



March 1, 2006

Ms. Marideth J. Sandler
Executive Director
Generalized System of Preferences (GSP) Program
Office of the U.S. Trade Representative
600 17th Street NW, Room 403
Washington, DC 20508

Re: Lebanon GSP IPR Review
Case: 016-CP-05

To the GSP Subcommittee:

We take this opportunity to update and supplement the public file with respect to the ongoing investigation into Lebanon's intellectual property rights practices under the GSP trade program.

Attached please find IIPA's 2006 Special 301 report on Lebanon which we filed with USTR on February 13, 2006. This report is also available online at the IIPA website, <http://www.iipa.com>.

Sincerely,

Michael Schlesinger
Vice President and Associate General Counsel
International Intellectual Property Alliance

cc: Meredith Broadbent

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301 REPORT

LEBANON

EXECUTIVE SUMMARY

Special 301 Recommendation: Lebanon should remain on the Priority Watch List in 2006. In addition, because Lebanon fails to meet the criteria for benefits under the Generalized System of Preferences trade program, Lebanon's GSP benefits should be immediately suspended.

Actions to be Taken in 2006:

- **Immediately Establish Special IPR Unit:** Piracy in Lebanon remains serious. Interior Minister Hassan Sabaa agreed to and officially supported the establishment of a Special IPR Unit in the Lebanese Judicial Police with 25 officers. This Unit must be made operational as a matter of the highest priority. The new Unit should take actions *ex officio*, running market sweeps, seizing pirate materials (optical discs, pirate photocopies of books, offset print books destined for export, etc.), arresting infringers, and forwarding case files to prosecutors for criminal proceedings. Market raids should result in seizure of all suspected pirated goods, as well as tools and implements (i.e., computers) used in piracy. IIPA cannot emphasize enough that leaving computers with copyshops after a raid is the most detrimental thing the authorities can do. These machines should be immediately seized and removed. Otherwise, pirates quickly make back-up copies via USB ports before the authorities return (often weeks or months later), when they finally have a court order to confiscate the computer.
- **Immediately Cease Onerous Market Access Barriers:** IIPA has become aware in 2005 that Lebanese authorities are increasingly not permitting legitimate product into the market through non-transparent and discriminatory censorship processes. This discriminatory treatment is further exacerbating an already serious piracy problem in Lebanon.
- **Address Cable Piracy:** Rampant cable piracy continues to be the major piracy problem for the motion picture industry, seriously damaging legitimate markets. The pay television market in Lebanon is nearly 100% pirate. For years, hundreds of small cable systems have engaged in the unauthorized re-transmission of broadcast programming, charging customers for these "pirate" pay television services. The Lebanese Government must take actions against all unauthorized cable facilities, including, where necessary, raids and shut-downs, including seizures of equipment used in the unauthorized transmission of right holders' programs.
- **Monitor Optical Disc Plant:** The Lebanese Government needs to monitor the one known optical disc plant in the country for illegal activity. If investigation determines illegal activity at this plant, steps should be taken to prevent such activities from occurring.
- **Take Significant Customs Actions Against Pirate Imports and Exports:** While much pirate product in Lebanon is now produced inside the country (factory-produced, "burned" to order, photocopied, printed, etc.), there are still significant imports of pirate product into Lebanon from the Far East as well as transshipped through Syria. In addition, Lebanon is one of the few countries in the world where pirate offset prints of books are produced for export, in this case, flooding the rest of the Middle East with pirate editions. Customs

authorities should step up *ex officio* actions to interdict and seize pirate product entering the country or destined for export.

- **Bring More Prosecutions and Increase Deterrent Sentences in Lebanese Courts:** Part of the hope placed in the new IPR Unit is that it will work closely with prosecutors to prepare cases for criminal proceedings. IIPA recommends training a number of prosecutors who will become expert in bringing IP cases, creating an enforcement reporting mechanism between ministries, Lebanese Customs, and prosecutors, and improving the efficiency of the court system through assignment of specially qualified judges to hear copyright cases.
- **Amend Copyright Law to Comply With Key Copyright Treaties:** The Lebanese copyright law remains TRIPS-incompatible in key ways. It should be amended to fix these deficiencies, as well as to protect copyright on the Internet consistent with the WCT and WPPT.

For more details on Lebanon’s Special 301 history, see IIPA’s “History” appendix to this filing at <http://www.iipa.com/pdf/2006SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years’ reports at <http://www.iipa.com/countryreports.html>.

LEBANON Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2001-2005¹										
	2005		2004		2003		2002		2001	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music²	3.2	75%	3.0	70%	2.5	70%	2.0	65%	2.0	65%
Business Software³	17.9	75%	15.0	75%	14.0	74%	3.5	74%	1.1	79%
Books	4.0	NA	3.0	NA	2.0	NA	2.0	NA	2.0	NA
Entertainment Software⁴	NA	NA	NA	75%	NA	80%	NA	NA	NA	NA
Motion Pictures⁵	NA	NA	10.0	80%	10.0	80%	8.0	80%	8.0	80%
TOTALS⁶	25.1+		31.0		28.5		15.5		13.1	

GENERALIZED SYSTEM OF PREFERENCES REVIEW UPDATE

GSP Petition Accepted, Review Ongoing: 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, namely, duty-free imports of many of Lebanon’s key products into the United States, USTR must be satisfied that Lebanon

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2006 Special 301 submission at <http://www.iipa.com/pdf/2006spec301methodology.pdf>.

² Loss figures for sound recordings represent U.S. losses only.

³ BSA’s 2005 statistics are preliminary. They represent the U.S. publishers’ share of software piracy losses in Lebanon, and follow the methodology compiled in the Second Annual BSA/IDC Global Software Piracy Study (May 2005), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA’s 2004 piracy statistics were preliminary at the time of IIPA’s February 11, 2005 Special 301 filing; the 2004 data has been revised and is reflected above.

⁴ ESA’s reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry “losses.” The methodology used by the ESA is further described in Appendix B of this report.

⁵ MPAA’s trade losses and piracy levels for 2005 are available for a limited number of countries and are based on a methodology that analyzes physical or “hard” goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As loss numbers and piracy levels become available for additional countries at a later time, they will be posted on the IIPA website, <http://www.iipa.com>.

⁶ Total losses due to piracy of records & music, business software, and books went up from \$21 million in 2004 to \$25.1 million in 2005.

meets certain discretionary 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.

Update on Review – Lebanon Should Lose GSP Benefits: Since the GSP Petition was accepted, IIPA has testified twice, most recently on November 30, 2005, and made several supplemental submissions in the GSP Review.⁷ On all of these occasions, as in this filing, IIPA states its view that the GSP Subcommittee should recommend to the President of the United States that he make a determination that Lebanon fails to meet the eligibility requirements of the GSP program, and remove Lebanon’s eligibility to participate in the Program until such time as it has achieved adequate and effective copyright protection and enforcement as contemplated by the GSP statute. During 2004, Lebanon exported \$33.2 million worth of products into the United States duty-free, or 44.6% of its total imports into the U.S. In the first 11 months of 2005, Lebanon exported \$30.4 million worth of products into the United States duty-free, or 37.4% of its total imports into the U.S.

PIRACY AND ENFORCEMENT UPDATES IN LEBANON

Promised Special IPR Unit and *Ex Officio* Actions Are Badly Needed: A main feature of the enforcement system that has been missing in Lebanon is a dedicated unit of police officers to take raids *ex officio* and follow up with prosecutors to achieve deterrence in the market.⁸ Instead, the Ministry of Economy and Trade had previously been tasked with copyright enforcement, but without the devotion of the Police, right holders were left with the unfortunately paltry resources of the MOET, which at one time included only six investigators for all of Lebanon, and which has always refused to take actions *ex officio*. In 2004, MOET was more responsive,⁹ but with the recent departure of Director General Fadi Makki, it is unknown whether MOET will reinvigorate its efforts to stamp out piracy. That is why it is quite positive that

⁷ 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. On November 9, 2005, IIPA filed a pre-hearing Brief advocating withdrawal of GSP benefits, and on December 14, IIPA filed answers to post-hearing comments (the GSP hearing was held on November 30, 2005).

⁸ A major shortcoming of the Lebanese enforcement system has been the requirement of private criminal complaints to obtain copyright enforcement, as *ex officio* public criminal actions against copyright infringers had never been taken in Lebanon.

⁹ Indeed, in late 2004, hopes were raised that the Lebanese Government had finally made the commitment long sought to eradicate piracy, as the authorities ran several raids, including one on November 25, 2004 against three warehouses in one of the most dangerous areas of Beirut (Sabra & Chatila), resulting in seizure of an estimated 200,000 pirate DVDs, computer programs, music CDs, and videogames (some of the DVDs were determined to be sourced from China). It was the largest ever copyright enforcement action in Lebanon’s history, leading to arrests and indictments. On January 10, 2005, a local court refused the warehouse owners’ application to be released on bail. However, as of February 2006, the three pirates are no longer in custody, and the prosecutor is still in the course of preparing the case. Also, in 2004, IIPA had been given assurances by then Director General of MOET, Fadi Makki, who was removed from office in November 2005, that he would see to it that manpower increased from 10 personnel (4 MOET and 6 Consumer Protection Division) to 20 dedicated IPR officers, and 120 additional officers from the Consumer Protection Division who would be available for copyright piracy matters. This never materialized.

the Lebanese Government has agreed (most recently in industry visits in November 2005 with Interior Minister Hassan Sabaa) to establish a Special IPR Unit of 25 officers of the Lebanese Judicial Police. This Unit must be made operational immediately.¹⁰ Industry has offered technical assistance and already provided training for this new Unit in late 2005. IIPA calls upon USTR to press the Lebanese Government to make the IPR Unit operational as soon as possible. It is extremely important that this Unit take actions *ex officio*, running market sweeps, seizing pirate materials (optical discs, pirate photocopies of books, offset print books destined for export, etc.), arresting infringers, and forwarding case files onto prosecutors for criminal proceedings. Market raids should result in immediate seizure, securing, and eventually destruction of all pirated materials, as well as equipment used in the course of the infringing activity, such as computers, CD burning machines, printing presses and photocopy machines. Too often, key equipment used in the course of illegal activity is left on the spot and pirates are back in operation again within 24 hours using the very same equipment.

Longstanding Cable Piracy Problem Is No Closer to Resolution: A look back at IIPA's past filings on Lebanon reveals a stark reality: copyright owners in television programs/motion pictures have been dealing with broadcast-related piracy issues for over a decade. There remain an estimated 650 cable operators serving over 80% of the Lebanese population. These operators retransmit domestic and foreign terrestrial and satellite programming without authorization to their subscribers (estimated to number about 720,000) for an average monthly fee of US\$10. Occasionally, these systems also use DVDs to emit unauthorized broadcasts directly to their subscribers, including the unauthorized broadcasting of recent popular movies and TV shows. Each cable operator retransmits about 100 different television channels, including a minimum of four movie channels that broadcast motion pictures 24 hours a day. 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. One legitimate cable operator, Econet, is reportedly on the verge of bankruptcy.

Many lawsuits have been brought over the years against various cable operators. However, in each of these cases, as in cases in which the authorities have inspected cable operators and induced them to sign declarations that they would not broadcast certain programming, there has been little deterrence either against the specific cable operator targeted, or the pirate cable community. The one cable piracy case decided in 2005 demonstrates how long it can take to achieve justice: a court in Beirut handed down a decision in April 2005 for a criminal case that was filed back in June of 2000 – more than five-and-a-half years ago – against four cable TV pirates for the unauthorized transmission of certain titles owned by U.S. motion picture companies.¹¹ Without severe fines and without imprisonment in commercial piracy cases, there will never be a deterrent in Lebanon against this sort of piracy.

¹⁰ Commander of the Judiciary Police (Internal Security Forces) General Anwar Yehya undertook to have the Special IPR Unit established by November 25, 2005 and operational shortly thereafter, even before the issuance of rules and regulations, so that piracy actions could occur in advance of the Christmas season exhibitions, traditional hot-spots for pirate sales. This unit, albeit in existence on paper, is still not fully operational, as the required personnel has not yet been allocated, which in turn delays the transfer of equipment and related training, offered by the copyright sector.

¹¹ The court convicted the four defendants, with sentences consisting of fines of US\$4,667 for each of the pirates, and damages of US\$1,334 each awarded to each of the six plaintiff companies (a total of US\$8,004 in damages to be paid by each of the four defendants), plus confiscation of the equipment, court fees, and costs.

Two criminal complaints were filed in 2005 – one against all the cable operators in February 2005. However, due to the assassination of Prime Minister Hariri, the investigation of that complaint was cancelled; as of February 2006, the complaint sits in the drawer of the public prosecutor.¹² In December 2005, a new complaint was filed with the Ministry of Economy and Trade requesting it to inspect the operations of 10 pirate cable operators in Beirut. No further action has been taken in regard to this complaint. Previous cases have resulted in some convictions and fines, but as noted, there has been no deterrence against cable piracy.¹³

Book Piracy Worsens, Including Pirate Books Produced in Lebanon for Export:

Book piracy is unfortunately on the rise in Lebanon. Lebanon is one of the few countries in the world where offset print pirate editions hurt not only the domestic market, but are being produced for export. These pirate editions, especially in the scientific, technical and medical sectors, flow out of Lebanon into Jordan, Saudi Arabia, and the United Arab Emirates, among other countries. This makes book piracy in Lebanon a major problem for publishers, and warrants high-level attention. In addition, illegal photocopying in and around university campuses is on the rise and threatens to spiral out of control if action is not taken soon. Two universities – American University of Beirut and Lebanese American University in Beirut and Byblos – have recognized the illegal nature of copyright piracy and have taken active measures to nominally crack down on illegal photocopying by students, even reprimanding some students found using illegal copies. IIPA commends these universities for their stance. Despite these efforts, however, illegal photocopying, especially in commercial establishments near the campuses, remains a serious problem (even for these two universities) as major commercial photocopying enterprises are situated to serve educational institutions with illegal copies of books. Other universities have taken little or no action to even discourage use of photocopied materials on campus.¹⁴ Enforcement and education officials should work together to target the massive illegal photocopying taking place in and around these institutions.¹⁵ In 2005, the publishers began working with MOET to educate university communities about copyright and the importance of using legal materials.

Retail Piracy Remains Open and Blatant: Piracy in Lebanon remains serious, running at around 75-80% depending on the industry sector, giving Lebanon the dubious distinction of having one of the highest compound piracy levels in the Middle East. Retail piracy in brick-and-mortar shops is rampant, including optical discs (predominantly “burned” CD-Rs) of sound recordings,¹⁶ movies,¹⁷ entertainment and business software. Some of the “burned” CD-Rs are

¹² The February 2005 complaint followed a similar complaint in 2004 against 400 cable pirates, nearly all of whom confessed that they were engaged in unauthorized transmissions of copyrighted materials. At the time, 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.

¹³ In 2003, for example, a different approach was attempted to beat back cable piracy, as motion picture companies, working with satellite broadcasters, pursued actions based on the channels’ broadcasting rights. In August 2003, a judge in Beirut issued the first ever injunction against seven cable pirates, based on the broadcasting right. In July 2003, the criminal trial court of Beirut convicted 40 cable pirates and sentenced them to pay a total of US\$317,000 in fines and damages, the first court-imposed penalty on cable pirates in Lebanon. The court also ordered the confiscation of equipment and directed that details of the convictions be published in two local newspapers. After two and a half years, the case is still pending before the court of appeals.

¹⁴ Most universities in Lebanon are affected by this problem, but an illustrative list of institutions for which enforcement is overdue includes: Notre Dame University, Haigazian University, Balamand University and Lebanese University.

¹⁵ One case, brought against the well-known Ghali Copy Center in Hamra, has been pending (now on appeal) for two years, while the business continues to operate.

¹⁶ Music piracy (music CDs and cassettes) is currently estimated at around 75% of the total market for recorded music (the highest levels for the entire Middle East region).

sourced back to Syria¹⁸ and the Palestinian territories. Several large and small-scale CD-R burning facilities are operational, while quantities of pirated pressed discs are still imported from Asia, particularly Malaysia, with some discs from China and Eastern Europe. Because of the rise of CD-R burning “to order,” it is essential that, when raids take place, these computers and all servers to which they are directly or indirectly linked be immediately seized and removed – just sealing them and leaving them at the target location is not enough. Syria remains a major transit country for pirated optical discs smuggled into Lebanon.¹⁹ Some street vendors disappeared from the market after the withdrawal of the Syrian armed forces in early 2005, but a number returned later in the year. In addition, a letter from the Minister of Economy and Trade to trade expo and trade fair organizers in October warning them that they would be held personally liable if pirate trade were to take place on their premises has had some effect on the amount of piracy available in trade shows.²⁰

Business Software Piracy: The business software industry continues to suffer 75% piracy rates in Lebanon, attributable to the unauthorized use of software in a business setting as well as the loading of illegal or unlicensed software onto hard drives of computers for sale, so-called hard-disk loading. While there have been some MOET raids against hard-disk loaders, resellers, and end-users, the MOET has generally not been able to stop this brand of piracy.²¹

Optical Disc Plant Remains in Operation: There is one known optical disc production factory in Beirut, Lebanon (Skyline) that has been producing over 150,000 discs per month, of a range of unauthorized copies of copyrighted products including entertainment software, business software, and sound recordings. As noted below, Lebanon should consider regulations to facilitate monitoring of this plant, and any others that might migrate to Lebanon.

Internet Piracy: Due to the high cost of telecommunications and the absence of broadband Internet there is not a predominant amount of pirated material downloaded online in Lebanon yet.²² However, IIPA became aware in the recent past of some online services 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. The availability of illegal mobile download services for music is on the rise.

¹⁷ Pre-theatrical and pre-video release piracy sourced from camcorder copies and from pirate and parallel imported optical discs is widespread in Lebanon. Illegal copies of new U.S. cinema releases are on the market within days.

¹⁸ Syria is being used as a major “transit country” for shipments of pirated discs into Lebanon from Malaysia. The pirated goods are mostly smuggled into Lebanon via “military roads” between Syria and Lebanon. There are no real Customs checkpoints at these roads.

¹⁹ In 2005, unfortunately, Customs took a less active role than in previous years. Nonetheless, they did seize a number of shipments containing pirated business and entertainment software as well as films. Three seizures in 2005 are of note: in July 2005, they seized a shipment of 19,000 pirate DVDs and CDs from China, transshipped through Dubai; in October 2005, they seized 21,000 pirate discs; and in December 2005, they seized a further 7,000 pirate DVDs, 2,400 pirate videogames and over 2,000 pirate copies of business software. Criminal complaints have been filed in all three cases.

²⁰ Unfortunately, despite the warning, there are those who continue to defy these directives. Recently, MOET raided system builders at IT fairs who were using pirate software on their machines.

²¹ The MOET sympathize with shop owners that sell pirated products, and lack technical expertise which would boost their confidence when performing raids.

²² A recent survey of broadband statistics worldwide indicated that Lebanon is not a regional leader in bringing broadband to its country as it, along with Saudi Arabia, Libya, and Algeria “suffer a variety of problems including poor infrastructure, with ADSL demand exceeding supply capabilities, or delay brought on by the national regulators.” Point-Topic, Inc., *World Broadband Statistics Q3 2005*, December 2005, Press Rel. at <http://www.point-topic.com/content/dslanalysis/ukbb051229.htm>.

Courts Have Failed to Deter or Adequately Compensate for Piracy: The U.S. copyright community has pursued criminal complaints, e.g., against cable pirates, and civil cases have also been pursued to a limited extent. Unfortunately, these cases have not led to deterrent results. The Lebanese Government must encourage judicial authorities to adjudicate promptly all intellectual property cases and to impose the maximum penalties allowed under Lebanese law. Inefficiency in the judicial system is a major obstacle to reducing the level of piracy in Lebanon. Postponements in court, even of urgent matters, are the norm, and criminal cases can take years to reach judgment. Private criminal complaints must be filed to obtain copyright enforcement, as *ex officio* public criminal actions against copyright infringers have never been taken in Lebanon.

In one very disturbing development 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 copyright law as well as the problem of piracy and its implications.

TRAINING, PUBLIC AWARENESS AND SPECIAL PROGRAMS

The copyright industries provided training in 2005. For example, the Motion Picture Association together with the Business Software Alliance and International Federation of Phonographic Industries provided a two-day training seminar for the 25 members of the special police unit.

Publishers worked with the MOET in late 2005 (and continuing into 2006) 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 in early February 2006. 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. IIPA will be closely monitoring this partnership between industry and MOET and encourages the Lebanon government to lend its full support to these endeavors.

The software industry ran two major programs in 2005 to help promote the use of genuine software.²³ The MOET also assisted with a telephone hotline which calls to end-users of business software to license their products, but these activities are not undertaken on a regular basis and thus are not very effective.

²³ One program offered by business software interests in Lebanon is called "Student PC," which offers Windows, Office and Encarta in addition to a free three-year MSN Internet subscription and other value added items for a monthly fee. The other is called "National PC" program, which offers similar advantages. Both programs represent an investment of more than \$2 million from local partners.

MARKET ACCESS

Censorship Results in Discriminatory Practices Against Foreign Copyright Contents: After the Syrian military was ousted in early 2005, the new Lebanese government formed adopted discriminatory (and bigoted) censorship rules, applying them in secret, and in most instances, against sound recordings which have a Jewish or Israeli musician or producer, etc. This outrageous policy shift has in practice had a serious impact on the ability of foreign right holders to release sound recordings in Lebanon. Releases that had previously been allowed are even being removed from shops *post facto*. There are dozens of titles that are being banned without valid explanation, and without notifying right holders (or providing a copy to review and appeal the ban).²⁴

COPYRIGHT LAW AND RELATED ISSUES

Copyright Law (1999) Remains Berne- and TRIPS-Incompatible: The Copyright Law of Lebanon (effective June 14, 1999) provides, on its face, a sound basis for copyright protection for U.S. works and sound recordings,²⁵ including stiff penalties (in theory) 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 outlaws the trafficking in satellite or cable decoders (i.e., devices that receive, or arrange the receipt of, unauthorized transmissions of broadcasts “dedicated to a section of the public who pay a fee to receive such broadcasting”). The law further provides right holders with a broad communication to the public right (Article 15), but does not take other necessary steps to fully implement the WIPO Internet Treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).²⁶ 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,²⁷ including:

²⁴ Examples of banned albums include: the Kanye West (Rap) album, banned after one year of being released without notification, because they discovered there was a violinist "Miri Ben Ari" (from Israel) playing violin on one of the tracks; and Pavarotti albums and classical albums, banned because of the presence of one Jewish composer or orchestra director; and many others.

²⁵ 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.

²⁶ 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 trafficking in circumvention devices or provision of circumvention services. Finally, while broadband is still only on the horizon, legislation should provide sufficient remedies against piracy over the Internet, including notice and takedown provisions so that Internet Service Providers will cooperate with right holders seeking to protect their rights.

²⁷ 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.

- There is no direct point of attachment for U.S. sound recordings (however, a 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).
- The law does not accord a right of action to exclusive licensees, which is a significant obstacle to efficient enforcement, given that the exclusive licensee in a territory is invariably the party with the strongest interest in stopping piracy and has the best information about it.
- Most significantly, 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 licensing 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.