

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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Submitted to www.regulations.gov

Jennifer Choe Groves
Senior Director for
Intellectual Property and Innovation
Office of the U.S. Trade Representative
600 17th Street NW
Washington, D.C. 20508

Re: Docket: USTR-2009-0001
Israel: Special 301 Out-Of-Cycle Review
IIPA Comments on the Status of Copyright
Protection and Enforcement
74 Fed. Reg. 51215 (October 5, 2009)

Dear Ms. Groves:

This submission by the International Intellectual Property Alliance ("IIPA") responds to USTR's request for comments concerning "acts, policies and practices regarding the adequacy and effectiveness of intellectual property protection and enforcement" in Israel as part of the Out-of-Cycle review announced by USTR on April 30, 2009. IIPA supports keeping Israel on the Special 301 list, consistent with its recommendation in IIPA's February 2009 report to USTR. Israel should take the actions noted in that report, including enforcing court decisions ordering Israeli cable operators to make payments for retransmissions of broadcast television signals and acceding to and implementing the WIPO Internet Treaties, in order to provide an appropriately high level of IP protection consistent with that of members of the OECD.

About the IIPA

The International Intellectual Property Alliance (IIPA) is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries in bilateral and multilateral efforts working to improve international protection and enforcement of copyrighted materials and open up foreign markets closed by piracy and other market access barriers. IIPA is comprised of seven member associations (listed in the letterhead below), which in turn represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world. IIPA has participated in the Special 301 process since its inception 20 years ago.



IIPA's February 2009 Submission on Israel

In IIPA's country report on Israel submitted to the U.S. Trade Representative as part of its February 2009 submission in the annual Special 301 process, we listed nine priority actions – both enforcement-related and legislative – that, if taken by the Israeli government, could lead to necessary improvements in copyright protection and enforcement in Israel.¹ The following lists several of those proposed actions for which we have updated information.

Priority Actions Requested in 2009

- **Enforce court decisions ordering Israeli cable operators to make payments for retransmissions of broadcast television signals, and scrap draft law demoting the cable and satellite retransmission right to a mere right of remuneration.**

Update: Notwithstanding protections accorded to retransmitted works under Israel's copyright laws and an Israel Supreme Court decision confirming that Israeli law affords such copyright protection to cable retransmissions, Israeli cable operators continue to refuse to make payment for retransmissions of any broadcast television signal. It is imperative that this matter be resolved promptly with fair settlement for past failure to compensate right holders, together with a reasonable agreement with AGICOA for payment going forward. In the Israeli government's *2009 Submission of the Government of Israel to the United States Trade Representative With Respect to the 2009 "Special 301 Review"* ("Israeli Government Special 301 Review"), which was submitted to USTR in March 2009, the government indicated, "With respect to the referred to court case brought by AGICOA that case is still pending in the court system and its outcome will depend, inter alia, on the ability of AGICOA to prove their case." We are unaware of any updated information regarding a successful resolution of this ongoing issue.

Regarding the draft collective management legislation, in the Israeli Government Special 301 Review, the Israeli government indicated that two issues, the "requirement for a single umbrella organization for the collection of royalties from users of copyright material" and "the method of getting the new scheme started with respect to setting initial tariff rates" were "under consideration and certain elements of the bill may change either as a result of committee action or at government initiative." The government indicated that Knesset debate of this Bill was not likely to resume in early period of the next Knesset. We have no indication of whether any discussion has ensued since the Israeli government submission.

- **Consider copyright amendments to enhance protection, e.g., by adding prohibitions against the circumvention of technological protection measures, circumvention services, and the trafficking in circumvention devices....**

Update: In the Israel Special 301 Review submitted to USTR in March 2009, the Israeli government addressed these issues. The government takes the position "Israel is not a member of either the WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonogram Treaty

¹ See IIPA 2009 Special 301 report on Israel, posted at <http://www.iipa.com/rbc/2009/2009SPEC301ISRAEL.pdf>.



(WPPT), the only multilateral instruments which obligate implementation of Technical Protection Measures and Digital Rights Management ... [h]ence, Israel is under no obligation to introduce TPM....” It also states “many several [sic] large authors’ groups vehemently oppose TPM.” We are unaware of authors groups vehemently opposing TPMs or the grounds for such opposition. Rather, it is clear and there is no debate that content providers worldwide rely on an array of TPMs to set up workable commercial approaches to content creation and distribution. The varying TPMs allow for varying distribution models, from pay-per-use models to free-and-clear transfers, and even, as the government indicated, some models which would include unencrypted access to content.² WIPO has been clear, from the earliest days of consideration of the WCT and WPPT that

“it is not sufficient to provide for appropriate rights in respect of digital uses of works, particularly uses on the Internet. In such an environment, no rights may be applied efficiently without the support of technological measures of protection.... There was agreement that the application of such measures... should be left to the interested rights owners, but also that appropriate legal provisions were needed to protect the use of such measures.”

Lastly, the government notes “lack of uniform implementation worldwide.” This is inaccurate. First of all, there are now 71 members of the WCT and 69 members of the WPPT, and it is expected that the European Union will be joining very soon, such that by early 2010, there are expected to be 88 members of the WCT and 86 members of the WPPT. This constitutes global consensus, making Israel an outlier. Second, with respect to practical implementation in national laws, even more countries have implemented into domestic law the obligations of the two treaties than have acceded or ratified them. As of November 2009, over 100 countries/territories had fully or partially implemented the anti-circumvention obligations, had already committed to, or had draft legislation which would provide such protection. At least two-thirds of these countries/territories cover all or some access controls, are committed to do so, or have draft legislation which would provide such protection.

The IIPA reasserts the remaining Priority Actions from the 2009 Special 301 report, and will continue to update the Office of the U.S. Trade Representative as we receive information pertaining to those additional priorities spelled out in that report.

Respectfully submitted,

Michael Schlesinger
International Intellectual Property Alliance (IIPA)

² It should be noted that such unencrypted access does not indicate a non-use of TPMs or DRM; therefore, protection against circumvention of TPMs remains a vital part of such distribution models.