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*Via electronic submission: FR0441@ustr.gov*

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Executive Director of the GSP Program and Chairwoman of GSP Subcommittee

Office of the U.S. Trade Representative

1724 F Street, NW

Washington, DC 20508

Re: GSP Country Practices Review, 016-CP-05,  
Lebanon, Pre-Hearing Brief and Request to  
Appear at the GSP Public Hearing

To the GSP Subcommittee:

The International Intellectual Property Alliance (IIPA) hereby submits this Request to Appear at the November 30, 2005 public hearing on the GSP country practices review of Lebanon. As you know, IIPA was the original petitioner of the GSP review of Lebanon's intellectual property rights practices in the annual review. Attached to this letter is IIPA's Pre-Hearing Brief.

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Thank you.

Sincerely,

Eric Smith  
President  
International Intellectual Property Alliance



**Pre-Hearing Brief**  
**International Intellectual Property Alliance**  
**GSP Review of the Intellectual Property Rights Practices of Lebanon**

Before the GSP Subcommittee  
 Case 016-CP-05, Lebanon  
 November 30, 2005

The International Intellectual Property Alliance (IIPA) appreciates the opportunity to provide the GSP Subcommittee with a summary of the serious copyright legal reform and enforcement deficiencies in Lebanon. In short, the government of Lebanon does not comply with the eligibility requirements for GSP benefits. In our view, the GSP Subcommittee should recommend to the President that he make such a determination, and should remove Lebanon's eligibility to participate in the GSP Program until such time as it has achieved adequate and effective copyright protection and enforcement as contemplated by the GSP statute.

On September 3, 2003, the United States Trade Representative "accepted for review" a Petition filed by the IIPA with the U.S. government as part of its "Country Eligibility Practices Review" of the Generalized System of Preferences (GSP) trade program. To qualify for benefits under the GSP Program, USTR must be satisfied that Lebanon meets certain criteria, including that it provides "adequate and effective protection of intellectual property rights." IIPA's Petition noted three major deficiencies in Lebanon's protection of copyright that caused economic harm to U.S. right holders that result in Lebanon failing to meet the GSP standard of providing "adequate and effective" copyright protection in practice: (1) deficiencies in the copyright law in Lebanon that render legal protection inadequate and ineffective; (2) the failure to enforce criminal remedies against pirate cable TV operators, making protection of U.S. audiovisual works inadequate and ineffective; and (3) enforcement efforts against piracy in Lebanon that are inadequate and ineffective. Each of these remains unresolved.

On October 7, 2003, IIPA testified regarding the deficiencies of Lebanon's protection of copyright that warranted immediate suspension or withdrawal of Lebanon's GSP benefits. On February 14, 2004, IIPA provided the GSP Subcommittee a copy of IIPA's February 2004 Special 301 report on Lebanon to supplement the public GSP file on this investigation. On May 25, 2004, IIPA wrote to the GSP Subcommittee advocating the immediate suspension or withdrawal of Lebanon's GSP benefits for its continuing failure to comply with the IPR obligations under the GSP program.

In late 2004, Lebanon took some steps toward controlling and reducing piracy in certain sectors. In November 2004, a significant police raid was carried out against three warehouses located in Beirut, yielding over 100,000 pirate optical discs worth over US\$2 million. As a result, and for the first time in Lebanon's anti-piracy history, the owners of the three warehouses,



including a notorious pirate were arrested and put in jail. A week later, a sweep was conducted on an exhibition filled with pirate vendors. Unfortunately, these latter raids failed to result in permanent closures — indeed, the pirates were back in business as usual less than one week after the raids. Perhaps more importantly, meaningful anti-piracy efforts by the Government of Lebanon largely stopped in February 2005.

The U.S. Trade Representative, in his April 2005 Special 301 announcement, noted that Lebanon was being maintained on the Special 301 “priority watch list” in part because of “rampant cable TV piracy, retail piracy of pre-recorded optical discs, and computer software piracy...” He continued, “Problems persist with the widespread availability of pirated optical discs and rampant cable piracy.” We agree with this assessment and believe that it reinforces our contention that Lebanon fails to comply with the IPR obligations under the GSP program.

Estimated losses to the U.S. copyright industries in 2004 due to copyright piracy in Lebanon were \$31 million, with piracy rates at 70% or above for all industries reporting such statistics.

<b>LEBANON</b> <b>Estimated Trade Losses Due to Copyright Piracy</b> <i>(in millions of U.S. dollars)</i> <b>and Levels of Piracy: 2000-2004<sup>1</sup></b>										
	2004		2003		2002		2001		2000	
	Loss	Level								
<b>Motion Pictures</b>	10.0	80%	10.0	80%	8.0	80%	8.0	80%	8.0	60%
<b>Records &amp; Music<sup>2</sup></b>	3.0	75%	2.5	70%	2.0	65%	2.0	65%	2.0	68%
<b>Business Software<sup>3</sup></b>	15.0	75%	14.0	74%	3.5	74%	1.1	79%	1.3	83%
<b>Entertainment Software</b>	NA	75%	NA	80%	NA	NA	NA	NA	1.5	96%
<b>Books</b>	3.0	NA	2.0	NA	2.0	NA	2.0	NA	2.0	NA
<b>TOTALS</b>	31.0		28.5		15.5		13.1		14.8	

<sup>1</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2005 Special 301 submission at <http://www.iipa.com/pdf/2005spec301methodology.pdf>.

<sup>2</sup> Loss figures for sound recordings represent U.S. losses only.

<sup>3</sup> BSA’s final 2003 figures represent the U.S. software publisher’s share of software piracy losses in Lebanon, as compiled in October 2004 (based on a BSA/IDC July 2004 worldwide study, found at <http://www.bsa.org/globalstudy/>). In prior years, the “global” figures did not include certain computer applications such as operating systems, or consumer applications such as PC gaming, personal finance, and reference software. These software applications are now included in the estimated 2003 losses resulting in a significantly higher loss estimate (\$22 million) than was reported in prior years. The preliminary 2003 losses which had appeared in previously released IIPA charts were based on the older methodology, which is why they differ from the 2003 numbers in this report.



## **COPYRIGHT PIRACY**

Retail piracy of optical discs (CDs, VCDs, DVDs, CD-ROMs, “burned” CD-Rs, etc.) continues in Lebanon. Locally burned CD-Rs are taking an increasing larger part of the pirate market in Lebanon. In addition, some pirated discs are known to be produced locally in one unregulated optical disc plant, while many more are imported from Asia, particularly Malaysia, and lesser quantities from Eastern Europe. Syria is a major transit country for pirated optical discs from Malaysia and China,<sup>4</sup> and a source country for locally burned pirate CD-Rs, which are being smuggled into Lebanon.

Online piracy is on the rise in Lebanon as well. IIPA has become aware of online services like [www.Musicoffers.lb](http://www.Musicoffers.lb) or “Millennium Songs,” offering illegal music compilations for sale in Lebanon via the Internet or e-mail. The Lebanese government has been regularly alerted to the existence of these illegal services, but has taken no action regarding these sites to date. Piracy at Internet cafés is also of concern to entertainment software publishers. There are about 500 Internet cafés in the country, only 30% of which are licensed.

Cable piracy continues to devastate the theatrical, video, and television markets for U.S. copyrighted materials. There remain 650 cable operators that serve some 80% of Lebanon’s households retransmitting domestic and foreign terrestrial and satellite programming without authorization to their subscribers, charging an average monthly fee of US\$10. Occasionally, these systems also use pirate videocassettes and DVDs to broadcast directly to their subscribers, including the broadcasting of recent popular movies and TV shows, and movies that have yet to be released theatrically in Lebanon.<sup>5</sup> The theatrical market continues to suffer, as films are frequently retransmitted by these pirate cable operators prior to their theatrical release or legitimate broadcast by television stations in Lebanon. The legitimate video market has been almost entirely destroyed by the various forms of piracy in Lebanon. Local broadcast television stations have canceled long-standing licenses with copyright owners because they cannot compete with the pirates.

Book piracy, in the form of illegal printing and commercial photocopying, continues at an even pace in Lebanon, severely curtailing the legitimate market for academic materials. In addition to the damage to the local market, Lebanon continues to produce pirated books for export. Evidence of print piracy leaking out of Lebanon into neighboring countries continues to mount. Book publishers are asking the Lebanese government for more enforcement actions, especially against commercial photocopy shops. Publishers have been working with the government to bring the latter's attention to the specific shops in violation of copyright, and these efforts will continue. In addition to enforcement actions, publishers are working with the

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<sup>4</sup> A customs raid on July 15 yielded about 19,000 pirate CDs and DVDs imported from China, as evidenced by the airway bill.

<sup>5</sup> Each pirate cable operator retransmits an average of 100 different television channels to their estimated 460,000 subscribers. Included among those channels is a minimum of four movie channels that engage in unauthorized broadcasts of motion pictures 24 hours a day.



Ministry of Economy and Trade to raise awareness of the importance of copyright on university campuses. The Ministry has agreed to partner in the production of promotional material to be distributed to bookshops, libraries and universities during the high copying season toward the start of the university terms. Publishers are also working with the Ministry to organize educational seminars and are asking university presidents to get involved by sending letters to their deans and department heads about illegal photocopying. These educational and awareness opportunities are all positive steps, but will be rendered less effective if not coupled with significant enforcement against illegal activity. In short, dialogue between the authorities and industry is a start, but that must be translated to meaningful action on both the enforcement side and the educational side if the market is to be legitimized.

### **COPYRIGHT ENFORCEMENT**

IIPA members were given the opportunity in 2004 and 2005 to correspond directly with the Ministry of Economy and Trade, providing a non-exhaustive list of some locations/services suspected of engaging in copyright infringement of various kinds. The list included over 400 potential targets. As noted above, several raids were carried out in the end of 2004; nonetheless, many more raids against a more diverse list of targets will need to be run to eradicate piracy in Lebanon. Inspections, investigations, and raids must be sustained, i.e., multiple raids against the same targets, immediately followed by aggressive *ex officio* prosecution, in order to effectively reduce piracy levels in Lebanon. Piracy levels in Lebanon cannot be successfully brought down without criminal prosecutions resulting in deterrent fines/imprisonment at the end of the day. In general, law enforcement agencies, including the Ministry of Economy, should — as a rule and without requiring a private sector complaint — pass on the results of successful raids to the appropriate magistrates, who in turn should initiate *ex officio* prosecution of the copyright criminals. Prosecution of copyright crime in Lebanon should not require a private sector complaint. In addition, private sector representatives should receive a blanket guarantee that, when they are invited to identify pirate product, the pirate suspect is not present. In the past such ‘joint’ pirate product identification sessions have led to serious personal threats to certain rightholders, discouraging them from cooperating with the authorities.

A positive development is that the Lebanese Judicial Police are planning to form a special bureau for the internet and IP crimes. The Motion Picture Association (MPA), Business Software Alliance (BSA) and International Federation of Phonographic Industries (IFPI) will be funding the purchase of computers and the software that will be needed by this bureau.

### **Warehouse Raid Largest of Its Kind; Proof Will Come in Court Results**

As noted, in late 2004, Lebanese authorities ran several raids raising hopes that the government had finally made the commitment long sought to eradicate piracy from Lebanon. The first took place on November 25, 2004, in which more than 15 armed policemen accompanied by industry representatives stormed three warehouses in one of the most dangerous



areas of Beirut (Sabra & Chatila), and confiscated an estimated 100,000 pirate DVDs, computer programs, music CDs, and computer games. The confiscated materials filled three vans. One of the warehouses raided belonged to the infamous “Fneish” family. The retail value of the confiscated products was about US\$2 million. It is noteworthy that on January 10, 2005, a local court refused the warehouse owners’ application to be released on bail. As of February 5, 2005, the three pirates were still in custody. Some DVDs seized in the raids were found to have the same labeling and spelling mistakes as discs found in the UK and South Africa, and were believed to be sourced from as far away as China. IIPA looks to the Lebanese authorities to follow up on these raids with swift prosecutions leading to deterrent criminal sentences. It should be noted in this context that the Fneish family has been involved in piracy activities for many years. The damage its illegal activities have inflicted on the copyright sector in Lebanon over the last years runs in the dozens of millions of dollars. Such blatant organized criminal activity can only be stopped if the perpetrators are severely punished with unsuspended prison sentences in combination with deterrent fines.

### **Set of Retail Raids Not Effective Without Repeat Visits**

Another set of raids, this time by the Ministry of Economy and Trade, took place as a result of repeated private sector complaints beginning on December 1, 2004, against pirates at the “Futuroscope Exhibition,” continuing one day later at ExpoBeirut. In the first action, two major outlets were raided (other outlets immediately closed when the raid was launched), yielding seizures of hundreds of pirated CDs and DVDs. The raids took place in a very tense and threatening context, and some of the pirates tried to use their contacts to get the Minister to call off the raid. Unfortunately, IIPA understands that, apart from the stand “Compugraphics,” the other stands at the expositions were back selling pirated materials again by December 4, just three days after the first raids. Two weeks later, the exhibitions were raided again, yielding seizures of a number of pirate CDs and DVDs (about 1,000), but, again, not resulting in the removal and/or definitive closure of the pirate stands. These actions by the Ministry of Economy and Trade were a welcome development and more effective than what we have seen in the past, but they will remain without a lasting effect if the raids are not carried out more thoroughly and the selling points found to be involved in pirate activity are not completely emptied, closed down and definitively sealed so that they cannot be reopened. In addition, as a result of such raids, all the perpetrators involved should be subject to immediate criminal investigation and *ex officio* prosecution. Other raids were run in late 2004 against 50 software retail outlets, yielding some seizures,<sup>6</sup> but no computer hard discs or CD burners.

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<sup>6</sup> In the December raids, 300 pirated cassettes, 15,000 CDs and 7,000 DVDs were seized.



### **Cable Piracy Actions Lead to No Cases, No Results**

After years of frustration trying to resolve the massive cable piracy problem, in Lebanon, in 2004, a criminal complaint was filed against all cable pirates with the office of the Chief Public Prosecutor. The complaint was referred to the police for investigation. The police questioned over 400 cable pirates, nearly all of whom confessed that they were engaged in unauthorized transmissions of copyrighted materials. Those admitting their actions signed an undertaking before the police to stop pirating. However, instead of seeking indictments and referring the cases to trial court, the Chief Public Prosecutor shelved the complaint. In early February 2005, a new criminal complaint was filed with the Chief Public Prosecutor against these 400 admitted cable pirates. The Prosecutor referred this new complaint to the central detective agency for investigation. However, as of November 7, 2005, this new criminal complaint continues to linger in the drawers of the investigating police officer without any questioning or raids.

In late 2004, IIPA understood that the Ministry of Economy and Trade (MOET) would be making a public announcement in which it would give cable pirates a two month amnesty to legitimize their activity, or cease transmission, and that after the passage of the two month period, MOET would start cracking down on pirates on the basis of complaints filed with it. Cable operators, in turn, were to launch a publicity campaign to announce the availability of an affordable alternative to the cable pirates. However, the MOET seems to have reneged on its commitment after the formation of a new cabinet. This is a very disappointing development.

### **Courts Have Failed to Deter, Adequately Compensate for, Piracy**

The Lebanese courts continue to have difficulties meting out justice against even blatant copyright pirates.<sup>7</sup> An important first step in 2005 toward judicial reform would be the establishment of a specialized group of prosecutors to work with the IPR unit or other enforcement officers (e.g., Customs), trained in copyright, to handle all copyright cases, and the development of a cadre of judges who have received specialized training in copyright and who could be regularly assigned to hear such cases.

Due to various problems in the judicial system, no results were obtained via the courts that have had any noticeable effect on piracy in Lebanon in 2004 or to date in 2005.<sup>8</sup> The

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<sup>7</sup> IIPA has noted in previous reports detailed instances of prosecutorial error in preparing piracy cases which have doomed straightforward piracy cases to failure (e.g., the prosecutors filed the cases in the wrong court).

<sup>8</sup> Civil copyright cases brought against pirates in Lebanon have never led to deterrent results. In 2002, while one conviction resulted in a one-month jail sentence – the first jail sentence ever in Lebanon for copyright piracy – the sentence has never been served. In addition, most fines are non-deterrent. Meanwhile, civil cases languish, and those decided have led to laughably low damages. For example, in some cases, no damages were awarded for harm done in the past, and were only awarded prospectively for infringements occurring in the future! Procedural problems in two cases in 2002 resulted in ineffective enforcement against known cable pirates. In one case (the “Elio Sat” matter), lack of police cooperation following a court-ordered inspection rendered it impossible to obtain the evidence necessary to successfully conclude the case. In yet another cable piracy case (the “Itani” matter), a court-appointed expert was unable to act quickly enough to catch the pirate cable operator to obtain the



criminal justice system did show some promise in 2003, as 41 defendants were convicted and sentenced for cable piracy in the first such criminal convictions in the country's history. Unfortunately, the sentences included no jail time, and the fines ranged from a mere US\$4,533 for some defendants to \$9,335 for the most egregious defendants, hardly a deterrent.<sup>9</sup> Most other cases get bogged down by procedural problems, judges' relative lack of familiarity with intellectual property laws, inefficient handling, and delays in adjudication. It should be noted that in a recent case, a judge refused to issue an injunction because the plaintiff did not register his copyright in Lebanon with the Ministry of Economy and Trade. This bench decision, if not reversed, would place Lebanon in direct violation of international copyright standards, which do not permit formalities (such as a registration) to interfere with the enjoyment and exercise of rights.

In late 2004, the Beirut court of appeals reversed a conviction handed down by the trial court against Jammal Trust Bank, a local bank which was adjudged, on the basis of a court-appointed expert, to be using unlicensed software. The Court of Appeals reached its decision, ruling that the use of the software by the bank did not result in any commercial benefits to the bank. This decision is very troublesome, and shows the lack of familiarity of the judge with the problem of piracy and its implications.

Copyright owners in motion pictures and television broadcasting have not been able to seek redress for copyright violations through the courts against blatant cable pirates. Consequently, in 2003, copyright owners began pursuing a new approach, working with satellite broadcasters to pursue actions based on those channels' broadcasting rights. In August 2003, a Beirut judge issued the first ever injunction against seven cable pirates, based on the broadcasting right.<sup>10</sup> It remains to be seen whether the judicial system can be used effectively to enforce such orders. As another new strategy, in 2004, U.S. motion picture industry representatives assisted local licensees in bringing civil cases against infringing DVD distributors on the basis of the commercial agency law. This remedy is not available for all right holders, however, and is not a substitute for concerted ex officio action by the public authorities.

## **COPYRIGHT LAW AND RELATED ISSUES**

The Copyright Law of Lebanon (effective June 14, 1999) provides, on its face, a sound basis for copyright protection of U.S. works and sound recordings,<sup>11</sup> including stiff penalties (on

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evidence necessary to proceed.

<sup>9</sup> The total awards to the two right holders, US\$160,000 for one and US\$20,000 for the other, were relatively substantial for copyright cases decided in Lebanon. The court also ordered the confiscation of equipment and directed that details of the convictions be published in two local newspapers. This constituted the first time a Lebanese court has penalized cable pirates. The decision has been appealed by the pirates, and the case is still pending before the court of appeals.

<sup>10</sup> The two petitioners in the case were Showtime and Arab Radio & Television. The judge also imposed a fine equal to US\$333 per day for any of the pirates that violated the injunction.

<sup>11</sup> Lebanon is a member of the Berne Convention (Rome [1928] Act) and the Rome Convention. Lebanon should accede to the Berne Convention (Paris 1971 Act), and should join the Geneva (phonograms) Convention in order to provide clearer protection to international sound recordings; Lebanon should also join the WIPO "Internet" treaties, the WCT and WPPT.



the books) for copyright infringement, stiff penalties against cable pirates, confiscation of illegal products and equipment, the closure of outlets and businesses engaged in pirate activities, and a Berne-compatible evidentiary presumption of copyright ownership. The law also provides right holders with a broad communication to the public right (Article 15), but does not take other steps necessary to fully implement the WIPO Internet Treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).<sup>12</sup> The government of Lebanon should be encouraged to fully implement these important treaties, and accede to them as soon as possible.

Unfortunately, the law remains deficient with respect to international standards in several respects,<sup>13</sup> including:

- There is no direct point of attachment for U.S. sound recordings (however, point of attachment for U.S. sound recordings can be achieved by simultaneous publication in the U.S. and any Rome Convention Member).
- Works and sound recordings are not explicitly given full retroactive protection in accordance with international treaties.
- Article 25, even as implemented by decision No. 16/2002 (July 2002), still does not meet the standards/requirements of the Berne Convention or the TRIPS Agreement. While many modern copyright laws include specific exceptions for the copying of computer programs under narrowly defined circumstances, and/or exceptions allowing the copying of certain kinds of works for “personal use” (but almost never computer programs, except for “back-up” purposes), Article 25 sweeps far more broadly than comparable provisions of either kind, to the detriment of copyright owners. The implementing decision addresses some areas of concern raised by IIPA in the past, but not the chief area, which is that the exception is essentially a free compulsory license for students to make multiple copies of a computer program. Such an exception violates the requirements of Berne and TRIPS since it “conflicts with a normal exploitation of the work” (software aimed at the educational market) and it “unreasonably prejudices the legitimate interests of right holders” (eliminating completely the educational market for software).
- There are certain other overly broad exceptions to protection (e.g., Article 32).

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<sup>12</sup> For example, the law should prohibit circumvention of technological protection measures used by copyright owners to protect their works in the digital environment from unlawful access or unlawful exercise of rights. The law should also prohibit preparatory acts (e.g., manufacture) of circumvention devices or provision of circumvention services.

<sup>13</sup> A more detailed discussion of remaining deficiencies in Lebanon’s copyright law can be found in the 2003 Special 301 report, at <http://www.iipa.com/rbc/2003/2003SPEC301LEBANON.pdf>. The government of Lebanon must consider the far-reaching consequences of its failure to bring its law into compliance with international standards, including potential negative effects on its chances to quickly accede to the World Trade Organization. WTO members will expect Lebanon to achieve minimum standards of intellectual property protection as spelled out by the TRIPS agreement.



- Most significantly, since the deterrent penalties provided on the books are not carried out in practice, Lebanon's legal framework at present pays only lip-service to the severe problem of piracy. Each of the items noted would arise in the WTO accession process, and Lebanon must take measures to address these deficiencies.

Because Lebanon has emerged as a producer of pirated optical discs (including "burned" CD-Rs), Lebanese authorities must move toward implementation of effective measures against optical disc piracy. In particular, the Lebanese government should introduce effective optical media plant control measures, including the licensure of plants that produce optical discs; the registration of locations engaging in the commercial duplication of optical discs onto recordable media (CD-R "burning"); the tracking of movement of optical disc production equipment, raw materials, and production parts (so-called stampers and masters); the compulsory use of identification codes (both mastering codes and a mould code), in order to successfully track the locations of production; plenary inspection authority as to licensed plants and search and seizure authority as to all premises; and remedies, including revocation of licenses, civil, administrative, and criminal penalties for violations of the law.

In sum, Lebanon continues to fail to meet the GSP Program's eligibility requirements. Lebanon should, therefore, be denied eligibility for the program's benefits until such time as it complies with the GSP program's eligibility requirements and fulfills commitments made to the U.S. government to improve its copyright protection and enforcement regime.

Respectfully submitted,

International Intellectual Property Alliance