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Re: GSP Country Practices Review, Case No. 007-CP-08 (IPR - Lebanon), Lebanon: Responses to Additional Questions, pursuant to 74 Fed. Reg. 11141-3 (March 16, 2009), Submitted to [www.regulations.gov](http://www.regulations.gov), Docket No. USTR-2009-0009

To the GSP Subcommittee:

The International Intellectual Property Alliance (IIPA) is pleased to provide the GSP Subcommittee with written responses on seven questions provided to us in writing as a follow-up to the April 24, 2009 Public Hearing regarding the Generalized System of Preferences Country Practice Petition of Lebanon, Case No. 007-CP-08 (IPR – Lebanon). See Generalized System of Preferences (GSP): Notice Regarding the Review of Country Practice Petitions for the 2008 Annual Review, 74 Fed. Reg. 11,141 (March 16, 2009).

We offer the following responses to the questions posed by the U.S. Government:

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**Question 1:** In your estimation, how would you define Lebanon’s “serious progress” made in the area of piracy?

**IIPA Response:**

In the Hearing Statement of Eric H. Smith, International Intellectual Property Alliance dated April 24 (“IIPA Hearing Statement”), IIPA noted its position that “Ultimately, the Subcommittee should recommend to the President that he determine that Lebanon fails to meet the GSP standards if serious progress is not made.” IIPA has already noted in the IIPA Hearing Statement as well as in its February 17, 2009 Special 301 country report on Lebanon that the government of Lebanon made “incremental” progress in legitimizing the copyright market there. IIPA noted in particular the legitimization of some previously cable companies that had previously transmitted IIPA member programming without authorization. However, much of the progress seen to date has been achieved through self-help measures of copyright companies operating in Lebanon, and without efforts by the Lebanese government. By “serious progress,” then, what the industries would like to see is a proactive willingness on the part of the Lebanese government to tackle piracy problems and bring the laws in Lebanon up to speed with



international standards. IIPA highlighted the “Priority Actions Requested in 2009,” which, if undertaken, would “result in the most significant near term commercial benefits to the copyright industries”:

### **Enforcement**

- Continue to address cable piracy by issuing a licensing decree and commencing enforcement.
- Ensure that the special police bureau, the Cyber Crime and Intellectual Property Rights Bureau (CCIPRB) Unit, continues actively running raids against retail targets, major operations producing pirate product or shops producing “burned” to order discs, and book piracy operations, including photocopying and print formats.
- Ensure that Customs authorities step up *ex officio* actions to interdict and seize pirate product entering the country or destined for export.
- Prosecute criminal copyright cases, seeking maximum deterrent sentences in Lebanese courts under the law.
- Continue to monitor the one known optical disc plant in the country for illegal activity.

### **Legislation**

- Reject recent draft amendments to the Lebanese Copyright Law (1999) which would weaken protection for software and make other detrimental changes. Instead, the Copyright Law should be amended to make it compatible with major international copyright treaties and implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, so that Lebanon can join these crucial treaties for digital-age copyright protection.
- Pass legislation to permit Lebanon to join the Berne Convention (Paris 1971 text) and draft and pass legislation to join the WCT and WPPT.

Information we have received thus far in 2009 appears to indicate that not much movement has been made in addressing the enforcement priorities this year, and we have received no information indicating that the draft legislation which would weaken protection in certain respects has been shelved. Thus we remain interested in reviewing whether the government of Lebanon has the willingness to address the piracy issue and to take steps in a positive direction on the overall copyright system, including the copyright law.

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**Question 2:** Is there evidence that there is pirated product entering or leaving the country? What percentage of available product, by category, is pirated? What sources establish that percentage?



**IIPA Response:**

IIPA has information of pirated products entering the market in Lebanon, but we do not have a complete picture of the size and scope of the problem. IIPA members continue to work with the Cyber Crime and Intellectual Property Rights Bureau (CCIPRB) Unit and noted increased cooperation with Lebanese Customs officials in 2008, to deal directly with a problem of piratical imports. In IIPA's 2009 Special 301 report on Lebanon, we noted the following:

“Some of the ‘burned’ CD-Rs are sourced back to Syria – a major transit country for pirated optical discs smuggled into Lebanon – and the Palestinian territories. Goods are smuggled into Lebanon via “military roads” between Syria and Lebanon, which have no effective customs checkpoints. Disturbingly, industry has reported that at least four optical disc plants are operational in Syria, not only distributing inside Syria, but also exporting heavily to Iraq and also to Jordan and Lebanon. In addition ... small quantities of pirated pressed discs are still imported from Asia, with some discs from China and Eastern Europe. Pre-theatrical and pre-video release movies reproduced from pirate and parallel imported source copies are common in Lebanon.... Finally, new information indicates that circumvention devices (to avoid technological protection measures used by right holders to prevent users from accessing or copying works without authorization) are being imported into Lebanon. This phenomenon highlights the urgent need for Lebanese legislators to pass a law amending the Copyright Law to prohibit the circumvention of TPMs and the trafficking in circumvention devices (and related services).”

IIPA also has some information that indicates Lebanon may be an exporter or at the least a transshipment point. Again, from the 2009 Special 301 report, IIPA noted:

“Lebanon is also believed to be a transshipment point of pirated video game products into Kuwait (and other countries in the region).”

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**Question 3:** In your statement you said that there is a need to continue to monitor the one known optical disc plant in the country. Is there evidence that the one optical disc plant in the country is the source of illegal product?

**IIPA Response:**

We do not have current forensic information related to the known optical disc plant in Lebanon since they have not supplied sample (or “exemplar”) discs to Lebanese authorities or to industry. Therefore, we cannot say with certainty at this point what is being produced at the plant or how much. The plant was once linked to an operative who was suspected to be supplying pirated product throughout the tri-border region in South America (this link is referred



to by Representative Henry Hyde in a Hearing Before the Committee on International Relations, U.S. House of Representatives Committee, in July 2003, as cited in the 2003 U.S. State Department's report, *Patterns of Global Terrorism*, and was most recently cited in a recent Rand Corporation report, *Film Piracy: Organized Crime and Terrorism*, available at [www.rand.org](http://www.rand.org)). Since there are still factory produced pirate discs in Lebanon, it is possible that some can be sourced to the plant in Lebanon, although it is also possible they come from Syria or from Asia (as noted above).

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**Question 4:** What progress has Lebanon made in meeting the international standards for IP protection? Have the government shown a willingness to work with you to improve their standards?

**IIPA Response:**

As noted in the 2009 Special 301 report on Lebanon, recent draft amendments to the Lebanese Copyright Law (1999) would weaken protection for software and make other detrimental changes, rather than making it compatible with major international copyright treaties and implementing fully the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, so that Lebanon can join these crucial treaties for digital-age copyright protection. In addition, the Lebanese government has not proceeded to enact legislation to permit Lebanon to join the Berne Convention (Paris 1971 text), which IIPA had understood was under consideration back in 2007.

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**Question 5:** How much of the issues present in Lebanon is due to the lack of regulation and how much is due to the lack of enforcement of existing regulations?

**IIPA Response:**

As explained in the IIPA 2009 Special 301 report, the copyright law remains out of sync with international standards in some important respects. However, piracy problems persist at current levels in Lebanon in the main due to what we perceive to be an overall lack of willingness at the highest levels to effectively enforce the laws. We do note that enforcement efforts have picked up in Lebanon over the past several years, in particular because of the establishment and growth of the special police bureau, the CCIPRB Unit, which now comprises 33 total officers (15 ranking officers and 18 junior officers), and increased cooperation with Lebanese Customs on tackling imports (especially) and with inspectors of the Ministry of Economy and Trade. As an example of improvements that could be made, we note that, like other police units in Lebanon, the CCIPRB Unit does not even have a formal budget.

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**Question 6:** Can the problem of protection be avoided by concurrent releases?

**IIPA Response:**

Release schedules and copyright protection issues are somewhat unrelated. Release schedules are business decisions made by individual copyright owners/publishers on a case-by-case basis, and are generally designed to maximize their revenues, or in the case of some products, to match release dates to periods of peak demand. Copyright owners/publishers evaluate each market and each product and there is no simple calculation as to how and when a copyright product will be released. As such, the problem of copyright protection cannot be fully addressed by concurrent releases, and cannot substitute for enforcement mechanisms to stop illegal source copying, illegal transmission over the Internet, and illegal downstream distribution.

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**Question 7:** How much awareness is there in Lebanon that enforcement of intellectual property law can actually be profitable for the country?

**IIPA Response:**

The Lebanese government is, or should be, well aware that copyright protection, and therefore, enforcement against illegal uses of copyright, is important for Lebanon's economic development. In July 2007, the World Intellectual Property Organization supported a report prepared by Roger Malki entitled *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\$1,044 million to the annual gross domestic product (GDP), employed 49,666 workers, and contributed 4.75 percent of the overall GDP and 4.49 percent of employment. The core copyright industries generated US\$555.52 million of value added, employed 23,364 workers, and contributed 2.53 percent of GDP and 2.11 percent of employment.

Meanwhile, copyright industries continue to report high piracy levels, for example, the Business Software Alliance reports losses of \$49 million due to piracy of all of its members' software titles, with the piracy rate growing to 74 percent in 2008 (up from 73 percent in 2007), while the record industry reports at least \$3 million in illegal sales and a 70 percent piracy level. The Lebanese government is losing out as well due to piracy. In 2000, a study carried out by Statistics Lebanon, Ltd. between April and June 2000 estimated that, due to cable piracy alone, the Lebanese government lost approximately US\$38 million in 1999, including lost taxes, social security contributions, and the earnings of the Lebanese government if the cable industry was legitimate.



These numbers, which the Lebanese government is (or should be) well aware of, roundly demonstrate two things: 1) that copyright is important to Lebanon's economy; and 2) that copyright would contribute even more to the economy if intellectual property rights were more effectively enforced.

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Thank you again for allowing us this opportunity to provide you with answers to your questions. We would be pleased to follow up with you on any of these answers, or other parts of our testimony.

Sincerely,  
/s/  
Michael Schlesinger