

Chapter 2: Research Background

2.1 Background on ODPs Piracy in Malaysia

The illegal recopying of ODPs in the country continues to rake in millions of ringgit for the crime syndicates and remains a threat to the existence of the legitimate distributors in the country. The top target for pirates tends to be the top selling, best known international titles, which are already heavily promoted by the production or distribution companies. Top selling, best known local titles are also become their target, though of lesser extent.

In 2000 and 2001, Malaysia was placed on the US government's Priority Watch List ² due to the rising numbers of optical discs being produced, sold and exported from Malaysia. ³In the October 2001 "out of cycle review", Malaysia was moved from the Priority Watch List to the Watch List. In 2002 to 2004, Malaysia remains on the "Watch List" for failure to provide adequate protection of America's creative products. In addition, should the price controls go in effect on April 1, 2004, as it was announced, Malaysia was susceptible to be elevated to the "Priority Watch List." This, however, was not materialized when a new minister (of Ministry of Domestic Trade and Consumer's Affair) decided not to impose the price controls. Although Malaysia has made some significant efforts on the piracy front through more enforcement crackdown to reduce domestic wholesale and retail piracy there are still problems with delay in the follow-up actions including cancellation of licenses and prosecution of cases involving optical disc

² Under Special 301, placement on the Watch List (WL) or Priority Watch List (PWL) indicates that a country does not provide an adequate level of protection or enforcement of intellectual property rights or market access for persons relying on intellectual property.

³ Out-of-cycle" reviews are conducted when countries require further monitoring, in addition to the annual review cycle. Under Special 301, placement on the Watch List (WL) or Priority Watch List (PWL) indicates that a country does not provide an adequate level of protection or enforcement of intellectual property rights or market access for persons relying on intellectual property.

factories. The lack of adequate enforcement in the judicial system undermines Malaysia's commitment to eradicate piracy.

Table 1.1: MALAYSIA' ESTIMATED TRADE LOSSES DUE TO PIRACY(in million US\$) and LEVELS OF PIRACY:1999-2003

INDUSTRY	1999		2000		2001		2002		2003	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	42.0	85%	41.0	80%	40.0	80%	42.0	75%	38.0	50%
Records & Music	5.0	40%	15.6	65%	148.90	70%	110.2	70%	40.0	45%
Business Software Applications	67.8	71%	75.4	66%	75.0	70%	79.2	68%	NA	NA
Entertainment Software	164.0	99%	NA	98%	56.4	93%	NA	NA	NA	90%
TOTALS	278.8		132		320.3		231.4		78.0	

Note: NA=Not Available

Source: adapted from IIPA 2004 Special 301 Report: Malaysia

Although crackdown had positive effects, piracy remains a serious problem. Table 1.1 above shows the trade losses due to piracy. Overall, its shows a declining trend, but the level is still high. The estimated losses due to copyright violations of motion pictures in 2003 amounted to US\$38 million, a 9.5 percent decrease from \$42 million in 2002. The piracy level reduced to 50 percent, this means that for every one motion picture discs being sold in the Malaysian market, one is an illegal copy. Losses in the records and music industry amounted to \$40 million in 2003, a significant 63.7 percent lower than \$110.2 million registered in 2002. Piracy level also decreased from 70 percent in 2002 to 45 percent in 2002.For the business software applications; the IIPA has no records in terms of losses or level in 2003. In the entertainment software division, the IIPA has no

records in terms of losses; however, the piracy level was estimated at 90 percent in 2003, which is an all time low since 1999. The pervasive nature of ODPs piracy in Malaysia can be attributed to several reasons:

1. Overcapacity in the replication industry (Commercial Piracy Report, 2001-2003), fuelled by over-investment in capacity. In 1999, there are at least 22 known optical media production facilities with 90 illegal production lines for opticals. In 2002, the pressing capacity is estimated at 1600 million units for all formats of ODPs but total legitimate demand were only 65 million units (see Table 1.2 below) overwhelmingly exceeding local demand. As a result, pirated products produced in Malaysia are exported to all parts of the world.

Table 1.2 Malaysia: Estimated Pressing Capacity 2000-2003 (in million unit)

Year	Estimated Capacity- all formats	Total Legitimate Demand for all Discs
2000	300	60
2001	500	60
2002	1600	65

Source: Commercial Piracy Report (2001-2003)

2. Starting 1990s, there was crackdowns by authorities in other Asian countries on the pirate production and export of ODPs, most notably in China and Hong Kong, resulting in Malaysia becoming an attractive option for pirates.
3. Advances in technology have lowered the barriers of entry for pirates as 1) cost of copying reduced and 2) less skilled staffs are needed

2.2 Significance of the Study

There are a host of reasons why ODPs piracy merits the attention in this study. Given the high level of piracy in the country, it is interesting to take a look at students' involvement in such acts. Increasing our understanding on the characteristics of ODPs pirates has an unambiguous importance in providing a useful insight to parties involved in addressing the issue of ODPs piracy. Incessant unchecked piracy by student leads to a wrong perception among students where inaction can be seen as a silent endorsement by the government to this unlawful behavior. It can also be detrimental to higher learning institutes in many ways. For example, litigation can arise as software manufacturers seek to thwart the theft of their commercial product⁴. Universities that fail to control piracy can be stand accuse of losing sight of their responsibility to serve as moral exemplars. Rahim et al (1991) recognize that the negative publicity that can ensue from this situation is often more damaging than a monetary loss. In addition, unauthorized duplication of ODPs may results in an increase in software prices as producers try to compensate for lost of revenues. In order to understand the context under which ODP piracy flourishes, it would seem appropriate to conduct the survey in a location where software piracy is a well-known phenomenon since young, male students are seen as the archetypical software pirates (Cheng, et al 1997; Sims, et al 1996). In addition, students are primed for ODPs piracy because they are not being told of what are being expected of them in regard to ODP usage. The importance of using a student population for this study is also noted by Hinduja (2003) and Sims (1996), that is, if student are not sanctioned for unlawful behavior, it is presumed that the behavior will continue when they graduate and enter the

⁴ The author however have no knowledge if there is any litigation against any higher learning institutes in Malaysia , currently or in the past.

working world where it is seemingly more difficult to inculcate moral principles. Students are targeted for analysis because it is where honorable ethical values must be instilled and strengthened. ODPs piracy may also precipitate additional forms of unethical and unlawful computer and network usage, such as hacking and internet stalking. Failure to adequately tackle ODPs piracy among students may be misperceived as a silent approval of the activity, which may then continue in their working environment upon graduation. Although there is considerable amount of research on piracy (Im and Van Epps, 1992; Rahim et al, 1999; Sims et al, 1996; Salomon and O'Brien, 1990; Eining and Christensen, 1991; Moores and Dhillon, 2000), these studies is, however, 1) focus only on software piracy, thus neglecting piracy on other optical disc product and 2) foreign-based. Consequently, their finding may be inapplicable to Malaysia due to cultural differences. In particular, Husted (2000) and Holm (2003) found that software piracy is significantly correlated to culture. Both sets of study found that software piracy to be significantly correlated to GNP per capita, while Husted individually found income inequality and individualism as other significant variables. Holm study found countries with efficient judicial institutions have lower piracy rates than those with inefficient ones. As such, it is important to conduct a domestic study of our own.

2.3 Objective of the Study

This study seeks to investigate the extent of pirated ODP usage among students of a higher learning institute and deduced their maximum willingness to pay for an original copy under the presence of pirated version. The survey, among others, was intended to

provide valuable information on the students' usage pattern, reason to pirate and not to pirate and their source of supply of pirated ODPs. This research seeks to enlightens us on certain questions:

- 1) How serious is the level of ODPs piracy among students and what are their general attitudes toward the act of ODPs piracy?
- 2) What are the determinants of the students' decision to buy pirated ODPs?
- 3) What is their maximum willingness to pay for both original and pirated copies and subsequent policy implication on government' proposal to imposed price control ⁵on ODPs? .
- 4) What are the reasons for influencing their involvement or non-involvement in buying or using counterfeits ODPs and for copying or not copying softwares?
- 5) What are the types of pirated software that students most frequently use?
- 6) Whether students are aware of government policy and legal issues pertaining to ODPs piracy?

⁵ At the onset of the study, government had announced that it would impose a price control on certain ODP. The Ministry of Domestic Trade and Consumer Affairs (MDTCA) had proposed that local CDs be priced at RM21 and foreign ones at RM29 while both local and foreign VCDs at RM14. The price control was supposed to take effect on Jan 1, 2004 but was deferred twice. Finally, on July 1, 2004, the Ministry announced that plan was scrapped to ensure that the items were "accessible to consumers" (The Star, July 14, 2004). Instead, MDTCA encourage distributor to reduce ODPs for certain promotional period in effort to encourage more consumers to buy originals.

2.3 Limitations of the Study

1. The survey involves just one public institute of higher learning (IHL), thus the results should not be generalized to all public IHL. In addition, the results may not be applicable to a private IHL, though there are no reasons for any difference between the two sets of institutions.
2. The study employ convenience (haphazard) sampling approach, thus the resulting sample may not reflect the university's demographic composition.
3. The study was likewise limited by the usual sources of error inherent in survey research.
4. The usage of just one question to gauge students' perception (whether they think that illegal copying as the same as stealing) may be inadequate to represent the students' overall perception.