

FACULTY OF SHARIAH & LAW

**ENFORCEMENT OF  
INTELLECTUAL PROPERTY RIGHTS  
IN PAKISATN**

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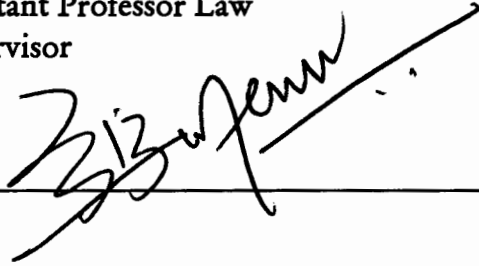
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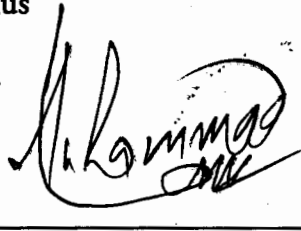
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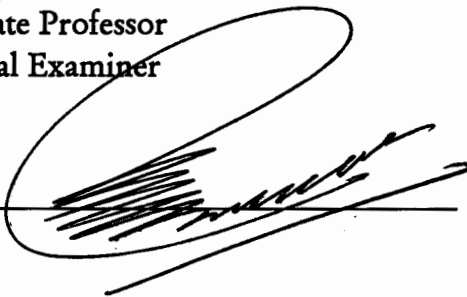
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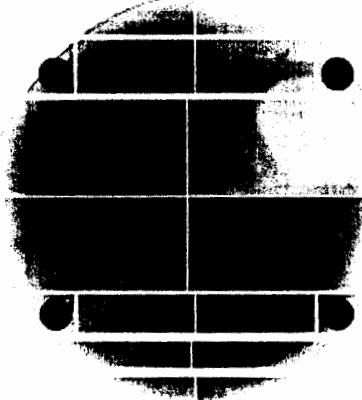
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# World Intellectual Property Organization



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## List of Abbreviation

1. ABC American Business Council
2. APC's Ant - Piracy Cells
3. BSA Business Software Alliance
4. CBR Central Board of Revenue
5. CDA Capital Development Authority
6. C.P.S.L.A Civil Petition for Special Leave to Appeal
7. CPC The Code of Civil Procedure
8. CrPc The Code of Criminal Procedure
9. FIA Federal Investigation Agency
10. FIAS of the World Bank Foreign Investment Advisory Services
11. GATT General Agreement on Tariff and Trade
12. GATS General Agreement on Tariff and Services
13. GI Geographical Indication
14. IFPI International Federation of the Phonographic Industry
15. IIPA International Intellectual Property Alliance
16. IPEIS Electronic Forum on Intellectual Property Enforcement Issues and Strategies
17. IPO Intellectual Property Organization Pakistan
18. MCA Monopoly Control Authority
19. MNF Most Favored Nation
20. NBF National Book Foundation
21. NOC No Objection Certificate
22. PASHA Pakistan Software House Association
23. PCT Patent Cooperation Treaty
24. PEMRA Pakistan Electronic Media Regulatory Authority
25. PIPRO Pakistan Intellectual Property Rights Organization
26. PLT Patent Law Treaty
27. PSEB Pakistan Software Export Board
28. PSDP Public Sector Development Programme
29. PTA Pakistan Telecommunication Authority
30. RBC Revised Bern Convention
31. RIAA Recording Industry Association of America
32. SBP State Bank of Pakistan
33. TRIPS Trade Related Intellectual Property Rights Agreement
34. UN United Nation
35. USTR US Trade Representative

36. WCT WIPO Copyright Treaty
37. WIPO World Intellectual Property Organization
38. WPPT WIPO Performances and Phonograms Treaty
39. WTO World Trade Organization
40. © This sign for Copyright Protection

## DEDICATION

This work is dedicated to my parents whose both financial and moral assistance gave me the determination and will power to complete this research work. May Allah bestow upon high blessing in this world.

## ACKNOWLEDGMENTS

Special thanks are due to those generous people who have placed a wealth of information on the Internet to help students undertaking research. The Idea of writing a perfect thesis has come from Hafiz Aziz-ur-Rehman Assistant Professor of Law, Faculty of Shariah & Law International Islamic University Islamabad. This thesis has been written for our own need, but the contribution of Professor Imran Ahsan Nayzee Ministry of Law, Islamabad, Pakistan, Sy. Yaseen Thahir D.G. (IPO), Sy. Muhammad Anwar Khan IP Expert (IPO), Sy. Ali Jaffar (PEMRA) Islamabad, Muhammad Aslam Rao Secretary (NBF) Ministry of Education Islamabad Pakistan, Hafiz Khubaib Ahmad Deputy Director Department of Libraries National Library of Pakistan Islamaba, Sy. Azam Khan Deputy Director Law (FIA Headquarter) Islamabad, Sy. Shukat Ali Deputy Director Law (FIA) Rawalpindi, Sy. Muhammad Siddique (NIPA) Karachi, Sy. Hasan Irfan Khan Legal Consultant (United Trade mark & Services) Lahore, Sy. Khurram Raza Attorney & Corporate Consultant (Legal Advisor of Microsoft in Pakistan) Lahore, Sy. Shaheen Kiran Advocate Supreme Court of Pakistan Lahore, Sy. Pervaiz Inayat Malik Advocate Supreme Court of Pakistan Lahore, (Ex-President Punjab bar Council), Sy. Matiullah Jan Advisor Media Law & Policy (Internews Pakistan) Islamabad, Software Houses in Islamabad Pakistan and Cable Operators Islamabad hereby acknowledged.

## ABSTRACT

This dissertation is basically aimed at creating awareness in the society about property rights. The research focused on the norms and standards of intellectual property rights vis-à-vis its enforcement, National Regulatory Framework regarding enforcement, institutional arrangements and procedures.

Police is one of the most vital organs of a state. It strives not only to establish law and order but also endeavors to perpetuate it. The whole structure of police is rusty and requires immediate and effective measures to retrieve it. Besides this we are having a dual system i.e. FIA and police. A poor country like ours can hardly afford to have two organizations for the same job.

In my opinion FIA should be abolished and its powers should be transferred to police. We have to ensure, the police improves its efficiency and performance.

Second administrative body is IPO. IPO is moving in the right direction with regard to the implementation of law. But there are some problems with it. The organization has neither a law wing nor a law expert. IPO desperately needs a full-fledged law wings, so that a sustainable long-term policy of enforcement could be formulated and pursued.

Government should earmark regular funds for National Book Foundation in order that the students could get books at cheaper rates. By adopting a realistic and oriented policy we can translate the dream of a literate Pakistan into reality.

National interests should be held supreme while making policies. The ground realities must be taken into account in this regard. All sort of pressures; political or bureaucratic, individual institutional must be rejected.

Media laws are being violated with impunity in Pakistan. Cable operators are running their own T.V channels. They have no qualms about telecasting pirated English and Indian movies.

They exploit these illegal means in another way and that is, they air their own advertisements through it. If these activities are effectively checked, whopping sums of revenue, of which, these handful of unconscientious. People are depriving our national exchange, will economy revive and reinvigorate our fragile.

Another thing, which merits serious consideration, is civil and criminal remedies. I firmly believe in the civil remedies. They are far more effective than criminal remedies.

The deterioration in the domain of enforcement of law, which we have been witnessing for quite some time, can be turned around only if we strengthen our judicial by freeing it from all pressures and influences. We must ensure speedy justice. The idea of setting up special separate courts, we experimented with following in the footsteps of the western countries proved an utter failure in our country; not because it's impractical but because the environment here is not conducive for them. The only ray of hope is a free and strong judicial system.

I got statistical data from these organizations and their analytical point of views while interviewing.

There points of views are available in different chapters and date in different tables, graphs and pie charts. You will observe their expert opinion in this thesis. There is no doubt that this practical study gave me a lot of help in writing this thesis. But their help, this task would have been impossible for me. We can take benefit from the conclusion drawn by these experts.



## CHAPTER NO.1

### 1.1 BRIEF INTRODUCTION, IMPORTANT DEFINITIONS AND INTELLECTUAL PROPERTY RIGHTS HISTORICAL EMERGENCE

#### PROPERTY

Whatever is owned by any person is called property. Existence (Physically) is not condition for property at all. Property includes tangible and intangible things.

One owner has both kind of title, legal and equitable title.

The law of property is the law of proprietary rights in rem. And right of personam is an obligation. It means the author of a book has right against the whole world.

#### Legal title

"A titles that evidences apparent ownership but does not necessarily signify full and complete title or a beneficial interest".<sup>1</sup>

#### Equitable Title

"A title that indicates a beneficial interest in property and that gives the holder the right to acquire formal legal title".<sup>2</sup>

In trust, many people can be owners of the property. Mosques and religious things are dealt by another kind of laws.

Definition of property may be of two kinds.

- 1) Comprehensive
- 2) Exhaustive

Whatever is required is included in the definition. When you are asked to be comprehensive (*Jameh*), you have not to be *mane*. Whatever is not required, should not be there.

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1 Bryan A. Garner, BLACK'S LAW DICTIONARY Seventh Edition p.1493

2 Ibid., p.1493

## INTRODUCTION

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### CHARACTERISTICS OF OWNERSHIP

- 1) *Ib Utendi*:- Right to use the property
- 2) *Frutendi*:- Right to enjoy benefit of property(Fruits of the property)
- 3) *Abutendi*:- Right to dispose of the property

Sale and gift transfer the ownership of the property.

If anyone of these characteristics is missing, you cannot have the right of ownership. For instance, you have only the right to enjoy the property. You can only use it but cannot give it on lease and mortgage. You may have the right to sell. In this case you may be an agent or representative in interest.

### ABSOLUTE OWNERSHIP

In sale and gift absolute ownership is transferred. Rest of the ways of transferring the property come under non-absolute ownership, e.g. lien, bailment and mortgage etc.

### CONCEPT OF SURRENDER

One says that "I just surrender my property". Some people say that it is an absolute ownership. But actually it is a kind of gift. So it comes under the gift transferring.

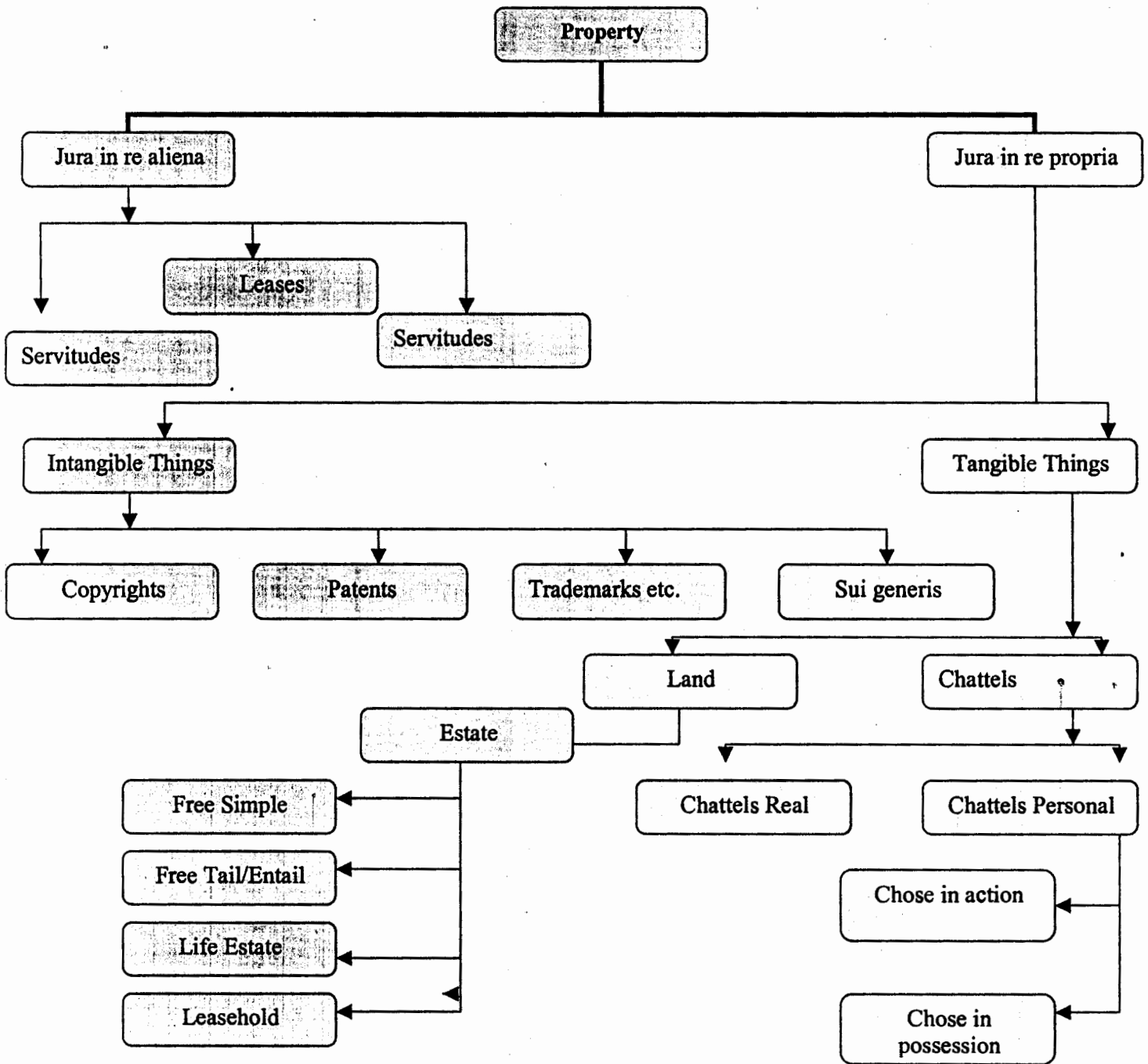
### NON-ABSOLUTE OWNERSHIP

Mortgage, lease, pledge and many other things are the example of non-absolute ownership.

### CLASSIFICATION OF PROPERTY

Which kind of property is placed where? These things are discussed under land laws and jurisprudence.

# INTRODUCTION



3 We are talking about absolute and partial ownership. Above given that is very flexible, one thing remember that under one and another can be replaced and changed. You can change them but with some justification.

4 This map made by Sir Aziz ur Rehamn class notes.

## INTRODUCTION

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### Jura in re propria

It is a Latin term. Jura in re propria means absolute ownership rests with one person or with one defined group of persons.

### Jura in re aliena

It is a Latin term. It means, where ownership is distributed among more than one owner. Every person is having right but when combined it becomes absolute.

You give your house on lease. You lose your equitable title but you have legal title.

Now we discuss Jura in re propria in detail.

Pakistan is a common law country so we give reference to English System. English law of transfer of property has a history. Only a sovereign may have property in ancient times. So King used to have property in ancient time.

## PRAGMATIC AND NORMATIVE

People used to have only tenure. In that tenure, terms and conditions were laid down on which a specific person was enjoying the property on behalf of King. King used to apportion his land to different people on the condition that the people would serve the King.

## DURATION OF HOLDING THAT TENURE

King gave land to different persons for different durations based on different compromise.

## DIFFERENT KINDS OF TENURES

- 1) Fee Simple
- 2) Fee Tail

## INTRODUCTION

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- 3) Life Estate
- 4) Lease Hold

### Fee Simple

When King would give his property without mentioning the time and the period as to how long that property would be with a particular person. Fee simple is like a gift and surrender.

### Fee Tail

With a condition, property will be given to your real heir after the death of certain person who had this property. The compromise, in which the heir inherits the land, will be of free tail.

### Life Estate

Property was given to people on one condition that on the death of the recipient, ownership of land would be reverted to the King.

### Lease Hold

It is a kind of sale. Property is given to a person for period less than life time.

Now fee simple, fee tail, life estate does not exist in law practically. But lease hold is existed. It does not mean that they are totally abolished. You can still amend the law a bit but you can not practice it. These exist in equity but not in equity law.

## INTRODUCTION

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### Chattel

"That money is not to be accounted Goods or Chattels, because it is not valuable itself. Chattels are either personal or real".<sup>5</sup>

"Moveable or transferable property; esp., personal property".<sup>6</sup>

### Chattels Personal

"Chattel personal may be so called in two respects: One because they belong immediately to the person of a Man, as a Bow, Horse etc." <sup>7</sup>

Except chattel real all the things are included in chattel personal e.g. car, duster and pen etc.

"A tangible good or an intangible right (such as patent)".<sup>8</sup>

### Chose in action

Chose in action means intangible chattel personal.

### Chose in Possession

Chose in possession means tangible chattels.

Debt is only movable intangible property. The value behind the money is associated with immovable property as well.

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<sup>5</sup> Bryan A. Garner, BLACK'S LAW DICTIONARY, Seventh Edition, p. 229.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Ibid.

## INTRODUCTION

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### Chattels Real

“Chattel real, are such as either appertain not immediately to the person, but to the some other thing, by way of dependency, as a Box with charters of land, Apples upon a Tree, or a Tree itself growing on the Ground .... [O]r else such as are issuing out of some immoveable thing to a person, as a Lease or Rent for the term of years.”<sup>9</sup>

We use real estate existence tangible. A person is dispossessed from immoveable property. He will be given back that property (IP)

In lease, lessor can dispossess lessee anytime when he pleases. Here lessee will be compensated only, damages will be paid. (Strict binding laws)

Real is immovable, because of its governing rules, it is real. For some other rules it becomes Jura in re aliena. Nature of lease is one of its one.

### Jura in re propria

This is one of my main focus area. It is a Latin term. Jura in re propria means absolute ownership rests one person or with one defined group of persons.

- 1) Copyrights
- 2) Patent
- 3) Trademark
- 4) Sui generis

I will discuss these concepts in detail subsequently in this chapter.

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<sup>9</sup> Ibid.

## INTRODUCTION

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### HOW DO THE INTANGIBLE RIGHTS (PROPERTY) CONVERT IN TO PROPERTY?

It is easy for us if we go through these concepts or branches of jurisprudence;

#### Situs

The location or position (of something) for large purposes, as in *lex situs*, the law of the place where the thing in issue is situated.<sup>10</sup>

#### Status

A person's legal condition regarding personal right < the status of Father > < the status of the wife.<sup>11</sup>

#### Law of Status

"The category of law dealing with personal or nonproprietary rights, whether in *rem* or in *personam*. It is one of the three departments into which civil law is divided. Law of obligation, law of property".<sup>12</sup>

In ancient times, things were sold in simple way. When the concept of commercialization came, then old and new things were represented in a different or new or charming ways e.g. Change the shape and packages.

## TECHNOLOGY AND LAW

Sometimes companies (Pvt) themselves impose passwords on their technology. When they sell it, of course people will criticize. The main aim of these kinds of activities is

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<sup>10</sup> Ibid., p. 1392

<sup>11</sup> Ibid., p. 1419

<sup>12</sup> Ibid., p. 893



## INTRODUCTION

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to earn profit. So corporate authorities (private companies) are trying hard to detach certain areas from the law of status and put them under the law of property.

## NEW SCHEME

Scientist or big companies wanted to change the law of status into property. So it meant they had wanted modification. When those things would come into property, they could earn profit from it. In this way intangible rights were converted into property, So in this way Intellectual Property came into Jura in re propria (absolute ownership).

## DEFINITIONS ACCORDING TO PAKISTANI STATUTES;

Intellectual property is, traditionally, divided into two main areas;

1. Copyright and rights related to copyright
2. Industrial Property

### 1. Copyright and rights related to copyright

According to The Copyright Ordinance, 1962 the definition of "Copyright" is as under;

"3. Meaning of Copyright. — 1. For the purpose of this Ordinance, "copyright" means the exclusive right, by virtue of, and subject to, the provisions of this Ordinance:—

- (a) in the case of a literary, dramatic or musical work, to do and authorize the doing of any of the following acts, namely:-
  - (i) to reproduce the work in any material form;
  - (ii) to publish the work;
  - (iii) to perform the work in public;
  - (iv) to produce, reproduce, perform or publish any translation of the work;
  - (v) to use the mark in a cinematographic work or make a record in respect of the work;
  - (vi) to broadcast the work, or to communicate the broadcast of the work to the public by a loudspeaker or any other similar instrument;

## INTRODUCTION

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- (vii) to make any adaptation of the work;
  - (viii) to do in relation to translation or an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (vi);
  - (ix) to authorize the rental of computer programme
- (b) in the case of an artistic work, to do or authorize the doing of any of the following acts, namely:-
- (i) to reproduce the work in any material form;
  - (ii) to publish the work;
  - (iii) to use the work in a cinematographic work;
  - (iv) to show the work in television;
  - (v) to make any adaptation of the work;
  - (vi) to do in relation to an adaptation of the work any of the acts specified in relation to the work in sub-clauses (i) to (iv);
- (c) in the case of a cinematographic work, to do or authorize the doing of any of the following acts, namely:-
- (i) to make copy of the work;
  - (ii) to cause the work in so far as it consists of visual images, to be seen in public and, in so far as it consists of sounds, to be heard in public;
  - (iii) to make any record embodying the recording in any part of the sound track associated with the work by utilizing such sound track;
  - (iv) to broadcast the work;
  - (v) to authorize the rental of cinematographic work;
- (d) in the case of a record, to do or authorize the doing of any of the following acts by utilizing the record, namely:-
- (i) to make any other record embodying the same recording;
  - (ii) to use the recording in the sound track of a cinematographic work;
  - (iii) to cause the recording embodied in the record to be heard in the public;
  - (iv) to communicate the recording embodied in the record by broadcast.
- (2) Any reference in sub-section (1) to the doing of any act in relation to a work or a translation or an adaptation thereof shall include a reference to the doing of that act in relation to a part thereof.
- (3). Entitlement to copyright in compilation of data or other material shall not extend to data or other material itself and shall be without prejudice to any copyright subsisting in the data or other material, that is to say, the copyright shall subsist to the extent of compilation only<sup>13</sup>.

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<sup>13</sup> The Copyright Ordinance, 1962 Section: 3

## INTRODUCTION

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Copyright is a set of exclusive right granted by governments to regulate the use of a particular expression of an idea or information. At its most general, it is literally "the right to copy" an original creation. In most cases, these rights are of limited duration. In Pakistan it gives the right for 50 years after the death of the creator. The symbol for copyright is ©, and in some jurisdictions may alternately be written {c}.

Copyright law covers only the particular form or manner in which ideas or information have been manifested, the "form of material expression". It is not designed or intended to cover the actual idea, concepts, facts, styles, or techniques which may be embodied in or represented by the copyright work. Copyright law provides scope for satirical or interpretive works which themselves may be copyrighted.

## 2. INDUSTRIAL PROPERTY

According to The Trade Marks Ordinance, 2001 the definition of "Trade Mark" is as following;

"(xlvii) "trade mark" means any mark capable of being represented graphically which is capable of distinguishing goods or services of one undertaking from those of other undertakings;"<sup>14</sup>

A trademark or trade mark is a distinctive sign of some kind which is used by a business to uniquely identify itself and its products and services to consumers, and to distinguish the business and its products or services from those of other businesses. A trademark is a type of industrial property which is distinct from other forms of intellectual property.

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<sup>14</sup> The Trade Marks Ordinance, 2001 Section: 2 (xlvii)

## INTRODUCTION

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Conventionally, a trademark comprises a name, word, phrase, logo, symbol, design, image, or a combination of these elements. There is also a range of non-conventional trademarks comprising marks which do not fall into these standard categories.

The styling of "trademark" as a single word is predominantly used in the United States, while the two word styling "trade mark" is used in many other countries around the world, including the European Union and Commonwealth and ex-Commonwealth jurisdictions (although Canada officially uses "trade-mark" pursuant to the *Trade-mark Act*, "trade mark" is also commonly used).

## GEOGRAPHICAL INDICATION

There is no law in Pakistan with regard to Geographical Indication. A geographical indication (sometimes abbreviated to *GI*) is a name or sign used on certain products or which corresponds to a specific geographical location or origin (eg. a town, region, or country). The use of a GI may act as a certification that the product possesses certain qualities, or enjoys a certain reputation, due to its geographical origin

In 1994, when negotiations on the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights ("TRIPS") were concluded, governments of all WTO member countries (148 countries as of September 2003) had agreed to set certain basic standards for the protection of GIs in all member countries. There are, in effect, two basic obligations on WTO member governments relating to GIs in the TRIPS agreement:

1. Article 22 of the TRIPS Agreement says that all governments must provide legal opportunities in their own laws for the owner of a GI registered in that country to prevent the use of marks that mislead the public as to the geographical origin of the good. This includes prevention of use of a geographical name which although literally true "falsely represents" that the product comes from somewhere else.

## INTRODUCTION

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2. Article 23 of the TRIPS Agreement says that all governments must provide the owners of GI the right, under their laws, to prevent the use of a geographical indication identifying wines not originating in the place indicated by the geographical indication. This applies *even where the public is not being misled*, where there is no unfair competition and where the true origin of the good is indicated or the geographical indication is accompanied by expressions such as "kind", "type", "style", "imitation" or the like. Similar protection must be given to geographical indications identifying spirits.

Article 22 of TRIPS also says that governments may refuse to register a trademark or may invalidate an existing trademark (if their legislation permits or at the request of another government) if it misleads the public as to the true origin of a good. Article 23 says governments may refuse to register or may invalidate a trademark that conflicts with a wine or spirits GI whether the trademark misleads or not.

According to The Registered Designs Ordinance, 2000 the definition of "Design" is as under;

"(e) "design" means features of shape, configuration, pattern ornament applied to an article by any industrial process or means, being features which in the finished article appeal to and are judged solely by the eye, but does not include a method or principle of construction or features of shape or configuration which are dictated solely by technical and functional considerations;"<sup>15</sup>

Industrial design rights are intellectual property rights that protect the visual design of objects that are not purely utilitarian. An industrial design consists of the creation of a shape, configuration or composition of pattern or color, or combination of pattern and color in three dimensional form containing aesthetic value. An industrial design can be a two- or three-dimensional pattern used to produce a product, industrial commodity or handicraft. This right is available forever but extendable after every 10 years according to Pakistani law.

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<sup>15</sup> The Registered Designs Ordinance, 2000 Section: 2 (e)

## INTRODUCTION

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According to The Patent Rules, 2004 the definition of "Patent" is as under;

"(i) "patent" means a patent granted under the provisions of the Ordinance;"<sup>16</sup>

The term "patent" originates from the Latin word *patere* which means "to lay open" (i.e. make available for public inspection) and the term *letters patent*, which originally denoted royal decrees granting exclusive rights to certain individuals or businesses.

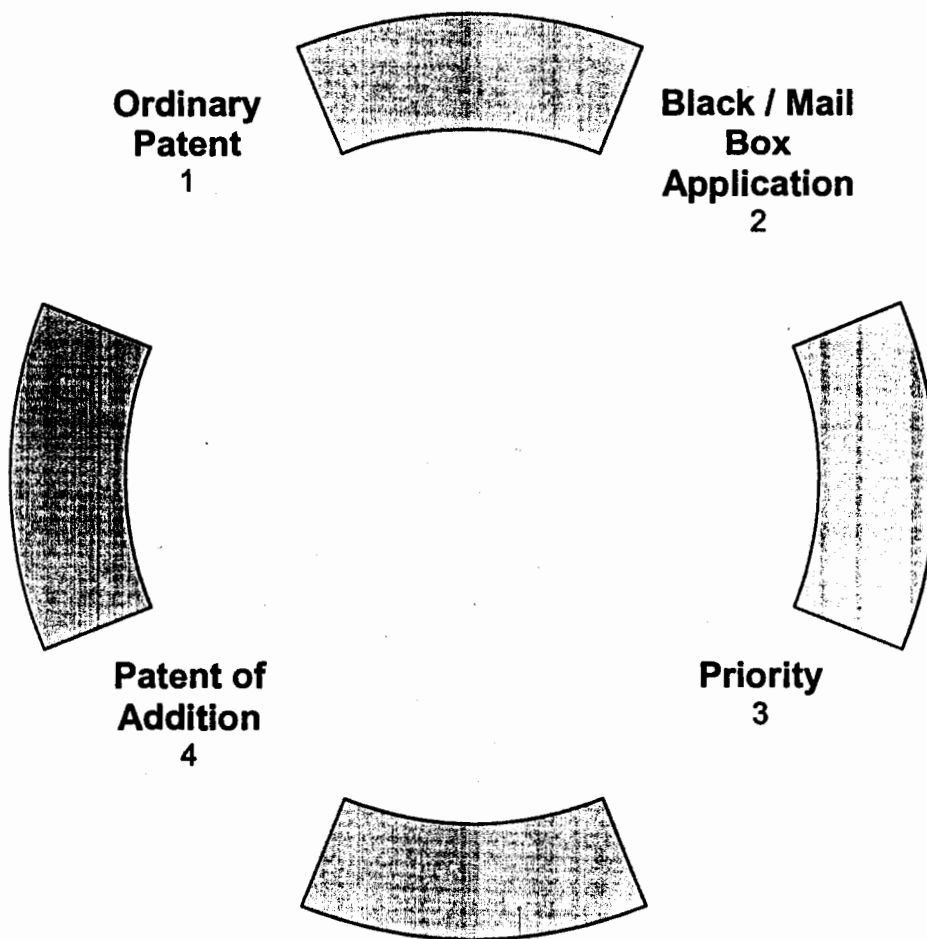
A patent is a set of exclusive rights granted by a state to a person for a fixed period of time in exchange for the regulated, public disclosure of certain details of a device, method, process or composition of matter (substance) (known as an invention) which is new, inventive, and useful or industrially applicable. Term of patent under Pakistani law is 20 years from the date of filing.<sup>17</sup>

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<sup>16</sup> The Patent Rules, 2003 Section: 2 (i)

<sup>17</sup> Ibid., Section: 40

Kinds of Patent



18192021

- 
- 18 An ordinary patent, which is dated as of the official date of the application for patent
  - 19 A black/mail box application relating to chemical products intended for the use in agriculture and medicines. The application will be kept dormant until 31st December 2004.
  - 20 A patent claiming "Priority", which is dated as of the official date of the corresponding application for patent first made in a country which is the member of WTO (World Trade Organization).
  - 21 A patent of addition, for improvement or modification of an invention for which a patent has already been applied for or granted.

### 1.2 DESCRIPTION OF THE TOPIC AND ELABORATION OF RESEARCH, QUESTION(S), IMPORTANT AND RELEVANCE OF TOPIC

Foreign investors in Pakistan are predominantly concerned about enforcement of intellectual property rights, which demands refined rigorous regulatory and institutional framework. USA says that it will sign the bilateral Investment Treaty with Pakistan only if Pakistan enforces intellectual property rights. So it means that we can sell our cotton in international market, when we implement these rights.

It is an age of economic warfare and not of armed combat. If we are to survive as a respectable country in the comity of nations we have to win the economic front. Apart from other requirements, economic growth and implementation of Intellectual Property Rights goes hand in hand. Such enforcement besides having other advantages also guards against violation IPRs of writers, creators, inventors and foreign investors.

In this thesis, I intend to assist Public sector in its efforts to comply with the obligations to put into place systems and procedures for the effective Enforcement of Intellectual Property Rights. It would also facilitate students in comprehending such topics.

This thesis will address the question of enforcement from investigation through administrative and judicial enforcement. It would provide guidance on how to achieve effective and long lasting protection for such rights. This thesis identifies a number of useful resources, which are of assistance in ensuring the effective enforcement of Intellectual Property Rights.

Obviously, being member of the World Trade Organization (WTO), Pakistan became a signatory to the TRIPS agreement. Now it is legally bond to enforce it. The country has created its own laws. We would see IPR's enforcement from this angle.



## INTRODUCTION

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This dissertation plans to inform the general public about the significance of intellectual property as a tool for economic, social and cultural development.

This thesis will be divided into five parts. First part will elaborate IPR's and create a relation with the title of the thesis (Enforcement of Intellectual Property Rights in Pakistan). Second part will explain the global scenario on enforcement issues. Third part will be the main focus area, in which interpretation of enforcement provisions of the relevant Pakistani laws would be presented. Fourth and fifth part will dilate upon institutional arrangements in Pakistan and will try to offer a solution for above mentioned issues.

### 1.3 LITERATURE REVIEW

Pakistan is a developing country. But there are some sectors that need more improvement. Education sector is also one of them. And the main cause of failure in education sector is that we have no research culture. You can see in this way that there is no Pakistani literature available on intellectual property rights. There are only two books: one is "The Intellectual Property Code" and the second one is "The Intellectual Property, Intellectual Property Laws in Pakistan and International Treaties on IPRs" by G.M. Chaudhry.

With due apology to the author of these books, that these are not research books but these are only the compilation of different national and international laws.

We need research work in intellectual property laws so that we can solve the economical problems of our country. My topic is also one of them. We need research keeping in view Pakistani atmosphere So that we can adopt international treaties and conventions easily. When Government signs these international documents, people should be aware about them. Developed Countries have very strong set up for institutions; they debate on these topics in their Houses and on media. In this way awareness as well as nice participation towards general public comes.

## INTRODUCTION

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Intellectual Property Organization of Pakistan is working very positively but unfortunately this organization has not even a single legal wing. How is it possible that IPO talks about Intellectual Property Rights enforcement, which consists of different statutes (TRIPS is one of them). Unluckily this organization has neither a law expert nor any publication.

With regard to enforcement, international reports are available but for their own interests. These organizations are working in different countries and Pakistan is also one of them. These organizations are as follows; The International Intellectual Property Alliance (IIPA), Business Software Alliance (BSA), The Recording Industry Association of America (RIAA), United States Trade Representative (USTR), and the American Business Council (ABC) etc. I have commented on them in detail in chapter 2 (Eleven Years reports of IIPA) and chapter 4.1.

### 1.4 METHODOLOGY

Writing of thesis consists of two styles of research hypothesis. First one is statistical study and other, qualitative study. In statistical study we analyze and provide definite solutions or even proper answers in yes or no. Qualitative studies contain analysis, draw a framework and conclude with a theme. I am aiming to follow both styles regarding Enforcement of Intellectual Property Rights in Pakistan closing stages at a theme.

I personally conducted interviews with these people namely;

- |                                    |                                       |
|------------------------------------|---------------------------------------|
| 1. Sy. Yaseen Thahir               | D.G. (IPO)                            |
| 2. Sy. Muhammad Anwar Khan         | IP Expert (IPO)                       |
| 3. Sy. Ali Jaffar Legal Consultant | (PEMRA)                               |
| 4. Sy. Muhammad Aslam Rao          | Secretary (NBF) Ministry of Education |

## INTRODUCTION

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5. Sy. Hafiz Khubaib Ahmad Deputy Director Department of Libraries  
National Library of Pakistan Islamabad
6. Sy. Azam Khan Deputy Director Law (FIA Headquarter)  
Islamabad
7. Sy. Shukat Ali Deputy Director Law (FIA) Rawalpindi
8. Sy. Muhammad Siddique (NIPA) Karachi
9. Sy. Hasan Irfan Khan Legal Consultant (United Trade mark &  
Services) Lahore
10. Sy. Khurram Raza Attorney & Corporate Consultant (Legal  
Advisor of Microsoft in Pakistan) Lahore
11. Sy. Shaheen Kiran Advocate Supreme Court of Pakistan  
Lahore
12. Sy. Pervaiz Inayat Malik Advocate Supreme Court of Pakistan  
Lahore
13. Sy. Matiullah Jan Advisor Media Law & Policy (Internews  
Pakistan) Islamabad
14. Software Houses in Islamabad Pakistan
15. Cable Operators in Islamabad

In these interviews, I get statistical data from these organizations and their analytical point of views. There points of views are available in different chapters and data in different tables, graphs and pie charts. You will observe their expert opinion in this thesis. There is no doubt that this practical study gave me a lot of help in writing this thesis. But without their help, this task would have been impossible for me. We can draw benefit from the conclusion drawn by these experts.

CHAPTER No. 2

INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT: NORMS AND STANDARDS

2.1 ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN GLOBAL SCENARIO, ATTEMPTS AT WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO) AND WORLD TRADE ORGANIZATION (WTO) LEVEL

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

The World Intellectual Property Organization (WIPO) was established by a convention of 14 July 1967, which entered into force in 1970. It has been a specialized agency of the United Nation since 1974, and administers a number of international unions or treaties in the area of intellectual property, such as the Paris and Berne Conventions. Pakistan is member of WIPO Bodies as following, Assembly of Bern Union, Executive Committee of Bern Union, Assembly of Paris Union, Conference of WIPO, Coordination Committee of WIPO, General Assembly of WIPO and Program and Budget Committee of WIPO.

WIPO's objectives are to promote intellectual property protection through the world cooperation among states. WIPO also aims to ensure administrative cooperation among the intellectual property unions created by the Paris and Berne Conventions and sub-treaties concluded by the members of the Paris Union.

The administration of the unions under the various conventions is centralized through WIPO's secretariat, the "International Bureau". The International Bureau also maintains international registration services in the field of patents, trademarks,

industrial designs and appellations of origin. WIPO also undertakes development cooperation for developing countries through advice, training and furnishing of documents.

In 2002 WIPO established an Advisory Committee on Enforcement, in charge of global enforcement issues, covering both industrial property and copyright and related rights. The objectives of the Committee are: coordination of private sector and relevant organizations to combat counterfeiting and piracy; public education; assistance; coordination to undertake national and regional training programs for all relevant stakeholders and exchange of information on enforcement issues through the establishment of an Electronic Forum. At the same time WIPO established the Enforcement and Special Projects Division to serve as a focal point for enforcement activities in the International Bureau. The Division has, inter alia, the following responsibilities: the convening and supporting the annual meeting of the Advisory Committee on Enforcement to consider intellectual property enforcement issues and strategies; preparation of working documents, studies and surveys on topical issues relating to the enforcement of intellectual property rights; administering the Electronic Forum on Intellectual Property Enforcement Issues and Strategies (IPEIS), as a forum where all relevant stakeholders can share information on national experiences pertaining to the enforcement of intellectual property rights; cooperation and coordination with multilateral and regional organizations and with non-governmental organizations in order to share expertise and experiences in the field of the enforcement of intellectual property rights, including the attendance of seminars, workshops and other meetings; promoting the understanding of the international obligations and principles relating to the enforcement of intellectual property rights and addressing the needs of Member States in developing and strengthening their national and regional systems for the enforcement of intellectual property rights, including correspondence, human resource development, participating in seminars and

workshops, advising national governments on the implementation of enforcement strategies, providing legislative advice and technical assistance; and developing projects and information material to enhance public awareness in the fight against counterfeiting and piracy.

#### AGREEMENT BETWEEN THE WIPO AND THE WTO

To facilitate the implementation of the TRIPS Agreement, the Council for TRIPS concluded with WIPO an agreement on cooperation between WIPO and the WTO, which came into force on 1 January 1996. As explicitly set out in the preamble to the TRIPS Agreement, the WTO desires a mutually supportive relationship with WIPO. The agreement, provides cooperation in three main areas

- Notification of, access to and translation of national laws and regulations
- Implementation of procedures for protection of national emblems
- Technical cooperation

#### WORLD TRADE ORGANIZATION

The World Trade Organization (WTO) came into being in 1995. One of the youngest of the international organizations, the WTO is the successor to the General Agreement on Tariffs and Trade (GATT) established in the wake of the Second World War. So while the WTO is still young, the multilateral trading system that was originally set up under GATT is well over 50 years old. The system was developed through a series of trade negotiations, or rounds, held under GATT. The first rounds dealt mainly with tariff reductions, anti-dumping and non-tariff measures. The last round - the 1986-94 Uruguay Round - led to the WTO's creation. Now negotiations or rounds are going on under WTO.

GATT is now the WTO's principal rule-book for trade in goods. The Uruguay Round also created new rules for dealing with trade in services, relevant aspects of intellectual property, dispute settlement, and trade policy reviews.

The World Trade Organization (WTO) deals with the rules of trade between nations at a global or near-global level. There are a number of ways of looking at the WTO. It is an organization for liberalizing trade. It is a forum for governments to negotiate trade agreements. It is a place for them to settle trade disputes. It operates a system of trade rules. (But it is not superman, just in case anyone thought it could solve - or cause - the entire world's problem!)

The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. They deal with: agriculture, textiles and clothing, banking, telecommunications, government purchases, industrial standards and product safety, food sanction regulations, intellectual property, and much more. But a number of simple, fundamental principals run throughout all of these documents. These principals are the foundation of the multilateral trading system. These principles are

1. Most-Favored-Nation
2. National Treatment
3. Balanced Protection

The WTO has 149 members, accounting for over 97% of world trade. Around 30 others are negotiating membership. Decisions are made by the entire membership. This is typically by consensus. A majority vote is also possible but it has never been used in the WTO, and was extremely rare under the WTO's predecessor, GATT. The WTO's agreements have been ratified in all members' parliaments except some

countries. Because they have their own procedure, which is against, that law and Pakistan is also one of them.

The WTO is an intergovernmental body dealing with the rules of trade between nations. Signature and implementation of the TRIPS Agreement is a membership obligation of WTO Member States. Oversight of the TRIPS Agreement is conferred upon the Council for TRIPS, which was established by Article IV of the WTO Agreement. The functions of the Council for TRIPS include: monitoring the operation of the Agreement (Art.68); review and, where appropriate, amend the Agreement (Art. 71). The Council for TRIPS is also required by Art.68 'to afford Members the opportunity of consulting on matters relating to the trade related aspects of intellectual property rights'.

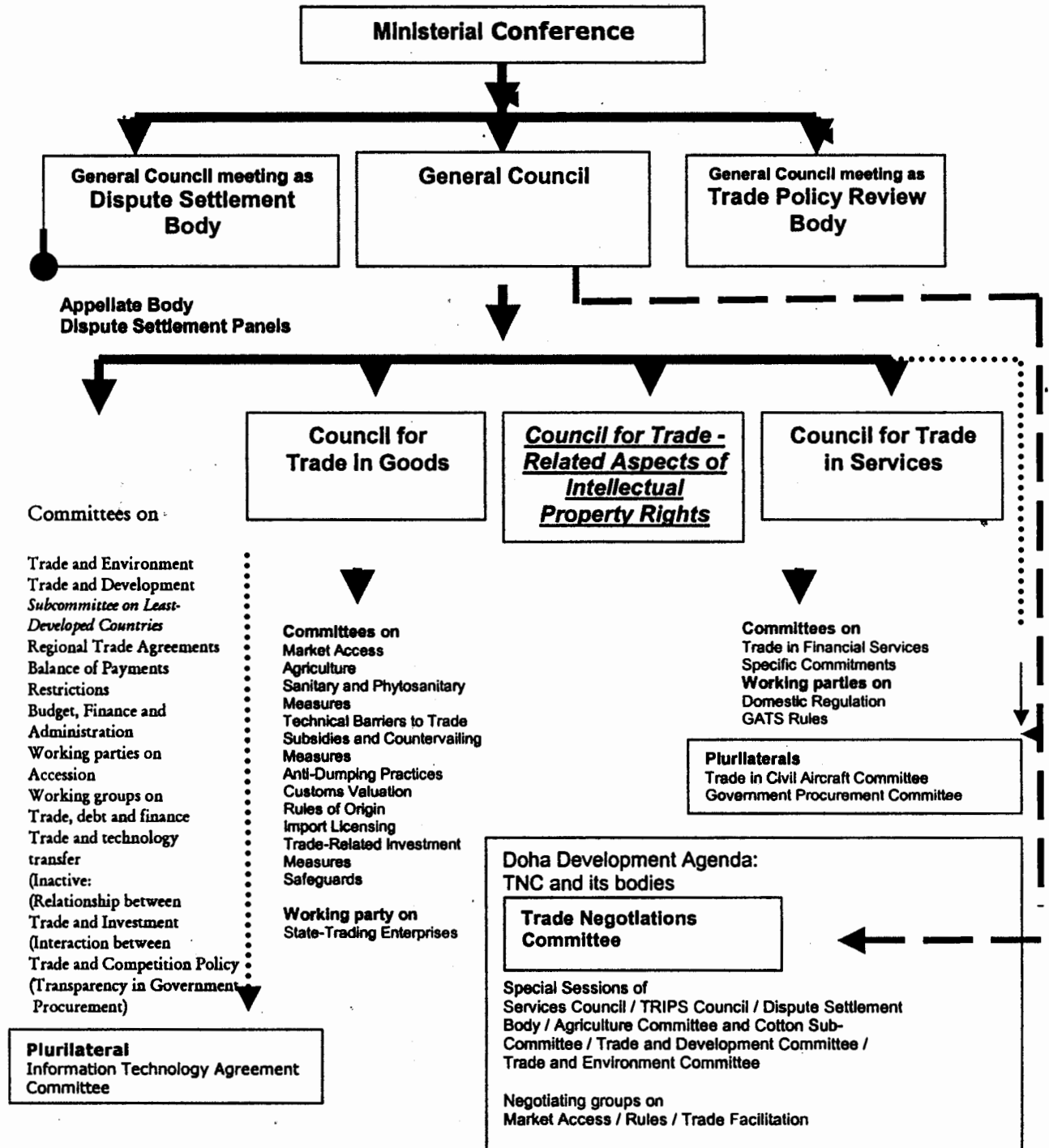
Article 69 of the TRIPS Agreement contains agreement on the part of Members that 'they will cooperate with each other with a view to eliminating international trade in goods infringing intellectual property rights'.



2: Structure

General Council WTO structure

All WTO members may participate in all councils, committees, etc, except Appellate Body, Dispute Settlement panels, and plurilateral committees.



Key



Reporting to General Council (or a subsidiary)



Reporting to Dispute Settlement Body



Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members



Trade Negotiations Committee reports to General Council  
The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body<sup>1</sup>

All the WTO agreements (except for a couple of "Plurilateral agreements") apply to all WTO members. The members each accepted all the agreements as a single package with a single signature – making it, in the jargon, a "single undertaking".

The TRIPS Agreement is part of that package. Therefore it applies to all WTO members

But the agreement allows countries different periods of time to delay applying its provisions. These delays define the transition from before the agreement came into force (before 1 January 1995) until it is applied in member countries. The main transition periods are:

- Developed countries were granted a transition period of one year following the entry into force of the WTO Agreement, i.e. until 1 January 1996.
- Developing countries were allowed a further period of four years (i.e. January 2000) to apply the provisions of the agreement other than Articles 3, 4 and 5 which deal with general principles such as non-discrimination.

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<sup>1</sup> <http://www.wto.org/> (Last Visited July 15,2006)

- Transition economies, i.e. members in the process of transformation from centrally-planned into market economies, could also benefit from the same delay (also until 1 January 2000) if they met certain additional conditions.

Least-development countries are granted a longer.

### 2.1.1 PARIS CONVENTION

Paris Convention (1983), revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958) and Stockholm (1967), and amended in 1979 (Paris Union).

The Paris Convention for the Protection of Industrial Property was concluded in 1883 and is one of the pillars of the international intellectual property system. It applies to industrial property in the widest sense, including inventions, marks, industrial designs, utility models (a kind of "small patent" provided for by the laws of some countries), trade names (designations under which an industrial or commercial activity is carried on), geographical indications (indications of source and appellations of origin) and the repression of unfair competition.

In 2005, Comoros (1) adhered to the Paris Convention.

The total number of contracting parties on December 31, 2005, was 169.<sup>2</sup>

Paris Convention for the protection of Industrial Property. Pakistan became the party in July 22, 2004 through Stockholm Act of Paris Convention and accession in April 22, 2004.<sup>3</sup> Total contracting parties are 169 in the Assembly (Paris Union) of WIPO Bodies and Pakistan is one of them but not in the Executive Committee (Paris Union) of WIPO Bodies.

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<sup>2</sup> <http://www.wto.org/> (Last Visited July 15,2006)

<sup>3</sup> With the declaration provided for in Article 28(2) of the Stockholm Act relating to the international Court of Justice.

### 2.1.2 BERN CONVENTION

Bern Convention (1886), completed at Paris (1896), revised at Berlin (1908), completed at Berne (1914), revised at Rome (1928), at Brussels (1948), at Stockholm (1967) and at Paris (1971), and amended in 1979 (Bern Union

The Berne Convention for the Protection of Literary and Artistic Works was concluded in 1886. It sets out and defines minimum standards of protection of the economic and moral rights of authors of literary and artistic works.

In 2005, Comoros, Nepal and Uzbekistan (3) adhered to the Berne Convention.

The total number of contracting parties on December 31, 2005, was 160.<sup>4</sup>

Although copyright protection is granted by national laws since 120 years. The Berne Convention of 1886 (with 2 Additions and 5 Revisions since the first Act was signed – the Paris Act of 1971 being the most recent one (usually referred to as Revised Berne Convention – in short: RBC). The RBC is administered by the WIPO, a specialized agency of the United Nations (UN)<sup>5</sup>

Total parties are 160 in Bern Convention. Bern conventions entered into force in Pakistan since July 5, 1948 through Rome Act (1928) and accession in July 5, 1948.<sup>6</sup> Articles 22 – 38 of Stockholm Act (1967) entered into force in January 29, 1970 and accession in November 26, 1969. (Stockholm Act: Alternative entered into force in February 26, 1970). Total contracting parties are 160; Pakistan is one of them and also member of Bern Union “Executive Committee” of WIPO Bodies (Total contracting

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4 <http://www.wipo.int/portal/index.html.en> (Last Visited July 15,2006)

5 Dr. Henning PhD in Copyright (Class Notes)

6 Pakistan deposited its instrument of ratification of (or of accession to) the Stockholm Act in its entry; however, Articles 1 to 21 (substantive clauses) of the said Act have not inter into force.

parties are 39 of Executive Committee). Total contracting parties are 157 in the Assembly of WIPO Bodies (Bern Union) and Pakistan one of them.

### 2.1.3 TRADE RELATED INTELLECTUAL PROPERTY RIGHTS (TRIPS)

All the WTO agreements apply to all WTO members. The members each accepted all the agreements as a single package with a single signature – making it, in the jargon, a “single undertaking”.

The TRIPS Agreement is part of that package. Therefore it applies to all WTO members.

“The general timetable for implementing the TRIPS Agreement, which entered into force on January 1, 1995, was one year for industrialized countries, five years for developing country and 11 years for least developed countries. Pakistan, being a developing country, was bound to conform its laws in accordance with TRIPS before 1<sup>st</sup> of January, 2000.”<sup>7</sup>

The extent of protection and enforcement of these rights varied widely around the world; and as intellectual property became more important in trade, these differences became a source of tension in international economic relations. New internationally-agreed trade rules for intellectual property rights were seen as a way to introduce more order and predictability, and for disputes to be settled more systematically.

The Uruguay Round achieved that. The WTO’s TRIPS Agreement is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring

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<sup>7</sup> Muhannad Siddiqe, “Intellectual Property Rights day, TRIPS Agreement and it’s Implication for Pakistan”, Business Recorder April 26, 2005, p.11.

them under common international rules. It establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. In doing so, it strikes a balance between the long term benefits and possible short term costs to society. Society benefits in the long term when intellectual property protection encourages creation and invention, especially when the period of protection expires and the creations and inventions enter the public domain. Governments are allowed to reduce any short-term costs through various exceptions, for example to tackle public health problems. And, when there are trade disputes over intellectual property rights, the WTO's dispute settlement system is now available.

The objectives of the TRIPS Agreement:

- Internationalization and unification of IP laws.
- Effective and speedy enforcement of IP rights across the globe.
- Safeguards against abuse,— The procedures must not hinder the smooth flow of trade in genuine goods.(and should not create barriers to international trade.)<sup>8</sup>

These are Basic principles: national treatment, MFN, and balanced protection.

As in GATT and GATS, the starting point of the intellectual property agreement is basic principles. And as in the two other agreements, non-discrimination features prominently: national treatment (treating one's own nationals and foreigners equally), and most-favored-nation treatment (equal treatment for nationals of all trading partners in the WTO). National treatment is also a key principle in other intellectual property agreements outside the WTO.

The TRIPS Agreement has an additional important principle: intellectual property protection should contribute to technical innovation and the transfer of technology.

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<sup>8</sup> Ibid., p. 12

Both producers and users should benefit, and economic and social welfare should be enhanced.

Part III of TRIPS (Article 41-61) lay down minimum standards for the enforcement of IPRs. Part IV (Article 62) does the same with respect to the acquisition and maintenance of such rights.<sup>9</sup>

The following chart summarizes some TRIPS deficiencies that are found in Copyrights laws and enforcement practices around the world.<sup>10</sup>

Deficiency in Law or Enforcement Practice	TRIPS Article(s) Invoked
Law fails to provide for <i>ex parte</i> civil search orders	Articles 41.1,50
Law provides for <i>ex parte</i> civil search orders, but obtaining order requires numerous pleadings and exorbitant costs	Articles 41.1,50
Court issues <i>ex parte</i> civil search order, but orders that party to be searched be forewarned, leading to the destruction of the evidence	Articles 41.1,50
Piracy levels of over 90% huge commercial piracy losses	Articles 41.1,61
Law provides for low civil/administrative damages	Articles 41.1,45
Law provides for low criminal penalties(e.g., no or limited duration	Articles 41.1,61

9 UNCTAD-ICTSD, Resource Book on TRIPS and Development (Cambridge University Press, Oxford 2005), 575

10 IIPA, Paper on Copyright Enforcements under the TRIPS Agreement, October 2004, p.5.

INTELLECTUAL PROPERTY RIGHTS ENFORCEMENT: NORMS AND STANDARDS

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imprisonment for criminal infringements, low fines)	
Law provides for relatively stiff imprisonment and high fines for commercial piracy, but in practice, imprisonments are commuted and fines are lowered to nominal amounts	Articles 41.1,61
Country runs raids against willful commercial pirates, seizing goods but never seizing materials and implements used in the infringement(or returning materials and implements without good reason)	Articles 41.1,61
Country fails to criminalize "end-user" software piracy (piracy in which very few legitimate copies of a work are purchased by a company or government ministry, which then proceeds to breach its license by disseminating multiple unauthorized copies among employees)	Articles 41.1,61
Country fails to criminalize transmitting pirate software over the Internet even where no charge is made when the act has significant" commercial" impact	Articles 41.1,61
Raids are available but court cases are never (or rarely) concluded and penalties are never (or rarely) imposed	Articles 41.1,41.2,61



## COUNTERFEITING AND PIRACY UNDER TRIPS

The five paragraphs of Article 41 enunciate the general enforcement obligations, which are incumbent upon Members. Articles 42 to 50 set out the civil and administrative procedures and remedies, which are required to be, offered intellectual property rights holders. Article 61 requires the institution of criminal procedures and remedies in the case of willful trademark counterfeiting or copyright piracy on a commercial scale'. A significant innovation is the scheme for the border control of intellectual property counterfeiting which is contained within Articles 51 to 60. As a corollary to the enforcement provisions of the Agreement, measures are adopted in Articles 63 and 64 for the establishment of multilateral consultation and dispute settlement procedures.

To "enforce" means, in this context, to execute a particular law, writ, judgment, or the collection of a debt or fine.<sup>11</sup> In the context of IPRs, in particular, it means to prevent or obtain remedied for infringement of conferred rights. An "infringement" occurs when acts under the exclusive control of the title holder (such as those defined in Article 11, 14, 16, 26 and 28) and not subject to admissible exceptions (like those permitted by Articles 13 and 30), are performed by third parties without the authorization of the title holder or a competent authority (e.g., in the case of compulsory licenses)<sup>12</sup>

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11 Bernard Hoekman, Michel Kosteki, *The Political Economy of the World Trading System, From GATT to WTO* (Oxford University Press, Oxford 1997), p.151

12 UNCTAD-ICTSD, *Resource Book on TRIPS and Development* (Cambridge University Press, Oxford 2005), pp 575-576

## GENERAL ENFORCEMENT OBLIGATIONS

Article 41.1 of the TRIPS Agreement imposes upon Members of the WTO the general obligation to make available the enforcement procedures listed in the Agreement 'so as to permit effective action against any act of infringement of intellectual property rights' covered by the Agreement. These procedures are required also to include 'expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements'. Consistent with the general trade liberalization objectives of the WTO, these procedures are required to be 'applied in a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse'.

In amplification of the latter qualifications, Art.41.2 requires that procedures concerning the enforcement of intellectual property rights shall be fair and equitable'. More specifically, the paragraph requires that procedures 'shall not be unnecessarily complicated or costly, or entail unreasonable time-limits or unwarranted delays'. In most countries some degree of delay is an inevitable consequence of the generally increasing work load which the court system has to bear. It should be noted that. The last paragraph of Article 41 was not suggested in the original U.S. and Ec proposals. It was included in order to address the concerns of developing countries, based on a proposal by the Indian delegation.<sup>13</sup>

Art.41.5 declares that it should be understood that the scheme for the enforcement of intellectual property rights contained in the TRIPS Agreement did not 'create any obligation to put in place a judicial system for the enforcement of intellectual property rights distinct from that for the enforcement of law in general'.

Article 41.3 requires that decisions on the merits of a case shall preferably be in writing and reasoned' and that they 'shall be made available at least to the parties to

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<sup>13</sup> [http://www.iprsonline.org/unctadictsd/docs/RB\\_4.30\\_update.pdf](http://www.iprsonline.org/unctadictsd/docs/RB_4.30_update.pdf) (last visited July 16, 2006)

the proceeding without undue delay'. Due process is also required by the paragraph which insists that decisions on the merits of a case shall be based only on evidence in respect of which parties were offered the opportunity to be heard'.

Article.41.4 requires an opportunity for judicial review of final administrative decisions and 'the legal aspects of initial judicial decisions on the merits of a case'. However, para.4 provides that there is 'no obligation to provide an opportunity for review of acquittals in criminal cases'.

Article 41.5 contains a general declaration of the understanding that the enforcement of intellectual property rights in a Member country should be in no better position than the enforcement of any other rights. Thus not only is there no obligation to establish a separate court system for the enforcement of intellectual property rights, but also Art.41.5 provides that there is no 'obligation with respect to the distribution of resources as between the enforcement of intellectual property rights and the enforcement of law in general'. However, this provision is subject to the preceding obligations to provide enforcement procedures which are, for example, expeditious and which provide interested parties an opportunity to be heard and with an opportunity for appeal on the merits of a case. These obligations will inevitably involve the deployment of resources and, depending on the existing level of funding received by the judicial sector in a country, may require the preferential allocation of resources to the judicial enforcement of intellectual property rights.

## CIVIL PROCEDURES

In relation to the intellectual property rights covered by the TRIPS Agreement, Article 42 applies directly only to civil judicial procedures <sup>14</sup>for the enforcement of those rights to rights holders, including federations and associations having legal standing to assert such rights. Article 42 requires that these procedures are fair and

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<sup>14</sup> By way of reference in Article 49, Article 42 also applies to administrative procedure

equitable in that defendants are entitled to 'written notice which is timely and contains sufficient detail, including the basis of the claims'.

Art.42 also requires representation by independent legal counsel. All parties to such procedures 'shall be duly entitled to substantiate their claim and to present all relevant evidence', without the procedures imposing 'overly burdensome requirements concerning mandatory personal appearances'.

Finally, Art.42 provides that the procedure 'shall provide a means to identify and protect confidential information, unless this would be contrary to existing constitutional requirements'.

## EVIDENCE

### 1) DISCOVERY AND INTERROGATORIES.

The purpose of this obligation is to secure, under certain conditions, access to evidence<sup>15</sup> under control of the opposing party. As is conventional in civil proceedings in most jurisdictions, Art.43.1 provides for procedures in the nature of discovery and the administration of interrogatories, once a party has 'presented reasonably available evidence to support its claims and has specified evidence relevant to substantiation of its claims which lies in the control of the opposing party'. A concern, which is particularly acute in patent actions, is that these pre-trial procedures may result in trade secrets being revealed. Article 43.1 provides that the production of evidence may be compelled, 'subject in appropriate cases to conditions which ensure the protection of confidential information'.

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<sup>15</sup> "Evidence" includes "testimony, writings or material objects offered in proof of an alleged fact or proposition" (Bryan A. Garner, *Black's Law Dictionary*, seventh edition, 1999, p. 576)

In the event that a party to a proceeding 'voluntarily and without good reason refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes a procedure relating to an enforcement action,' Art.43.2 permits Members to accord the judicial authorities 'the authority to make preliminary and final determinations, affirmative or negative on the basis of the information presented to them'.<sup>16</sup> This will include 'the complaint or the allegation presented by the party adversely affected by the denial of access to information'. Article 43.2, does however provide the opportunity for the parties to be heard on the allegations or evidence.

## 2) SECURING AND PRESERVING EVIDENCE

In cases of copyright piracy or trademark counterfeiting, the defendant will not usually remain available to answer interrogatories or to discover documents. Indeed, on detection, relevant evidence will immediately be removed or destroyed.

Art.50 is the sole Article in Part III dealing with "Provisional measures".<sup>17</sup> Article 50.1 provides that the judicial authorities shall have the authority 'to order prompt and effective provisional measures: '(b) to preserve relevant evidence in regard to the alleged infringement'.

Art.50.2 permits the judicial authorities 'to adopt provisional measures *inaudita altera parte*<sup>18</sup> where appropriate, where there is a demonstrable risk of evidence being destroyed.' Also the judicial authorities may have authority pursuant to Art.50.3 'to require the applicant to provide any reasonably available evidence in order to satisfy

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16 UNCTAD-ICTSD, Resource Book on TRIPS and Development (Cambridge University Press, Oxford 2005), p. 589

17 Ibid., p. 601

18 Latin for "Without hearing the other Party". (Bryan A. Garner, Black's Law Dictionary, seventh edition, 1999, p. 763)

them with a sufficient degree of certainty that the applicant is the right holder' and that an infringement has occurred or is imminent. Additionally, Art 50.5 provides that to assist the authority which will enforce the provisional measure, 'the applicant may be required to supply other information necessary for the identification of the goods concerned'

As with measures to prevent abuse and to protect a defendant's rights, Art. 50.3 reflects the "check and balance" approach<sup>19</sup> and Art.50.4 provides that where provisional measures have been adopted *inaudita altera parte*, notice must be provided to the affected parties 'without delay after the execution of the measures at the latest'. Paragraph 4 also provides for 'a review, including a right to be heard' upon the request of the defendant 'with a view to deciding, within a reasonable period of notification of the measures' whether they should be 'modified, revoked or confirmed'. Additionally, if proceedings leading to a decision on the merits of the case have not been initiated within a reasonable period, Article 50.6 permits the defendant to request the revocation of the provisional measures or for a determination that they cease to have effect.

Art 50.7 provides for the compensation of a defendant where 'the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is found subsequently that there has been no infringement or threat of infringement of an intellectual property right'.<sup>20</sup>

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19 UNCTAD-ICTSD, Resource Book on TRIPS and Development (Cambridge University Press, Oxford 2005), 605

20 Ibid., p. 607

## INJUNCTIONS

### INTRODUCTION

A civil remedy, which is important for the preservation of intellectual property rights, is injunctive relief. This is particularly the case where infringement may damage or undermine the establishment of a commercial reputation immediately upon the launching of a new product. Similarly, where the widespread counterfeiting of a trademarked product may have the effect of destroying the distinctiveness of a proprietor's mark, thereby rendering the trademark registration voidable. Article 44 deals with injunctions to be adopted when an infringement has been established. Article 44 permits the conferral upon the judicial authorities the power 'to order a party to desist from an infringement, *inter alia*, to prevent the entry into channels of commerce in their jurisdiction of imported goods that involve the infringement of intellectual property rights'.

The injunctions, which may be granted under Article 44, are grounded upon infringing conduct. Where proof of consumer deception is the central feature of the infringement, the remedy proffered by Art. 44 may be rendered nugatory where a sufficient time is required to provide an opportunity for consumers to become deceived. After this has occurred, it might be futile to hope that this deception can be undone. In this circumstance the provision of interlocutory relief is essential.

### PROVISIONAL INJUNCTIONS

Article 50.1 provides that the judicial authorities 'shall have the authority to order prompt and effective provisional measures... (a) to prevent an infringement of any intellectual property right from occurring'. The trade-related context of this remedy is

emphasized by the supplementary particularization in sub-paragraph (a) that provisional measures may be taken 'to prevent the entry into the channels of commerce in their jurisdiction of goods including imported goods immediately after customs clearance.

As a matter of practice the provisional injunction, although it is only intended to have a preservative effect, will actually be the basis of the final determination of parties' rights, as it is very seldom that after the interlocutory hearing, the defeated party will proceed to the determination of final relief. If an appeal is to be taken, it will usually be on the issue of interlocutory relief. Provision is made in Art.50.6 for a defendant to request that provisional measures be revoked 'if proceedings leading to a decision on the merits of the case are not initiated within a reasonable period, to be determined by the judicial authority'. Where such a period is not determined, Art. 50.6 prescribes 20 working days or 31 calendar days, whichever is the longer.

Here the damage claimed will easily be compensable by way of damages, the court may lean against the grant of injunctive relief, this will particularly be the case where the grant of a provisional injunction will have a significant impact upon the business of the defendant. On the other hand, where the claimed infringement may be likely to have a significantly deleterious impact upon the business of the applicant, the court may consider the inconvenience to the respondent to be accommodated by an undertaking by the applicant or by the payment by it of monies into court in anticipation of compensation or costs being granted to the respondent. These principles are adopted in Art.50.7, which provides that

*Where the provisional measures are revoked or where they lapse due to any act or omission by the applicant, or where it is subsequently found that there has been no infringement or threat of infringement of an intellectual property right, the judicial authorities shall have*



*the authority to order the applicant upon request of the defendant, to provide the defendant appropriate compensation for any injury caused by these measures.*

## FINAL INJUNCTIONS

Article 44 permits the judicial authorities 'to order a party to desist from infringement, *inter alia*<sup>21</sup>, to prevent the entry into channels of commerce in their jurisdiction of imported goods that involve the infringement of an intellectual property right'.

The remedy of injunction is usually granted on a discretionary basis. Among the factors considered are whether:

- (a) Damages provide an adequate remedy;
- (b) The order will require constant supervision by the court;
- (c) The applicant has engaged in some disintitling conduct, such as its own infringing activity; and
- (d) The applicant has delayed in seeking its remedy or has acquiesced in the respondent's conduct.

Another discretionary ground which is contained in Art.44 is that Members are not obliged to accord the remedy of injunction 'in respect of protected subject matter acquired or ordered by a person prior to knowing or having reasonable grounds to know that dealing in such subject matter would entail the infringement of an intellectual property right'. It is difficult to see the justification for this qualification and how it will operate in practice. Article 50 permits the grant of provisional measures to prevent an infringement occurring on the application of a single party,

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<sup>21</sup> "[Latin] among other persons". (Bryan A. Garner, Black's Law Dictionary, seventh edition, 1999, p. 815)

where appropriate. A respondent may at that time discover that the products which it has purchased are infringing, but it cannot be enjoined from selling those products under Art.44, since it acquired the knowledge of infringement after the date of the contract of acquisition. Some sense may be made of this qualification by virtue of the fact that the respondent would still be liable to pay damages if it persisted in distributing infringing products.

### DAMAGES AND COMPENSATION

Article 45.1 provides that the judicial authorities shall have the authority to order 'the infringer to pay the rights holder damages adequate<sup>22</sup> to compensate for the injury...suffered because of an infringement of that persons intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity'.

There is no assistance contained in Art.45.1 to deal with the complex issue of quantifying the damages suffered as the result of an intellectual property infringement. Where the plaintiff and defendant are competitors, the measure of damages is likely to be what the defendant would have had to pay for a license if one had been requested. Alternatively, the court may look to the losses which the plaintiff has suffered, which are conveniently assessed on the basis of the profits made by the defendant.

A particular problem arises in with assessing the losses suffered by a trader where the parties do not compete in the same market. For example, in the case of the counterfeiting of prestige branded products, invariably the defendants are the producers of large quantities of inferior products, which are sold to an entirely different class of consumer to those, which purchase the genuine article. Infringement

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<sup>22</sup> "Adequate" means "sufficient, satisfactory (often with the implication of being barely so)", The Concise Oxford Dictionary, 1990, p. 14.

is undeniable, but the plaintiff will not directly have lost customers to the counterfeiter. On the other hand some customers may have been lost if the presence of large quantities of counterfeits has depreciated the cachet of the genuine product. The computation of the plaintiff's losses in this situation will be extremely difficult.

Article 45.1 is couched in the language of compensation for injury suffered. An alternative approach may have been to provide the option for the defendant to provide an account of profits. Obliging a counterfeiter of low quality products to disgorge its profits obviates the difficult calculation of the impact, which the sale of those counterfeits may have upon the business of the trademark owner.

#### GUILTY KNOWLEDGE

Article 45.1 provides for compensation orders against infringers 'who knowingly, or with reasonable grounds to know, engaged in infringing activity'. A general standard of reasonableness is usually applied to the question of guilty knowledge. The courts have taken the view, for example that a person who copies a new product ought to have inquired whether it was patented. Conventionally, the existence of relevant knowledge is sought to be established by the delivery of a cease and desist letter to an infringer. A continuation of infringing activity after receipt of such a letter is evidence of guilty knowledge.

Article 45.2 permits Members to authorize the judicial authorities 'to order the recovery of profits and/or payment of pre-established damages even where the infringer did not knowingly, or with reasonable grounds to know, engage in infringing activity'. This sort of remedy is usually ordered in cases of unfair competition or passing off.

## COSTS

Article 45.2 permits judicial authorities 'to order the infringer to pay the rights holder expenses, which may include appropriate attorney's fees'. These expenses can also include court filing fees, witnesses' expenses and any costs involved in preparing evidence.

## OTHER REMEDIES

Article 46, under the justification of creating an effective deterrent to infringement, allows Members to empower the judicial authorities 'to order that the goods which they have found to be infringing be<sup>23</sup>, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the rights holder'. Alternatively, where existing constitutional requirements so permit, the infringing goods may be destroyed. A constitutional obstacle, which exists in some jurisdictions, is the obligation to provide 'just terms' for any goods, which are compulsorily acquired.

A supplementary power which is conferred upon the judicial authorities is the power 'to order that materials and implements, the predominant use of which has been in the creation of the infringing goods' be similarly disposed of outside the channels of commerce' in such a manner as 'to minimize the risks of further infringements'.

In considering requests for orders to dispose of or destroy infringing goods and equipment used to produce such goods, the judicial authorities are required to take into account 'the need for proportionality between the seriousness of the infringement and the remedies ordered as well as the interests of third parties'. In the case of

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23 UNCTAD-ICTSD, Resource Book on TRIPS and Development (Cambridge University Press, Oxford 2005), 595

counterfeit trademark goods, Art. 46 indicates that 'the simple removal of the trademark unlawfully affixed shall not be sufficient, other than in exceptional cases, to permit the release of goods into the channels of commerce'.

#### RIGHT OF INFORMATION

A particularly useful innovation is the authority, which is conferred by Art.47 'to order the infringer to inform the right holder of the identity of third persons involved in the production and distribution of the infringing goods or services and of their channels of distribution'. Article 47 counsels the exercise of this power where it is not 'out of all proportion to the seriousness of the infringement'. No guidance is provided as to how seriousness is to be evaluated or whether is the touchstone of seriousness damage to the party seeking the information, or whether from the perspective of the public interest in suppressing wrongful acts. For example, the large-scale counterfeiting of low quality trademarked goods may be of minimal concern to a trader producing high quality products, which are not likely to be confused with the counterfeiter's products. However there may be a public interest in the protection of consumers from the poorer quality goods. There may also be a more fundamental public interest in inculcating an ethos of commercial morality.

#### INDEMNIFICATION OF THE DEFENDANT

Where 'enforcement measures have been abused' Art.48.1 provides that the judicial authorities shall have the authority to order a party 'at whose request enforcement measures were taken' to provide 'adequate compensation for the injury suffered because of such abuse' to a person wrongfully enjoined or restrained. Article 48.1 also provides for the applicant to be ordered to pay the defendant's 'appropriate attorney's fees'.

## EXEMPTION OF PUBLIC OFFICIALS

A problem about which rights holders have complained in some jurisdictions is the caprice and abusiveness of the implementation of administrative procedures by public officials concerned in the enforcement of intellectual property rights. This is perceived to be particularly the case where the litigant is a foreign party. Public officials have been able to shelter behind the immunity, which is invariably attached to their office. Article 48.2 provides that in relation to the administration of any law pertaining to the enforcement of intellectual property rights, exemption will be provided to public authorities and officials '*only...where actions are taken or intended in good faith in the course of the administration of that law*'.

## CRIMINAL SANCTIONS

### OVERVIEW

Article 61 provides that Members shall provide for criminal procedures and penalties 'to be applied at least in cases of willful trademark counterfeiting or copyright piracy on a commercial scale'. Among the criminal sanctions, which are listed in the Article, are: 'imprisonment, and/ or monetary fines sufficient to provide a deterrent, consistently with the level of penalties applied for fines of a corresponding gravity'. Also in appropriate cases, Art.61 provides for 'the seizure, forfeiture and destruction of the infringing goods and any materials and implements the predominant use of which has been in the commission of the offence'.

Article 61 also provides for criminal procedures and penalties to be applied in other cases of infringement of intellectual property rights, 'in particular where they are committed willfully and on a commercial scale'.

## STANDARD OF PROOF

A consequence of providing for 'criminal procedures' in the case of certain willful Infringements are that a higher standard of proof will apply than that which is required in civil proceedings.<sup>24</sup> In systems of justice derived from the British model the standard will be beyond reasonable doubt. The prosecution will usually carry the burden of proof. Where defenses exist, the defendant will usually carry the burden of making out the defense, usually on the balance of probabilities.

## KNOWLEDGE

Article 61 permits the institution of criminal penalties in the case of willful infringement. As a matter of practice it is not uncommon in intellectual property disputes for a complainant to send a cease and desist notice to an alleged infringer to put them on notice that they may be infringing the complainant's intellectual property rights.<sup>25</sup> This may, however, be unrealistic in cases of large-scale copyright piracy and trademark counterfeiting, particularly where the perpetrators may be involved in organized crime.

A particular problem in proving the willfulness of corporate defendants is in identifying the persons whose state of mind is relevant to the culpability of the corporation. Generally speaking, a company is liable for the acts and knowledge of persons who could be described as part of the directing mind and will of the company. These would include the board of directors, the managing director and other superior officers who carry out the functions of management and who speak for the company. The persons who are treated in law as the company are to be found by identifying

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<sup>24</sup> [http://www.iprsonline.org/unctadictsd/docs/RB\\_4.30\\_update.pdf](http://www.iprsonline.org/unctadictsd/docs/RB_4.30_update.pdf) (last Visited July 17, 2006)

<sup>25</sup> Ibid.

those natural persons who by the memorandum and articles of association, or as the result of action taken by the directors, or by the company in general meeting pursuant to the articles, are entrusted with the exercise of the powers of the company.

## QUANTIFICATION OF PENALTIES

The degree of willfulness or deliberation in the infringing conduct will have a bearing on the size of any pecuniary penalties, which are imposed. Also relevant as a quantification factor will be the multiplicity of offences by a defendant and the recurrence of similar offences. Article 61 also refers to the deterrent effect of penalties. This will involve a consideration of the capacity of the defendant to pay, the incentives for wrongdoing and the likelihood of recurrence.

### 2.1.4 OTHERS BILATERAL & MULTILATERAL AGREEMENTS

The year 2005 saw a significant number of accessions or ratifications to treaties administered by the World Intellectual Property Organization WIPO and the entry into force of a new international instrument relating to formal patent procedures reflecting continuing commitment by member states in enhancing intellectual property legislation at the national level. In 2005, 45 instruments of accession or ratification of treaties administered by WIPO were deposited.

On April 28, 2005 the Patent Law Treaty (PLT) entered into force. The PLT, concluded in 2000, harmonizes and streamlines, on a worldwide basis, formal patent procedures relating to national and regional patent applications and maintenance of patents. Inventors seeking patent protection must as a first step meet certain formality requirements in order to avoid rejection of their application and a consequent loss of rights. These formalities currently vary from one country to another. In standardizing



them, the PLT offers both inventors and national and regional patent offices a number of advantages. The PLT achieves a major goal of international simplification by incorporating the requirements for PCT international applications into national and regional laws. Thus, under the PLT, the requirements and procedures for national and regional patent applications, and those for PCT international applications, are harmonized. This will eventually lead to standardized formal requirements and streamlined procedures for all patent applications worldwide.

In 2005, there was also an increase in the membership of the WIPO Performances and Phonograms Treaty (WPPT) with the deposit of 7 new instruments of accession and ratification. The WIPO Copyright Treaty (WCT) registered a similar increase with 6 new instruments deposited with the Director General of WIPO. These treaties establish minimum standards of protection for owners of protected materials on the Internet.

#### WIPO CONVENTION

The Convention Establishing the World Intellectual Property Organization was signed at Stockholm on July 14, 1967, and entered into force in 1970. WIPO is responsible for the promotion of the protection of intellectual property throughout the world through cooperation among states, and for the administration of various multilateral treaties dealing with the legal and administrative aspects of intellectual property.

Pakistan became the member of this convention in January 1977 and accession in October 6, 1976. In 2005, Afghanistan and Comoros (2) adhered to the WIPO Convention. The total number of contracting parties on December 31, 2005, was 183.

## TREATIES IN THE FIELD OF INDUSTRIAL PROPERTY

### PARIS CONVENTION

Details are available in chapter 2.1.1

### PATENT COOPERATION TREATY (PCT)

The Patent Cooperation Treaty (PCT), concluded in 1970, makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an "international" patent application. Such an application may be filed by anyone who is a national or resident of a contracting state. The treaty regulates the formal requirements with which any international application must comply. Pakistan is not member of this treaty.

In 2005, Comoros, Libyan Arab Jamahiriya, Nigeria and Saint Kitts and Nevis (4) adhered to the PCT. The total number of contracting parties on December 31, 2005, was 128.

### MADRID AGREEMENT AND MADRID PROTOCOL

The Madrid system for the International Registration of Marks (the Madrid system) is governed by two treaties: the Madrid Agreement Concerning the International Registration of Marks (Madrid Agreement) and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol).

The Madrid Agreement was concluded in 1891, and the Madrid Protocol was concluded in 1989 in order to introduce certain new features into the Madrid system. These features address the difficulties that prevent certain countries from adhering to the Madrid Agreement by rendering the system more flexible and more compatible with the domestic legislation of these countries. Pakistan is not member of this treaty.

In 2005, Bahrain (1) adhered to the Madrid Protocol. The total number of contracting parties to the Madrid Protocol on December 31, 2005, was 67.

#### NICE AGREEMENT

The Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks was concluded in 1957 and establishes a classification of goods and services for the purposes of registering trademarks and service marks. The Classification consists of a list of classes (based on types of products and services) of which there are 34 for goods and 11 for services and an alphabetical list of the goods and services. Pakistan is not member of this treaty.

In 2005, Bahrain, Egypt, Jamaica and Saint Kitts and Nevis (4) adhered to the Nice Agreement. The total number of contracting parties on December 31, 2005, was 78.

#### VIENNA AGREEMENT

The Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks was concluded in 1973. The Vienna Agreement establishes a classification system for marks consisting of or containing figurative elements. The classification comprises 29 categories, 144 divisions and some 1,887 sections in which the figurative elements of marks are classified. Pakistan is not member of this treaty.

In 2005, Jamaica (1) adhered to the Vienna Agreement. The total number of contracting parties on December 31, 2005, was 21.

#### LOCARNO AGREEMENT

The Locarno Agreement Establishing an International Classification for Industrial Designs was concluded in 1968. It establishes a classification for industrial designs, which consists of 32 classes and 223 subclasses based on different types of products. It

also comprises an alphabetical list of goods with an indication of the classes and subclasses into which these goods fall. The list contains some 6,600 indications of different kinds of goods. Pakistan is not member of this treaty.

In 2005, Latvia (1) adhered to the Locarno Agreement. The total number of contracting parties on December 31, 2005, was 45.

#### BUDAPEST TREATY

The Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure was concluded in 1977. The main feature of the Budapest Treaty is that a contracting state which allows or requires the deposit of microorganisms for the purposes of patent procedure must recognize, for such purposes, the deposit of a microorganism with any "international depositary authority," irrespective of whether such authority is on or outside the territory of the said state. This eliminates the need to deposit in each country in which protection is sought. Pakistan is not member of this treaty.

In 2005, Georgia (1) adhered to the Budapest Treaty. The total number of contracting parties on December 31, 2005, was 61.

#### NAIROBI TREATY

The Nairobi treaty on the Protection of the Olympic symbol was concluded in 1981. All contracting states are obliged to protect the Olympic symbol (the five interlaces rings) against use for commercial purposes (in advertisements, on goods, as a mark, etc.) without the authorization of the International Olympic committee. Pakistan is not member of this treaty.

In 2005, Romania (1) adhered to the Nairobi Treaty.

The total number of contracting parties on December 31, 2005, was 44.

### LISBON AGREEMENT

The Lisbon Agreement for the Protection of Appellations of Origin and their International Registration was concluded in 1958. It aims to provide for the protection of appellations of origin, that is, the "geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographic environment, including natural and human factors". Pakistan is not member of this treaty.

In 2005, Islamic Republic of Iran and Peru (2) adhered to the Lisbon Agreement. The total number of contracting parties on December 31, 2005, was 24.

### THE HAGUE AGREEMENT

The system of international registration of industrial designs is governed by the Hague Agreement Concerning the International Registration of Industrial Designs which dates from 1925 and has been revised at various times, in particular in London (1934 Act) and the Hague (1960 Act). A new Act of the Hague Agreement was adopted in Geneva on July 2, 1999.

The Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs was concluded in 1999 and seeks to make the system more responsive to the needs of users and to facilitate adherence by countries whose industrial designs systems do not permit them to accede to the 1960 Hague Act. Pakistan is not member of this treaty.

In 2005, the Former Yugoslav Republic of Macedonia, Latvia and Singapore (3) adhered to the Geneva Act of the Hague Agreement. The total number of contracting parties on December 31, 2005, was 19.

## PATENT LAW TREATY (PLT)

Concluded in 2000 and entered into force in April 28, 2005, the Patent Law Treaty (PLT) aims to harmonize and simplify formality procedures in order to result in cost reduction, increase of patent offices' efficiency, reduction of risk of errors and consequent less frequent loss of rights. With a significant exception for the filing date requirements, the PLT provides maximum sets of requirements which the office of a contracting party may apply: the office may not lay down any other formal requirements in respect of matters dealt with by this Treaty.

In 2005 Bahrain, Finland, Romania and the United Kingdom (4) adhered to the PLT. Pakistan is not member of this treaty.

The total number of contracting parties on December 31, 2005, was 13.

## TREATIES IN THE FIELD OF COPYRIGHT AND RELATED RIGHTS

### BERNE CONVENTION

Details are available in chapter 2.1.2

### ROME CONVENTION

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, concluded in 1961, secures protection of performers on their performances, phonograms of producers of phonograms and broadcasts of broadcasting organizations. Pakistan is not member of this treaty.

In 2005, Azerbaijan and Bahrain (2) adhered to the Rome Convention. The total number of contracting parties on December 31, 2005, was 82.

### WIPO COPYRIGHT TREATY (WCT)

The WIPO Copyright Treaty (WCT) was concluded in 1996. It extends copyright protection to two additional subject matters: (i) computer programs and (ii) compilations of data or other material ("databases") in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations. It also provides for new rights, which correspond to the new forms of exploitation of protected works in the digital environment. Pakistan is not member of this treaty.

In 2005, Albania, Bahrain, Dominican Republic, Oman, Qatar and Singapore (6) adhered to the WCT. The total number of contracting parties on December 31, 2005, was 56.

### WIPO PERFORMANCES AND PHONOGRAMS TREATY (WPPT)

The WIPO Performances and Phonograms Treaty (WPPT) was concluded in 1996. The treaty deals with intellectual property rights of two kinds of beneficiaries: (i) performers (actors, singers, musicians, etc.), and (ii) producers of phonograms (the persons or legal entities who or which take the initiative and have the responsibility for the fixation of the sounds). They are dealt with in the same instrument because most of the rights granted the treaty to performers connects rights with their fixed, purely aural performances (which are the subject matter of phonograms). Pakistan is not member of this treaty.

In 2005, Bahrain, Cyprus, Dominican Republic, Oman, Qatar, Singapore and United Arab Emirates (7) adhered to the WPPT. The total number of contracting parties on December 31, 2005, was 55.

## CONTRACTING PARTIES TO THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

### UPOV CONVENTION (PLANT VARIETIES)

The International Convention for the Protection of New Varieties of Plants (the UPOV Convention) was concluded in 1961. The objective of the Convention is the protection of new varieties of plants by an intellectual property right.

In 2005, Albania and the European Community (2) adhered to the 1991 Act of the UPOV Convention. Pakistan is not member of this treaty.

The total number of contracting parties on December 31, 2005, was 60.

## 2.2 ENFORCEMENT SITUATION IN PAKISTAN

We divide the situation of enforcement into two parts, after that we will examine international comments;

- Pre-TRIPS
- Post-TIPS

### PRE-TRIPS

Pakistan being a member of WTO and WIPO is bound to conform its IPR laws in accordance with the requirements of TRIPS Agreement. Before this Agreement, Pakistan had following IP laws:

1. Patents & Designs Act, 1911
2. Trademarks Act, 1940
3. Copyright Ordinance, 1962
4. Merchandise Marks Act, 1889



5. Pakistan Penal Code, and
6. Custom Act, 1969

#### POST-TIPS

In order to fulfill our international obligations and make our IP laws TRIPS-compliant, the following new IPR laws have been promulgated as Presidential Ordinance, which incorporate therein requisite amendments in the light of TRIPS Agreement:

1. Copyright Ordinance, 1962 (amendment 2000)
2. Registration of Layout Designs of Integrated Circuits Ordinance, 2000
3. Industrial Designs Ordinance, 2000
4. Patent Ordinance, 2000
5. The Trade Marks Ordinance, 2001

Though the above Ordinances have been promulgated but subordinate legislation in the shape of procedural rules, (see chapter 3) which can ensure effective implementation is still under way. The enforcement measures to be provided in line with Part-III of TRIPS Agreement, the Custom Act, 1969 has also been revised in the Budget 2004-05 and legal provisions of Section 15 of the Customs Act relating to prohibition and restriction on importation and exportation have thoroughly revised in order to ensure compliance with IPR regime.

#### INTERNATIONAL COMMENTS

Here are some negative comments about Pakistan IPR's atmosphere;

"Pakistan is one of the world's worst markets for books' as piracy of published material is rampant".<sup>26</sup>

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<sup>26</sup> <http://www.iipa.com/countryreports.html> (Last Visited July 15, 2006)

"Pakistan is the fourth largest exporter of pirated discs: 13 million pirated discs exported from Pakistan per month to more than 46 countries".<sup>27</sup>

"Software piracy in Pakistan is as high as 82%".<sup>28</sup>

"US companies have concerns about continuing problems with pharmaceutical patent infringement and trademark counterfeiting in Pakistan".<sup>29</sup>

"Intellectual Property Rights issues still remain among the top investment climate barriers to FDI in Pakistan".<sup>30</sup>

Due to this international criticism on enforcement situation, Government of Pakistan took these steps in April 2005;

1. Establishment of IPO - Pakistan for integrated management of Intellectual Property and enforcement coordination as a focal Organization.
2. Empowerment of FIA to eliminate piracy by including the Copyright Ordinance, 1962 in the Schedule of FIA Act, 1974; and
3. Activation of Pakistan Customs to interdict import and export of pirated optical discs (CDs, DVDs and Cards) by establishment of Anti - Piracy Cells [APCs] at the major international airports of Pakistan.<sup>31</sup>

FIA skillfully raided and closed the notorious piracy infrastructure in Pakistan. Relapse was also effectively checked and timely stopped. Pakistan Custom effectively contained export of pirated optical discs by establishing Anti - Piracy Cells (APC's) at the country's major International Airports. While FIA and Pakistan Customs were busy controlling the supply side of piracy, IPO Pakistan launched a number of

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27 <http://www.ifip.org/> (International Federation of the Phonographic Industry-IFPI) (Last Visited April 12, 2005)

28 <http://www.bsa.org/> (Last Visited April 12, 2005)

29 <http://www.commerce.gov/> (Last Visited April 12, 2005)

30 <http://www.ifc.org/> Foreign Investment Advisory Services - FIAS of the World Bank (Last Visited April 12, 2005)

31 Intellectual Property Organization, IPO Pakistan REVIEW-2005, 3

initiatives including IP Awareness and Public Outreach Programme to manage the demand side of the piracy problem. These well delivered initiatives of IPO – Pakistan, FIA and Pakistan Customs have combined well and found synergies with concrete results. Consequently, an exponential change has taken place in the ground situation as well as in the perception of external stakeholders within a very short period of time under one year.

#### INTERNATIONAL RESPONSE;

In response to Pakistan's initiatives to improve the IP management, the US government has promptly taken the following steps;

1. Closed a four-year-old GSP Petition in favor of Pakistan.
2. Removed Pakistan from the priority Watch List.
3. Offered a three-year support programme (CLDP) to upgrade IP management in Pakistan.

Now we see the different international comments on IPR's positive environment. The US Trade Representative, in a press release, appreciated the concerted efforts of the Government of Pakistan to improve the IP situation in the following words;

' Pakistan 's concerted efforts since April 2005, particularly ist enforcement actions have resulted in concrete results, including destruction of pirated optical disks, plant closures, arrests, and confiscations of imported disks. Pakistan has engaged in a number of additional actions to improve its intellectual property rights regime. The Government announced new regulations to fight IPR theft, and established the Intellectual Property Organization of Pakistan, to coordinate enforcement actions, with notable results. In recognition of these positive developments, the United States has closed the review of the GSP petition concerning intellectual property rights protection and enforcement in Pakistan. We look forward to working together with

Pakistan to ensure that enforcement actions continue and that further steps are taken to strengthen its intellectual property environment.”<sup>32</sup>

The Recording Industry Association of America (RIAA) has also appreciated Pakistan’s actions in the following words:-

“The US recording industry fully endorses the termination of this investigation. The efforts of the Pakistan Government under the remarkable leadership of Prime Minister and the actions of the Federal Investigation Agency to address the rampant copyright piracy that had been outstanding. As a result, pirate optical disc manufacturing operations have been shut down; the owners have been arrested and are awaiting trial. We congratulate Pakistan on its excellent efforts, and we commend USTR for terminating the investigation.”<sup>33</sup>

The International Federation of the Phonographic Industry (IFPI) has also reported a paradigm shift in the IP situation in Pakistan in the following words:-

“The results (of the Government’s concerted efforts since April, 2005) are evident that the export of pirated optical discs from Pakistan’s major international airports has completely dried up.”<sup>34</sup>

More recently, the US Embassy in Pakistan has sent a Non-Paper on Intellectual Property Enforcement of the Government of Pakistan with the following open remarks, namely:

“The United States Government wishes to inform ... that the United States appreciates the work that the Federal Investigation Agency (FIA), Pakistan Customs, and the Intellectual Property Office (IPO), have done in enforcing intellectual property rights (IPRs) in Pakistan.”

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32 <http://www.ustr.gov/> (Last Visited 11 May, 2006)

33 <http://www.riaa.com/> (Last Visited February 12, 2005)

34 <http://www.ifip.org/> (International Federation of the Phonographic Industry-IFPI) (Last Visited April 12, 2005)

In view of this early harvest of IP enforcement achievements of Pakistan the International Intellectual Property Alliance has recommended to USTR;

“That Pakistan is moved from the Priority Watch List to the Watch List, with an out-of-the-cycle review to evaluate whether Pakistan continues to make progress in taking book piracy and reducing pirate optical disc production.”<sup>35</sup>

The American Business Council of Pakistan has recently issued “Perception Survey Results for 2005” in the following words:-

“ABC perception survey for the year 2005 has been recently completed and our annual Press Briefing was held early this year (2006) ..... Our members hold a positive opinion about the business environment and remain optimistic about the investment opportunities in Pakistan.”<sup>36</sup>

Government of Pakistan endeavors in this regard is commendable. She should continue with the implementation of the reforms in order that Pakistan’s image can be improved.

### 2.3 INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) ELEVEN-YEAR REPORTS VIEW

The International Intellectual Property Alliance (IIPA) is a private sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. IIPA is comprised of seven trade associations, each representing a significant segment of the U.S. copyright community. These member associations represent 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal

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35 <http://www.iipa.com/rbc/2006/2006SPEC301ARGENTINA.pdf> (Last Visited June 16, 2006)

36 <http://www.abcpk.org.pk/> (Last Visited 17 May, 2006)

computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, trade books, reference and professional publications and journals (in both electronic and print media).

Special 301: Congress created "Special 301" when it passed the Omnibus Trade and Competitive Act of 1988, which amended the Trade Act of 1974. Special 301 requires the U.S. Trade Representative to identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable and market access for persons that rely on intellectual property protection. Countries which have the most onerous or egregious acts, policies or practices and which have the greatest adverse impact on relevant U.S. products are designated "Priority Foreign Countries," and at the end of an ensuing investigation, risk having trade sanctions levied against them. Countries can also be placed on other lists which do not result in immediate trade sanction, such as "Priority Watch List" and Watch List."<sup>37</sup>

Pakistan was on the Special 301 Watch List from 1989 to 2003 and Priority Watch List from 2004 to 2005.<sup>38</sup>

In 1997 and 1998, USTR noted that piracy of computer software, videos, and books remained widespread. In 1999, IIPA recommended that Pakistan remain on the Watch List, and noted for the first time the sudden arrival of CD manufacturing capability. USTR noted the CD plants and Pakistan's TRIPS is incompatible with law. In 2000, IIPA again recommended that Pakistan be kept on the Watch List, again noting the increasing pirate CD production problem. In 2001, IIPA made the same recommendation. In the April 30, 2001 Special 301 Announcement, USTR noted that despite new legislation, the sharp growth in optical media piracy, however, offsets the promising developments in legal infrastructure." In 2002 and again in 2003, IIPA

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<sup>37</sup> <http://www.iipa.com/countryreports.html> (Last Visited July 16, 2006)

<sup>38</sup> <http://www.iipa.com/rbc/2006/2006SPEC301PAKISTAN.pdf> (Last Visited July 16, 2006)

recommended that Pakistan be elevated to the Priority Watch List, noting the alarming rise of pirated optical disc production. USTR, in keeping Pakistan on the Watch List both years, recognize Pakistan's position as "one of the world's largest exporters of pirate CDs and optical media. IIPA recommended that the "fourth largest source of counterfeit and piratical goods seized by the U.S. Customs Service" and elevated Pakistan to the Priority Watch List, citing worsening piracy and counterfeiting problems. USTR retained Pakistan on the Priority Watch List in its Special 2004 2005 announcement.

It is a great achievement of Pakistan that now Pakistan is shifted Priority Watch List to Watch List only.

Now we will analyze International Intellectual Property Alliance (IIPA) historical summary:

Table: 2.1

Area of IPR,s	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Total
Motion Pictures	10	10	9	9	9	10	11	12	12	12	12 <sup>39</sup>	116
Sound Recording / Music Compositions	5	2	2.5	2	3	65	60	60	70	70	25	364.5
Computer Programs: Business Application	10.5	16.7	16.4	18.1	14.1	24.5	9.2	11.2	9	14	15.7	159.4
Computer Programs: Entertainment Software	8	9.8	10.2	11.1	12 <sup>40</sup>	13 <sup>41</sup>	14 <sup>42</sup>	15 <sup>43</sup>	16 <sup>44</sup>	17 <sup>45</sup>	18 <sup>46</sup>	144.1
Books	30	30	30	40	42	45	44	44	44	52	55	456
Total	63.5	68.5	68.1	80.2	80.1	157.5	138.2	142.2	151	165	125.7	1250

47

39 Data was not available, so I put it according to previous years

40 Data was not available from 1999 to 2005 in entertainment software. So I put it according to average, as it was increasing in previous three years,,

41 Ibid.

42 Ibid.

43 Ibid

44 Ibid.

45 Ibid.

46 Ibid.



This table shows the total losses to US due to piracy in Pakistan in different areas of copyrights from 1995 to 2005. Pakistan was on Priority Watch List from 1989 to 2005. We have analyzed those above figures. We know that cumulative piracy is low in 2005. So for this reason we are on Watch List instead of Priority Watch List in 2006.<sup>47</sup> The main point in this table is; that US is shouting against Pakistan with regard to software piracy. But their own data shows that the biggest area of IPR's infringement is in books instead of software.

Pie Chart: 2.1

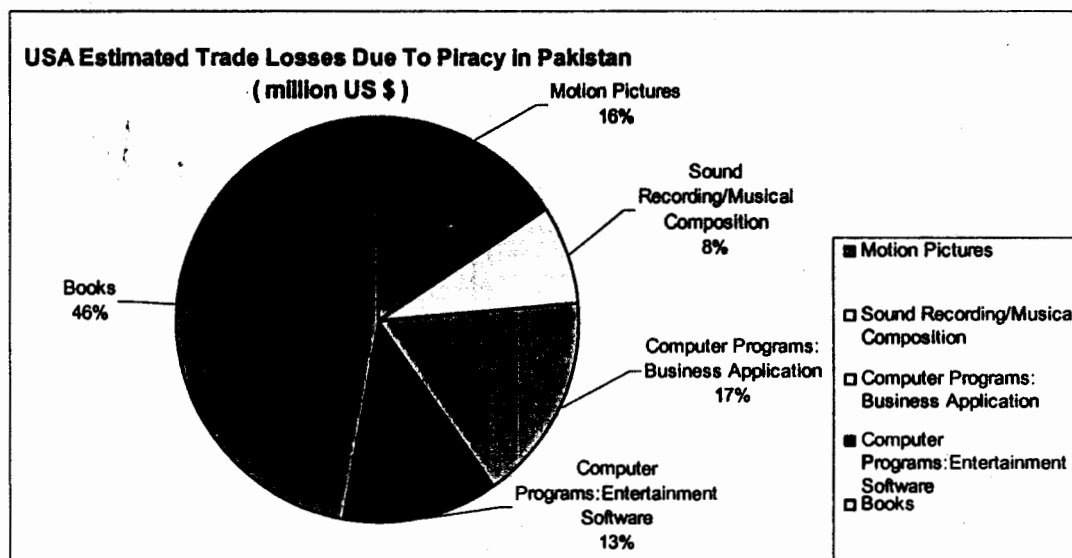


Chart 2.1 explains that largest amount of losses to US due to piracy in Copyrights in above categories is in books, that one is 46 %. Remaining percentage is as following, Computer Programme (Business Application) is 17%, Motion Pictures 16 %, Computer Programme (Entertainment Software) is 13 %, and Sound Recording (Musical Composition) is 8 %.

47 <http://www.iipa.com/countryreports.html> (Last Visited July 16, 2006)

48 <http://www.iipa.com/rbc/2006/2006SPEC301PAKISTAN.pdf> (Last Visited July 16, 2006)

But now Pakistan Government is more serious about IPR's enforcement, because we are on the Watch List instead of Priority Watch List. It means that it has put responsibilities and liabilities on Pakistan in abundance.

CHAPTER No. 3

NATIONAL REGULATORY FRAMEWORK REGARDING ENFORCEMENT

3.1 THE COPYRIGHT ORDINANCE, 2000 & RULES, 1967

PROCEDURE

Under section 39 of the Copyright Ordinance, 1962 read with rule 3 of Copyright Rules, 1967 copyright registration system is available in Pakistan and under four parts of register of Copyrights, as under:-

- i: Part-I Literary, Dramatic and Musical Work
- ii: Part-II Artistic Work
- iii: Cinematographic Works
- iv: Record Work<sup>1</sup>

The procedure for registration for all categories of copyrights works is as under:-

- I) Application for registration of copyrights is required to be submitted on the prescribed Performa-II (in triplicate) alongwith registration fee of Rs.500/- in the form of Demand Draft/Pay-Order in the name of Director General IPO.
- II) In case registration of Artistic Work three copies of the Artistic Work alongwith Affidavit/NOC regarding creation of Artistic work duly signed by Artist/creator who created the work and transferring copyrights to the applicant alongwith affidavit/undertaking of the applicant in the light of Sind

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<sup>1</sup> Section: 10 The Copyright Ordinance, 1962

## NATIONAL REGULATORY FRAMEWORK REGARDING ENFORCEMENT

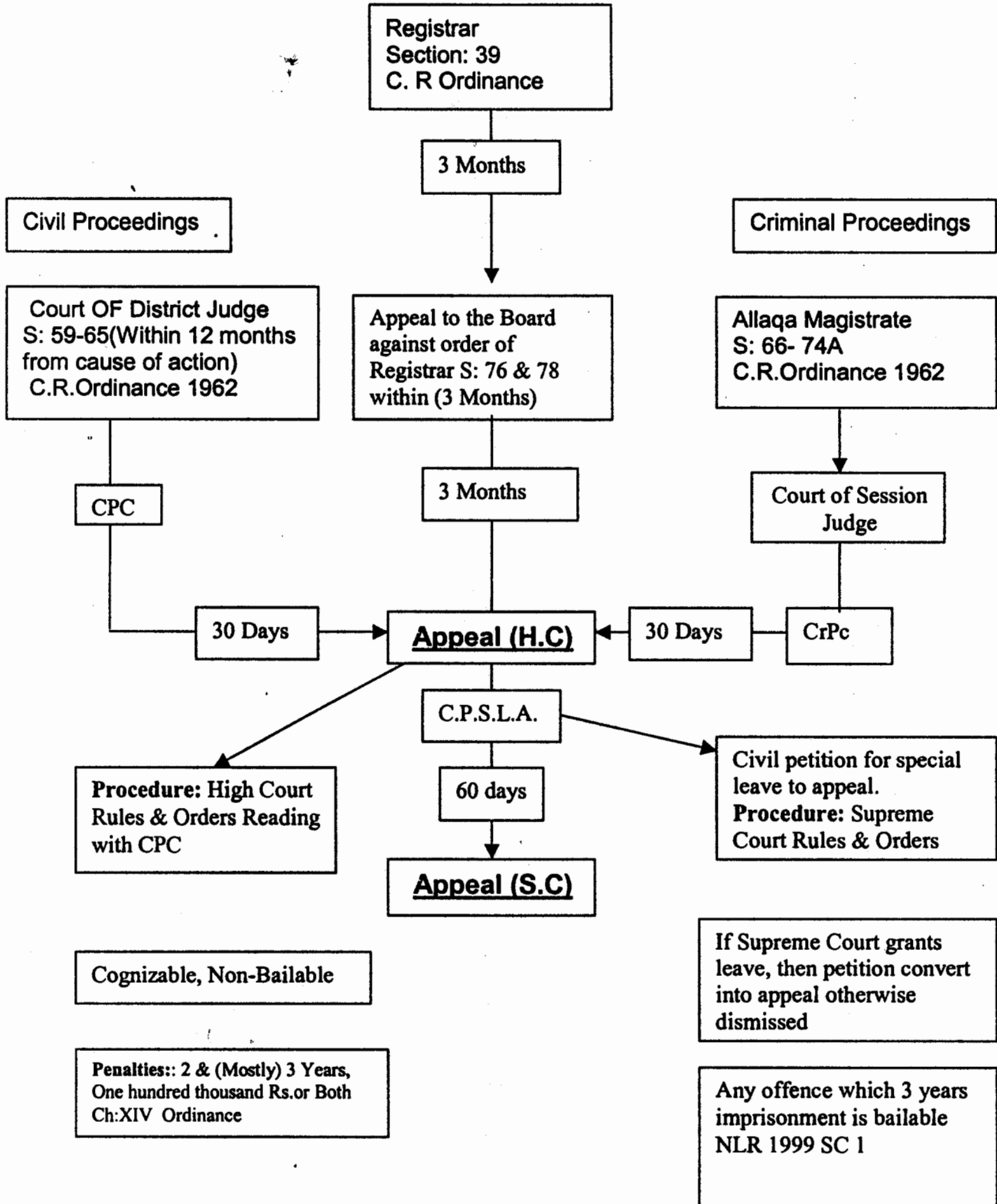
High Court order both duly attested by Oath Commissioner and also under the proviso of Sub-section (2) of the Section 39 of Copyright Ordinance, 1962 read with rule (3A) of Copyright Rules, 1967 the applicant is required to advertise any artistic work (Label Design/ Calligraphy/ Logo etc.) in any National Urdu or English language daily newspaper in circulation where the applicant resides or carries on business within 30 days of filing of application and send two copies thereof to the Registrar of Copyrights.

- III) In case of registration of the literary work (books)/computer software programmes etc. 2 copies of published book/computer programme in form of Floppy/CD (and brief print thereof).
- IV) In case of registration of record and Cinematographic 2 copies of VCD/DVD/Audio/Video Cassette.

Presently two filed offices Karachi and Lahore are working for registration of copyright in Pakistan.

**NATIONAL REGULATORY FRAMEWORK REGARDING ENFORCEMENT**

The Copyright Ordinance, 2000 & Rules, 1967



## NATIONAL REGULATORY FRAMEWORK REGARDING ENFORCEMENT

Any aggrieved person may apply for the appeal to the Board against the decision or order of the Registrar but within three months from that date of the decision or order.<sup>2</sup> Registrar and the Board have the powers to summons, discovery and production of any documents, receive evidence on affidavit, exam of witnesses or documents, require any public record or copy and any other matter etc. of the Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908).<sup>3</sup> Any aggrieved person may apply to District Court within 12 months from the cause of action for civil remedy<sup>4</sup> and he may apply to the Alaqa Magistrate and Court of Session Judge for penalties.<sup>5</sup>

After that he can go to the High Court for appeal within 30 days in both civil and criminal cases. But in civil case CPC and in criminal case CrPc apply. With regard to High Court procedure we apply High Court Rules & Orders reading with CPC or CrPc.

Before going to Supreme Court, he can apply for Civil Petition for special leave to Appeal (C.P.S.L.A). If Supreme Court grants leave then petition is converted into appeal otherwise dismissed. He can apply to Supreme Court for appeal within 60 days of the High Court decision and Supreme Court Rules and Orders apply for procedure. Punishment of the copyrights infringement is 3 years, non-bailable and cognizable offence. But this thing remembers that Supreme Court has decided that any offence, whose imprisonment is 3 years, is bailable.<sup>6</sup>

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<sup>2</sup> Ibid., Section: 76

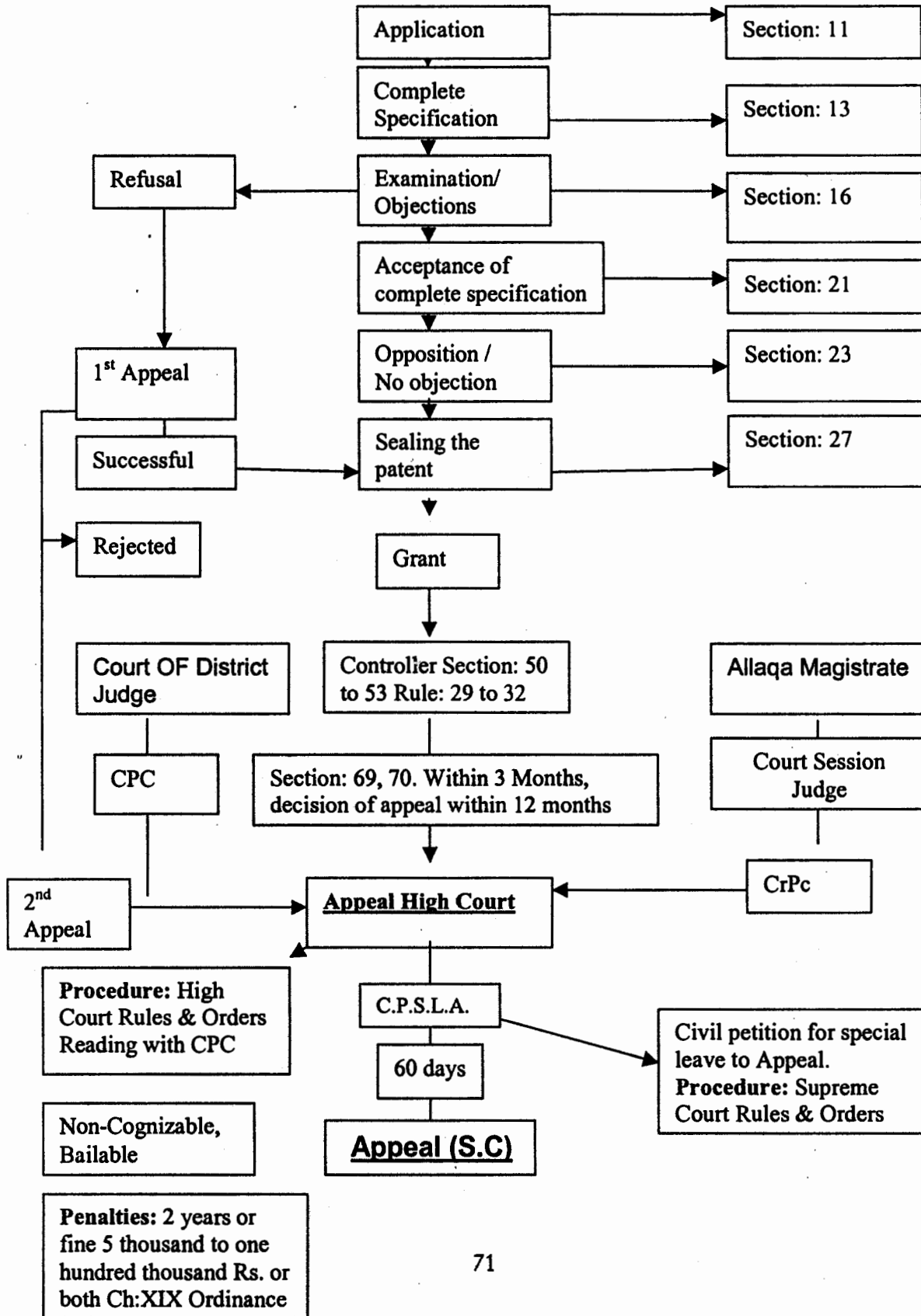
<sup>3</sup> Ibid., Section: 78

<sup>4</sup> Ibid., Section: 59 to 65

<sup>5</sup> Ibid., Section: 66 to 74 A.

<sup>6</sup> NLR 1999 SC 1

3.2 The Patents Ordinance, 2000 & Rules, 2003



## PROCEDURE

Following persons are entitled to make an application;

- The true and the first inventor or inventors of the invention or his or, as the case may be, their assignees or successor - in- interest;
- The legal representative of any deceased person who immediately before his death was entitled to make such application.<sup>7</sup>
- Employee or employer.<sup>8</sup>

The application of the Patent makes in the prescribed manner and form as defined in the section 13, 14 and 15.

Examiner examines the complete specification within eighteen months from the date of filing the application. After that he refers to Controller. Controller grants patent or gives extra time to remove deficiency. If he grants then it effects from that date in which he already applied.<sup>9</sup> If it infringes then next application comes.<sup>10</sup>

While examining if objection / refusal occurs then he can appeal. If appeal becomes successful then goes to sealing to patent. If 1<sup>st</sup> appeal is rejected then he goes in 2<sup>nd</sup> appeal. Controller gives notice to the applicant after that advertised in the official Gazette.<sup>11</sup>

Any person can give notice of opposition to the Controller within four month of the acceptance of the complete specification.<sup>12</sup> At the end the request for the sealing of a patent is submitted within six months.<sup>13</sup>

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<sup>7</sup> Section: 11 The Patent Ordinance, 2000

<sup>8</sup> Ibid., Section: 12

<sup>9</sup> Ibid., Section: 16

<sup>10</sup> Ibid., Section: 17

<sup>11</sup> Ibid., Section: 21

<sup>12</sup> Ibid., Section: 23

<sup>13</sup> Ibid., Section: 27



Chapter XIV of the patent ordinance, 2000<sup>14</sup> and chapter VII of the patent rules, 2003 define the powers of Controller.<sup>15</sup> Anybody can apply for appeal against the order or decision of the Controller to the High Court within 3 months.<sup>16</sup>

In civil matter he can go to Court of District Judge and for criminal matter in Allaha Magistrate and Session Judge's Court. High Court decides the case within 12 months from the date of filing.<sup>17</sup> With regard to High Court procedure we apply High Court Rules & Orders reading with CPC or CrPc.

Before going to Supreme Court, he can apply for Civil Petition for special leave to Appeal (C.P.S.L.A). If Supreme Court grants leave then petition is converted into appeal otherwise dismissed. He can apply to Supreme Court for appeal within 60 days of the High Court decision and Supreme Court Rules and Orders apply for procedure. Chapter XIX of the patents ordinance, 2000 deals with penalties. The punishment is 2 years imprisonment or with fine 5 thousand to one hundred thousand rupees or with both.<sup>18</sup>

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<sup>14</sup> Ibid., Section: 50 to 53

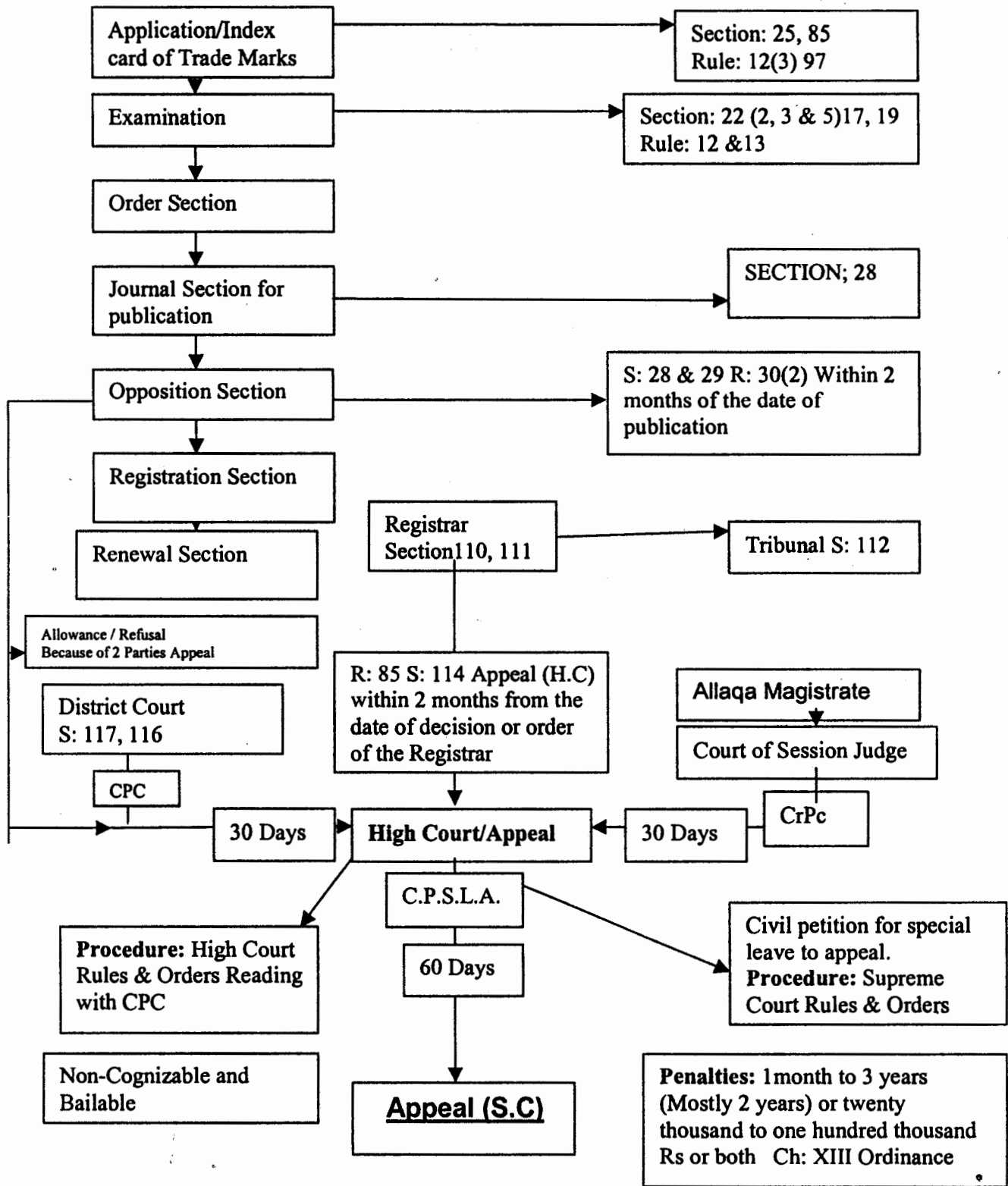
<sup>15</sup> Rule: 29 to 32 Patents Rules, 2003

<sup>16</sup> Section: 69 (4) The Patent Ordinance, 2000

<sup>17</sup> Ibid., Section: 70 (3)

<sup>18</sup> Ibid., Section: 71 to 78

3.3 THE TRADE MARKS ORDINANCE, 2001& RULES 2004



## PROCEDURE

Application for registration of trade mark defines in sections 25 and 85 the patent ordinance, 2000 and rules 12 and 97. After preparation of index cards all applications transfer to Examination Section.

Before starting the examination each application is scrutinized to see that all the particulars given in section 22(2) and (3) of the patents ordinance, 2000 are available in the application and if there are any deficiencies, the same is brought to the notice of the applicant. Manual search is conducted with the help of Index cards to ascertain if there are any identical, similar or closely similar trade marks.<sup>19</sup> Examination Section conducts search and report is sent to the party within a week. Facility of personal search in the Trade Mark Registry is available on payment of prescribed search fee.

Order Section examines each and every reply and evidence filed by the party. When application has been accepted for advertisement the application is transferred to the Journal Section. Journal Section requires preparing manuscript for press of all trade marks, which publishes in a monthly Trade Mark Journal.

On receipt of advertised application the Registration Section obtains "No Opposition" report from Opposition Section<sup>20</sup> and each and every application is put up to Registrar for final approval.

Renewal Section issues notice under section 35(2) and rule 47 to all registrants of the approaching expiration of last registration for filing request alongwith prescribed renewal fee within the period specified for ten years<sup>21</sup>

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<sup>19</sup> Details in Section 22 (2, 3, and 5) and Rules 12 and 13 The Trade Marks Ordinance, 2001 & Rules 2004

<sup>20</sup> Sections: 28 & 29 The Trade Marks Ordinance, 2001

## NATIONAL REGULATORY FRAMEWORK REGARDING ENFORCEMENT

Any person can go to the High Court for appeal against the decision and order of the registrar within 2 months.<sup>22</sup> Sections 117 and 116 deal with District Court. Any aggrieved person may apply to District Court for remedy and he may apply to the Alaqa Magistrate and Court for Session Judge for penalties.

After that he can go to the High Court for appeal in both civil and criminal cases. But in civil case CPC and in criminal case CrPc apply. With regard to High Court procedure we apply High Court Rules & Orders reading with CPC or CrPc.

Before going to Supreme Court, he can apply for Civil Petition for special leave to Appeal (C.P.S.L.A). If Supreme Court grants leave then petition is converted into appeal otherwise dismissed. He can apply to Supreme Court within 60 days of the High Court decision and Supreme Court Rules and Orders apply for procedure.

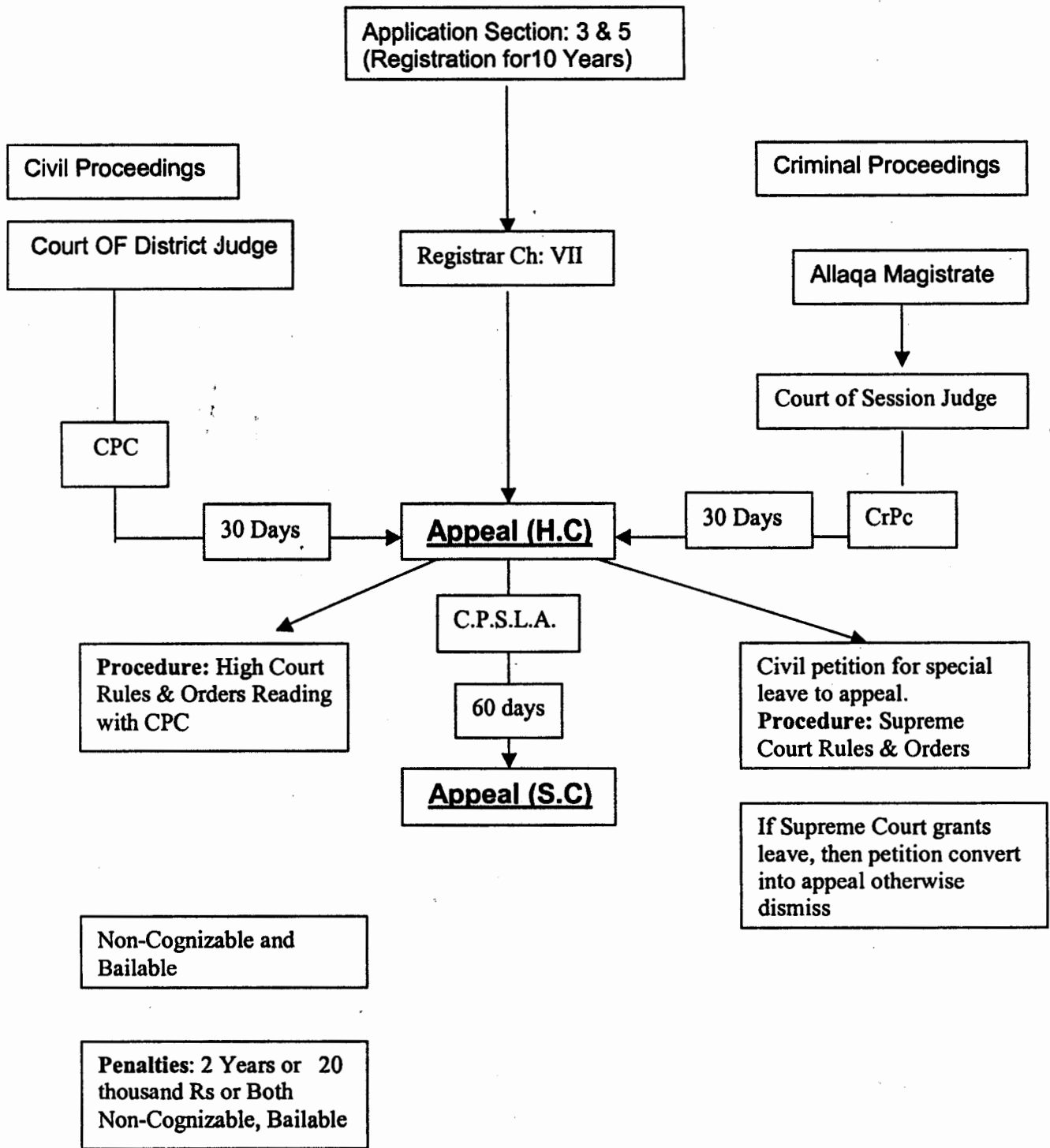
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<sup>21</sup> Ibid., Section: 34 and 35

<sup>22</sup> Rule: 85 Rule Trade Marks Rules, 2004

**NATIONAL REGULATORY FRAMEWORK REGARDING ENFORCEMENT**

**3.4 THE REGISTERED DESIGNS ORDINANCE, 2000 (NO RULES)**



PROCEDURE

Application for registration of design is defined in sections 3 “The Registered Designs Ordinance, 2000” and about Registrar chapter VII. There are no rules with regard to design. Powers and duties of the Registrar are explained in section 23 to 26. Offences and penalties are in section 27 to 30. The patent office deals with the design as well.

Any aggrieved person may apply to District Court for civil remedy and he may apply to the Alaqa Magistrate and Court of Session Judge for penalties.

After that he can go to the High Court for appeal within 30 day in both civil and criminal cases. But in civil case CPC and in criminal case CrPc apply. With regard to High Court procedure we apply High Court Rules & Orders reading with CPC or CrPc.

Before going to Supreme Court, he can apply for Civil Petition for special leave to Appeal (C.P.S.L.A). If Supreme Court grants leave then petition is converted into appeal otherwise dismissed. He can apply to Supreme Court for appeal within 60 days of the High Court decision and Supreme Court Rules and Orders apply for procedure.

CHAPTER No.4

INSTITUTIONAL ARRANGMENTS

4.1 INTELLECTUAL PROPERTY ORGANIZATION (IPO)

On 8 April 2005, vide a Presidential Ordinance; the government of Pakistan decided to adopt, incorporated management of intellectual property in keeping with the upcoming global trend. The previous name of Intellectual Property Organization (IPO) was Pakistan Intellectual Property Rights Organization (PIPRO).

Intellectual Property Organization (IPO) is an autonomous Organization under the administrative control of the Cabinet Division<sup>1</sup>. Trade Marks Registry, Copyright Office and Patent Office are working under the Intellectual Property Right Organization (IPO)<sup>2</sup>.

Policy Board

The Federal Government set up a policy Board of the Organization comprising the Chairman Mr. Waseem Haqqie, Vice Chairman and other members from the public and private sectors<sup>3</sup>. The Board is responsible for setting of objectives and policy guidelines of the Organization in accordance with the powers and functions<sup>4</sup>. The Board promotes a modern system for the protection of intellectual property rights in Pakistan, approves policies, plans, programmes of the Organization, and makes procedures and necessary framework for the utilization of funds generates or acquires

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<sup>1</sup> Section 3 (3) Intellectual Property Organization of Pakistan Ordinance, 2005

<sup>2</sup> Ibid., Section.2

<sup>3</sup> Ibid., Section4 (1)

<sup>4</sup> Ibid., Section5 (1)

## INSTUTIONAL ARRANGMENTS

through services, donations or grants, etc<sup>5</sup>. The Board may assign all or any powers and function to the Chairman, Vice Chairman or any committee of the Board and Director-General<sup>6</sup>. The Board regulates the procedure for its meetings. The meeting of the Board organizes by and under the directions of the chairman. The federal Government may direct convening of a meeting of the Board at any time on any matter requiring a decision by the Board. The meeting of the Board holds at least twice a year. A simple majority of the total membership shall constitute the quorum for a meeting of the Board. The decision of the Board shall is adopted by simple majority of the members present and voting<sup>7</sup>.

### DIRECTOR-GENERAL

A Director-General of the Organization appoints by the Federal Government on the terms and condition as may be prescribed. The Director-General is Chief Executive Officer of the Organization, discharges such duties, and performs such functions, assigns to him by or under Intellectual Property Organization of Pakistan Ordinance, 2005. The D.G. complies with such directions that the Federal Government or the Board may give from time to time<sup>8</sup>. Now Yasin Tahir is the D.G. of IPO Pakistan. He is working day and night for the enforceability of IPR's. Time will prove his competency in the shape of the implementation of intellectual property rights in Pakistan.

### POWERS AND FUNCTIONS OF THE ORGANIZATION

Now we give details the powers and functions of the organization as defined in IPO Ordinance:-

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<sup>5</sup> Ibid., Section 5 (3)

<sup>6</sup> Ibid., Section 6

<sup>7</sup> Ibid., Section 7

<sup>8</sup> Ibid., Section 10



## INSTUTIONAL ARRANGMENTS

- IPO administers and coordinates all specified IPR, s.
- IPO regulates or implements measures and standards which are related to IPR,s.
- IPO endorses any person as intellectual property agent.
- IPO determines any reasonable fees or charges for services & facilities provide by it or its three subordinate offices.
- IPO can carry out such works that are benefit for it.
- IPO manages other authorities, international agencies or Organization relating to intellectual property study and project.
- IPO can enter into any contracts that are necessary for the discharge of duties and functions.
- IPO supervises and coordinates all its three offices, which are patent Office, Trade Marks Registry & Copyright Office.
- IPO maintains documents and information for public.
- IPO advises the Government of Pakistan on intellectual property rights policy.
- IPO promotes education and research in the field of intellectual property. Therefore, IPO is working with many public and private sector universities in Pakistan. International Islamic University Islamabad Pakistan is one of them.
- IPO advises the Federal Government relating to international negotiations in the field of intellectual property.
- IPO engages in human resource development of its officers and staff.
- IPO promotes awareness about intellectual property issues in the public and private sector
- IPO becomes bridge between counterpart intellectual property related organizations in other countries for capacity building and exchange of information.
- IPO proposes and initiate intellectual property rights legislation for the protection of intellectual property rights in Pakistan.

- IPO initiates and monitors the enforcement and protection of intellectual property rights through designated law enforcement agencies (Judiciary, FIA, Custom and Police) of the government and collect-related data and information. The law enforcement agencies keep the Organization regularly and appropriations against violations of intellectual property rights and ensure full liaison and cooperation with the Organization.
- IPO develops working manuals, references, materials and procedures in order to assist in improving the protection of intellectual property rights.
- IPO coordinates the implementation of foreign-aided technical assistance projects on intellectual property.
- IPO performs and carries out any other act, thing or function relating to intellectual property assigned to it by the Board or the Federal Government<sup>9</sup>.

### GOVERNMENT OF PAKISTAN AMPLIFICATION

In April 2005, the Government of Pakistan took the following landmark decisions in parallel to strengthen and reorganize the institutional infrastructure for integrated management of intellectual property and to reinforce and enhance the IPR enforcement capacity of the government agencies in Pakistan. The decisions are as follows:-

- Establishment of IPO-Pakistan
- Empowerment of FIA
- Activation of Pakistan Customs

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<sup>9</sup> Ibid., Section 11

IPO-Pakistan was established for integrated management of intellectual property rights by bringing all IP Registries under one umbrella organization instead of the old fragmentation of IP Registries into three different Ministries namely:-

Copyrights	Ministry of Education
Trade Marks	Ministry of Commerce
Patents/Designs	Ministry of Industries

Not only that this fragmentation of IP management into three different Ministries was done away with, but also the Prime Minister was also pleased to place the new organization directly under him through the Cabinet Division. This measure has further enhanced the significance of the new organization and sharpened its business focus. The new organization was also reasonably enabled with substantial initial grant of funds and necessary autonomy to incur expenditure in accordance with the initial setting up requirements of the new organization. Against this backdrop, besides meeting its own initial requirements, the following additional measures were taken to kick-start IPO-Pakistan on the road to effectively achieving the organizational goals namely:-<sup>10</sup>

1. One Building Operation
2. Committee of Heads of Registries
3. Public Outreach Program
4. Enforcement Coordination Committees
5. Regional Offices
6. Automation
7. IPO Website
8. Recruitment of Patent Examiners
9. Capacity Building Programs

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<sup>10</sup> Source Muhammad Anwar Khan (IP Expert) IPO Islamabad

### 10. Focused Judicial Set-Up

#### ONE BUILDING OPERATION

In Lahore, an integrated Regional Office of IPO has been established. The Copyright Office and the Trade Marks Office which were previously located at two different and distant places in dilapidated buildings have now been shifted to a new building. Regional Patent Office is also in the process of establishment in the same building in Lahore. In this way, all the three regional offices will be located in the same building for public dealing facility.

In Karachi, IPO-Pakistan is in the process of locating all IP Registries namely Copyrights, Trade Marks and Patents in the same building to initiate "One Building Operation" for the facility of dealing Public, which had to go to three different and distantly located offices namely Copyrights, Trade Marks and Patents.

#### CONSTITUTION OF JOINT COMMITTEE OF HEADS OF IP REGISTRIES

In order o consolidate integration of IP operations, a joint Committee has been constituted comprising Heads of IP Registries located in Karachi. Whereas the Registrar of Trade Marks (Previously under Ministry of Commerce), the Registrar of Copyrights (Previously under Ministry of Education) and Controller of Patents (Previously under Ministry of Industries) rarely met ever before even socially, now meet every Monday to jointly address their organizational problems in a corporate environment. This measure is aimed at improving the quality of decision-making and finding corporate solutions for organizational problems.

### PUBLIC OUTREACH PROGRAM

The Committee of Heads of IP Registries has been assigned the Director General's Public Outreach Program. Under this initiative, the Heads of IP Registries jointly meet with the Chambers of Commerce and Industry to inform them of the benefits of IP compliance and the business risks involved in non-compliance. They have already held such meetings with the Chambers of Commerce and Industry of Karachi and Peshawar. Their next meeting is set-up shortly with the Hyderabad Chamber of Commerce and Industry. One by one, they plan to hold similar meetings with all major Chambers of Commerce and Industry. They will also add a new dimension of meetings with universities, R&D and academic institutions.<sup>11</sup>

### ENFORCEMENT COORDINATION

An Enforcement Coordination Committee has been constituted in Islamabad comprising the following; namely:-

- IPO-Pakistan (Secretariat of the Committee + Lead Role)
- Federal Investigation Agency (FIA)
- Police Department
- Pakistan Customs (CBR)
- Directorate General of Customs Intelligence
- Law & Justice Division
- Pakistan Electronic Media Regulatory Authority (PEMRA)

This Committee regularly coordinates and reviews enforcement activities and strategies for enhancement of IP enforcement. Following a gradual and step-by-step

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<sup>11</sup> Source Yasin Tahir (D.G.) IPO Islamabad

approach the Enforcement Committee has decided to establish two Regional Enforcement Coordination Committees in Karachi and Lahore to jack up IP enforcement in these two most major cities. Depending on the success of this enforcement mechanism, the Committee network will be extended to those other cities where piracy, counterfeiting, imitation or misappropriation of IP may be suspected.<sup>12</sup>

### REGIONAL IP OFFICES

Historically, the Registries of Copyrights, Trade Marks and Patents have existed in one city only i.e. Karachi. A small regional presence of Copyrights and Trade Marks has existed in Lahore. After the formation of IPO-Pakistan, an acute need was felt for up gradation of the regional office Lahore with the addition of patents related business and in other Provincial capitals as well. It is accordingly proposed to establish Regional Offices in Quetta (Baluchistan) and Peshawar (N.W.F.P). The objective is to fulfill a felt-need of the people and to expand the institutional outreach of IPO-Pakistan as well as to provide IP related facilities at the doorsteps of the dealing public. This measure will not only help promote IP awareness in the country but it will also strengthen the ongoing enforcement drive.

### AUTOMATION

Previously, the IP Registries were not in the limelight of public policy in terms of automation. WIPO is now helping the Trade Marks Registry with automation under the European Union's Trade Related Technical Assistance (TRTA) Program. The automation plan is also being expanded to include the three Registries and IPO HQ as

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<sup>12</sup> Presentation "Enforcement of Intellectual Property Rights" in IIU by Yasin Tahir (D.G.IPO ) Islamabad Dated 12<sup>th</sup> May, 2006

well as the existing and the proposed Regional Offices. E-Government Directorate of the Government of Pakistan is also assisting IPO-Pakistan in achieving its automation plan.

### WEBSITE

IPO Website has been launched under the following domain name:- [www.ipo.gov.pk](http://www.ipo.gov.pk) It presently houses information on Patents and Trade Marks. The Copyright component is under construction. Efforts are underway to make it a comprehensive portal for comprehensive real time information. WIPO is also assisting IPO-Pakistan in upgrading this Website.

### RECRUITMENT OF PATENT EXAMINERS.

There is an acute shortage of patent examiners in the Patent Office. In order to make up this shortage twenty candidates have been selected through a merit-based competitive process. After their initial training, they will be inducted to the Patent Office shortly. They will however, take quite some time to acquire the requisite level of competency in patent examination.

### CAPACITY BUILDING

As there is no IP Academy in Pakistan, IPO-Pakistan is developing a work plan for capacity building of IP staff with the assistance of IP friendly countries and organizations. WIPO experts have already conducted a training program for Examiners of Trade Marks/ Service Marks. Another program has been lined up by WIPO under European Union's TRTA Project to train Patent Examiners. Similar arrangements will be made for training of Copyright Examiners. US Commerce

Department's offer of assistance under CLDP will also be utilized for Capacity building of IP Offices. IPO-Pakistan needs international assistance for the training and skill development of IPO staff at all levels. TRTA Project of European Union contains as IP related component. US CLDP offer is also in hand. Singapore, South Korea and Australia are expected to help IPO-Pakistan in its capacity building initiatives. WIPO has already held an International Round Table in Pakistan and a study visit of a six member-high level IP delegation from to Australia, Korea and Singapore has been very useful. These exposures have greatly helped the Policy Board and the Management of IPO-Pakistan to raise the new organization on the most competitive and sophisticated lines. Thus the new organization i.e. IPO-Pakistan is expected to manage the IP Rights regime in Pakistan competently and effectively.<sup>13</sup>

### FOCUSED JUDICIAL SET-UP

IPO-Pakistan has proposed to the Federal Ministry of Law, Justice and Human Rights to request the relevant judicial authorities to nominate those judicial officers who alone should deal with IP litigation. In this way, IPO-Pakistan can easily introduce capacity-building programs in the judiciary to enhance their skills to understand the implications of IP litigation and the IP-economy linkages for impartial and competent decision-making.<sup>14</sup>

#### 4.2 COPYRIGHT OFFICE GOVERNMENT OF PAKISTAN

The Copyright Office was established in Karachi 1963. Its branch office was established in Lahore in 1984. The Ministry of Education previously supervised the Copyright Office. The Copyright Ordinance 1962(as amended in year 2000 to align it

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<sup>13</sup> Source Yasin Tahir (D.G.) IPO Islamabad

<sup>14</sup> [http://www.ipo.gov.pk/start\\_activity.php](http://www.ipo.gov.pk/start_activity.php) (Last Visited July 10, 2006)



with TRIPS requirements) and the Copyrights Rules as amended in 2002 constitute the legal framework of the Copyright Office<sup>15</sup>.

### REGISTRATION PROCESS

The applicants on prescribed Performa on payment of prescribed fees file copyright application. Acceptance of the application founds complete in all respects and eligible for grant of Copyright is published in newspapers. If no opposition is field against an acceptance within a prescribed time frame, then Copyright is granted.<sup>16</sup>

Filing fees is 500 Pak Rupees.

The Copyright Office, Karachi is headed by the Registrar (BPS-19). Remaining management staff is Dy. Registrar (PBS-17), Asstt. Librarian (BS-16), Asst. Librarian, Examiner (BPS-16), Admn. Officer (BS-16) and 18 Supporting Staff (BPS-1to16).

The Regional Office, Lahore head is In-Charge IP Office (PBS-19). Remaining Staff is Dy.Registrar, Examiner (BS-16) and 6 Supporting Staff is needed.

Patent offices registered 71,914 Copyrights till 2005.<sup>17</sup> Numbers of staff members and registration of copyrights show that we are working well but need more improvement.

### 4.3 THE TRADE MARKS REGISTRY GOVERNMENT OF PAKISTAN

The Trade Marks Registry was established in Karachi in 1948 under the Trade Marks Act of 1940. A branch Office of Registry was established in Lahore in 1974. The Trade

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<sup>15</sup> Intellectual Property Organization, IPO Pakistan REVIEW-2005, 9

<sup>16</sup> Ibid., p. 19

<sup>17</sup> Ibid., p. 19

Marks Registry was previously supervised by the Ministry of Commerce (now under IPO). The Trade Marks Act 1940 was replaced by the Trade Marks Ordinance, 2001 in order to align it with the requirements of TRIPS. The operational details of Trade Marks and Service marks are governed by the Trade Marks Rules, 2004 which replaced the Trade Marks Rules of 1963<sup>18</sup>.

The Trade Marks Registry, Karachi is headed by the Registrar (BPS-19). Remaining staff is Admin. Officer (BPS-16), two Dy. Registrars (BPS-15 & 16) two Asstt. Registrars (BPS-17), two Examiners (BPS-16) and 69 supporting staff. The Regional office, Lahore Head is In-Charge IP Officer (BPS-19), Examiner (TMR) (BPS-16) and Supporting Staff.

### 1. FUNCTIONS: (TRADE MARKS REGISTRY)

Trade Marks Registry is working under the administrative control of IPO Pakistan. The main function of the organization is to grant protection of trade marks through registration. Trade Marks Ordinance 2001 provides the law which governs the registration of trade marks for goods and services in Pakistan. Working of trade Marks Registry is like a Civil Court. The Registrar of Trade Marks hears and decides the cases relating to registration; post registration, opposition and rectification matters.

### 2. STEPS FOR REGISTRATION:

- 1: SEARCH BEFORE FILING OF APPLICATION.
- 2: FILING OF APPLICATION.
- 3: PRELIMINARY EXAMINATION.
- 4: FINAL ORDER FOR PUBLICATION.

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<sup>18</sup> Ibid., p. 18

5: PRINTING IN TRADE MARK JOURNAL.

6: OPPOSITION PROCEDURE.

7: ISSUANCE OF REGISTRATION CERTIFICATE.

8: RENEWAL OF THE REGISTRATION.

9: POST REGISTRATION MATTERS.

10: RECTIFICATION PROCEDURE.

3. CHART OF THE DEPARTMENT:

HIERARCHICAL CHART

Registrar is BPS-19 officer appointed under provisions of Trade Mark Act 1940 by Federal Government. who works as Head of the Departments and also as a tribunal equivalent to District Court. Deputy Registrar BPS-18 officer is also tribunal of the same status

4. LAST FIVE YEARS STATISTICS AND PERFORMANCE

Table: 4.1

Year	Application Filed	Application Registered
2001-02	6572	2238
2002-03	7799	2065
2003-04	11311	3368
2004-05	13097	3586

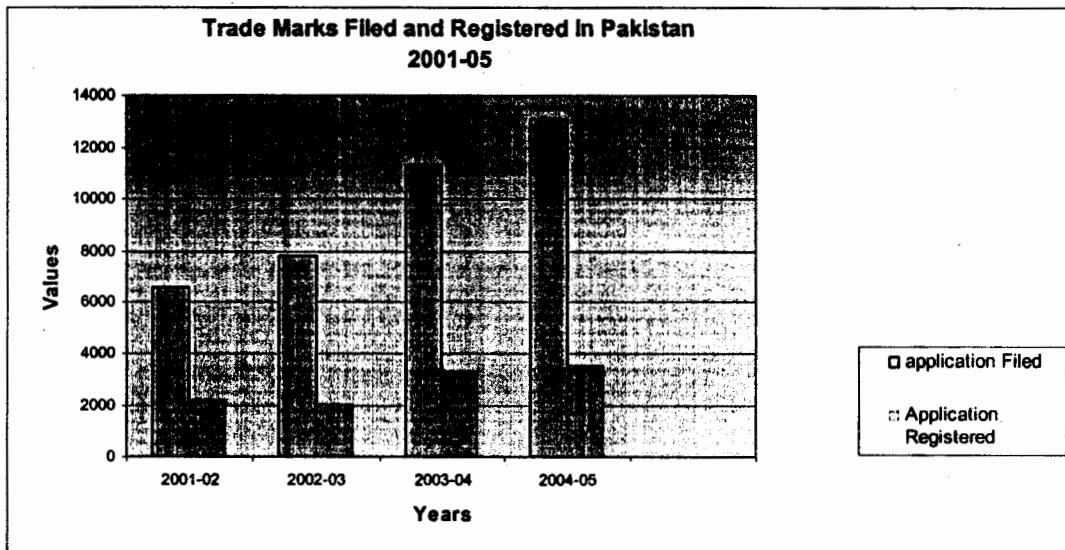
19

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<sup>19</sup> Ibid., p. 18

Table 4.1 explains the increase of application filed and registered. When we compare 2001 with 2005. 6572 applications were filed in 2001-2002. While in 2004-2005, it increased by more than double. This growth shows the awareness and enforceability in Pakistan. Third column of application registered are also moving in high figures.

Graph: 4.1



Graph 4.1 shows the continuous enlargement in application field and registered. So number of Trade Marks is increasing day by day.

5. TRADE MARKS REGISTRY-A SERVICE ORIENTED ORGANIZATION:

Trade Marks Registry is a service-oriented organization, therefore the major objective of the policy is to facilitate the general public and trade marks owner/applicant to achieve the goal of registration of trade marks. A help desk is separately working along with the reception where every one can get briefing/guidance on registration procedure / information and to resolve the problems/issues related to any of the function of Trade Marks Registry. All the officers including Registrar of Trade Marks are available to general public in order to help them solve their problems if any. Trade Marks Agents/Advocates have been provided with a separate waiting room. A library with all related law books is available to the lawyers and the trade mark officials. The staff is given training from time to time to make them updated on trade marks matters to achieve the best results.

6. FUTURE PLANS:

• COMPUTERIZATION - SOFTWARE DEVELOPMENT:

In order to computerize the working of the department a software development project has been completed. This project was fully financed by World Intellectual Property Organization, Geneva. The software is a solution towards the computerized working of Trade Marks Registry. Presently the record for registered Trade Marks is being loaded in the Software through the available hardware. In order to fully computerize the working of Trade Marks Registry, available hardware is insufficient to cope with the need.

• REGISTRATION OF GEOGRAPHICAL INDICATIONS:

Presently the Trade Marks Registry is granting registration of Trade Marks with relation to goods and services only. A law for the registration of Geographical

Indications in Pakistan has also been drafted to grant protection of our valuable geographical indications and bring Pakistan at par to other countries which are providing full protection to their geographical indications during the course of trade. The law is yet to be promulgated after being vetted by law division. Registration of Geographical Indications needs creation of a separate Registry which is also an obligation under Trips agreement. IPO arranged a geographical indication workshop with the cooperation of European Union on 3 and 4 July 2006. WIPO experts were also there.

- **INTERNATIONAL OF TRADE MARKS:**

Evaluate, comprehend and assess the needs and requirement of international registration of trade mark under Madrid Agreement/protocol for the future benefit of our traders.

- **SEMINARS AND WORKSHOPS:**

Arrange workshops and seminars in all major cities of Pakistan to create awareness about trade marks, Geographical Indications, enforcement and remedies. Being an important marketing tool, financial role of brands in the assets of the companies, evaluation and accounting for brands.<sup>20</sup>

#### **4.4 THE PATENT OFFICE GOVERNMENT OF PAKISTAN**

The Patent Office was established in Karachi in 1948. It operated under the Patents and Designs Act, 1911 and the Patent Rules, 1933, till the legal framework was revised in the year 2000 in order to align it with the TRIPS requirements. The Patent Rules of 1933 were also replaced with the Patent Rules 2003. The Patent Office is headed by

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<sup>20</sup> <http://www.tmr.gov.pk/aboutus.html> (Last Visited July 6, 2006)

## INSTITUTIONAL ARRANGMENTS

the Controller Patents (BPS-19) also the Registrar of Designs assisted by Assistant Controller (BS-18) and Patent Examiners (BS-17). The Patent Office was previously supervised by Ministry of Industries, Production and Special Initiatives<sup>21</sup> (now under IPO).

### FUNCTIONS OF PATENT OFFICE

#### INTRODUCTION:

The patent office was an attached department of Ministry of Industries & Production established in 1948 under the provision of section 55 of the Patents & Designs Act. 1911(the Act is amended as Patents Ordinance 2002 & Designs Ordinance, 2000). The law of registration of Layout Designs of Integrated Circuits has also been promulgated as "Registered Layout-Designs of Integrated Circuits Ordinance, 2000".

The Patent Office currently is a part of IPO Pakistan (Intellectual Property Organization).

#### FUNCTIONS:

The Patent Office is an integral part of the progress of the country and of the development of its technological, material resources and it also:

1. Administers the Patent Ordinance, 2000, Designs Ordinance, 2000 and Layout-Designs of Integrated Circuits Ordinance, 2000.
2. Grant the Patents to the new and novel inventions.
3. Register the new and novel Designs of an article.

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<sup>21</sup> Intellectual Property Organization, IPO Pakistan REVIEW-2005, 17

4. Provide a sound legal and administrative framework for the promotion and protection of intellectual property.
5. Formulate and review intellectual property policies and legislation.
6. Represent the government internationally on intellectual property matters.
7. Collaborate with other organizations and intellectual property offices or programmes.
8. To encourage research and inventions.
9. To disclose new technological discoveries.
10. To disseminate technical information & know-how.
11. Endeavors to promote new inventions.
12. To foster and aid industrial development in Pakistan.<sup>22</sup>

Table: 4.2

Year	Patent Filed	Patent Granted
2001-02	1461	322
2002-03	1622	492
2003-04	1426	404
2004-05	1631	414

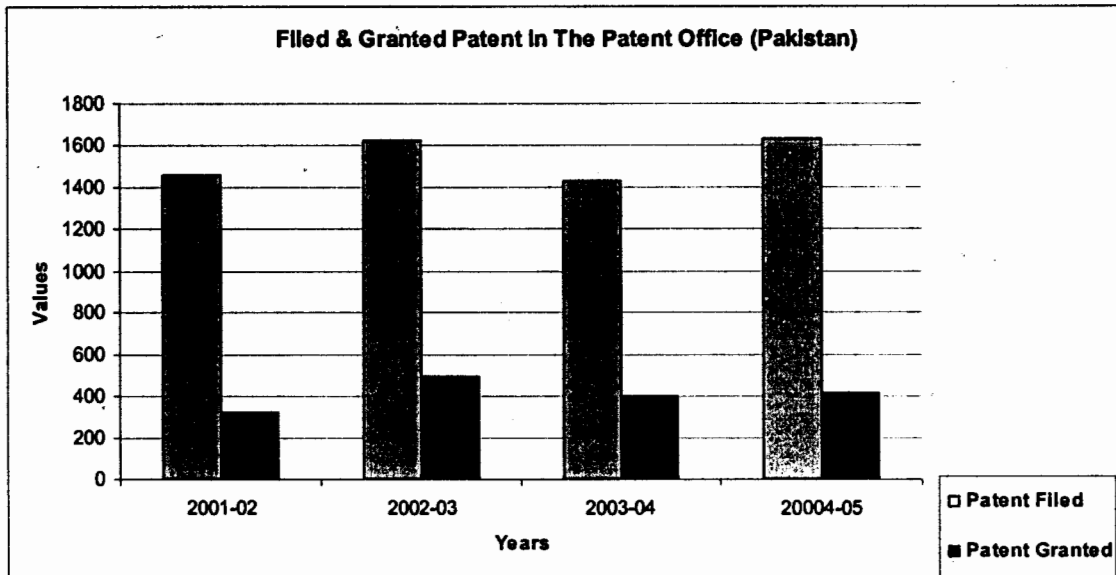
Table 4.2 gives date from 2001 to 2005. But there is no stability in patent filing and granting. The reason is that Pakistan is not expending as much amount on research as developing countries. So we have fewer patents for registration.

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<sup>22</sup> <http://www.patent.gov.pk/functions.htm> (Last Visited June 25, 2006)



Graph: 4.2



The usability in the graph shows, that we need some serious steps in this field. Although average shows that we are improving. But stable growth is also a positive point for any country.

**4.5 PAKISTAN ELECTRONIC MEDIA REGULATION AUTHORITY  
(PEMRA)**

Pakistan Electronic Media Regulatory Authority (PEMRA) was established on March 01, 2002 through an Ordinance to induct the private sector into the field of electronic media.

**PEMRA HAS BEEN MANDATED TO:**

Improve the standards of information, education and entertainment. Enlarge the choice available to the people of Pakistan in the media for news, current affairs, religious knowledge, art, culture, science, technology, economic development, social sector concerns, music, sports, drama and other subjects of public and national interest.

Facilitate the devolution of responsibility and power to the grass-roots by improving the access of the people to mass media at the local and community level; and

Ensure accountability, transparency and good governance by optimizing the free flow of information.

**CABLE TV OPERATIONS IN PAKISTAN:**

Cable TV was introduced in the country in the year 2000 under license from the Pakistan Telecommunication Authority (PTA). With the establishment of Pakistan Electronic Media Regulatory Authority (PEMRA) on 1st March 2002, all CTV operations in the country were formally handed over to PEMRA on 15th May 2002.

**CABLE TV LICENSES AND TARIFF CEILING:**

There are eight categories of cable TV licenses ranging from B-1 to B-8 based on the numbers of subscribers as per Annex.1. At present there are 1067 licenses registered with the authority as per detailed below:

Table: 4.3

Category	NWFP Region	ISB/RWP Region	Sindh Region	Balochistan Region	Punjab Region	Total
B-1	27	49	86	18	95	275
B-1	0	0	7	0	3	10
B-3	0	1	3	1	0	5
B-4	0	0	2	0	0	2
B-5	0	0	1	0	0	1
B-6	0	0	0	0	0	0
B-7	0	0	0	0	0	0
B-8	0	0	0	0	0	0
Rural	13	54	168	34	56	325
B	10	10	0	8	91	119
Hotels	0	0	4	1	3	8
Total	50	114	271	62	248	745

23

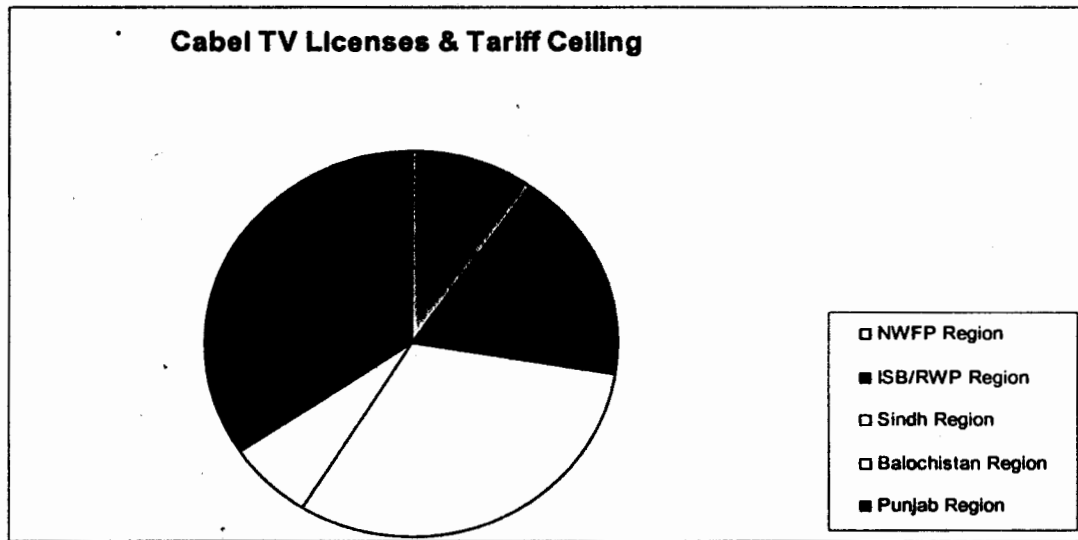
Fee for grant of a license for operating a cable TV station (5 year Term)

<sup>23</sup> <http://www.pemra.gov.pk/ctv.htm> (Last Visited June 17, 2006)

Application Processing Fee..... Rs 5000/-

Table 4.3 shows that cable networking is everywhere spreading in Pakistan. So it has got a complete industry status in Pakistan.

Pie Chart: 4.3



This pie chart explains different categories of cable operators in different areas of Pakistan. When we compare states then we find that Punjab is number one because Islamabad is also in Punjab, after that Sindh and NWFP.

Section: 20 (g) "not broadcast or distribute any programme or advertisement in violation of copyright or other property right".<sup>24</sup>

It is clearly mentioned in above section that Copyrights must be protected in electronic media.

<sup>24</sup> Section.20 Pakistan Electronic Media Regulatory Authorities Ordinance, 2002

Critical View: Now electronic media is industry in Pakistan. But it consists of big problems. The main reason is that there are a few people who are specialized in this field. Now we will critically analyze this industry;

Section: 34 Cases to be initiated on complaint. "No court shall take cognizance of any offence under this Ordinance except on a complaint in writing by the Authority or any officer authorized by it".<sup>25</sup>

So there is restriction on private rights. If any party suffers a loss due to infringement of copyrights, that party cannot go to court directly. First he shall complaint to PEMRA.

The practical loss of this section is that, many cable operators are advertising their own ads instead of the original ads of the channel. Once a foreign channel (HBO) approached PEMRA and said take action against it. PEMRA said, give written application. But that channel knew that if he did so, then cable mafia would not broadcast its TV channels. Instead of this, that PEMRA gave surety to him.

When we see towards PEMRA, it has almost 10 people for enforcement. So it is impossible for PEMRA to watch or make sure the interest of foreign and local channels.

Second, main issue is royalty. Now TV and Radio channels are not interested in giving royalty. The example of this problem is this that Mickal Jacson sleeps in an oxygen box; While Mehdi Hussan has no money for his own treatment is his last age. All the Radio channels (FM etc) are broadcasting songs without any permission. Last time

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<sup>25</sup> Ibid., Section.34

Pakistan Broadcasting Corporation (PBC) gave royalty in 1970.<sup>26</sup> Same is true of PTV and other channels.

There are some other problems in the electronic media. Nobody is interested in taking action against this mafia as well. A kid won half million Pak rupees in one TV programme against his intelligence. When he came to bank for money. Bank said, we would release money against check or bank draft not voucher. That child once again went to that TV channel. They said we were joking.

Third problem with regard to electronic media is, some cable operators on-air unregistered T.V. channels, which are not allowed in Pakistan for example MM1, MM2 (South African), Star Pulse (India) and S1 to S7 etc. Some of them are not interested in coming to Pakistan, some are banned due to pornography and some have political problems like Star Pulse (India), same thing happened with Pakistani channels in India.

In Dubi, channel cards are available. My source said that airhostesses go there and get these cards. So those cards are available in Pakistani markets such as in Super Market in Islamabad Pakistan. When those TV cannels go on-air through cable operators, the owner of those channels get money of their part through sale of those cards but not through subscription.

The cable operators broadcasting these channels because the cost is less than as compared to register one. They rely on those illegal programmes of those illegal channels through (stolen) cards. For these legal channels, they have to pay more. The second reason is public demand. Our people want to see these channels. So, Star Plus

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<sup>26</sup> Source Ali Jaffar Legal Consultant (PEMRA) Islamabad

(India) is shown in Pakistan except Islamabad, because PEMRA can take action only in Islamabad.

Development Authorities and Municipal Authorities have also some link with media industry. These authorities have the ownership rights of roads, parks, green belts and bridges etc. There is no restriction from the PEMRA with regard to number of cable license in one area. But these cable operators also need the NOC from these development authorities. These authorities issue very few number of NOC,s for cable operators. Due to this, they create monopoly. For example in Islamabad Capital Development Authority (CDA) issues 3 licenses for one sector. After that cable operators divide the area due to this reason they create monopoly. And The Monopoly Control Authority (MCA) is doing nothing with regard to this. Almost 1/2 to 3 Million Pak Rupees is monthly income of one cable operator. Nobody is here to check them. So cable operator's services are very poor. They are here only to earn. MCA should take action with regard to monopoly and PEMRA for services.

Cable Registration: Registered number of cable operators in Pakistan according to PEMRA figures is 1250. Actually total number of cable operators in Pakistan is 5000, some of which are registered whereas the rest are unregistered. One reason of such a huge number of cable operators is that their registration started under Pakistan Telecommunication Authorities (PTA) but now under PEMRA. According to my opinion 5 million people are directly or indirectly relate to this industry.

Almost all cable operators have their own private TV channels, through which they telecast English and Indian movies, plays and songs, which is a direct infringement of copyrights. They telecast their own advertisements through which they earn a lot of money.

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Cross Media: USA also imposed restriction on cross media, which means no print media can obtain license for electronic media. Same rules are exclusively meant for some EU countries. The reason is that both media play a great role in the progress of democracy. They give awareness to general public and thereby for the cause of democracy. If both are run by the same people, the development of the country will be hindered.

Some channels are coming from Dubai. PEMRA give them only landing rights. It means they can telecast their programmes through cables. But PEMRA can register them through amendment in the law. Due to this we can get more revenue through many sources.<sup>27</sup>Our industry can develop rapidly.

### SUGGESTION FOR PEMRA

In some countries like UK, there are only 2 cable operator's .Through this; Government can enforce their laws and policies easily. When PEMRA find out that some cable operators are working illegally or unregistered channels. PEMRA employees go there and confiscate their equipment. But problems in this fast telecommunication age, they inform each other before PEMRA employees reach there through cell phone. Due to this they close their illegal activities.

The other problem is that, one cable operator gets license for one particular area and he sells illegal connections to the contiguous areas, where no connection is available. He himself or any other person starts this business. Those illegal cable operators pay less than PEMRA fees. These cable operators have no offices. They run their business through mobile phone. So it is difficult to trace them. Only these people know about these loop holes. Firstly, the cable operator who has got a legal connection and



## INSTUTIONAL ARRANGMENTS

secondly, those cable operators who have illegal connection. So it is difficult to know about these people but not impossible. Enforcement agencies can get information through cables connection.

According to my information, almost 3000 illegal cable operators are running their business in Pakistan.<sup>28</sup> PEMRA takes action against some of them but in some other areas new mafia appears. PEMRA catches and fines them. At the end they get license or merge with each other.<sup>29</sup>

We can solve all the above-mentioned problems of enforcement. First of all we need digital media agency, the one which is updated with latest equipments, strict enforcement and amendment in relating laws.

### 4.6 PAKISTAN SOFTWARE EXPORT BOARD (PSEB)

PSEB is registered as a Guarantee Limited company with the Securities and Exchange Commission of Pakistan. Owned 100% by the Government of Pakistan, it falls within the administrative control of the Ministry of Information Technology, and is governed through a Board of Directors appointed by the Prime Minister.

#### AIMS AND OBJECTIVES

- Formulating policies and developing sound infrastructure with the support of the Ministry of Information Technology and Telecommunications
- Facilitating business development by identifying new market opportunities for Pakistani products and services; and promoting them at national and international exhibitions and events

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<sup>28</sup> Detail of "Landing Rights" by PEMRA are available in Annexure-IV

<sup>29</sup> Detail of satellite TV broadcast station licensees at Annexure-V

## INSTITUTIONAL ARRANGEMENTS

- Expanding existing opportunities for education and employment in the IT/ITeS sector
- Leading research and development activities within various segments of the industry and maintaining a comprehensive information bank of industry-related activities
- Encouraging and promoting quality certifications to further strengthen and prepare the Pakistani IT/ITeS industry to face international competition

With over 500 IT and ITeS companies registered with PSEB, and 75,000 professionals employed in the overall IT sector, PSEB is committed to creating an conducive environment for the growth of the national IT industry.<sup>30</sup>

### ENFORCEABILITY WITHIN THE GOVERNMENT

The Government of Pakistan is committed towards the elimination of piracy, the protection of intellectual property, and the indigenous development of open source technologies by committed academicians, and software professionals. The government through its various ministries, divisions and departments is arranging meetings, seminars and conferences to educate users.

Since 2002, the Federal Government has strictly prohibited the use of pirated software on nearly 5000 computers spread throughout its ministries, divisions and departments. Vendors are clearly instructed to quote the rates for registered software only, while floating tender notices or advertisements for the supply of computer hardware. A good example of this policy is the recent (June 2005) multimillion dollar multi year enterprise agreement signed by the Pakistan Telecommunications Company Ltd and Microsoft. At the same time, vigorous discussions are taking place with the global IT companies that supply proprietary software products so that these products are made

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<sup>30</sup> [http://www.pseb.org.pk/page.php?page\\_id=85](http://www.pseb.org.pk/page.php?page_id=85) (Last Visited July 11, 2006)

## INSTITUTIONAL ARRANGEMENTS

available in Pakistan at substantially reduced rates. This will in itself be a significant deterrent to the use of pirated software within the private sector.

### ENFORCEABILITY WITHIN THE PRIVATE SECTOR

Apart from the government, some private organizations are also actively playing their role in enforcing Intellectual Property Rights, particularly within the IT sector. These are very encouraging signs for both local software developers, and international software firms. The Business Software Alliance (BSA) is working closely with the Pakistan Software Houses Association (PASHA) to check piracy and to boost the country's software export potential. The BSA's toll-free helpline (0800-01234), has proved a highly useful resource for local software developers seeking information regarding copyright protection on software exports from Pakistan, and to combat the threat of its infringement in cyberspace.

The American Business Alliance (ABC) encourages US investment in Pakistan and promotes the development of commerce between the two countries. It has suggested that the Government of Pakistan should establish an Intellectual Property Rights Task Force - which also includes trademarks - the sole purpose of which should be to eliminate Intellectual Property Rights' infringement from Pakistan.<sup>31</sup>

### IMPORTING SOFTWARE INTO PAKISTAN

- The State Bank of Pakistan (SBP) requires that any company wanting to procure software from abroad first needs to obtain a No Objection Certificate (NOC) from PSEB.<sup>32</sup>

There was no section in Copyright Ordinance 1962 with regard to software. It was firstly mentioned in Copyright Ordinance 1962 in 2000 through section 60

<sup>31</sup> [http://www.pseb.org.pk/page.php?page\\_id=135](http://www.pseb.org.pk/page.php?page_id=135) (Last Visited July 11, 2006)

<sup>32</sup> [http://www.pseb.org.pk/page.php?page\\_id=127](http://www.pseb.org.pk/page.php?page_id=127) (Last Visited July 15, 2006)

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(A). There is no case law till May 2006 with regard to software piracy. The main problem is that we can get evidence in every area on IPR's except software. The main issue is that we purchased CPU and monitor in 4 thousand Pak rupees but software price is almost 14000 Pak Rupees. Different prices of software are given below.<sup>33</sup>

Table: 4.4

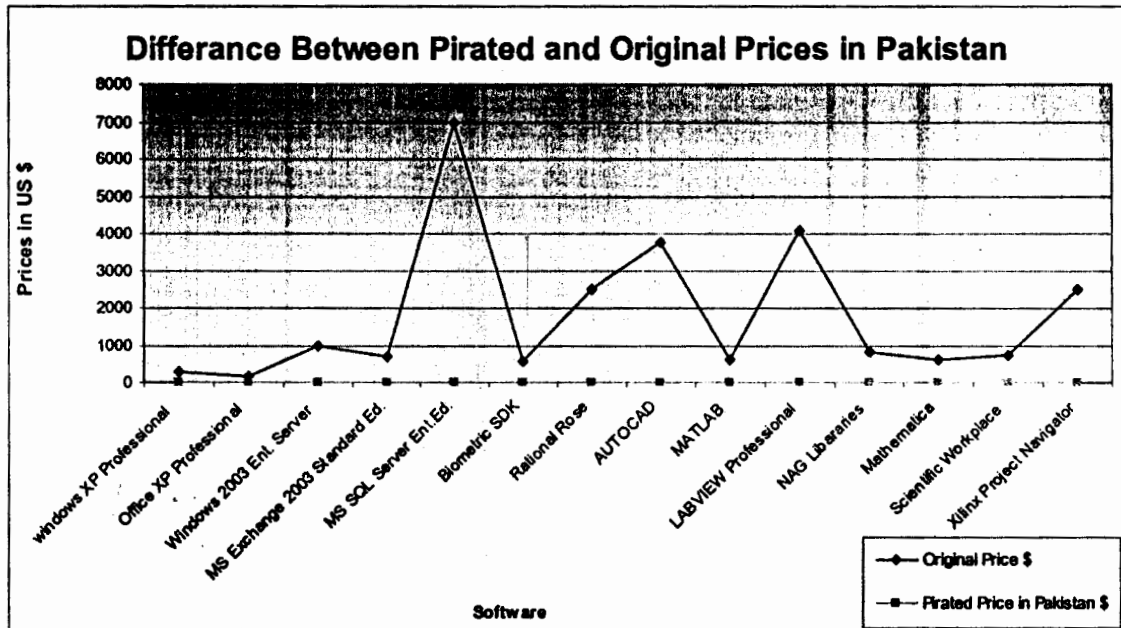
Programmes	Original Price in \$	Pirated Price in Pakistan in \$
Windows XP Professional	299	Half Dollar
Office XP Professional	169	Half Dollar
Windows 2003 Ent. Server	1000	Half Dollar
MS Exchange 2003 Standard Ed.	699	Half Dollar
MS SQL Server Ent.Ed.	6999	Half Dollar
Biometric SDK	589	Half Dollar
Rational Rose	2495	Half Dollar
AUTOCAD	3750	Half Dollar
MATLAB	625	Half Dollar
LABVIEW Professional	4095	Half Dollar
NAG Libraries	830	Half Dollar
Mathematica	630	Half Dollar
Scientific Workplace	735	Half Dollar
Xilinx Project Navigator	2495	Half Dollar

<sup>34</sup> This table illustrates the difference in original and pirated softwares in Pakistan. We should take serious notice with regard to software industry. It is a huge loss. This loss is beyond the limit for software companies.

<sup>33</sup> Source Sy. Kurram Raza (Legal Consultant Microsoft) practicing lawyer in Lahore

<sup>34</sup> Software Prices are collected from different Software Houses of Islamabad

Graph: 4.4



Graph 4.4 differences between pirated and original prices in Pakistan. It is such a huge difference, which simply cannot be compared.

Best solution with regard to enforcement is that software foreign companies should give suitable packages to different classes as following students, industrialists and public sectors etc. The other thing is that it is moral issue as well as legal. Theft of some tangible property is regarded as a crime whereas that of software is not considered so.<sup>35</sup>

<sup>35</sup> Source Sy. Kurram Raza (Legal Consultant Microsoft) practicing lawyer in Lahore

### 4.7 NATIONAL BOOK FOUNDATION (NBF)

#### INTRODUCTION

National Book Foundation was established in 1972 as a service rendering educational welfare organization. It is a statutory Corporation created through an Act of the Parliament in order to make books available at moderate prices. It has its Head Office in Islamabad and Regional Offices at each provincial Headquarters. In addition it has Branch Offices and bookshops. Its management and overall control is vested in a Board of Governors. The Federal Education Minister is Chairman of the Board of Governors. The Chief Executive of the organization is the Managing Director.

#### FUTURE PLANS

1. Continuation of its on-going activities.
2. Establishment of Authors Corners and Resource Learning Centers in Islamabad and provincial capitals. It will facilitate the author to develop textbook for elementary to higher classes as an on going activity, for literacy and academic activities and Authors Resource Centers.
3. Knowledge at doorstep - Mobile Bookshops and Home Libraries.
4. Development of textbooks at post-graduate level and for professional institutions in collaboration with Higher Education Commission.
5. Establishment of an outlet for Pakistani books in New Delhi, India. Supply of books to institutions under Book Bank Scheme (Phase-II) through Higher Education Commission.
6. Organizing International Book Fairs biannually, Pakistan being the only exception in the region.

7. Securing licenses and rights from foreign publishers in view of the likely implications of WTO regime and TRIPS Agreement from 2005.<sup>36</sup>

Table: 4.5

S.No.	Years	Foreign Reprinting Text Books	Pakistani Books	Total
1	19973-75	170	85	255
2	1976-78	282	202	484
3	1979-81	196	184	380
4	1982-84	213	146	359
5	1985-87	113	197	310
6	1988-90	148	246	394
7	1991-93	34	224	258
8	1994-96	69	203	272
9	1997-99	186	265	451
10	2000-02	503	589	1092
11	2003-05	647	1068	1715
Total		2561	3409	5970

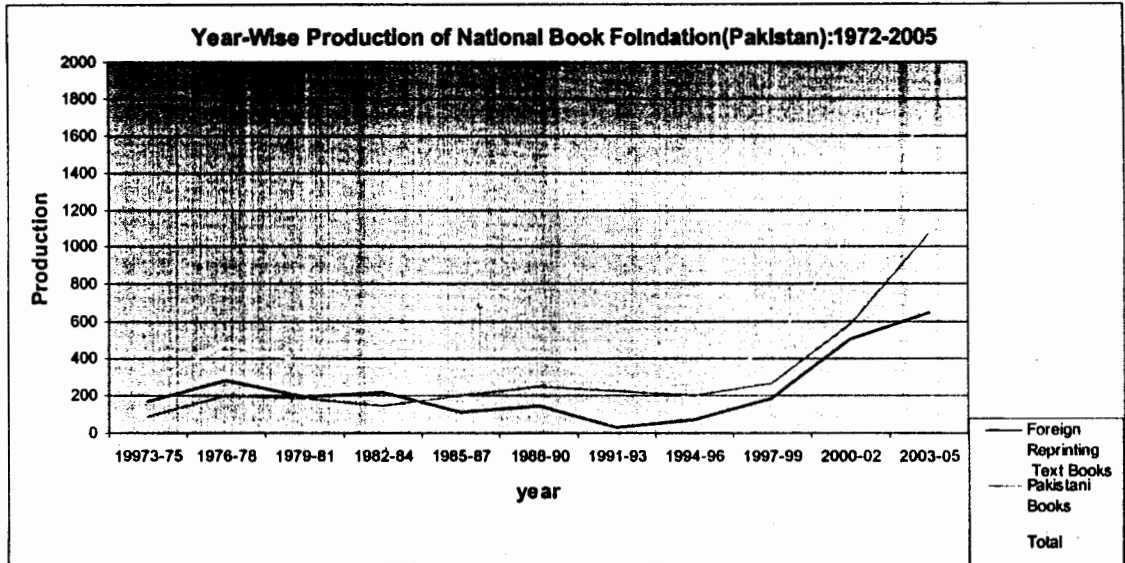
<sup>37</sup>

Table 4.5 explains the whole publication history of NBF from 1973 to 2005 and how many foreign and Pakistani books are published by NBF. In other words these are achievements of National Book Foundation.

<sup>36</sup> <http://www.nbf.org.pk/> (Last Visited July 18, 2006)

<sup>37</sup> Detail Data of NBF is available in Annexure-III

Graph: 4.5



38

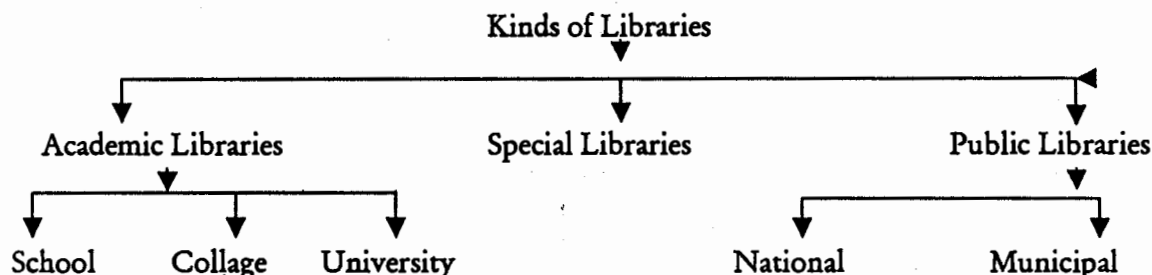
Graph 4.5 features three lines, which explain foreign, Pakistani and total number of yearly publication. From starting point lines are gradually improving but you can notice a steep rise in the end from 1997 to 2005, which is indicating reading culture in Pakistan.

In ancient era Books came from Baghdad to Spain and were translated there. Due to these activities, economical revolution came in these countries. Pakistan's economy just failed to take off some how. What is reason of this default? The answer is obviously clear, that we have no reading culture. Mostly in the world, the national libraries are under Ministry of Culture but in Pakistan, it is under Ministry of Education.

<sup>38</sup> Data provided by National Book Foundation Islamabad, Pakistan..



VARIOUS KINDS OF LIBRARIES ARE;



**Academic Libraries:** Academic libraries have only course books. These kinds of libraries are school, collage and university libraries. In these libraries course books or course supporting books are available.

**Special Libraries:** Theses libraries are built to cater to the special needs so that we can control wastage of sources and variety of knowledge. So these libraries have variety of knowledge in specific fields. Example is NIH and PIMS libraries etc.

**Public Libraries:** Public libraries are built by public fund. Any person can become member of these kinds of libraries. Public libraries are of two kinds: one is, National Libraries and second one, is Municipal Libraries.

Our Government is not thinking about libraries. Due to this reason many libraries have been closed and the remaining are likely to close down in the near future. Sundijman (Quetta) Library is closed and Ghos Baksh (Lahore) is near its closure

**Visitor in National Library Islamabad:** Almost nearly 50 to 60 people regularly visit the National Library in Islamabad. Most of them come here in connection with their preparation for the CSS, some work on different projects and some are students.

In USA, National Library is situated near the White House and same place in Pakistan (near Prime Minister House). In my opinion, it's not a suitable place in our case. The reason is that education sector in Islamabad is H sector but National Library is located at a long distance from it. Other reason is that the roads are blocked frequently due to security reasons. Many times government has order to shift the library to some other place in Islamabad.

Pakistan is an agricultural country. So Municipal Libraries can play a great role in our economy development especially with regard to agriculture. If we provide literate farmers with books and videos on agriculture in Municipal Libraries. I am positive, we shall achieve our ends. National Library in Islamabad has a membership fee. Nobody can borrow the books from National Library Islamabad; not even students.

The facility of borrowing books from the library should be extended to the students. So it is the sole responsibility of Government to provide funds to these libraries. Once copyright laws are enforced the prices of books will go up. However, due to enforceability, foreign publishers will come to our country and we will get latest books for research.<sup>39</sup> That updated knowledge will play a great role in the development of our economy.

National Book Foundation (NBF) is non-profit making organization. It also publishes and sells the books. Copyrights are always with the author, till 50 years after the death of author. After that it becomes public domain. Anybody can publish and sale out the public domain books. NBF enters into agreements with authors, with regard to publish and sale.<sup>40</sup>

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<sup>39</sup> Source Hafiz Khubaib Ahmed (Deputy Director) Department of Libraries, National Library Islamabad

<sup>40</sup> Agreement with Pakistani and foreign author are also attached in Annexure-I and II

International Conference: Then how can we solve this problem? There is only one way, that the Government issues licenses to other international publishers as "Oxford". But international publishers are interested in doing business in India as compared to Pakistan; of course due to big market. The question arises, is there book-reading culture in India? The answer is, "no". Both countries have got almost the same book reading culture. The only difference is in the population. That's why publishers are interested in India. Now NBF is arranging an international conference in Pakistan. Through these kinds of activities hopefully we will win the confidence of foreign publishers. Time will prove that Pakistan have also good market.

Budget: In our country, our politicians think that bridges and roods etc are more important than books. Therefore, in every budget taxes are imposed on publishing. Government is gradually decreasing allocation to libraries.

Non- Commercial Activities: Book publication is non-commercial activity. We can also say that it is social investment and not financial. Because we cannot measure it in figures. Here a question arises. "How we can improve our reading culture"? We know that 70 % population lives in rural areas. If somebody needs a book, at first he goes to the main city. After that he buys that book. Suppose the price of the required book price is 200(Pak Rs). The customer has to bear the traveling expenses also. So the total amount comes to  $200 + 500 = 700$ .

Shall we say that there is no reading culture in Pakistan? First we should explain what reading culture actually is? Reading culture means the people read books to enrich their knowledge and to remain well informed. Now the answer of the question, we cannot blame our publishers. The responsibility lies with the relevant departments (Government). Without providing the public the opportunity of reading it's irrational

books to Pakistani Embassies in other countries. It also gives free books to foreign libraries or forum, so that we can promote our culture.

NBF also publishes course books for students. First it conducts a survey through which it collects data regarding, how many books are required, demand time period and how many students are interested in that particular book.<sup>42</sup> After that NBF publishes of particular number of books.

Core Issue While Publication: Main issue with section: 36 (3) of The Copyright Ordinance 1962. The section: 36(3) of copyright Ordinance 1962 " The Federal Government or the Board may, upon an application by any governmental or statutory institution, in the public interest, grant a license to print, translate, adapt or publish any text book on non-profit basis".<sup>43</sup>

Now for the publication of a new book, NBF needs departmental approval from Ministry of Education and Copyright Office, if that publication is required for educational purpose.

But here the problem arises for example the price of book is 8000 \$ in foreign country. NBF writes to that author in foreign country or in Pakistan. There are two possibilities here. One he will demand more royalty as compared to its price. The price of that book will be too high. Even it is not affordable for our students. Second one is that the author may not even reply if the author is not interested in having his book published in Pakistan. Because he has a contract with single publisher in his country and has given there all rights. So he cannot give this right to any other publisher. Then NBF has only one solution for this issue. NBF publishes that book in

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<sup>42</sup> Source M. Aslam Rao (secretary) National Book Foundation Islamabad, Pakistan.

<sup>43</sup> Gazette of Pakistan, Extraordinary, Part 1, Islamabad, on Friday, the 29<sup>th</sup> September, 2000, pp 723-732

Pakistan for the interest of students without approval of their author. This section allows for publishing that book in Pakistan. This thing is disputed by the international enforcement agencies and has drawn a lot of criticism on Pakistan.

### 4.8 FEDERAL INVESTIGATION AGENCY (FIA)

FIA works through administrative and operational wings. Administrative wings are located at Islamabad.

Operational Zones (field directorates are at Karachi, Lahore, Rawalpindi, Peshawar & Quetta). These Zones are sub-divided into Circles for operational purposes.

#### Organizational Setup

The Director-General, generally a very senior Police Officer of BPS 21/22, with his Headquarters based in Islamabad, acts as head of the Department. In his work three Additional Director-Generals and ten Directors for effective monitoring and smooth functioning of the operations spread all over the country assist him.<sup>44</sup>

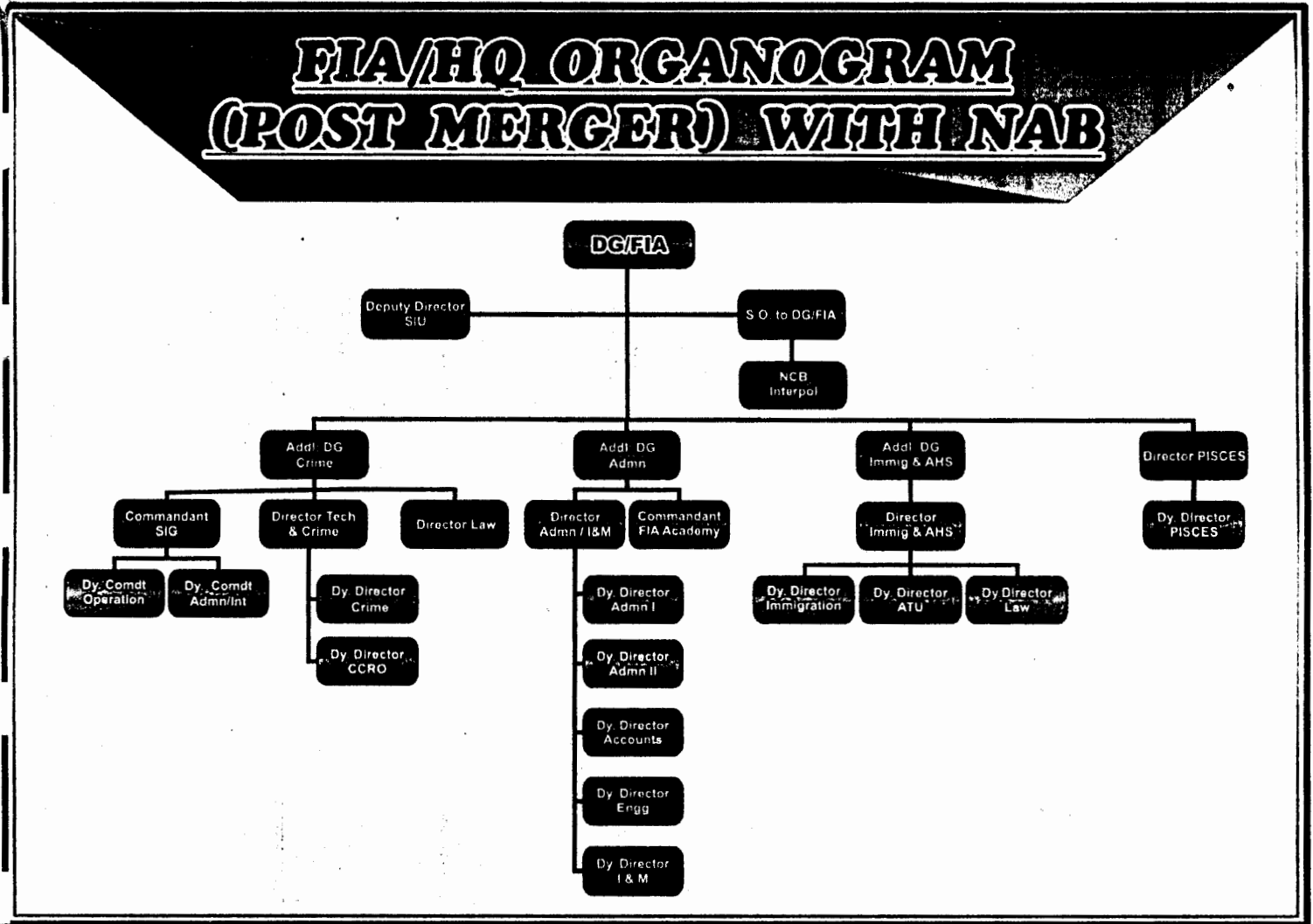
Six Directors assist the Director-General at Headquarters in controlling the Functional Wings of Administration, Crime, Immigration and Anti-Human Smuggling, PISCES, SIG and Technical Assistance. Four Directors supervise the zones of Lahore, Karachi, Rawalpindi and Peshawar.<sup>45</sup>

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<sup>44</sup> Source Azam Khan D. Director Law (FIA Headquarter) Islamabad

<sup>45</sup> Source Shukat Ali D. Director Law (FIA) Rawalpindi

Chart: 4.6



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This chart shows hierarchy of FIA so that we can compare FIA and the huge set up of police.

<sup>46</sup> [http://www.fia.gov.pk/abt\\_organization.htm](http://www.fia.gov.pk/abt_organization.htm) (Last Visited July 15, 2006)

One thing should be remembered FIA's right to cognizance of every copyrights offence through its ordinance, does not mean that police cannot take cognizance against copyrights. So both can take action against copyrights crimes.

Government of Pakistan gave the power to FIA through Schedule of FIA Act, 1974 Schedule [26] Offences punishable under the Copyright Ordinance, 1962 (XXXIV of 1962).

According to my own presumption Government should also take serious steps to acquaint the police with the Intellectual property Rights. In Pakistan even sun-inspector does not know what Intellectual Property Rights is.

### CHAPTER No. 5

#### RECOMMENDATIONS & CONCLUSION

A survey conducted by WIPO in 2002 indicated that the principal barriers to eliminating counterfeiting and piracy did not subsist in the substantive law, but rather in the remedies and penalties available (or not available) to stop and deter counterfeiting and piracy<sup>1</sup>. The ineffectiveness of enforcement systems was attributed, in many cases, to a lack of human resources, funding and practical experience in IP enforcement of relevant officials, including the judiciary; insufficient knowledge on the side of right holders and the general public, concerning their rights and remedies; and systemic problems resulting from insufficient national and international coordination, including a lack of transparency.

#### NATIONAL COOPERATION AND COORDINATION

The fight against counterfeiting and piracy would have much greater chances for success if it is a coordinated one, involving all the relevant stakeholders, and dealing with all the various intellectual property rights. A number of Member States have established coordinating or taskforce units involving, *inter alia*, the various relevant ministries and agencies, such as the intellectual property offices, customs, police and justice. Also involved are members of such bodies as associations of right holders, copyright societies, and medicines control agencies and trading standard authorities, as well as leading manufacturing, retail and consumer organizations. These units sometimes have specialized smaller committees, dealing with more specialized

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<sup>1</sup> <http://www.wipo.int/portal/index.html.en> WIPO Doc., WIPO/EIM/3.(Last Visited July15, 2006)



## RECOMMENDATIONS & CONCLUSION

intellectual property issues such as the drafting of new legislation and the development of frameworks for cooperation on enforcement action against intellectual property crimes.

The aims of this cooperation included the coordination of enforcement activities; the development of greater expertise, particularly among customs officers at all points of import and export; the improvement in general liaison procedures with all national agencies involved in enforcement; the enhancement of contacts with right holders and their representative organizations; the establishment of benchmarks with specialist anti-counterfeiting units in other Customs administrations; and the participation in public awareness campaigns. The exchange of officials is considered to have produced good results, allowing them to benchmark their performance and structure against specialist units that operate in other Member States. Right holders have been encouraged to contribute to the training of customs staff in the identification of counterfeit and pirated goods, and in intelligence reporting from their own sources to assist officers in identifying consignments of counterfeit or pirated goods.

### 5.1 JUDICIAL MEASURES

#### PROVISIONAL MEASURES

The effective participation of right holders in enforcement actions against counterfeiters and pirates an effective way of facilitating this participation is through the ordering of prompt provisional measures to preserve evidence and to prevent infringements. In some jurisdictions, the right holders apply *ex parte* for an order to enter the premises of the alleged infringer in order to attach and preserve evidence. This can be done on short notice, but right holders have to substantiate their claims and may have to provide security. The applications for *ex parte* orders should be acted upon and executed within a short time period and security requirements should not

## RECOMMENDATIONS & CONCLUSION

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unreasonably deter recourse to these procedures. Similarly, the appropriate authorities should have the right to order the seizure of suspected infringing goods and other relevant evidence as soon as there is reason to suspect that rights are being or are about to be infringed. The ability to seize or preserve should cover not only the infringing articles themselves, but also the equipment and other materials used in the infringing operation, including the production and distribution aspects.

In some jurisdictions the freezing of the defendant's bank account(s) and other assets may be ordered in order to assure funds to satisfy compensation awards and judgments, may be ordered, pending the court's consideration of the merits of the case. In the USA such orders, executed by the police authorities, under the anti-racketeering legislation, allows the enforcement authorities to confiscate assets of organized criminals, such as real property, vehicles and boats, to be used in subsequent enforcement activities.

### DAMAGES

In cases involving infringements of intellectual property rights, it is important that courts be empowered to award damages that both compensate the right holders and deter potential infringers from engaging in illegal activities. National laws therefore should contain rules on the calculation of damages that allow courts to award such damages as to create a deterrent, and adequately compensate right holders. In common law countries, right holders are entitled to an "account of profits", i.e. the right to receive all profits from the infringement. Exemplary damages may be used as a deterrent in cases of flagrant counterfeiting and piracy.

## RECOMMENDATIONS & CONCLUSION

### ANCILLARY ORDERS

In a number of countries, the courts can order the destruction of infringing goods and/or implements used in the manufacturing thereof, particularly where the defendant has acted in bad faith. In Pakistan takes place many times. Judicial procedures may also be adopted whereby offending goods that have been placed on the market are recalled at the infringer's expense, as long as they were not sold to consumers. In some countries, infringers may be required to undertake corrective advertising.

### EVIDENTIARY RULES

In some States, the rules of civil procedure have been amended to include a rebuttable presumption, that the judicial authorities shall presume that a person who has infringed an intellectual property right had reasonable grounds to know he was infringing such right. The presumption is rebuttable, where the defendant is able to provide concrete proof to the contrary. Additionally, proceedings are facilitated by the presumption of ownership of an industrial property right, evidenced on the relevant registration certificate. In copyright matters the person or legal entity whose name was indicated as the author, producer, performer or publisher of the work, in the usual manner is, in the absence of proof to the contrary, presumed to be the lawful right holder of the work. A person claiming to have a copyright license carries the burden of producing a true copy of the license agreement.

### CRIMINAL PROCEDURES

A number of countries have introduced criminal sanctions in relation to piracy and counterfeiting. Article 61 of the TRIPS Agreement requires criminal procedures and

## RECOMMENDATIONS & CONCLUSION

penalties for cases of willful trademark counterfeiting or copyright piracy on a commercial scale. A number of countries provide for both civil remedies and criminal penalties. Pakistan is also one of them.

### MEDIATION AND ARBITRATION

A means of reducing the expense and bureaucratic delays in the enforcement process in a number of developed countries has been to introduce alternative dispute resolution procedures, such as mediation and arbitration. These procedures encourage the exchange of information in order to facilitate the settlement of disputes at an early stage.

#### 5.2 ADMINISTRATIVE MEASURES

Institutions play a great role for the development of any country. Some international organization gave different solution with regard to administration to face this problem (Enforcement of Intellectual property Rights in Pakistan). But I am totally opposed to these solutions. The reason is that they have their own interest. We should solve these problems in our own way, that one of course according to international standards.

First of all the whole word is appreciating FIA works. But I am totally against FIA. We are third world country. But when our Government sets up the institution, we compare it with that of USA or EU countries. We should put our sources in a proper place. Without any delay, we must finish FIA. We can not afford two organizations for law and order. We have to improve our police. There is no need to give copyrights to FIA. That is to say, our police cannot facilitate general public. It is dire need of time that we reshape the whole structure of police.

## RECOMMENDATIONS & CONCLUSION

Second administrative body is IPO. IPO is going in right direction with regard to implementation. It is in its infancy. So it needs a lot of improvements. Language of law is used in all treaties, conventions and Pakistani Laws. But IPO has not a single Law expert. First of all it needs a complete law wing in IPO. After that economists and lawyers will decide as to adopt treaties in favor of our country. We should devise a complete policy, which suits our country.

In the end I would recommend that the government should adopt a policy, which is in the interest of our country and does not jeopardize it. We should not accept any (local) political pressure with regard to this. It is not an imaginary conclusion. We can do this, if we want.

### 5.3 PUBLIC AWARENESS

Ultimately, the fight against infringements of IPR has to involve the public. The question arises, how public can be informed. The best solution is, through electronic media. There are also others ways like seminars, workshop and providing relevant material in shape of publications.

### 5.4 SPECIAL COURTS

Some developing countries, such as Thailand and China, have established specialized courts to hear IPR-related cases as a means of improving their capacities for national enforcement, though such a measure is not formally required under TRIPS. A more attractive approach for developing countries is probably to establish (or strengthen) a commercial court, which may hear IPR-related cases *inter alia* and provide improved access to justice for the business sector as a whole. In any event, in most developing

## RECOMMENDATIONS & CONCLUSION

countries, a considerable programme of training for the judiciary and other enforcement agencies in IP subjects will be required. The "private" nature of IP rights suggests the importance of resolution of disputes between parties either out of court or under civil law. Indeed, as state enforcement of IPRs is a resource intensive activity, there is a strong case for developing countries to adopt IPR legislation that emphasizes enforcement through a civil rather than a criminal justice system. This would reduce the enforcement burden on the government in the case of counterfeiting on a large scale, although the state enforcement agencies would still be required to intervene. That said, we note that developing countries have come under pressure from industry which advocates enforcement regimes based on state initiatives for the prosecution of infringements. Such pressures should be resisted, and right owners assume the initiative and costs of enforcing their private rights.

### 5.5 CONCLUSION

Police is one of the most vital organs of a state. It strives not only to establish law and order but also endeavors to perpetuate it. The whole structure of police is rusty and requires immediate and effective measures to retrieve it. Besides this we are having a dual system i.e. FIA and police. A poor country like ours can hardly afford to have two organizations for the same job.

In my opinion FIA should be abolished and its powers should be transferred to police. We have to ensure, the police improves its efficiency and performance.

Second administrative body is IPO. IPO is moving in the right direction with regard to the implementation of law. But there are some problems with it. The organization has neither a law wing nor a law expert. IPO desperately needs a full-fledged law wings, so that a sustainable long-term policy of enforcement could be formulated and pursued.

## RECOMMENDATIONS & CONCLUSION

Government should earmark regular funds for National Book Foundation in order that the students could get books at cheaper rates. By adopting a realistic and oriented policy we can translate the dream of a literate Pakistan into reality.

National interests should be held supreme while making policies. The ground realities must be taken into account in this regard. All sort of pressures; political or bureaucratic, individual institutional must be rejected.

Media laws are being violated with impunity in Pakistan. Cable operators are running their own T.V channels. They have no qualms about telecasting pirated English and Indian movies.

They exploit these illegal means in another way and that is, they air their own advertisements through it. If these activities are effectively checked, whopping sums of revenue, of which, these handful of unconscientious. People are depriving our national exchange, will economy revive and reinvigorate our fragile.

Another thing, which merits serious consideration, is civil and criminal remedies. I firmly believe in the civil remedies. They are far more effective than criminal remedies.

The deterioration in the domain of enforcement of law, which we have been witnessing for quite some time, can be turned around only if we strengthen our judicial by freeing it from all pressures and influences. We must ensure speedy justice. The idea of setting up special separate courts, we experimented with following in the footsteps of the western countries proved an utter failure in our country; not because it's impractical but because the environment here is not conducive for them. The only ray of hope is a free and strong judicial system.

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# National Book Foundation

## AGREEMENT

FOR THE PUBLICATION BY THE NATIONAL BOOK FOUNDATION  
OF \_\_\_\_\_  
BY \_\_\_\_\_

This agreement is made at Islamabad between the National Book Foundation (hereinafter called the Party of the First Part) and the author (hereinafter called the Party of the Second Part) whereby it is mutually agreed between the parties hereto (including their respective legal heirs, executors, administrators, assigns or successors, as the case may be) as follows:-

1. The party of the First Part agrees to publish, at its own risk and expense, a book/manuscript in \_\_\_\_\_ language (hereinafter called the said work) which the Party of the Second Part has written and has made available for publication.
2. The Party of the Second Part hereby grants to the Party of the First Part the exclusive licence to produce, publish, and sell the said work in book form in the \_\_\_\_\_ language, and on the terms and conditions hereinafter mentioned.
  - (1) The Party of the Second Part warrants to the Party of the First Part that the work contains nothing libellous or defamatory and that all statements contained therein purporting to be facts are to the best of the knowledge and belief of the Party of the Second Part true and correct and contain no obscene, improper or objectionable material.
  - (2) The Party of the First Part shall print and publish the work and shall have the sole control of all details of production, price, sale and terms of sale of the work, and the right, from time to time, to raise or reduce the price of the work. However, the copy-right shall remain vested in the Party of the Second Part.
  - (3) The Party of the Second Part shall read the final proof of the said work and return it to the Party of the First Part. The responsibility for the correctness of the proof will be that of the Party of the Second Part.
  - (4) The Party of the First Part agrees to pay the Party of the Second Part a royalty of \_\_\_\_\_ percent of the published price in Pakistan on sold copies.
  - (5) The Party of the First Part shall send to the Party of the Second Part the amount of royalty due once in a year in the first quarter of every calendar year for the amount accruing upto 31st December of the preceding year.
  - (6) If at any time after three years from the date of publication of the said work, it ceases to be in sufficient demand, the Party of the First Part shall be at liberty to dispose of any copies remaining in hand at less than one half the published price. If so, the Party of the First Part shall be free from any liability to pay royalty to the Party of the Second Part. The Party of the Second Part shall, however, have the option of purchasing such copies at a rate to be mutually agreed upon.
  - (7) The Party of the First Part shall be entitled, at its discretion, to present, at its own cost, copies of the work to newspapers, periodicals, institutions, teachers etc., for the purpose of publicising the said work aiming at promotion of its sale.

25 copies each

- (8) The Party of the Second Part shall, on publication, receive free of cost, ~~the~~ <sup>25 copies each</sup> copies of the work, and shall be entitled to purchase, at half price, a maximum of fifty copies required for his personal use or publicity by him but not for sale.
  - (9) The Party of the Second Part shall not, during the continuance of this agreement, publish or cause to be published any translation, abridgement, expansion, or rendering in any audio-visual form for use by the media of stage, radio and television.
  - (10) If required, the Party of the First Part shall print and publish subsequent editions of the said work unless the Party of the Second Part gives one year notice to the Party of the First Part not to do so.
  - (11) Should the Party of the First Part, after the work is out of print, decline to bring out a new edition within a year, then this agreement shall automatically terminate without prejudice to the Party of the Second Part. It will however be entitled, to purchase from the Party of the First Part, all or any of the plates, films, moulds and engravings especially made for the work at cost price, less a reasonable amount for wear and tear at a mutually agreed price.
  - (12) If any difference arises between the Party of the Second Part and the Party of the First Part touching the meaning or construction of this agreement or the rights and liabilities of the parties there to, the same shall be referred to the arbitration of two persons (one to be nominated by each party) and their mutually agreed umpire, in accordance with the provisions of law on arbitration for the time being ~~in force~~ <sup>in force</sup>.
3. The Party of the First Part shall have the right to terminate this agreement unilaterally due to some unforeseen reasons, financial problems or change in policy.

In witness where of the parties append there signatures hereto.

Signatures of the witnesses  
with name, address and date:

1. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Party of the First Part

(  
 Managing Director  
 National Book Foundation  
 Islamabad.  
 Date: \_\_\_\_\_

Signatures of the witnesses  
with name, address and date:

1. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

2. \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Party of the Second Part

Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Date: \_\_\_\_\_

Nominee in case of death.

AGREEMENT

FOR REPRODUCTION BY THE NATIONAL BOOK FOUNDATION,  
 PAKISTAN, OF<sup>1</sup> \_\_\_\_\_  
 BY<sup>2</sup> \_\_\_\_\_  
 PUBLISHED BY<sup>3</sup> \_\_\_\_\_

This Agreement is made between the National Book Foundation, Pakistan  
 (hereinafter called the Party of the First part) and \_\_\_\_\_

(hereinafter called the Party of the Second Part), who is the publisher and  
 original copyright owner of<sup>1</sup> \_\_\_\_\_  
 by<sup>2</sup> \_\_\_\_\_

(hereinafter referred to as the said work) whereby it is mutually agreed between  
 the parties hereto (including their respective legal heirs, executors,  
 administrators, assigns and successors, as the case may be) as follows :

1. The party of the Second part grants to the Party of the First Part the exclusive licence to print, publish and sell the said work in book form in Pakistan.
2. The party of the First Part shall pay, to the Party of the Second Part a royalty of two per cent of the foreign published price on the copies of the said work sold by the Party of the First part.
3. The Party of the First Part shall not alter or abridge the said work in any way.
4. The party of the First Part shall reproduce the said work faithfully and accurately and shall include in the said work reproduced by it, the name of the author and that of the publisher as well as the particulars of the publication of the original book as given therein.
5. The Party of the First Part shall intimate to the Party of the Second part, the number of copies of the said work sold during the financial year (July 1 to June 30 of the following year) and, render to the Party of the Second part, by the following 31st December (that is, within six months of the close of the financial year), the amount of royalty due on the copies of the said work sold during the financial year.
6. The sale price of the said work to be fixed by the party of the First Part shall not exceed the Pak rupee equivalent of the foreign published price.

- 
1. Title of the book.
  2. Name of the author of the book.
  3. Name of the publisher of the book.

7. All rights in the said work, except the exclusive right of reproduction and sale in Pakistan of the said work, shall remain vested in the Party of the Second Part.

8. Notwithstanding the right of the Party of the Second Part to take any legal action to protect the copyright of the said work vesting in it against any person or party, the Party of the Second Part authorizes the Party of the First Part to take all steps required under the law to protect the copyright and the exclusive rights of the party of the First Part of reproduction and sale of the said work in Pakistan. In this behalf the Party of the Second Part shall provide all necessary assistance to the Party of the First Part and shall equally share the expenses in this behalf to be incurred by the Party of the First Part.

9. The Party of the First Part shall not assign or sub-let this licence or issue the said work under any imprint other than their own.

10. The Party of the First Part shall not export or reproduce copies of the said work outside Pakistan without prior consent in writing of the Party of the Second Part and shall cause to be printed on the reverse of the title page, the following:

"This book is for sale and distribution in Pakistan only".

11. The party of the First Part shall send two copies of the said work to the Party of the Second Part, on its reproduction.

12. If at any time after one year from the publication, in the opinion of the Party of the First Part, the said work ceases to have a remunerative sale, the Party of the First Part shall be at liberty to dispose of the copies remaining on hand and in the event of the price realized being less than one half of the Pakistani published price, the Party of the First Part shall be free from any liability to pay royalty to the Party of the Second Part on copies disposed of in this manner. The Party of the Second Part shall however have the option of purchasing such copies at a rate to be mutually agreed upon between the parties.

13. The Party of the Second Part shall not, during the continuance of this agreement, publish or cause to be published in Pakistan the said work in original, or a translation, abridgement, expansion or other adaptation of the said work.

14. The Party of the Second Part undertakes that it shall not export or cause to be exported to Pakistan any copy of the said work or its revised edition during the continuance of the agreement and one year thereafter.

15. The Party of the Second Part shall intimate to the Party of the First Part six month before the publication of the revised edition, if any, of the said work by the Party of the Second Part. On the publication of such revised edition, the Party of the Second Part shall send two copies of the revised edition of the said work to the Party of the First Part.

16. This Agreement shall be deemed to commence on the date on which the Party of the First receives the Agreement after its execution by the Party of the Second Part.

17. This Agreement shall remain in force for a period of five years from the date of commencement of the Agreement and shall be renewable through mutual consent of the parties.

18. If any difference arises between the Party of the Second Part and the Party of the First Part with regard to interpretation, construction or application of any term or terms of this Agreement or the rights and liabilities of the parties thereto, the same shall be referred to arbitration at Islamabad, of two persons, (one to be nominated by each party) and their mutually agreed umpire in accordance with the provisions of the Arbitration laws for the time being in force in Pakistan.

In witness whereof the parties append their signatures hereto on dates given under their respective signatures below.

Party of the First Part\*

Witnesses: 1\* \_\_\_\_\_

(  
MANAGING DIRECTOR  
NATIONAL BOOK FOUNDATION

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Witnesses: 1\*\* \_\_\_\_\_

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## Year-wise Production of books since 1972 to June 2005 including Braille Books

ANNEX\_III

S. No.	Years	Foreign Reprinted Text Books	General Books	Children books	School Textbooks	Darul Musanfeen books	Braille Books	Total	Total No. of Copies
1.	1972-73	41	1	0	0	0	0	42	78700
2.	1973-74	73	5	37	1	0	0	116	364488
3.	1974-75	56	22	19	0	0	0	97	295036
4.	1975-76	128	32	53	2	0	0	215	3485367
5.	1976-77	97	68	0	25	0	0	190	1190981
6.	1977-78	57	6	0	16	0	0	79	556500
7.	1978-79	40	7	13	18	15	0	93	720750
8.	1979-80	82	17	0	15	32	0	146	542537
9.	1980-81	74	9	32	17	8	1	141	1846601
10.	1981-82	68	14	37	19	5	3	146	873855
11.	1982-83	74	5	4	16	11	5	115	222000
12.	1983-84	71	15	1	1	3	7	98	115309
13.	1984-85	48	21	13	18	15	3	118	546416
14.	1985-86	49	35	6	11	15	16	132	1642537
15.	1986-87	16	15	0	15	10	4	60	2155401
16.	1987-88	32	29	0	11	3	2	77	677102
17.	1988-89	80	27	19	14	15	11	166	538118
18.	1989-90	36	16	52	12	22	13	151	491675
19.	1990-91	14	12	9	12	11	6	64	274056
20.	1991-92	5	26	17	24	9	12	93	500052
21.	1992-93	15	15	37	14	10	10	101	403430
22.	1993-94	9	70	17	18	1	0	115	712995
23.	1994-95	35	19	5	23	1	0	83	1288240
24.	1995-96	25	18	4	23	0	4	74	1660134
25.	1996-97	27	27	6	44	0	4	108	1774015
26.	1997-98	62	17	3	29	1	35	147	1568130
27.	1998-99	97	27	16	40	6	10	196	1684199
28.	1999-2000	102	45	16	106	1	50	320	2895118
29.	2000-2001	232	20	6	72	1	88	419	1498934
30.	2001-2002	169	52	2	53	1	76	353	1349844
31.	2002-2003	196	54	18	285	0	22	575	3020831
32.	2003-2004	215	69	19	226	0	64	593	2846359
33.	2004-2005	236	45	7	197	0	62	547	3604101
34.	Total	2561	860	468	1377	196	508	5970	41423811

Grand Total: 5970

OR  
41.424 Million

Sr. No.	Name of Channel	Included in the Approved List (Yes/No)	Status of the Channel (Encrypted / FTA)	Landing Rights Permission (Yes/No)	Satellite / Uplinking details	Language	Channel Owner
<b>CHANNELS CONFERRED "LANDING RIGHTS" BY PEMRA &amp; INCLUDED IN ELIGIBLE LIST</b>							
1.	CNN	Yes	Encrypted	Yes	PAS-10, Atlanta, U.S.A.	English, Spanish, Turkish, Arabic, German etc.	Time Warner / Turner Broadcasting System
2.	Hallmark	Yes	Encrypted	Yes	Hotbird 3, U.S.A.	English	Crown Media Holdings
3.	Cartoon Network	Yes	Encrypted	Yes	PAS-10, Atlanta, U.S.A.	English, Arabic, Hindi etc.	Turner Broadcasting System
4.	Ten Sports	Yes	Encrypted	Yes	PAS- 10, U.A.E.	English	Taj TV Ltd. (Bukhater Investment Ltd.)
5.	HBO	Yes	Encrypted	Yes	PAS- 10, Singapore	English	Time Warner
6.	N Vibe	Yes	FTA	Yes	Thaicom 3, Thailand	Urdu	Mr. Babar Tajammul (Media Unlimited Pvt. Ltd.) Pakistan
7.	Filmazia	Yes	Encrypted	Yes	AsiaSat 3S, Hong Kong	Urdu, Punjabi, Regional Languages	Leo Communication Pvt. Ltd. Pakistan
8.	STAR World	Yes	Encrypted	Yes	AsiaSat 3S, Hong Kong	English	(News Corporation U.S.A.) Rupert Murdoch
9.	STAR Movies	Yes	Encrypted	Yes	AsiaSat 3S, Hong Kong	English	(News Corporation U.S.A.) Rupert Murdoch
10.	STAR SPORTS	Yes	Encrypted	Yes	AsiaSat 3S, Hong Kong	English	(News Corporation U.S.A.) Rupert Murdoch

Sr. No.	Name of Channel	Included in the Approved List (Yes/No)	Status of the Channel (Encrypted / FTA)	Landing Rights Permission (Yes/No)	Satellite / Uplinking details	Language	Channel Owner
11.	ESPN	Yes	Encrypted	Yes	AsiaSat 3S, Hong Kong	English	(News Corporation U.S.A.) Rupert Murdoch
12.	National Geographic	Yes	Encrypted	Yes	AsiaSat 3S, Hong Kong	English, Hindi	Fox Cable Network / Nat. Geographic Television & Film
13.	Sky News	Yes	Encrypted	Yes	AsiaSat 3S, Hong Kong	English	(News Corporation U.S.A.) Rupert Murdoch
14.	Fox News	Yes	Encrypted	Yes	AsiaSat 3S, Hong Kong	English	(News Corporation U.S.A.) Rupert Murdoch
15.	Channel [V]	Yes	Encrypted	Yes	AsiaSat 3S, Hong Kong	English	(News Corporation U.S.A.) Rupert Murdoch
16.	Adventure One	Yes	Encrypted	No	Koreasat 2, Asia Sat 3s, Thaicom 3, Korea	English	

**Max Media has applied for "Landing Rights" for channels 8-16**



Sr. No.	Name of Channel	Included in the Approved List (Yes/No)	Status of the Channel (Encrypted / FTA)	Landing Rights Permission (Yes/No)	Satellite / Uplinking details	Language	Channel Owner
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**CHANNELS OF NATIONAL BROADCASTER (MANDATORY FOR RELAYING THROUGH CTV NETWORKS)**

17.	PTV	Yes	FTA	National Broadcaster	AsiaSat 3S, Pakistan	Urdu	PTVCL
18.	PTV World	Yes	FTA	National Broadcaster	AsiaSat 3S, Pakistan	Urdu	PTVCL
19.	PTV National	Yes	FTA	National Broadcaster	AsiaSat 3S, Pakistan	Regional Languages	PTVCL
20.	AJK TV	No	FTA	National Broadcaster	Thaicom 3, Paksat 1, Pakistan	Kashmiri	PTVCL
21.	PTV Bolan	No	FTA	National Broadcaster	Paksat 1, Pakistan	Brahwi	PTVCL
22.	ATV (Channel 3)	No	FTA	No	AsiaSat 3S, Pakistan	Urdu	Owned by Pvt. Co.

PTV has reportedly pledged its infrastructure to a private venture for running Atv.

Sr. No.	Name of Channel	Included in the Approved List (Yes/No)	Status of the Channel (Encrypted / FTA)	Landing Rights Permission (Yes/No)	Satellite / Uplinking details	Language	Channel Owner
<b>CHANNELS CONFERRED LICENCES BY PEMRA.</b>							
23.	ARY Digital	Yes	FTA	PEMRA Licenced	PAS 10, Pakistan	Urdu	Haji Muhammad Iqbal
24.	ARY One World	Yes	FTA	PEMRA Licenced	PAS 10, Pakistan	Urdu	Haji Muhammad Iqbal
25.	Indus Music	Yes	FTA	PEMRA Licenced	AsiaSat 3S, Pakistan	Urdu	Syed Ghazzanfar Ali Shah
26.	Indus Vision	Yes	FTA	PEMRA Licenced	AsiaSat 3S, Pakistan	Urdu	Syed Ghazanfar Ali Shah
27.	Khyber TV	Yes	FTA	PEMRA Licenced	AsiaSat 3S, Pakistan	Pashto	Jawad Raja
28.	VTV-1	Yes	<del>FTA</del>	PEMRA Licenced	Paksat 1, Pakistan	Urdu/ English	MoS&T
29.	VTV-2	Yes	FTA	PEMRA Licenced	Paksat 1, Pakistan	Urdu/English	MoS&T
30.	Mashriq TV	Yes	FTA	PEMRA Licenced	Paksat 1, Pakistan	Urdu	
31.	Ravi TV	Yes	FTA	PEMRA Licenced	Paksat 1, Pakistan	Punjabi	Ijaz Warraich
32.	HUM TV	Yes	FTA	PEMRA Licenced	PAS 10, Pakistan	Urdu	Ms. Sultana Siddiqui
33.	CNBC Pakistan	No	FTA	PEMRA Licenced	PAS 10, Pakistan	Urdu	Mr. Zafar Siddiqui

Sr. No.	Name of Channel	Included in the Approved List (Yes/No)	Status of the Channel (Encrypted / FTA)	Landing Rights Permission (Yes/No)	Satellite / Uplinking details	Language	Channel Owner
<b>CHANNELS OPERATING ON "SHORT TERM UPLINKING PERMISSION" FROM PEMRA</b>							
34.	Aaj TV	Yes	FTA	On short term uplinking permission	AsiaSat 3S, Pakistan	Urdu	Sahab Zubari
35.	TV One	No	FTA	On short term uplinking permission	AsiaSat 3S, Pakistan	Urdu	Tahir A. Khan
36.	Business Plus	No	FTA	On short term uplinking permission	Paksat 1, Pakistan	Urdu	Shan Taseer
37.	Azad TV	No	FTA	On short term uplinking permission		Urdu	Zia Shahid

Sr. No.	Name of Channel	Included in the Approved List (Yes/No)	Status of the Channel (Encrypted / FTA)	Landing Rights Permission (Yes/No)	Satellite / Uplinking details	Language	Channel Owner
<b>CHANNELS WAITING FOR "LANDING RIGHTS" PERMISSION FROM PEMRA (PAKISTANI)</b>							
38.	Geo	No	Encrypted	No	PAS 10, Dubai	Urdu	(IMC) Mir Ibrahim Rehman
39.	Geo News	No	FTA	No	PAS 10, Dubai	Urdu	(IMC) Mir Ibrahim Rehman
40.	KTN (Kawish TV)	No	FTA	No	Thaicom 3, Thailand	Sindhi	Aslam Qazi
41.	Kashish TV	No	FTA	No	Thaicom 3, Thailand	Sindhi	Aslam Qazi
42.	Uni Plus	No	FTA	No	Thaicom 3, Dubai	Urdu	Asad Ali Sheikh
43.	QTV	No	FTA	No	Thaicom 3, Pakistan	Urdu	Haji Muhammad Iqbal
44.	APNA Channel	No	FTA	No	PAS 10, Dubai	Punjabi	Sajjad Hussain Shah
45.	Channel G	No	FTA	No	AsiaSat 3S, Hong Kong	Urdu	Syed Ghazanfar Ali Shah
46.	Indus Plus	No	FTA	No	AsiaSat 3S, Hong Kong	Urdu	Syed Ghazanfar Ali Shah
47.	City Channel	No	FTA	No	PAS 10, Pakistan	Urdu	Haji Muhammad Iqbal
48.	The Musik	No	FTA	No	PAS 10, Pakistan	Urdu	Haji Muhammad Iqbal
49.	Sindh TV	No	FTA	No	Thaicom 3, Bangkok	Sindhi	Dr. Abdul Karim Rajpar
50.	Rung TV	No	FTA	No	Thaicom 3, Bangkok	Urdu	Atif Asad Khan
51.	Aag TV	No	FTA	No	AsiaSat 3S, Dubai	Urdu	

Sr. No.	Name of Channel	Included in the Approved List (Yes/No)	Status of the Channel (Encrypted / FTA)	Landing Rights Permission (Yes/No)	Satellite / Uplinking details	Language	Channel Owner
52.	Prime TV	No	FTA	No	Hotbird 4, London	Urdu	Prime Television, UK
53.	Fashion TV PK	No	FTA	No	PAS 10	Urdu/ English	ARY Communication Pvt. Ltd.
54.	Labbaik TV	No	FTA	No	Thaicom 3	Urdu	Labbaik Pvt. Ltd.
55.	DM Digital	No	FTA	No	Thaicom, Eurobird	Urdu	DM Digital Television Ltd.
56.	TV 2 Day	No	FTA	No	Thaicom	Urdu	Syed Naqi Haider
57.	Roshni TV	No	FTA	No	Thaicom	Urdu/Religious	Direct Media Corp. Pvt. Ltd.
58.	Dhoom	No	FTA	No	Thaicom	Urdu	Qaumi Akhbar Group of News Papers Mr. Ilyas Shakir
59.	Fortune TV	No	FTA	No	Thaicom	Urdu	Din Akhbar, Lahore
60.	Royal TV	No	FTA				Royal Television Pvt. Ltd.

**CHANNELS WAITING FOR "LANDING RIGHTS" PERMISSION FROM PEMRA (FOREIGN)**

61.	Nickelodeon	Yes	Encrypted	No	PAS- 8, 10, U.S.A.	English, Sarnish, Russian, French etc.	(I&SC ) Warner Amex Satellite Entertainment.
62.	AXN	No	Encrypted	No		English	Sony Entertainment Pictures.
63.	VH 1	No	Encrypted	No	Satcom C3, AMC 10	English	Viacom, USA
64.	E! Entertainment	No	Encrypted	No	Hotbird 4	English	E! Entertainment Television Inc.

65.	Pogo	No	Encrypted	No		English	Info & Systems Corp Pvt. Ltd.
66.	Discovery	Yes	Encrypted	No		English	Info & Systems Corp Pvt. Ltd.
<b>Sr. No.</b>	<b>Name of Channel</b>	<b>Included in the Approved List (Yes/No)</b>	<b>Status of the Channel (Encrypted / FTA)</b>	<b>Landing Rights Permission (Yes/No)</b>	<b>Satellite / Uplinking details</b>	<b>Language</b>	<b>Channel Owner</b>
67.	TCM	Yes	Encrypted	No	AsiaSat 3S, Hotbird 4,	English	
68.	Reality	No	Encrypted	No	PAS 10	English	Zone Vision Enterprises, UK
69.	Euro News	Yes	Encrypted	No	Hotbird 1,6, France	English, French, German, Italian etc.	SOCEMIE (Societe Operatrice De La Chaîne Européenne Multilingue d Information Euro News)
70.	DW News	Yes	FTA	No	AsiaSat 2S, Hotbird 6, PAS- 9, Germany	German, English 29 languages	Broadcasters of Germany

## ANNEX-V

**SATELLITE TV LICENSEES**  
**SATELLITE TV BROADCAST STATION LICENCES**

<b>Sr. No.</b>	<b>Name/Title of Interested Party/Company</b>	<b>Name of the Station</b>	<b>Date of the award of Licence</b>
1	Virtual University, Lahore	<b>VTV-1</b>	25.01.2003
2		<b>VTV-2</b>	25.01.2003
3		<b>VTV-3</b>	30.08.2004
4		<b>VTV-4</b>	30.08.2004
5	Indus TV Network (Pvt.) Ltd., Karachi	<b>Indus Vision</b>	25.03.2004
6		<b>Indus Music</b>	25.03.2004
7	AVT Prime Pvt. Ltd., Islamabad.	<b>Khyber TV</b>	23.02.2004
8	ARY Communications (Pvt) Limited, Karachi.	<b>ARY One World</b>	13.04.2004
9		<b>ARY Digital</b>	13.04.2004
10	Mashriq Television Pvt. Ltd., Lahore	<b>Mashriq TV</b>	27.09.2003
11	International Marketing & Trading Company (Pvt.) Ltd. Lahore.	Licence Issued	15.07.2003
12	Top End Network (Pvt.) Ltd., Lahore.	<b>Ravi TV</b>	23.02.2004
13	Eye TV Ltd., Karachi	<b>HUM TV</b>	30.10.2004
14	Vision Network TV Ltd., Karachi	<b>CNBC</b>	30.10.2004
15	24-Seven Media Network Pvt. Ltd. Karachi	Licence Issued	03.11.2004
16	Southern Networks Limited, Islamabad	<b>SUN BIZ</b>	04.05.2005