate. Consequently, while the number of raids has increased, the availability of pirated materials throughout Ukraine has barely decreased.

A major reason why illegal recordings are still widely available in Ukraine is the lack of deterrent punishment of those involved in copyright crime. Prosecution, even of obvious piracy cases, is slow and cumbersome. Rights holders seeking prosecutions face time-consuming hearings, being required to testify and turn up for endless witness interrogation sessions. The piracy cases that do end up in court merely result in the imposition of administrative or criminal fines that are not even remotely deterrent. Prison sentences are very rare and are always suspended.

Despite maintained US trade sanctions, which will soon enter their third year, and continued record industry pressure, Ukraine has still not adopted the necessary amendments to its flawed CD plant regulation. Some of Ukraine's optical disc plants continue to be involved in illegal production and export of pirate optical discs.



Ukraine has the potential to create more artists like Ruslana, winner of the 2004 Eurovision Song Contest

The Ukrainian music industry calls upon the authorities to:

1. Help enforcement agencies to focus more on distribution channels such as markets, kiosks and street stalls.
2. Substantially improve border enforcement, especially between Russia and the Ukraine. Customs authorities cannot continue their policy of non co-operation, refusing to share even basic information.
3. Improve the CD Plant regulation and enforce it properly. The Ukrainian optical disc law falls short of what is required to effectively prevent illegal optical disc manufacturing despite repeated explanations by copyright industries of the elements in the law that need to be revised. Moreover rights holders organisations need access to production samples of optical discs and other information currently withheld.
4. Carry out deterrent prosecution and sentencing of pirate activity, including meaningful prison terms.

## IN THE SPOTLIGHT: SOUTH KOREA

Korea has seen a dramatic rise in internet (as opposed to physical format) piracy. With government action urgently needed, Korea merits a special mention in this report.

The market in Korea for recorded music has almost halved in the past two years, down 44%. This is principally due to the exponential growth of internet piracy, fuelled by one of the highest levels of broadband penetration in the world and weak legislation to regulate e-commerce in copyrighted materials.

It has been estimated in media reports that the number of unauthorised peer-to-peer (P2P) file sharing sites in Korea may be as high as 500. The largest P2P site in Korea has an estimated 10 million members, and permits 1,000 to 15,000 simultaneous connections. In July 2002, an injunction was granted by the Korean court against P2P service Soribada, but a newly developed version is back in service. A criminal case is pending in the courts.

Another problem for the industry is the prevalence of unauthorised streaming sites. The largest streaming site, which accounts for about 55% of the market segment, reportedly has over 10 million members.

The government has begun a process of consultations to amend the Korean copyright law, releasing a Master Plan for IPR Protection by the Inter-Ministerial Joint Project, which sets out the broad intellectual property rights policy and plans to step up on law reform and enforcement.

Although the Plan on the whole is positive, it fails to address the urgent needs of the recording industry, which include ratification of the WIPO internet treaties and immediate amendment of the copyright law to accord record producers the right to control all digital transmissions of their recordings. The Plan also does not set out specific enforcement plans to tackle online music piracy.



## EUROPEAN UNION



Counterfeiting of sound recordings in the CD-R and DVD-R formats is most serious in Southern Europe, namely Greece, Italy, Portugal and Spain. These countries are victims of organised manufacturing and distribution of pirate CDs by criminal groups, operating within hierarchical structures.

IFPI has strong relationships with Law Enforcement Authorities (LEAs), who are now willing to initiate ex-officio actions against retailers and distributors of these products. Particular priority is given to educating the Western European judiciary about the links between music piracy and organised criminal activity. The continued lack of sentencing in piracy cases is the major problem in tackling piracy in Western Europe, and erodes the incentive of enforcement authorities to be active in this area of their work.

A key priority for IFPI will be to address the expansion of pirate trade within the European Union resulting from the enlargement of the EU and the subsequent free movement of goods between a larger group of Member States. In countries such as Poland, investigators have discovered widespread availability of pirate pre-release music titles in local markets. The removal of internal borders will see these products becoming available in more Western countries. The three Baltic States – Estonia, Latvia and Lithuania, all of which recently joined the EU – also have huge piracy problems.

More positively, Poland adopted optical disc regulations that are expected to prevent its massive optical disc production capacity from being used for illegal purposes. The situation at the infamous Warsaw Stadium has improved, with the disappearance of numerous stalls selling illegal discs. As a result of these actions Poland no longer features in IFPI's list of the top ten priority territories.

The widespread growth of CD-R production in Western Europe has allowed for an explosion of piracy in the

CD-R format in the region. Joint industry and law enforcement agency investigations have led to the seizure of 6.8 million CD-R discs during 2003 compared to 4.5 million in 2002.

European-wide anti-piracy legislation has been strengthened by the adoption in April 2004 of the EU Enforcement Directive, which aims to bring national legislation on civil sanctions and remedies closer in line across the 25 EU Member States. While the Directive could have gone further to help in the fight against piracy, it does extend some enforcement best practices across the entire EU region.

Gains for the all rights owners in the Directive include measures concerning the use of injunctions, the freezing of assets used in illegal activities, and guidelines to the courts on awarding damages. Importantly, the Directive allows for a presumption of ownership if a rights holder's name appears on a sound recording or other work. This measure should help record companies and other rights holders avoid expensive and pointless courtroom disputes with pirates about copyright ownership.

Under the Directive, rights holders also will be able to ask judicial authorities to order infringers to provide information on the origin and distribution of pirate goods. This should prove helpful both in physical and internet piracy cases. The Directive also contains measures to protect evidence from destruction and to allow for the use of sampling of suspected pirate product.

EU Member States now have two years to implement the Directive into national law. Since the Enforcement Directive provides for a minimum harmonisation of enforcement practices, Member States are free to go further during the implementation process.

The recording industry continues to insist on the need for strengthened criminal sanctions to help combat piracy and counterfeiting. The European Commission intends to come forward with a new proposal for EU legislation on criminal sanctions later in 2004.

## EASTERN EUROPE



Piracy levels in the Russia/CIS region remain consistently above 60%, even though the legitimate market grew in 2003 by some 24%. There has been an increase in enforcement actions targeting retailers and distributors of pirate products, but results are much fewer, with less than 25% of cases resulting in court proceedings.

The trans-shipment of pirate product from Russia, often en route to Western Europe, continues to plague the region. High quality counterfeits originating in Russia are found in markets throughout Eastern Europe, as is pre-1995 repertoire which is being reproduced in Russia where it is not yet protected by copyright. CD-R piracy continues to grow and door-to-door sales of illegal sound carriers, which are difficult to detect and control, are increasing throughout the region.

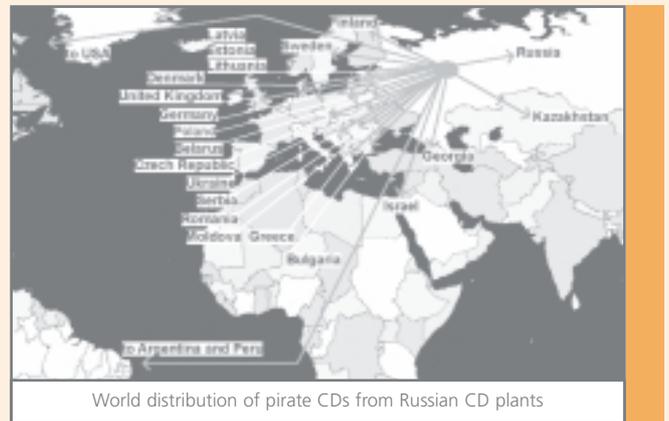
Action by law enforcement agencies remains sporadic and poorly co-ordinated. Without exception, authorities fail to show long-term resolve and a clear strategy in tackling copyright crime.

There is a serious piracy situation in Bulgaria, where enforcement has not improved since 1998. The judiciary and court system in Bulgaria have failed to actively prosecute

copyright thieves or hand down deterrent sentences. The legitimate recording industry in Bulgaria is struggling to survive commercially and investment in Bulgarian music production has, as a result, shown a sharp decline.

New replication facilities in Estonia, Poland, Hungary and Romania have contributed to continuing growth in overall production capacity for optical discs in Eastern Europe. In most jurisdictions, attempts to effectively regulate optical disc manufacturing have achieved little success.

Piracy in Turkey is still very high. However, the government has recently adopted a strong anti-piracy bill, including a total ban on street sales of audio-visual products. This is expected to help eradicate the widespread phenomenon of street piracy in Turkey's main cities and tourist areas.



## LATIN AMERICA



The continued decline in the legitimate market is the direct result of high levels of piracy in most markets in Latin America, resulting in a 14% decrease in value and a 10% drop in units during 2003. Last year all markets in the region sold 148 million legitimate units, compared to 243 million units in 1998 – representing a drop in legitimate sales of 39%.

The trend towards recorded CD-Rs as the favoured pirate format continues, with 98% of all seized infringing products on CD-Rs. In 2003, over 150 million blank CD-Rs entered Paraguay alone from markets in South East Asia.

CD-R burning laboratories controlled by organised crime groups are able to operate with relative impunity in territories such as Brazil and Mexico, where weak legislation and ineffective policing mean there is little real threat of detection and subsequent prosecution.

Piracy levels in Mexico and Brazil have seen both countries' legitimate sales decline to the extent that these once-major markets have dropped out of the world's top ten largest markets for legitimate music.

The piracy problems of other Latin American markets such as Colombia are also in the spotlight. Legitimate unit sales in Colombia decreased in 2003 by 5% in units and over 50% in the past five years. In order to stop this continued deterioration, the Colombian government needs to conduct a consistent anti-piracy campaign throughout the country as well as increase piracy criminal penalties to allow the courts to issue deterrent level sentences.

Chile suffered a sizeable 22% decrease in legitimate unit sales. The Chilean police have been fighting piracy in Santiago for the past three years, but the campaign has not been effectively extended to other major cities. In addition, criminal penalties for piracy are too low to serve as real deterrents.

In Peru and Ecuador piracy has practically eliminated the legitimate music markets. Other than sporadic actions taken by individual authorities interested in the subject, neither country has established anti-piracy campaigns, which would ultimately help to promote the development of local artists. Piracy exceeds 95% of the total market in both countries.

As the Argentine market recovers from the economic and political collapse experienced in 2002 its unit sales of recorded music have increased. However the tools to fight piracy are inefficient as criminal penalties remain too weak to serve as a real deterrent. Moreover the Argentine government has not addressed piracy as a priority problem or recognised that it is jeopardising the local music culture as well as contributing to crime levels.

## AFRICA AND THE MIDDLE EAST



Political disinterest, combined with a lack of effective enforcement for intellectual property rights, continues to result in high piracy levels in this region.

In many countries the cassette remains the most popular pirate music carrier. However, CD-R piracy is growing fast.

Lebanon has the highest music piracy levels, followed by Kuwait, Saudi Arabia and Egypt. In Lebanon, with a piracy rate of 70%, the situation worsened in 2003-2004 despite promises by the government at the highest level to make copyright enforcement a key priority. Pre-raid leaks and a complete lack of ex-officio action have prevented enforcement from having any sustainable impact in the country, the only positive exception being the customs department.

In 2003, law enforcement agencies in Saudi Arabia carried out hundreds of raids resulting in the seizure of approximately 600,000 pirate music carriers. However, the absence of deterrent penalties for intellectual property violations and a total lack of transparency in the judicial system are preventing these actions from having a positive and lasting impact.

With an estimated overall piracy level of 60%, Kuwait is still one of the worst countries in the Middle East in terms of retail piracy. Even higher levels of piracy are estimated for Indian repertoire distributed in the country. Intellectual property protection is a very low priority for the Kuwaiti authorities, despite it being one of the many Middle Eastern countries to which Pakistan-based optical disc plants ship thousands of illegal optical discs every month.

Egypt still has a piracy level of close to 50%, despite the fact that enforcement has improved in the past three years. A notable event in 2003 was a massive seizure of two million pirate cassettes. However, legitimate sales decreased and the industry is struggling to revive what was once a thriving and highly creative recorded music market.

The year 2003 saw a marked increase – from three to eight – in the number of optical disc production lines now located in Africa. Although currently confined to South Africa and Nigeria, it is evident that many of the region's territories which impose no effective copyright protection, now represent an attractive haven for disc plants.

The increasing popularity of the CD as a format for music in the region has also seen increasing imports of pirate optical disc products, as illustrated by the recent seizures of discs on route to Nigeria from Singapore (see page 6).

## ASIA-PACIFIC



The Asia-Pacific region maintains its position as the world's leading producer of pressed optical discs, feeding illegal music markets around the world. It is no surprise that three of IFPI's top ten priority territories are in Asia, when the region hosts nearly 50% of the world's optical disc plants. Physical piracy continues to predominate in most countries in the region, particularly where internet penetration has yet to reach significant proportions<sup>2</sup>.

While a number of governments within the region have exerted tighter controls on the optical disc industry – the Philippines being the latest to implement legislation on optical disc manufacturing in June 2004 – such progressive moves have resulted in the shift of optical disc production lines into countries with little or no copyright protection or enforcement, for example Vietnam.

CD-R piracy is also on the increase in the region, following earlier successes in controlling pressed pirate

music products in countries like Singapore, Hong Kong and Taiwan.

Malaysia continues to be a major exporter of pirated discs in the region. While the Malaysian government moved to deploy greater resources to combat pirates in early 2004, its efforts to curb piracy have been hampered by the backlog of cases in court and delays in investigations. This is partly because the relevant Ministry is also responsible for enforcing eight other consumer-related laws. The lack of a dedicated prosecution and investigation unit is another major contributing factor to the backlog which could be dealt with by creating a special intellectual property court.

Both China and Thailand have also increased government enforcement activities, but their efforts have yet to translate into a positive outcome on the ground. Elsewhere, the music industries in countries like Indonesia, India and Vietnam continue to suffer from high piracy rates. Governments across the region are urged to adopt measures to strengthen enforcement, reduce piracy levels and curb exports of illegal music products.

<sup>2</sup>The wider availability of broadband connectivity in countries such as Japan, South Korea, Hong Kong and Australia has, however, led to increases in the level of illegal online distribution and file-sharing. Online music piracy is examined in the separate IFPI Online Music Report.

# the call to governments

IFPI and its national groups are among the most active of all copyright-based sectors in taking action against piracy. The basis of the work of IFPI's enforcement teams is the protection afforded under copyright laws and the procedures and remedies available to fight against piracy. Good laws and enforcement procedures as well as a strong government commitment are vital.



Destruction of pirate product in Romania

## Governments' top priorities in the fight against piracy can be broadly summarised as follows:

- Strong and up-to-date copyright laws.
- Enforcement rules that permit effective action against any act of infringement, including expeditious and deterrent remedies.
- Regulation of optical disc manufacturing.
- Political commitment to prosecute copyright crime aggressively.
- Stepping up international pressure on governments.

IFPI has identified three key priorities for governments to deal with physical piracy, which are:

### 1. Effective copyright and enforcement-related legislation

It is essential that governments provide adequate rights and protections under the copyright law against unauthorised copying, distribution and communication to the public of sound recordings. It is equally important that laws protect against the circumvention of the technological measures used to protect content (for instance copy control mechanisms applied to CDs).

Providing adequate rights is the first step in protecting recorded music. Following on from this, it is essential to provide law enforcement authorities and rights holders with effective means to enforce such rights in practice. These include effective civil, administrative and criminal procedures and measures. Key provisions in this context include:

- Damages that effectively compensate rights holders and deter infringers.
- Search and seizure orders for obtaining evidence and stopping the distribution of infringing copies.

- Right of information, for example about the extent of infringing production, sources, and distribution channels.
- Reasonable evidence rules, such as presumptions of ownership of rights, and recognition of sampling as evidence where large shipments are seized.
- Injunctions to prevent or to stop infringements.
- Deterrent-level criminal penalties against infringements that are committed for economic benefit or that cause substantial harm to rights owners.
- Effective border measures empowering customs officials to seize infringing imports, exports and trans-shipments on their own initiative.



IFPI/MPA presentation at the Motion Picture Association (MPA) Anti-Piracy Conference in Barcelona

### 2. Regulation of optical disc manufacturing

The replication of pressed CDs and DVDs takes place in a relatively limited number of large-scale mastering and manufacturing facilities. Anti-piracy regulation covering optical disc (OD) plants is essential in order to stop the production of infringing and counterfeit goods at source, before they are dispersed widely and hurt domestic and foreign markets.

Any country with high CD production capacity, and in particular overcapacity, should adopt OD plant regulation in order to maintain the level of transparency and business practices necessary to promote legitimate manufacturing and deter piracy. OD plant regulation is already in place in China, Macau, Hong Kong, Malaysia, Taiwan, the Philippines, Bulgaria, Ukraine, and Poland. Legislative projects for OD plant regulation are underway in Indonesia, Singapore and Thailand.

Many more countries are in need of effective OD plant regulation, based on the experience of IFPI's enforcement teams. At present, a number of countries clearly stand out as needing such regulation, particularly the Russian Federation, India and Pakistan.

## 3. Effective prosecution and deterrent penalties

Even where adequate laws are in place, rights are not effectively protected unless governments commit resources and political will to bringing prosecutions and deterrent penalties against copyright infringers. It is also critical that they put in place teams of prosecutors that have experience in intellectual property crimes.

The inexperience of many courts in copyright matters can also make it difficult for governments or rights holders to enforce their rights through the legal process. IFPI therefore strongly supports the creation of specialist intellectual property courts that can hear piracy cases. Whether or not such courts are established, it is essential that the judiciary treat copyright infringement as a serious matter and impose penalties that act as an effective deterrent to music piracy. This is a legal obligation on countries that are members of the WTO under the TRIPs Agreement.

Stepping up international pressure on countries which are failing adequately to enforce intellectual property rights is a vital and effective way of bringing about real change. The regular reviews conducted by the US government under 301 legislation play a vital role in monitoring progress



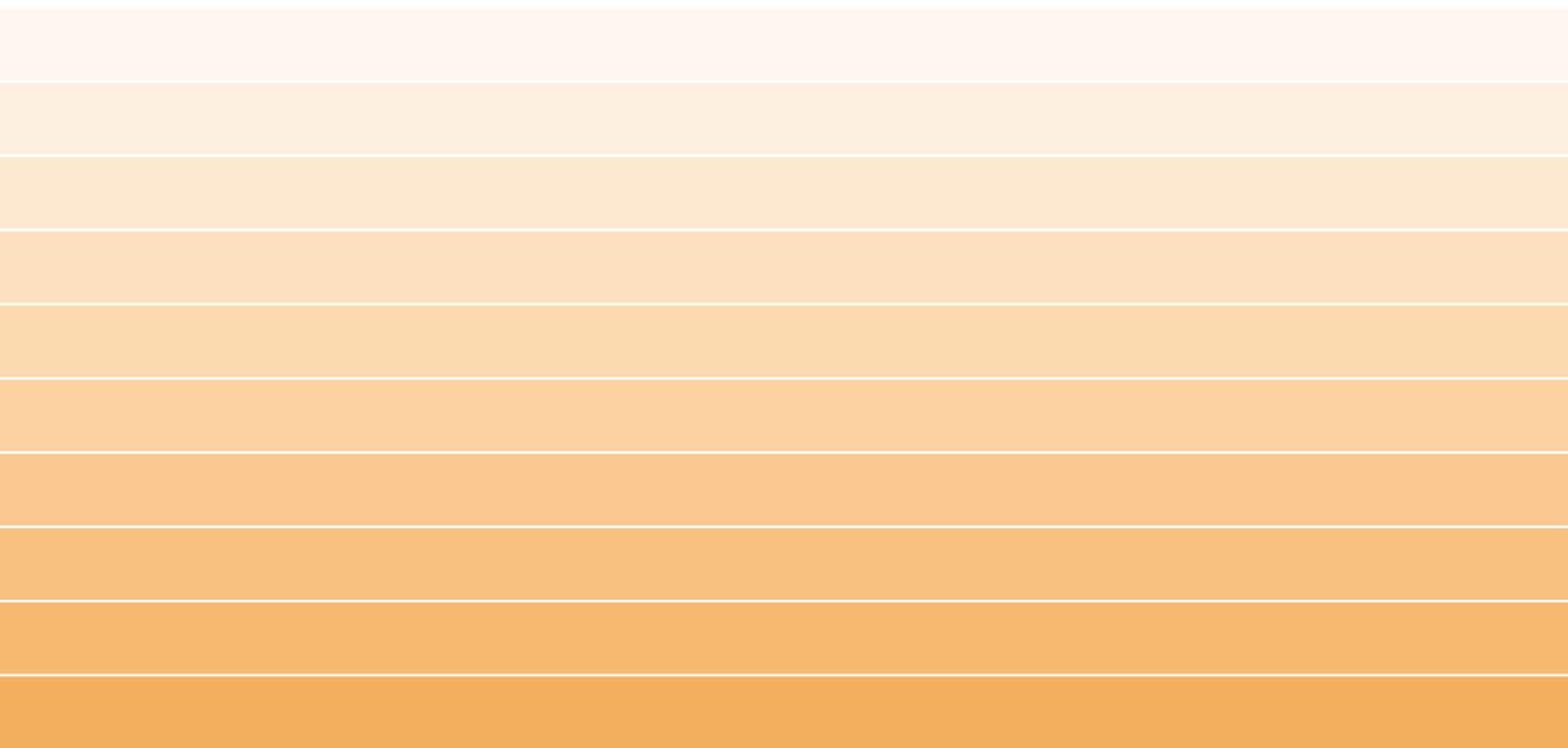
Russian band Drugie Pravila speak out for artists at an anti-piracy press conference in Moscow

internationally. Inter-governmental pressure needs to be stepped up in several arenas, including the World Customs Organisation (WCO), the World Trade Organisation (WTO), the World Intellectual Property Organisation (WIPO), and at regional level, for example, via the internal and external policy initiatives of the European Union.

## music piracy - the facts

- **Freeloaders:** Because of the relative low cost of the raw materials, pirate profit margins are close to 100% but the pirates add no value to the creative industries. Pirates illegally copy and sell only the recordings of the most popular international stars and local icons, pocketing the money and leaving the legitimate record business to do all the investment and to take all the risks in producing music.
- **The victims:** Piracy is not a victimless crime. The economic losses due to piracy are enormous and are felt throughout the music value chain. The victims include the *artists* and all those involved in the performance of music; *governments* which lose hundreds of thousands in tax revenues; *record producers*, who are forced to reduce artist rosters; and *consumers*, who get less diversity in the music that can be produced.
- **Links to organised crime:** Most pirates are sophisticated and organised. They are able to obtain and sell valuable intellectual property before it is even released in the legitimate marketplace. The proceeds from pirate sales fund ruthless criminal enterprises. They are encouraged by poor laws, weak enforcement and inadequate legal penalties.
- **Local culture suffers:** Piracy sucks the lifeblood out of local culture. Talented artists in the high piracy markets of China, India, Africa, the Middle East, Eastern Europe and elsewhere cannot get local recording contracts and have to try to make a living from touring, or move elsewhere, which means that the cultural wealth of their home country suffers.
- **A global problem:** Pirate operations are increasingly international and cross-border. The most effective way of fighting piracy is by inter-governmental co-operation on enforcement strategies.

IFPI represents the recording industry worldwide with over 1,450 members in over 70 countries and affiliated industry associations in 48 countries.



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