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## Intellectual Property - Pakistan

### Fighting Piracy and Counterfeiting: Legislation and Organizations

Contributed by **Vellani & Vellani**

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#### Legislation

#### Authorities and Organizations

#### Comment

The government has been making determined efforts to deal effectively with the problems of counterfeiting and piracy. An ongoing process of legislative amendments is intended to facilitate control and enforcement in both areas.

#### Legislation

Pakistan's legislation on trademarks, copyright and patents has been amended periodically to bring it into line with the requirements of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Relevant provisions have also been incorporated into or reflected in other laws, such as the Customs Act 1969, the Drugs Act 1976, the Federal Investigation Act 1974 and the Penal Code, in order to strengthen the authorities' hand in enforcing IP rights.

#### **Trademarks Ordinance**

The Trademarks Ordinance 2001 replaced the Trademarks Act 1940 and contains specific provisions relating to counterfeit goods. The ordinance defines the term 'counterfeit goods' and contains provisions that protect owners of registered trademarks against infringement in Pakistan, allowing them to approach Customs with evidence of potential infringement. Sections 53 to 66 contain provisions relating to imports of infringing goods, materials or other articles. Section 53 states that the trademark owner may give notice in writing to Customs of the arrival of infringing goods, materials or articles which are subject to controls under the Customs Act 1969, requesting it to take due notice, treat such goods as prohibited and take action in respect thereof. Under Section 56, Customs may seize goods bearing an infringing trademark and give notice of the seizure to the importer, consignee or owner of the goods under Section 57. Furthermore, the trademark owner may bring an action for infringement in respect of the seized goods and may give notice thereof to Customs, which has the power to impound and hold the goods.

#### **Customs Act**

Section 15 of the Customs Act prohibits and restricts the import and export of goods that infringe copyright or bear a counterfeit trademark or false trade description. Section 17 empowers Customs more broadly to seize and confiscate goods imported into Pakistan in violation of the law.

#### **Copyright Ordinance**

Copyright protection is principally provided under the Copyright Ordinance, which contains specific provisions relating to copyright infringement and provides strong administrative tools to combat counterfeiting and piracy. The ordinance provides that the copyright registrar may, on application from the copyright owner, make an order restricting the import or export of infringing items pursuant to the prohibitions under the Customs Act. Further special remedies apply in cases of copyright infringement where the rights holder is unable to institute legal proceedings immediately for lack of sufficient cause. A rights holder may apply to court for immediate interim orders to prevent further copyright infringement and to preserve related evidence. In cases involving the import or export of infringing works, the court may direct Customs to impound all consignments pending a court decision. The ordinance also empowers officers operating under the terms of the Customs Act to halt the import or export of any consignment of goods containing infringing or pirated copies of a work without such a court order.

### ***Patents Ordinance***

The Patents Ordinance 2000 allows a patentee to bring suit against a party that makes, sells or uses the patentee's invention without a licence or counterfeits or imitates such an invention.

### ***Drugs Act***

The Drugs Act prohibits the sale of spurious or counterfeit drugs. The import, export, manufacture or sale of such drugs (or a drug under a name other than its registered name) is punishable by imprisonment and a fine. Special drugs courts hear cases relating to offences under the act. The Drugs (Import and Export) Rules 1976 state that if Customs has reason to suspect that drugs do not comply with the provisions of the act (or the rules made thereunder), it may detain them.

### ***Penal Code***

In some cases criminal proceedings can be brought to protect a registered trademark under the provisions of the Penal Code. Sections 480 to 489 of the code make it an offence to use a false or counterfeit trademark, such conduct being punishable by imprisonment or a fine, or both. Moreover, raids can be conducted with the assistance of state authorities to confiscate counterfeit products, provided that the trademark owner has established ownership by registering the trademark.

### ***Federal Investigation Agency Act***

Item 26 of the schedule to the act, which includes provisions of the Copyright Ordinance, empowers the Federal Investigation Agency to investigate offences relating to the infringement of copyright and to take action in connection therewith.

## **Authorities and Organizations**

### ***Customs***

Customs is one of the main bodies supporting the government's anti-piracy drive. It has established anti-piracy units at Pakistan's main international airports to focus on the trafficking of illegal and pirated CDs, computer programmes and other counterfeit products. As a result, substantial numbers of pirated goods are seized and destroyed.

### ***Intellectual Property Organization of Pakistan***

In 2005 the government established the Intellectual Property Organization of Pakistan (IPO Pakistan) to lead the effective and integrated management and promotion of all forms of intellectual property and to bring together all of Pakistan's IP departments. IPO Pakistan comprises the Trademarks Registry, the Copyright Office and the Patent Office, which are regulated by the Intellectual Property Organization of Pakistan Ordinance 2007, the Trademarks Ordinance, the Copyright Ordinance and the Patents Ordinance.

IPO Pakistan is responsible for:

- reforming, restructuring and reorganizing the management of IP rights;
- increasing public recognition of IP rights and their protection and enforcement; and
- creating effective connections with the public enforcement authorities and private-sector investigation agencies which are engaged in the detection of IP infringement.

IPO Pakistan has adopted a gradual and selective approach, based on the principle of special and differential treatment advocated by the World Trade Organization (WTO), whereby certain regions of Pakistan have been prioritized for IP enforcement. The enforcement agencies are reducing supplies of counterfeit and pirated goods and IPO Pakistan is seeking to restrict demand for such goods through its public awareness programme, which is part of its public outreach initiative. The Ministry of Information Technology is providing affordable open-source resources to enable migration to legitimate business software.

In order to tackle counterfeiting and piracy, IPO Pakistan has established enforcement coordination committees at policy level, supervisory level and operational level - the Policy Board Interface, the Organizational Interface and the Enforcement Coordination Committee Interface, respectively.

At the operational level, enforcement coordination has been institutionalized through regional enforcement coordination committees in Pakistan's main cities. All agencies in the enforcement chain are represented, including the Central Intelligence Legal Division and the Pakistan Electronic Media Regulatory Authority. Private investigation agency liaison committees and citizens and police liaison committees in major urban areas will be involved in enforcement by invitation. IPO Pakistan is responsible for overall enforcement coordination, but other tasks are divided between:

- the district police, which have responsibility for enforcement;
- the Federal Investigation Agency, which monitors production;
- the Pakistan Electronic Media Regulatory Authority, which covers pirate broadcasting;
- Customs; and
- the judiciary.

The World Intellectual Property Organization is holding workshops in cooperation with IPO Pakistan and with the assistance of the European Union. These meetings are attended by government officials and representatives from business and the law.

### Comment

Pakistan is a member of the WTO and in order to comply with the TRIPs Agreement it is making ongoing efforts to upgrade and revise its IP legislation. Considerable efforts are being directed at discouraging and controlling piracy and counterfeiting. The legislative powers are now in place, but the problem of effective enforcement remains. However, the agencies concerned are now fully empowered to support the enforcement of IP rights in Pakistan and to eliminate piracy and counterfeiting.

*For further information on this topic please contact [Seema S Mansoor](#) at Vellani & Vellani by telephone (), fax (+92 21 580 2120) or email ([seema.mansoor@vellani.com](mailto:seema.mansoor@vellani.com)).*

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### Author

#### Seema S Mansoor



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