



October 15, 2011

Filed via www.regulations.gov

L. Daniel Mullaney
Assistant United States Trade Representative
for Europe and the Middle East
Office of the U.S. Trade Representative
Washington, DC 20508

Re: **IIPA Written Comments in Response to: Request for Comments on The Trade and Investment Partnership for the Middle East and North Africa, 76 Fed. Reg. 55456 (September 7, 2011) Docket: USTR_FRDOC_0001-0160**

Dear Assistant USTR Mullaney:

In response to the September 7, 2011 Federal Register notice referenced above, the International Intellectual Property Alliance (IIPA)¹ takes this opportunity to provide the U.S. Government with written comments with respect a “Trade and Investment Partnership Initiative” to “strengthen economic ties both between the United States and MENA countries and among MENA countries themselves,” and to “facilitate more robust trade within the region and promote greater MENA integration with U.S. and other markets.” Specifically, we will address key areas of concern identified by the U.S. Government that are of particular interest to the U.S. copyright industries, namely, Intellectual Property (“improving IPR protection”), Investment (“exploring practical solutions through changes in domestic law, policies, or practices that could help boost confidence in the rule of law and local institutions in the region and stimulate further inward investment across a wide range of sectors”), Transparency and Services.

¹ 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 comprises seven trade associations, each representing a significant segment of the U.S. community. These member associations represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world — business software (operating systems, Internet enabling software, browsers, search engines, office productivity software, database management software, green technology enabling software, security software and mobile technologies); entertainment software (interactive games for video game consoles, handheld devices, personal computers, and the Internet); theatrical films, television programs, home videos and digital representations of audiovisual works; musical compositions, recorded music, CDs, and audiocassettes; and textbooks, trade books, reference and professional publications and journals, in both print and electronic media.

In July 2009, IIPA released the latest update of our economic report, *Copyright Industries in the U.S. Economy: The 2003-2007 Report*, prepared by Stephen Siwek of Economists Inc. This is the twelfth report in a series detailing the economic impact and contributions of U.S. copyright industries to U.S. Gross Domestic Product, employment, and trade. The *2003-2007 Report* indicates that the core copyright-based industries¹ in the U.S. continued to be major contributors to the U.S. economy, accounting for an estimated \$889.1 billion or 6.44% of the U.S. gross domestic product (GDP) in 2007. Also according to the Report, the “core” copyright industries employed 5.6 million workers in 2007 (4.05% of U.S. workers) in 2007. The Report provides data on the estimated average annual compensation for a worker in the core copyright industries: \$73,554 in 2007, amounting to a significant 30% “copyright premium” compared with average annual wages in the rest of the economy. Finally, estimated 2007 foreign sales and exports of the core copyright industries increased to at least \$126 billion, leading other major industry sectors.



IIPA's Written Comments on Trade and Investment Partnership for the Middle East and North Africa

IIPA is pleased to provide its written comments on areas of interest for the U.S. copyright industries in developing a mutually beneficial “Trade and Investment Partnership for the Middle East and North Africa.” First, IIPA recognizes and appreciates the United States’ bilateral and regional initiatives, including FTAs, TIFAs, trade preference programs containing IPR conditionality, and other initiatives, to strengthen IPR protection and enforcement in MENA countries. We also recognize the training and capacity building efforts in the MENA countries, most of which are developing countries or have developing IP systems.² It is in part due to the efforts of the U.S. Government that important breakthroughs in IPR protection in MENA country markets have been achieved, and IIPA members are grateful for the efforts of those in the U.S. Government who have worked to achieve such results. Yet, more can be done, particularly in some the largest MENA markets, including Turkey, Saudi Arabia, and Egypt, and IIPA members recognize some significant market opportunities in these countries and in the entire MENA region going forward. Significant progress cannot be made, however, unless MENA country governments take steps to provide adequate copyright protection, provide adequate enforcement systems to deal with the onslaught of physical piracy and emerging online (and mobile) piracy, and remove market access barriers and other restrictions to trade (such as onerous taxes, tariffs, content review systems), that harm the economic interests of U.S. copyright owners and stifle the development of domestic creative industries.

Over the years, IIPA has engaged both through the U.S. Government, and directly with the MENA country governments, to seek improvements in copyright legislation, protection, and enforcement, and the lifting of market access restrictions or other barriers to trade in copyright goods and services in these countries. IIPA information on various MENA markets can be found at our website, www.iipa.com, at the “Country Reports” page, www.iipa.com/countryreports.html, and in our Special 301 reports published throughout the years, at www.iipa.com/special301.html.³

The Copyright Industries’ Key Initiatives and Challenges for 2011 in MENA Countries

It is useful to recall from the IIPA 2011 Special 301 submission (which includes country surveys of some MENA countries) the key challenges and initiatives that define the copyright industries’ agenda.⁴ These global initiatives and challenges remain key areas on which to seek improvements in MENA countries through the developing Partnership, to the mutual benefit of U.S. creators (and hence the multiplier effects accruing to the U.S. economy) and the MENA Partnership country concerned.

² Included in such capacity building are the many programs of the Global Intellectual Property Academy through the U.S. Patent and Trademark Office (bringing in many key officials from MENA countries), the State Department’s International Visitor Leadership Program which brought in many MENA country officials, the Commercial Law Development Program (which has had programs in Egypt in recent years), USAID (which similarly had capacity building projects in Egypt as well as Lebanon in recent years), and the Department of Homeland Security (DHS) which conducted a recent customs/border control training in Egypt.

³ IIPA’s 2011 Special 301 Report is available to the public via www.regulations.gov as well as our website, www.iipa.com. The direct link to our report, which includes the table of contents as well as descriptions of our methodology, is available at www.iipa.com/2011_SPEC301_TOC.htm.

⁴ The one-page summary, “Copyright Industries’ Global Initiatives and Challenges for 2011,” can be found on the IIPA website at www.iipa.com/pdf/IIPAINitiatives&Challenges2011021711.pdf.



1) The Need for Deterrent Enforcement Responses to Copyright Piracy

Copyright piracy as we know it today increasingly occurs in ways more sophisticated than the mere duplication and sale of content on physical media. Piracy also includes the unauthorized use of software within businesses (or by governments); the illegal copying, uploading, downloading, making available, communicating, or streaming of copyright materials on the Internet (or at Internet cafés) or mobile networks; the illegal camcording of movies from theater screenings; the illegal photocopying of books or pirate offset printing of popular titles; the illegal public performance or broadcast of audiovisual works or sound recordings; hard-disk loading of software onto computers without authorization or license; and bootlegging, i.e., the fixing of a live performance of music as a sound recording, for further duplication and sale. Related to piracy are activities such as the development, manufacture and distribution of circumvention devices used to access and make copies of copyright materials protected by technological protection measures; the trafficking in counterfeit software packaging, labels, holograms, certificates of authenticity, or documentation; and the unauthorized decryption of pay TV signals, as well as other activities facilitating unlawful use of copyright materials.

Too often, whether due to lack of political will or under-developed rule of law, MENA countries fail to address these piracy phenomena effectively. The overarching objective therefore remains to secure in these countries effective legal frameworks capable of providing deterrent enforcement against copyright piracy. Examples of concrete acts that can make a commercial difference include: 1) dedicating enforcement resources commensurate with the scale of the piracy problem, to provide for “effective action” and “remedies that constitute a deterrent”⁵ to infringement as the minimum required by the TRIPS Agreement, through civil, administrative, and criminal action, and effective adjudication in the courts, including specialized IP courts;⁶ 2) training and empowering enforcement authorities to investigate, and prosecutors and judges to prosecute, copyright offenses; 3) updating laws and enforcement tools to meet the current piracy challenges, as the nature of these challenges changes, including recognizing the connection between piracy and organized crime;⁷ 4) issuing orders or directives to government

⁵ For effective deterrence, prosecutors and judges (or, where applicable, administrative agencies) should impose penalties that remove the monetary incentives that drive the pirate trade. Small fines do not deter pirates who stand to gain hundreds of thousands to millions of dollars. Deterrence requires substantial prison sentences in these cases. Major pirates often manipulate the legal system to evade conviction, or suffer only small monetary fines that utterly fail to discourage them from continuing in their illegal business or others from following their example. Recidivism is endemic in many of the MENA countries.

⁶ In many countries, specialized IP courts have been established, in addition to IP- or cybercrime-intensive investigative units with police and prosecutors. In the most successful examples, such specialized courts or divisions are starting to make a difference in their localities, since they receive specialized training and have a deeper understanding of the nature and harm posed by piracy and IP crime in general.

⁷ Piracy has been taken over in many countries by organized crime syndicates; this includes both physical and online piracy phenomena. These highly-organized criminal syndicates, linked across national boundaries, control large amounts of capital, and exploit complex distribution networks. IIPA has long provided examples of the linkages between piracy and violent or organized crime in previous Submissions. A March 2009 study explored the linkages between organized crime and film piracy detailing 14 case studies of film piracy, providing compelling evidence of a broad, geographically dispersed connection between piracy and organized crime, and includes some MENA countries, most notably, Lebanon. See Gregory F. Treverton et al, *Film Piracy, Organized Crime & Motion Picture Piracy*, RAND Corporation, March 2009, at http://www.rand.org/pubs/monographs/2009/RAND_MG742.pdf. That study once again showed that the mark-up for DVD piracy (a relatively low-risk activity) is much higher than that for cocaine and heroine trafficking. The private sector does not possess the tools, nor usually the authority within countries, to investigate and fight organized crime. In addition, such organized groups or other commercial pirates can become violent, and company representatives and counsel have in some countries experienced threats on their lives, physical intimidation, or attacks leading to injury when doing their jobs to investigate piracy, and this has prevented enforcement activity by the private sector in many instances. Therefore, MENA country governments must step up to this challenge, including encouraging countries with existing laws, like Hong Kong’s Organized and Serious Crimes Ordinance and the United Kingdom’s Serious Crimes Act 2007, and those having other procedures that can be employed against organized crime, to bring the remedies within them to bear against syndicate operations involved in piracy, including, *inter alia*, disclosure of information being used to commit piracy and seizure or freezing of assets. As early as 2000, INTERPOL has recognized the need



agencies, entities, contractors, and educational institutions to use only legal software, legal copies of textbooks and other educational materials, and other copyright materials, both because these entities are a large market for such works and because the government's own respect for copyright will set an important example for the private sector; 5) directing government agencies and educational institutions in MENA countries to take appropriate steps to ensure that their networks or computers are not used for infringing purposes; 6) ratifying and fully implementing the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT); 7) encouraging cooperation by Internet service providers with all content owners, including notice and takedown systems and effective and fair mechanisms to deal with repeat infringers; and 8) enacting and enforcing measures to make it illegal to use or attempt to use an audiovisual recording device to make or transmit a copy of a motion picture.

2) Enterprise (Including Government) End-User Piracy of Software and Other Copyright Materials

The unauthorized use of software within businesses, also referred to as “enterprise end-user software piracy,” stands as the principal and most damaging form of infringement to the business software industry today, with the estimates of the commercial value of unlicensed U.S. software in 2010 exceeding \$34 billion globally (almost \$59 billion including non-U.S. firms). End-user software piracy rates remained well above 50% in most major developing markets in 2010, well above the worldwide average of 42%. Reducing software piracy can have a profound impact on national economies. A recent IDC study for BSA, *Piracy Impact Study: The Economic Benefits of Reducing Software Piracy*, demonstrates through studies of 42 countries that reducing the piracy rate for PC software by 10 percentage points over four years would create \$142 billion in new economic activity while adding nearly 500,000 new high-tech jobs and generating roughly \$32 billion in new tax revenues. Front-loading the gain by lowering piracy 10 points in the first two years would compound the economic benefits by 36 percent, producing \$193 billion in new economic activity and generating \$43 billion in new tax revenues.⁸

Enterprise end-user software piracy occurs when someone in a business enterprise (or government agency) makes the decision to use software (or any other type of protected content) without paying for it. In the most typical example, a corporate entity purchases one licensed (or pirated) copy of software and installs the program on multiple computers. Other examples of end-user piracy include copying discs for installation and distribution in violation of license terms; taking advantage of upgrade offers without having a legal copy of the version to be upgraded; acquiring academic or other restricted or non-retail software without a license for commercial use; and swapping discs in or outside the workplace. Client-server overuse, another common example of end-user piracy, occurs when too many employees on a network have access to or are using a central copy of a program at the same time, whether over a local area network (LAN) or via the Internet. These enterprises receive the productivity benefits that the software provides, while foregoing the expense of licensed copies of the software and enjoy an

for national and international enforcement authorities to coordinate their efforts and cooperate with IP right holders to fight IP crimes including piracy.

⁸ Business Software Alliance and IDC, *Piracy Impact Study: The Economic Benefits of Reducing Software Piracy*, 2010, at <http://portal.bsa.org/piracyimpact2010/>.



unfair commercial advantage over their law-abiding competitors who pay for their software. The unfair advantage can be understood on a macroeconomic level as well, since this means countries with high piracy levels compete unfairly with countries which have lower rates.

In many cases, enterprise end-user software piracy is attributable to negligence and poor software asset management (SAM) practices. Enterprises can also be victimized by unscrupulous computer manufacturers and dealers who engage in “hard disk loading,” installing copies of software onto the internal hard drive of the personal computers they sell without authorization from the copyright holder. In many cases, however, enterprise end-user piracy is undertaken willfully, with management fully aware and supportive of the conduct. Enterprise end-user software piracy also occurs in government agencies. Often, foreign governments, including in MENA countries, fail to properly procure software for their hardware purchases, which leads to unauthorized use and under-licensing practices. In countries having significant state-owned enterprises, this problem is compounded. The principle way to address this is through government software legalization programs. It is also critical that governments vigorously pursue legalization of software within state agencies to set an example for private sector businesses and lend credibility to government enforcement efforts against software piracy.

Adequate laws prohibiting the unauthorized use of software in a business setting and enforcement of the same are critical to reduce piracy of business software. To effectively enforce against corporate end-user piracy, countries must provide an effective civil system of enforcement, provisional remedies to preserve evidence, including *ex parte* civil search orders in an expeditious manner, in line with Article 50 of TRIPS, adequate compensatory civil damages including additional damages (where possible), and criminalization of corporate end-user piracy as required by Article 61 of TRIPS. The software industry along with IIPA members strongly support the adoption of pre-established (statutory) damages in MENA countries, as is mentioned as a possible remedy under TRIPS Article 45, and which will in some countries be required to meet the TRIPS Article 41 test to provide “remedies which constitute a deterrent to further infringements.”⁹ Another important way to systematically address software piracy is to implement proven, internationally recognized SAM practices that ensure an enterprise is efficiently managing its software and is not using software beyond what is licensed.¹⁰

End-user piracy is not limited to business software but now affects other copyright sectors. For example, in government, school and university facilities, photocopy machines are routinely used for commercial-scale book piracy. Where a government (for example, a country’s education ministry or the university itself if state-run and/or state-owned) is directly involved or directly responsible for the facilities and implements used, including in particular government owned or controlled networks, policies and decrees must be promulgated and strictly enforced to ensure that these facilities are not used for infringing conduct. Governments have an opportunity and responsibility to engage in best practices with respect to the handling of intellectual property

⁹ The U.S. has the lowest software piracy rate in the world and this is due in large part to the deterrent impact of infringers knowing that right holders can avail themselves of statutory damages.

¹⁰ BSA provides tools and resources to help organizations manage software in a way that reduces compliance risks and maximizes return on investment. BSA SAM Advantage is an effort to help companies move more easily toward lasting adoption of the global SAM standards published by the International Organization for Standardization (ISO).



issues in the operation of government services, and they should be encouraged to lead by example.

3) Internet and Mobile Piracy

While developments on the Internet and mobile networks have transformed the way we work, learn and play, and have opened up opportunities for faster, more efficient and more cost-effective distribution of information, products and services across the globe, they have also, unfortunately, resulted in massive infringement of music, movies, games, software, published materials and other copyright materials. Studies by Envisional (which concluded that an astonishing 23.76% of all worldwide Internet traffic is copyright infringing) are indicative of the growing scope of the problem, including in some MENA countries, particularly those in which broadband penetration has grown substantially in recent years, as well as those in which mobile penetration nears or has exceeded 100%. The latest statistics indicate 72.5 million people in the Middle East use the Internet, or a 33.5% penetration rate, while 46.3 million people in North Africa use the Internet, an almost 22% penetration rate (highest in Morocco, Tunisia, and Egypt in that order).¹¹

Each industry sector has its own unique experience with online piracy phenomena most harmful to them, although many share commonalities, particularly with the increase in broadband penetration making faster and larger downloads and access to copyright materials possible. Online and mobile piracy are by far the greatest priority issues for the music industry, which faces a global Internet piracy problem estimated at 95%. Other industry sectors also view Internet-based infringement as one of the greatest threats to their continued viability. The copyright industries report infringements of their materials via many different kinds of services, including in the MENA region. These services around the world range from infringing content made available via P2P filesharing sites or protocols, through BitTorrent sites or indexes, through “deeplinking” sites, through “one-click hosting sites,” through UGC sites, through streaming sites, through B2C (such as auction) or B2B sites, and through unlicensed Internet café usage.

The massive challenge of online piracy requires a multi-faceted approach, but its roots are quite straightforward. Governments in the MENA region must recognize the need for proportionate and effective steps to curb online piracy, and provide adequate legal frameworks for the protection of copyright online, including provisions in line with the two treaties adopted by the World Intellectual Property Organization (WIPO) in December 1996, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT),¹² provisions recognizing online piracy as a form of cybercrime,¹³ and appropriate levels of

¹¹ See *Internet World Stats*, at www.internetworldstats.com/stats5.htm and www.internetworldstats.com/stats1.htm.

¹² This should include express recognition of protection of reproductions in the online environment, regardless of their duration (i.e., temporary as well as permanent copies capable of being further copied, communicated, or perceived should be recognized), since consumers engage in the full exploitation of copyright materials they license and receive over a network without ever making a permanent copy. This should also include a WIPO treaties-compatible definition of “communication to the public” including an interactive “making available” right.

¹³ Governments in the MENA region should look to join and implement the Council of Europe Cybercrime Convention, Budapest, 23.XI.2001, which contains, in Article 10, “Offences related to infringements of copyright and related rights,” an obligation to “adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright [and related rights] ... where such acts are committed wilfully, on a commercial scale and by means of a computer system,” and which contains in Article 11 the



responsibility for online infringements that foster cooperation among the stakeholders (including ISPs) involved in the online supply chain.¹⁴ Effective enforcement is critical to ensure the healthy development of a legitimate online market and stop or slow the massive harm being caused by online piracy every day.

4) Implementation of the WCT and WPPT

As noted, the WCT and WPPT provide a basic legal framework for the protection of online copyright. These treaties, in force since 2002, now have 89 adherents each, including Bahrain, Jordan, Morocco, Oman, Qatar, Turkey, and United Arab Emirates. However, effective implementation of these global legal minimum standards is critical in the fight against online piracy. These standards include clarifying exclusive rights for the online world, and prohibiting through civil and criminal remedies the production of or trafficking in tools that circumvent technological protection measures used by right holders to prevent access to content or the exercise of exclusive rights. A number of key countries in the MENA region, notably including Egypt, Israel, and Saudi Arabia, have not yet ratified the WCT and WPPT, and many in the region have not yet fully or properly implemented these treaties. The U.S., which was one of the first countries to implement these changes in its laws having done so thirteen years ago, should continue to make it a priority to encourage other countries to follow this path.¹⁵

5) Circumvention of Technological Protection Measures (TPMs)

Copyright owners use technological protection measures (TPMs) to ensure that works made available in the digital and online environments are not easily stolen. For example, game consoles contain TPMs that aim to make it impossible to play infringing copies of games. DVDs are protected by “serial copy management system” (SCMS) to prevent second-generation copying and subsequent distribution or play, directly or over the Internet. Pay-TV, premium cable and satellite services, and Internet services providing legitimate downloads or streaming of motion pictures similarly employ access and copy controls. Virtually all software packages are licensed with some type of technological protection measure (encryption, passwords, registration numbers). EBooks employ access and copy controls as well.

Unfortunately, just as content owners would take such self-help measures to protect their content in emerging marketplaces including in the MENA region, there are those who not only would like to gain unlawful access to the content or copy it, but increasingly, those who build their business models around providing devices, tools or technologies to fill such demand. The entertainment software industry has seen a proliferation in the development, manufacture and

obligation to “establish as criminal offences under its domestic law, when committed intentionally, aiding or abetting the commission” of Article 10 offenses.

¹⁴ Many governments, particularly in Asia and Europe, have recognized the need for urgent steps to curb online piracy, and while not all approaches are favored by all the content industries equally, the goal is the same: to ensure effective action is available in practice against online piracy. There is consensus that bad actors who cause massive harm or profit from their direct involvement in the online infringing supply chain should be held responsible. There is also general agreement that all stakeholders in the online supply chain, including service providers, should have proper incentives to cooperate to eradicate bad behavior, which has traditionally included notice and takedown, and which at least includes effective and fair mechanisms to deal with repeat infringers in the non-hosted environment. The fact is that momentum is building for workable solutions and all recognize that solutions are required and desirable.

¹⁵ The U.S. implemented the WCT and WPPT by enacting Title I of the Digital Millennium Copyright Act of 1998, Pub. L. No. 105-304, 112 Stat. 2860 (1998). The United States deposited instruments of accession for both treaties on September 14, 1999.



distribution of increasingly sophisticated circumvention devices, tools and technologies used to make and play infringing copies of games. The “mod chip,”¹⁶ “game copier,”¹⁷ and variations of the mod chip including “soft modding” are ravaging the console-based videogame industry and require a strong response in terms of legal measures and enforcement to make space for the sale of legitimate games. Purveyors of these devices are so sophisticated and determined to escape detection that they often separate their products into components, e.g., they ship devices that are only partially functional, intending that the user take steps required (such as downloading software) to restore the circumvention device to full functionality.

One of the key aspects of WCT and WPPT implementation involves adequate and effective protection against the circumvention of TPMs. In order for such protection to be “adequate and effective,” as required by the WIPO treaties, MENA countries must address acts of circumvention, trafficking in circumvention devices, tools, technologies, and components, and the provision of circumvention services (such as the installing of “mod chips” into game consoles). MENA countries must also ensure that both TPMs that control access to content as well as TPMs that prevent the unauthorized copying or other exercise of exclusive rights are covered. Exceptions to protection in this area must be narrowly and carefully crafted to ensure that prohibitions on circumvention are not rendered ineffective. Civil and criminal (and where available, administrative) remedies should be provided. While implementation of TPMs protections has given rise to effective enforcement actions against distributors of unlawful circumvention devices, these efforts are critically undermined by countries that have yet to pass such provisions. MENA countries that lack TPM provisions may serve as a source of circumvention devices for consumers who live in countries where such devices are rightly prohibited. Countries in the MENA region which have attempted to or have partially implemented this critical protection should be encouraged to continue down this path toward adequate and effective protection. They include Bahrain, Egypt, Jordan, Morocco, Oman, Qatar, Saudi Arabia, and the United Arab Emirates. MENA countries not now having any TPMs protections, which should be encouraged to adequately provide for such protections immediately, include Israel, Kuwait (which provided for such in draft legislation that unfortunately has stalled), Lebanon (provides for such in draft legislation), and Turkey, as well as others.¹⁸

6) Illegal Camcording of Theatrical Motion Pictures

One of the greatest concerns to the motion picture industry involves illegal recordings of movies from theaters often just as they open. According to the industry, approximately 90 percent of newly released movies that are pirated can be traced to thieves who use a digital recording device in a movie theater to literally steal the image and/or sound off the screen. The increase in the severity of this problem in recent years tracks the development of camcorder technology that makes detection difficult and copies near perfect. All it takes is one camcorder copy to trigger the mass reproduction and distribution of millions of illegal Internet downloads and bootlegs in global street markets just hours after a film’s release and well before it becomes

¹⁶ There is a global market for modification chips (mod chips) sold on the Internet and in videogame outlets which, when easily installed into a console (by the user or by the pirate retailer) will bypass the handshake and allow the play of pirated games.

¹⁷ “Game copier” devices also bypass TPMs to allow for the copying and use of infringing copies of games for handheld platforms.

¹⁸ Other MENA countries having no current protection against the circumvention of TPMs or trafficking in circumvention devices or services, include Algeria, Iran, Iraq, Libya, Syria, Tunisia, and Yemen.



available for legal rental or purchase from legitimate suppliers. Producers and theater owners have significantly increased security and surveillance in theaters all over the world to thwart would-be camcorders. Since 2003, motion picture producers have employed technology such as watermarking film companies to discern the source of a stolen film through forensic analysis and trace it back to the very theater in which it was recorded. In 2010, there were over 1,000 instances of MPAA member company titles were illegally recorded from cinemas around the world; approximately 60% were audio captures.

This number does not include independently produced and films illegally camcordered. Independent producers also suffer gravely from illegal camcording since they must pre-sell distribution rights prior to production and rely on the legitimate distributors to license and finance films. These authorized distributors cannot compete when illegal camcording makes product available virtually for free, and overall damage to the marketplace due to piracy and translates into fewer independent films being produced. Independent production accounts for nearly 70% of all films and damage to this sector is especially damaging in terms of lost jobs, taxes and economic activity.

Anti-camcording legislation is critical to stopping the rapid increase in camcording. The United States and several other countries now have anti-camcording legislation,¹⁹ and some others are actively considering legislation right now. There remain critical steps on top of good legislation that the motion picture industry and cinema owners are pursuing to mitigate the level of unauthorized camcording activity. Despite industry efforts, it is clear that if camcording is not made a criminal offense and deterrent penalties are not applied, this crippling source piracy will continue, migrating to territories where enforcement is weak.

7) Game Cartridge Piracy

In addition to optical disc piracy, factory piracy of entertainment software in cartridge format also afflicts the entertainment software industry. Pirate videogame cartridges easily find their way into numerous countries around the world. Absent sustained enforcement actions against these factories engaged in illegal production and export, and the prosecution of their owners and financiers, there will be little progress in curtailing this piracy problem.

8) Piracy of Books and Journals

The book publishing industry continues to be plagued by large scale unauthorized photocopying of academic, scientific, technical and medical books, principally on and around university campuses,²⁰ sophisticated infringing offset print versions of books (essentially akin to

¹⁹ With the passage of the U.S. Family Entertainment and Copyright Act, which made camcording a federal offense, and similar state laws, as well as diligent efforts by local police, the U.S. is taking the necessary steps to provide adequate and effective remedies against camcorder piracy.

²⁰ Pirate photocopying takes place in a variety of venues, including commercial photocopy shops located on the perimeters of university campuses and in popular shopping malls, at on-campus copy facilities located in academic buildings, libraries and student unions, and in wholly illicit operations contained in residential areas or other underground establishments. Some of these operations are highly organized and networked, and technological advances are making the problem worse, since the shift from physical copy machines to electronic files means shops can print infringing books on demand. Publishers also suffer from unauthorized institutional or business-related photocopying for commercial research (often accompanied by failure to compensate rights holders through collective means or otherwise for copies made).



counterfeiting),²¹ and unauthorized translations of popular books.²² Photocopy piracy in most countries involves unauthorized commercial copying of entire textbooks by copy shops on and around university campuses, often undertaken on a “copy-on-demand” basis to avoid stockpiling. Book pirates have shifted tactics and are increasingly electronically storing digitized files of books (academic or otherwise) and fulfilling customer requests on a “print-to-order” basis, thereby complicating the enforcement process due to lack of infringing stock-on-hand. Authorities need recognize this shifting pattern and tailor enforcement efforts accordingly (e.g., by including cyber forensics in their investigations). Commercial print piracy is prevalent in many developing countries where unauthorized operations obtain masters or copies of books and run unauthorized editions, in English or via unauthorized translation, off a printing press. In other cases, licensed local distributors or publishers produce print overruns, printing more copies of a title than permitted by their license.

Book and journal piracy calls for aggressive action by law enforcement authorities. However, such efforts should be in conjunction with robust efforts by universities and educational institutions (especially state-run or state-funded) to promote appropriate use and copyright policies, in particular the use of legitimate books and journal publications. IIPA urges the U.S. government to ensure that such acts of piracy are fully covered in its MENA Partnership.

9) Using FTAs to Improve Global Standards of Copyright Protection and Enforcement

The negotiation of bilateral and regional free trade agreements (FTAs) over the past fifteen years has proven to be of great value to the U.S. economy, and is an important part of the MENA partnership given the number of FTAs in the MENA region that are now in force. The agreements have helped U.S. copyright industries to compete fairly in these foreign markets and have helped our trading partners develop their domestic copyright industries, a true win-win for both parties. FTAs in the MENA region include those with Jordan, Morocco, Bahrain, Oman. Israel has an older FTA with the United States, and recent announcements indicate the intention to reinvigorate talks between the U.S. and Israel on the FTA, which should include enhancements to the IP protections required.

10) Optical Disc Piracy

While piracy is migrating to the online space for most of the content industries, piracy of optical disc (OD) products²³ continues to cause major losses to most copyright industries, especially in the MENA markets that have lower Internet penetration, where such formats continue to enjoy considerable market share, or where pirate console-based videogames are

²¹ These printers come in two varieties. In some cases, they are licensed printers or distributors who are engaged in offset printing beyond the scope of a valid license granted by the publisher. Others are wholly illegal pirate operations that have no license from the copyright owner at all. While many pirated copies are rife with errors or obviously of inferior quality, in some cases sophisticated printing technologies result in extremely high-quality pirate editions of books, making it difficult for users to distinguish between legitimate and pirate products.

²² Publishers continue to suffer from unauthorized translations of books and journals of all kinds and genres, as well as trademark misuse. Unauthorized and unlicensed compilations abound in the academic context as well, in the form of course packs or even “original textbooks” that consist of sections of U.S. publishers’ material, in English or in translation.

²³ OD include formats such as compact discs (CD), video CDs (VCD), CD-ROMs, CD-Recordables (CD-Rs), digital versatile discs (DVDs), DVD-Recordables (DVD-Rs), universal media discs (UMD), and high definition formats such as Blu-ray.



popular.²⁴ In recent years, factory production has somewhat waned as technological developments have meant fewer large-scale factories and more smaller, agile “burning” of music, books and reference publications, games, movies, and business software onto recordable media. CD-R or DVD-R “stack” bays (of ten or twenty discs when “daisy-chained”) are lightweight and can produce multiple discs in minutes. They can and are being set up anywhere, including in factories but also in shops where vendors can “burn to order.” Programs such as regularized surprise plant inspections and exemplar (sample) disc collection must continue, and where unlicensed illegal activity is detected, copyright laws and specialized OD laws or regulations should be aggressively enforced, e.g., including the imposition of deterrent penalties, license revocations, confiscation of equipment and raw materials, and heavy fines and imprisonment where warranted. In the MENA region, several countries have legislated to deal with optical piracy issues (e.g., Turkey) and/or have FTA commitments to do so (e.g., Bahrain and Oman).

11) Pay TV Piracy and Signal Theft

The unauthorized broadcast, cablecast or satellite delivery of motion pictures, as well as other content (music and sound recordings) cost right holders significantly. Three key problems are identified by the industry. The first is unauthorized cable access, which represents actions by individuals or groups to tap into the lines of legitimate cable TV companies without paying subscription fees. Most illegal taps likely occur on large cable systems. The second involves unauthorized operators or rogue cable companies who take broadcast signals by unauthorized means (hacked set-top boxes or “overspill” boxes from neighboring countries), replicate the signal and sell to hundreds or thousands of consumers. These pirate operators do not pay for any of their content. The third is subscriber under-declaration, namely, cable companies who use and pay for some legitimate content, but do not pay for all the channels they use or all the subscribers they serve. It is therefore critical that copyright laws or related laws in MENA countries contain strong provisions prohibiting the unauthorized use (broadcast, communication to the public, public performance, transmission, etc.) of content, but also contain prohibitions on the decryption of encrypted cable or satellite signals, as well as the unlawful onward use of the signals already decrypted (whether lawfully or not). Of particular importance are protections against the unauthorized retransmissions of such signals, and countries should afford appropriate rights in this area, including in the online environment. Lebanon is one example in the region in which a significant cable piracy situation improved by virtue of strong provisions against cable piracy and resulted in some consolidation in the market to legitimate cable operators.

²⁴ Historically, organized piracy groups set up major factories at great expense in the promise of high-profit, relatively low-risk factory piracy. Markets such as China, Macau, Hong Kong, Taiwan, Malaysia, Thailand, Indonesia, and the Philippines in Asia; Russia and Ukraine in Central Asia; Bulgaria in Eastern Europe; even Pakistan in South Asia and Israel in the Middle East, have all at one time or another been afflicted by major factory piracy rings. As a result of this onslaught of factory production, affecting domestic markets and exported to neighboring and regional countries, a swift regulatory and enforcement response was required. IIPA and IIPA members developed tools including draft effective optical disc regulations, and in October 2003, APEC leaders agreed on the need to “stop optical disk piracy” and Ministers endorsed a set of “Effective Practices.” The specialized regulatory framework, including licensing controls on the operation of optical disc mastering and replication facilities, the requirement to use identification tools to identify the plant of production, collecting exemplar discs, and tracking the growth of optical disc production capacity, including the cross-border traffic in production equipment and raw materials, principally optical-grade polycarbonate, has been sought in many countries. Regulations adopted in Bulgaria, China, Hong Kong, Indonesia, Macau, Malaysia, Nigeria, Oman, the Philippines, Poland, Singapore, Taiwan, Thailand, Turkey, and Ukraine, and under consideration elsewhere, accomplish much of what is needed.



12) Market Access Barriers

The U.S. copyright industries suffer from myriad market access barriers, investment barriers, and discriminatory treatment making it difficult to compete in some foreign markets on a level playing field. It is truly impossible to discuss copyright infringement without recognizing the direct relationship between the fight against infringement and the need for liberalized market access to supply legitimate product (both foreign and local) to consumers around the world, including in MENA countries. Reduction of market access impediments should be a key component of ongoing efforts to combat piracy in MENA countries. Our experience shows that where there are restrictions on the distribution of legitimate products, impediments to the establishment of companies involved in the creation, manufacture or distribution of such products, or the imposition of prohibitively high tariffs and taxes on legitimate products entering the country, illegal operations fill the void with piratical product. Pirates are thus able to become exclusive distributors of the prohibited content or the products that have been priced out of reach for most consumers due to high tariffs, and are rewarded accordingly by cementing strong loyalties with their dedicated consumer base.

Market access restrictions identified in MENA countries include ownership and investment restrictions, discriminatory or dilatory content review/censorship systems, restrictions on the ability to fully engage in the development, creation, production, distribution, and promotion of copyright materials, the inability in some countries to engage in the import, export, distribution, publishing, and marketing online of reading materials, the maintenance of quotas including screen time and broadcast quotas or complete bans on broadcast of foreign programming or advertising, discriminatory restrictions on the ability to import or distribute copyright content, blackout periods for films, local print requirements, onerous import duties, and *ad valorem* duties based on potential royalties generated from a film rather than the accepted practice of basing duties on the value of the carrier medium. Sometimes well-intentioned anti-piracy initiatives, such as labeling (e.g., banderol or hologram sticker programs) or licensing requirements have the opposite effect from that intended, precluding effective protection or enforcement against piracy. In developing the MENA Trade and Investment Partnership, the U.S. Government should ensure that their foreign government counterparts fundamentally reexamine the effectiveness of, and policy justifications underlying, market access prohibitions or impediments that restrict legitimate producers' ability to compete with pirates, and should strive, as a high priority issue, to open markets to copyright and eliminate or phase out market access barriers.

Brief Summary of Issues in Select MENA Countries

EGYPT

Prior to the political upheaval, and even today, Egypt's copyright market was and remains characterized by pirate consumption.²⁵ Local Egyptian and U.S. right holders are

²⁵ The independent Creative and Innovative Economy Center (CIEC) estimated motion picture piracy in 2007 to be between 90% and 95% and losses to be as much as US\$90 million to that sector. Bertrand Moullier et al, *IP and Economic Challenges in the Egyptian Film Industry*, Creative and Innovative Economy Center (CIEC) at George Washington University, October 2007, at www.law.gwu.edu/NR/rdonlyres/B1EDABB1-E920-4C22-AF94-CB1A0E295C0.pdf.



equally hampered by piracy and other barriers, as authors such as Alaa al-Aswany,²⁶ and the local Egyptian film market duopoly of the Arabic Company for Production and Distribution Group and El Mottahida (which suffer from piracy, cultural burdens, narrow theatrical windows, and a dearth of screens in the country) can attest. In addition to damaging photocopy and print piracy, other piracy phenomena like retail and Internet-based piracy of music, software, games, and movies, and business software end-user piracy (which grew to 60% in 2010, and for which the value of U.S. unlicensed software grew to \$108 million), caused copyright owners increasing losses and kept them from doing legitimate business in Egypt. Internet usage continued to grow rapidly in 2010 and into 2011, and along with it, Internet-based piracy, especially of music, became a growing concern. Copyright law in Egypt is governed by Law No. 82 of the Year 2002 (“82/2002”) Promulgating Intellectual Property Law (in force June 3, 2002), as implemented in 2005. While Egypt is a member of two important copyright treaties (the Berne Convention and the Geneva Phonograms Convention), it has not yet joined or fully implemented the WIPO “Internet” treaties. Prior to the upheaval, there was hope that the establishment of new Economic Courts by Law No. 120 (2008) would be a positive development so that civil and criminal copyright cases would be handled by judges with specialized training. Other developments, including the shift in jurisdiction of business and entertainment software cases to ITIDA, simply cannot be evaluated in the absence of rule of law throughout the country.

It is hoped that the political situation in Egypt will stabilize, and that once that occurs, the following can be accomplished in the short term:

IPR Enforcement

- Fully establish specialized “Economic Courts” with specialized judges to deal with copyright matters, emphasizing speed and deterrence in piracy cases, and taking active steps to develop a core of specialized IP prosecutors and judges.
- Tackle book and journal piracy, both illegal reprints and photocopying, by taking sustained enforcement actions against pirate production and ensuring universities adopt policies to use only legal copies of publications.
- Fully implement laws and decrees (such as Law No. 118/1975, Decree No. 770/2005, and other measures) to seize piratical imports and exports, without guarantee amounts that are prohibitively expensive.
- Build capacity to handle Internet piracy cases, including cybercrime police to deal with infringing sites and services.

IPR Legislation and Market Access

- Ease onerous market access restrictions which close the Egyptian market to legitimate copyright companies. In the past, these have included: *ad valorem* duties on films imported into Egypt; *ad valorem* duties on sound recordings and entertainment software; sales taxes on imported goods; censorship certificate release fees imposed on foreign films only; a 10% sales tax on imports, and a 20% box office tax for theatrical motion pictures; a requirement that all song lyrics on locally manufactured releases be translated into Arabic; the absence of trading rights for foreign-invested enterprises; a discriminatory and GATT-inconsistent

²⁶ See Abdallah, *Alaa El Aswany*, Egypt Today, August 2004, Volume # 30 Issue 02.



entertainment tax on foreign films; and a *de jure* discriminatory cap of five film prints for theatrical distribution for U.S. films

- Amend the copyright law and implementing decree to cure TRIPS deficiencies and resolve ambiguities, and fully implement and join the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).
- Establish mechanisms for service providers to cooperate with right holders against Internet piracy, including an expeditious way to remove infringing content, block piracy websites, enforce against illegal file sharing, and deal effectively with repeat infringers.

ISRAEL

While being the newest member of the Organization of Economic Co-operation and Development (OECD),²⁷ and while its per capita GDP matches that of Korea and members of the European Union, Israel has lagged behind in terms of protecting the copyright of Israelis and foreign creators alike. Piracy in certain areas remains serious in Israel. For example, the value of unlicensed U.S. business software in the market is \$80 million in 2010 (\$170 million including non-U.S. software).

A key reason the Israeli creative market remains under-developed is a lack of commitment to strong, modern copyright protections. Israel remains one of only two OECD members that have not implemented key provisions of, or joined, the WCT and WPPT.²⁸ End-user software piracy still is not criminalized in the country as required by TRIPS. One major and longstanding issue for the audiovisual industry remains the resistance of Israeli cable operators to compensate copyright owners for unauthorized uses of their works through retransmissions of broadcast television signals, despite court decisions confirming remuneration for unauthorized retransmissions. Israel's Internet usage continued to increase in 2010 and into 2011, and along with it, so did infringing activities online. Right holders' ability to take action to stop online infringement has been significantly limited by a recent Supreme Court ruling, which held that courts are not empowered under Israel's existing legal framework to order ISPs to disclose the details of their users.²⁹ In 2010, Israel ranked second among all countries in terms of per capita detections of peers participating in unauthorized file sharing of select entertainment software titles. Serious commercial piracy still cannot be addressed in the country effectively, as the number of police officers in the IPR Units remains too low. In addition, internal prosecutors have yet to be assigned to the Units, resulting in long delays in indictment submissions and in lower quality cases being filed due to lack of experience.

It is hoped that through the development of the MENA Trade and Investment Partnership, mutually beneficial short- and long-term IP goals can be set, and that the following can be accomplished:

²⁷ See Organization of Economic Co-operation and Development, *List of OECD Member countries - Ratification of the Convention on the OECD*, at http://www.oecd.org/document/58/0,3746,en_2649_201185_1889402_1_1_1_1,00.html.

²⁸ The following OECD members are members of the WCT and WPPT: Australia, Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, Netherland, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States. Only Canada, Iceland, New Zealand, and Norway have not, and of those, only Canada has not implemented either Treaty.

²⁹ Civil Leave to Appeal 4447/07 *Rami Mor v Barak* (Supreme Court, 25 March 2010). The case dealt with online defamation, but the ruling is not limited to defamation cases.



IPR Enforcement

- Enforce court decisions ordering Israeli cable operators compensate copyright owners for unauthorized retransmissions of television broadcast signals containing their works, and establish fair remuneration structure going forward.
- Ensure courts impose higher damages that create a deterrent to further infringements.
- Fortify the Special Police IPR Units, by adding staff, funding, and providing them with *ex officio* raiding authority. A National Police Unit director should be assigned to coordinate districts for effective and sustained enforcement.
- Tackle burgeoning Internet piracy through proactive Israeli Police pursuance of Internet piracy cases.
- Establish national and independent unit specifically to prosecute piracy cases, and give such cases priority attention for expeditious handling and processing in the courts.

IPR Legislation and Market Access

- Amend the Copyright Act to, *inter alia*, confirm criminal liability against enterprise end-user software piracy, provide minimum statutory damages, prohibit circumvention of technological protection measures and the trafficking in circumvention devices, and establish effective means for enforcement against online infringement.
- Clarify the scope of ISP liability for authorizing infringements and provide incentives for them to help right holders tackle online infringement, including takedowns and assistance with repeat infringers in the online space. Pass legislation allowing courts to order Internet service providers to disclose the details of online infringers
- Scrap regulation prohibiting foreign television channels from carrying some advertising aimed at the Israeli market.

KUWAIT

Over the past five years, copyright protection in Kuwait has improved for most industries due to cooperation with the Kuwaiti Ministry of Commerce (MOC), which has taken the primary role in enforcing copyright in the country.³⁰ Piracy problems remain, and non-deterrence in the courts remains a key hurdle to limiting piracy in Kuwait. The Kuwaiti Government is considering a draft which appears intended to bring the current Copyright Law 1999 into compliance with TRIPS, create a more deterrent criminal penalties structure, and implement and join the WCT and WPPT. IIPA recommends immediate passage of the draft Law, with some changes to ensure full TRIPS compliance and compatibility with the WCT and WPPT, and other important proposed changes to improve copyright protection and reduce piracy.³¹

³⁰ Other agencies previously involved include the Kuwaiti Ministry of Information (MOI), Kuwaiti Customs, and the Kuwaiti Ministry of the Interior (Police). In 2010, for internal political reasons, copyright enforcement moved jurisdictionally from the MOI to the MOC. It should be noted that this move, made after 14 years of working with MOI, represents a shift in enforcement, since the MOC only deals with trademark infringements, until they can build capacity and train staff for copyright offenses. In the meantime, some copyright owners are being required to provide trademark registrations and other information about common law trademarks in order to continue to receive seamless enforcement of their rights in Kuwait. The U.S. Government must watch this development closely to ensure that 1) the failure to provide a trademark registration does not pose a bar to enforcement in Kuwait, and 2) the MOC's capacity and training is sufficient so they can continue the tradition of good enforcement built up in the MOI over the years.

³¹ See IIPA, 2011 Special 301 Report on Copyright Protection and Enforcement, Kuwait, pp. 211-215, at www.iipa.com/rbc/2011/2011SPEC301KUWAIT.pdf.



It is hoped that through the development of the MENA Trade and Investment Partnership, mutually beneficial short- and long-term IP goals can be set, and that the following can be accomplished:

IPR Enforcement

- Investigate and where appropriate prosecute cases involving end-user piracy of business software, as well as cases involving pirate software resellers and hard-disk loading of pirate business software onto computers being sold in the market.
- Once the Copyright Law is amended to provide mandatory deterrent fines and prison sentences, these penalties must be imposed by the courts in criminal cases to drive piracy levels down and defeat recidivism.
- Enforcement and Internet takedowns by Kuwaiti authorities should be applied against pirate vendors who sell or advertise products which are prohibited by marketing restrictions (such as religious requirements) and censorship rules. At present, enforcement is not even-handed and pirates effectively enjoy a state-enforced monopoly to sell restricted/banned materials on the streets or over the Internet, given the lack of action taken against them under copyright or other marketing/censorship grounds.

IPR Legislation

- Amend the Copyright Law to provide mandatory deterrent fines and mandatory minimum prison sentences, and to confirm that end-user piracy of business software is considered a crime.
- Ensure the law provides incentives for ISPs to cooperate with right holders against online piracy.
- Amend and modernize the Copyright Law to meet the requirements of the TRIPS Agreement, implement and join the WCT and the WPPT and update the law to effectively address online piracy.

LEBANON

IIPA has noted some incremental progress in enforcing copyright, including some successful cases against illegal cable retransmission, and support from the Lebanese Police Cyber Crime and Intellectual Property Rights Bureau (CCIPRB) Unit against pirate street stalls.³² Notwithstanding these signs of incremental progress in Lebanon, piracy remains a significant hurdle to legitimate business for the industries, including problems like end-user piracy of business software which continues to cause losses to U.S. software companies (piracy levels remained at an unacceptably high 72% in 2010, with the value of unlicensed U.S. software increasing to \$27 million in 2010, and \$49 million for all software including non-U.S. titles).

³² See Tamara Qiblawi, *Beirut Boosts Efforts to Protect Copyright Owners*, The Daily Star, December 10, 2010, at http://dailystar.com.lb/article.asp?edition_id=1&categ_id=3&article_id=122371. This article cited a recent World Intellectual Property Organization meeting at which Economy Ministry Director General Fuad Fleifel asserted that the government has intensified its campaign against intellectual property rights violations in recent months by increasing surveillance and urged copyright owners to make use of special judicial courts.



Other problems include book piracy, retail piracy (of all kinds of copyright materials), cable and pay TV piracy, and some growing Internet-based and mobile device piracy. IIPA highlights the importance for Lebanon to establish a proper legal framework for copyright protection, including online, and to fully implement those laws to reduce piracy and foster growth in the creative sectors in Lebanon, as well as to ready itself for World Trade Organization accession and to implement relevant international treaties, the Berne Convention,³³ as well as the WCT and the WPPT.³⁴ Since late 2006, the United States and Lebanon have been party to a Trade and Investment Framework Agreement, and IIPA has advocated that copyright issues should be a permanent part of the TIFA agenda.³⁵ Lebanon's Government is well aware of the importance of copyright protection to its national economy.³⁶

It is hoped that through the development of the MENA Trade and Investment Partnership, mutually beneficial short- and long-term IP goals can be set, and that the following can be accomplished:

- Ensure that draft amendments to the Lebanese Copyright Law (1999) are compatible with major international copyright treaties, including the TRIPS Agreement, the WCT and the WPPT.
- Pass accession legislation to permit Lebanon to join the Berne Convention (Paris 1971 text), and reintroduce and pass legislation to ratify the WCT and WPPY, and the instruments of ratification with WIPO in Geneva.
- Ensure that the special police bureau, the Cyber Crime and Intellectual Property Rights Bureau (CCIPRB) Unit, continues actively running raids against piracy targets, including end-user software piracy, and take steps to provide the Unit with *ex officio* raiding authority, authority to employ investigative techniques to detect piracy practices (such as "hard-disk loading"), and a regular operating budget.

SAUDI ARABIA

Piracy rates are higher in Saudi Arabia than in any other country in the Gulf region for the motion picture, music and recording industries (in the 90% range) and remain unacceptably high for the business software (an increase to 52% piracy in 2010, with the value of unlicensed software increasing rather dramatically to \$236 million for U.S. software, \$414 million including non-U.S. software), entertainment software and publishing industries. Promised actions,

³³ Lebanon currently adheres to the Rome (1928) text of the Berne Convention. In 2007, legislation was prepared and forwarded to the National Assembly to ratify the Berne Convention 1971 Paris text; passage of this legislation would be a welcome development.

³⁴ Both the WCT and WPPT were ratified by Lebanon's National Assembly on March 6, 2010, by National Assembly passage of Laws Nos. 77 (WPPT) and 78 (WCT). However, we understand that the session of the National Assembly was nullified, and thus, it is as if the ratification never occurred. This is very unfortunate, and we hope the new Government will reintroduce and swiftly pass the ratification legislation for these two important treaties.

³⁵ See *United States and Lebanon Sign Trade and Investment Framework Agreement*, November 30, 2006, at www.ustr.gov/Document_Library/Press_Releases/2006/November/United_States_Lebanon_Sign_Trade_Investment_Framework_Agreement.html.

³⁶ In July 2007, the World Intellectual Property Organization released Roger Malki's report, *The Economic Contribution of Copyright-Based Industries in Lebanon* (published in World Intellectual Property Organization, *National Studies on Assessing the Economic Contribution of the Copyright-Based Industries*, July 2007, at 491-550). That report demonstrates that in 2005, the total copyright industries in Lebanon contributed around US\$1.04 billion to the annual gross domestic product (GDP), employed almost 50,000 workers, and contributed 4.75% to the GDP and 4.49% to overall employment, while the core copyright industries generated almost US\$556 million of value added, employed over 23,300 workers, and contributed 2.53% to the GDP and 2.11% to overall employment.



including a successful conclusion (i.e., a conviction with jail sentence) of an appeal in the Video Mesfir case (from the Violations Review Committee (VRC) to the Board of Grievances (BOG)), unfortunately did not come to fruition in 2010. Other benchmarks were not met, including failure to reduce piracy rates and make progress on government software legalization efforts, and a dearth of deterrent enforcement actions in the past year and a half.

It is hoped that through the development of the MENA Trade and Investment Partnership, mutually beneficial short- and long-term IP goals can be set, and that the following can be accomplished:

IPR Enforcement Benchmarks (from 2009 IIPA Special 301 Submission)

- Re-commence a zero-tolerance policy toward street vendor piracy in the major cities until it becomes a *de minimis* problem.
- Complete the appeals of the Video Mesfir cases at the Board of Grievances (BOG) with a sentence of imprisonment.
- Authorize appeals of other cases involving major seizures with the Minister recommending sentences of imprisonment, signaling to citizens that piracy crimes will receive deterrent penalties and especially imprisonment in appropriate cases.
- Publicize widely, and on a regular basis, all these actions, including press statements by high government officials that piracy will no longer be tolerated.
- Make significant progress toward legalizing software use within the KSA Government.
- Fully populate the MOCI's website with data on raids, hearing dates, judgments and penalties commencing at the beginning of 2008 through the present, in both Arabic and English.

Other IPR Enforcement Issues

- Administrative penalties imposed by the VRC should be increased to provide more deterrence, under the guidance of the Minister and new Deputy Minister Eid Al-Hoot.
- While a small number of new trained inspectors have been added to the Copyright Department at MOCI in Riyadh, resources there are inadequate and are almost totally lacking in the rest of the Kingdom to deal with continued high levels of piracy.
- A prosecutor must be appointed to handle cases before the VRC.
- The Police Committee in Riyadh should be duplicated in other major cities to assist with street vendor raids and to investigate large producers and distributors of pirate product. Greater police involvement is critical and has yet to be ensured.
- A special cyber crime unit within the Police Committees and an Internet piracy unit at MOCI should be established, and the MOCI should work closely with the Communication and Information Technology Commission (CITC) to take actions against Internet piracy. At present, nothing is being done by the government to address rampant online piracy over P2P networks and enforcement authorities do not take actions to curb copyright infringements committed in this way.
- Enforcement of marketing conditions (such as religious requirements) must be even-handed and translate into raids and takedown actions against pirate product, which is both freely available on the streets and advertised online.



- The CITC must continue blocking websites and do so strictly on the basis of copyright violations and, if it is a local website, subject the owner to deterrent penalties.
- The MOCI should act on its own to enjoin sites engaged in infringement.
- The VRC must act to impose deterrent penalties for Internet infringements.
- The MOCI, the police and rights holders should cooperate to develop a plan to convert the compounds to legitimacy, bringing Pay-TV piracy in the compounds to an end.
- The customs system must be reformed to establish an IPR Task Force and Saudi Customs must impose fines on importers of seized product.

IPR Legislation

- The Copyright Act must be amended to fully implement and ratify the WCT and WPPT, including ensuring the law provides incentives for ISPs to cooperate with rights holders against online piracy.

TURKEY

The Government of Turkey continues to make incremental progress in the fight against piracy and the development of a modern IP system. Nonetheless, the value of unlicensed software use in Turkey is enormous (increasing to \$284 million in 2010, while the PC software piracy level remains too high at 62%), book piracy continues to hinder the development of the publishing industry, and Internet piracy has grown in recent years, on top of traditional physical (OD) piracy. The EU accession process and the “Twinning Project” with EU Member State Governments had led to engagement on enforcement issues and an invigorated legislative process, expected to lead to legislation to complete EU Directive implementation, including implementation of the WCT and the WPPT. Unfortunately, that process has either slowed on chapters opened or stalled completely, with no new negotiations/chapters moving forward. The 2009 launch of the “Framework for Strategic Economic and Commercial Cooperation” has led to greater engagement between the United States and Turkey on important issues, including intellectual property rights. While noting the slowing of progress toward EU accession, it is noteworthy that the EU Accession IP Chapter obligates Turkey to make sure that “enforcing bodies dispose of sufficient administrative capacity to enforce the rights concerning the fight against piracy and counterfeit,” and that it “provides a satisfactory track record of investigations, prosecutions and judicial treatment of violations and an improved performance concerning the effective enforcement of Intellectual Property Law, including a substantial reduction in the volume of counterfeited and pirated goods exported to the EU.”

It is hoped that through the development of the MENA Trade and Investment Partnership, mutually beneficial short- and long-term IP goals can be set, and that the following can be accomplished:

IP Enforcement

- Improve coordination and cooperation between authorities, police, judiciary and anti-piracy commissions in cities other than Istanbul, Ankara and Izmir.
- Increase the number of specialized IP courts throughout Turkey in cities other than Istanbul, Ankara and Izmir, and address and eliminate hurdles experienced in the different IPR courts.



- Ensure courts issue preliminary court injunctions in a timely and effective manner.
- Speed criminal trial process in appeals of copyright cases, and work to defeat recidivism by significantly reducing number of suspended sentences and/or amnesties.
- Take an active role in significantly reducing Internet piracy, by, *inter alia*, establishing a special division within the IP Police.
- Reconfirm through a formal circular that Police and Inspection Committee members have *ex officio* raiding authority against sales of copyrighted materials on the streets as well as banderole violations.
- Take significant steps to legalize businesses engaged in end-user software piracy, including large- and medium-sized businesses.
- Take significant raiding actions against illegal commercial photocopying and organized pirate printing of books.

IP Legislation

- Amend copyright law further to fully implement the WCT and WPPT, make necessary amendments to ensure that copyright piracy is included among cybercrimes, and ensure that ISPs comply with notices to take down infringing materials and have in place effective and fair policies to address repeat infringers.
- Amend the laws and regulations to ensure that private copy levies are collected and fairly distributed to right holders; at present, all amounts accrue to the Ministry of Culture and Tourism, which does not collect efficiently or use the money that is collected for useful anti-piracy purposes or in ways helpful to right holders.
- Take urgent action to legalize all use of software in the public sector by government agencies, employees, contractors and grantees, including implementation Circular No. 2008/17.

UNITED ARAB EMIRATES

IIPA notes that the Government of the United Arab Emirates has taken some significant strides in protecting copyright and in copyright enforcement over the past decade. The court system has been particularly effective in dealing with infringements, notably, related to both business and entertainment software, and audiovisual materials. Deterrent sentences have become more of the norm in recent years in piracy cases, driving pirates out of the Emirates and creating an overall deterrent for those remaining in the country. While the copyright law (Federal Law No. (7) of the year 2002 (effective July 1, 2002)) is not perfect, it provides basic protections and allows for the imposition of deterrent sentencing in open-and-shut piracy cases. We further note that the UAE has joined and partially implemented the WCT and WPPT.

Among remaining issues in the Emirates for copyright owners is the inability of right holders in music to exercise their broadcast and public performance rights. The copyright legislation of the UAE provides for a right of broadcasting and public performance in music, including recorded music, such that commercial establishments that use music in these ways (e.g., radio stations, hotels, restaurants, shops, discos, bars, dance schools, etc.) must license the uses. Globally, the most effective, efficient and user-friendly way for producers and performers to license their catalogues of recordings to commercial establishments that use recorded music in the operation of their businesses is through collecting societies. In 2004, the major music



companies in the Middle East including the Recording Industry Association of America's members, and a number of local record companies, decided to establish a collecting society in the UAE, to be called the Emirates Music Rights Society ("EMRS"). Unfortunately, the UAE Government will not approve this collecting society, leaving no practical way for right holders to enforce their rights. More specifically, the Ministry of Economy still has not established a set of guidelines and rules for the approval of collecting societies, and without UAE Government approval, collecting societies are not permitted to operate. We are hopeful that through the development of the MENA Trade and Investment Partnership, mutually beneficial short- and long-term IP goals can be set, and that the resolution of this long-standing matter related to the recognition of EMRS as a collecting society, can occur, to permit IIPA members to begin collecting in the UAE the royalties clearly provided for under the UAE copyright law.

IIPA and its members appreciate the opportunity to provide you with the above information in relation to the development of "The Trade and Investment Partnership for the Middle East and North Africa." We would be pleased to follow up with you on the development of this Partnership as you move forward.

Sincerely,

Michael Schlesinger
International Intellectual Property Alliance