

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2001 SPECIAL 301 REPORT

LEBANON

EXECUTIVE SUMMARY¹

IIPA recommends that Lebanon be elevated to the Priority Watch List.

There has been precious little enforcement against copyright piracy in Lebanon, despite the passage of the new copyright law in 1999. Indications of the Lebanese government's lack of commitment to protect copyright include the fact that no effective measures have been taken to eliminate egregious illegal software usage in government offices, as well as in large companies or banks in Lebanon. Cable piracy still runs rampant, with unauthorized broadcasts of first-run movies showing up on "community cable" TV stations throughout the country, although recent self-help actions taken by copyright owners may begin to send the signal to pirates that they cannot continue engaging in cable piracy without fear of action on the part of copyright owners. IIPA has information about one CD plant operating in Lebanon unregulated. Without proper controls, this plant could transform Lebanon from a country with a small domestic piracy problem into an 'export pirate' country. Already, compilation CD-ROMs (with thousands of dollars' worth of software) sell on the streets of Lebanon for U.S.\$10. Meanwhile, book piracy in Lebanon, which took root during the years of civil unrest, is a net-export business. Total losses to the U.S. copyright-based industries in Lebanon were more than U.S.\$15.0 million in 2000.

Piracy generally does not receive any attention from the Lebanese government, particularly the Ministry of Economy, which appears to turn a blind eye to piracy. The courts remain largely backlogged and inefficient, posing major impediments to effective enforcement of copyright across the board. Some ancillary agencies appear to have made some progress in intercepting imports of pirate videos at the borders, and the police conducted the first searches against pirate resellers and end-users of business software. IIPA hopes that the changes in government in November 2000, including the new Prime Minister's promise to increase enforcement, will usher in a new era of cooperation and enforcement sufficient to improve the situation.

Lebanon passed a new copyright law in March 1999 (effective June 14, 1999), but the law has never been properly implemented. In addition, two last-minute amendments added exceptions authorizing 1) educational institutions to make "copies" of a computer program they have acquired an original copy of, and 2) students to make one copy of a computer program for their own use. These provisions take Lebanon outside the realm of well-established international principles of copyright protection, and must be deleted before Lebanon will have any hope of benefiting from the global trading system. November 1999 implementing regulations that attempt to limit the exceptions also violate the major copyright treaties, and will not work.

¹For more details on Lebanon's Special 301 history, see IIPA's "History" Appendix to filing.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1995 - 2000

INDUSTRY	2000		1999		1998		1997		1996		1995	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	8.0	60%	8.0	60%	8.0	80%	8.0	80%	19.0	99%	43.7	100%
Sound Recordings / Musical Compositions ²	2.0	45%	2.0	45%	2.0	40%	1.0	40%	1.0	30%	NA	NA
Business Software Applications ³	1.5	87%	1.6	88%	0.9	93%	1.4	79%	1.4	76%	0.9	79%
Entertainment Software ⁴	1.5	96%	0.5	70%	0.6	70%	NA	NA	NA	NA	NA	NA
Books	2.0	NA	2.5	NA	2.5	NA	2.0	NA	2.0	NA	1.5	NA
TOTALS	15.0		14.6⁵		14.0		12.4		23.4		46.1	

COPYRIGHT PIRACY IN LEBANON

Cable Piracy Continues to Threaten Legitimate Market for Copyright Owners

There are an estimated 1,300 cable operators serving over 50% of the Lebanese population. These operators retransmit domestic and foreign terrestrial and satellite programming without authorization to their subscribers (estimated to number about 460,000) for an average monthly fee of U.S.\$10.00. Occasionally, these systems also use videocassettes to broadcast directly to their subscribers, including the broadcasting of recent blockbuster titles. Each cable operator retransmits an average of 40 to 50 different television channels. Included among those channels is a minimum of four movie channels that broadcast motion pictures 24 hours a day. Films are frequently retransmitted by these pirate cable operators prior to their legitimate broadcast by television stations in Lebanon.

Cable piracy in Lebanon seriously damages the legitimate theatrical, television and video markets in Lebanon. In addition, in 2000, ticket sales in the theatrical market went down by approximately 50% compared to 1999 (which indicates additional damage inflicted by cable piracy). Local broadcast television stations have started canceling long-standing licenses with copyright owners because they cannot compete with the pirates. The legitimate video market has

² Loss figures represent U.S. losses only. Piracy levels represent the total level (including Indian, Arabic and international). The piracy level for international repertoire in 2000 was higher, at 68% (an increase over the 60% piracy level for international repertoire for 1999).

³ BSA loss numbers for 2000 are preliminary. In IIPA's February 2000 Special 301 submission, BSA's 1999 loss figure of \$1.4 million was also reported as preliminary, while the piracy level was unavailable at that time. These numbers were finalized in mid-2000, and are reflected above.

⁴ IDSA estimates for 2000 are preliminary.

⁵ In IIPA's 2000 Special 301 submission, IIPA estimated that total losses to the U.S. copyright-based industries in Lebanon were \$14.4 million. Because of the adjustment to reflect BSA's final 1999 statistics (see footnote 3), estimated total losses to the U.S. copyright-based industries in Lebanon in 1998 are raised to \$14.6 million.

been almost entirely decimated by the various forms of piracy in Lebanon. Earlier in 2000, a survey on the economic impact of cable piracy estimated that the Lebanese government is losing about U.S.\$38 million a year due to cable piracy.⁶

Retail Piracy in Lebanon: A Pirate Haven

Piracy runs rampant in Lebanon, and Lebanese authorities, while fully acknowledging the dominance of piracy in the retail markets, do nothing about it. A sampling of the market reveals that:

- Pirate versions of virtually any business software, entertainment software, sound recording, or published interactive software (i.e., encyclopedias on CD-ROM) can readily be purchased for U.S.\$7 or less.
- Lebanon is a “pirate haven” for video games, with no enforcement in sight. Console-based videogames are 99% pirate, while personal computer videogames are 98% pirate in Lebanon (roughly 70% of each of which are imported, mainly from Asia, while 30% are domestically produced). Silver counterfeit CDs complete with packaging and manuals are available on the streets of Lebanon. These come in compilation-CD format and single discs.
- Piracy levels for business applications remain the highest in the Middle East. End-user piracy of business applications is pervasive in the largest banks, trading companies and virtually all government ministries.
- As noted above, the legitimate video market is almost completely defunct. Pre-theatrical and pre-video release piracy sourced from off-screen copies and parallel imported laser discs is widespread. Copies of new U.S. cinema releases are on the market within days of their U.S. theatrical release. The home video market is estimated to be 80% pirate.
- The parallel importation of laser discs and Zone 1 DVDs (Zone 1 refers to DVDs programmed for distribution and playback in North America only) is a growing problem.
- Music cassette piracy harms the industry, with Syria supplying many of the pirate cassettes.
- Book piracy took root during the 1980s, and remains a serious problem, although the legitimate university community has recently made some efforts to have students use only legitimate textbooks. Nonetheless, pirate photocopying and pirate publications are still the norm on college campuses. Pirate scientific, technical and medical and other English-language materials continue to flow out of Lebanon into Jordan, Saudi Arabia and the United Arab Emirates, among other countries.

Optical Media Piracy Arrives in Lebanon

In addition to retail optical media piracy, IIPA has learned of one CD plant operating in Beirut, Lebanon unregulated. Without proper controls, this plant could transform Lebanon from a

⁶ Levels of broadcast television piracy have fallen, however, reflecting the ongoing regulation of the broadcast market. Implementation of the Broadcast Law and regulation of the market have removed most of the pirate stations from the air.

country with a small domestic piracy problem to an 'export pirate' country. Given that local demand for CDs is very small (for example, it is 500,000 for sound recordings), IIPA is concerned by the existence of this known plant, that reportedly has one line in operation and does not use Source Identification (SID) code. IIPA urges the Lebanese government immediately to implement effective measures against CD and CD-ROM piracy. In particular, the Lebanese government should introduce effective optical media plant control measures, including the ability to track the movement of optical media production equipment, as well as the raw materials (including optical grade polycarbonate), and also including the compulsory use of Source Identification (SID) codes, in order successfully to halt the production of pirate CDs and CD-ROMs. In addition, Lebanese authorities should contact unregulated plants to ensure that they are engaged in the production of authorized product. If necessary, authorities must seize infringing copies and machinery, and must impose criminal penalties to deter the organized manufacturing and distribution of pirate product.

COPYRIGHT ENFORCEMENT IN LEBANON

Self-Help Measures Taken Against Cable Pirates Begin to Bear Fruit

Largely through self-help measures on the part of the motion picture industry, some cable pirates are coming to recognize that they may not continue retransmitting domestic and foreign terrestrial and satellite programming without authorization to their subscribers. As the result of the commencement of some civil actions and several private criminal complaints being lodged with the Public Prosecutor (in 1999), then raids largely run (and funded) by the industry in December 2000, several cable pirates were caught in the act of illegal retransmissions, and eventually have agreed in writing not to retransmit copyright owners' broadcasts. While the outcomes of these cases is somewhat promising, the fact remains that the Lebanese government has played almost no role in seeing that these cases were taken and that the cable pirates were brought to justice. No cable pirate has ever been fined or sentenced to a day in jail for these commercial piratical activities. It is the Lebanese government's responsibility to tackle the problem of 1,300 cable pirates, and the industry, while willing to do whatever is necessary to support the enforcement activities of the government, cannot go it alone.

Censorship Police Begin to Intercept Pirate Videos at the Border

In a positive development in Lebanon in 2000, while video piracy levels remain unacceptably high, some legal product is now available in the market, partially as a result of the cooperation and action of the Censorship Police. Several actions taken by the Censorship Police have resulted in unauthorized videocassettes destined for import into Lebanon being seized at or near the border. In addition, the police are working diligently to seize pirate cassettes from video shops. While much more needs to be done, this avenue of enforcement (unlike the traditional avenues for copyright infringement, or, for example, the Ministry of Economy, which is responsible for fighting piracy in Lebanon) is proving worthwhile to the motion picture industry. IIPA calls upon other ministries within the Lebanese government to follow the lead example set by the Censorship Police and get to work in fighting rampant piracy in Lebanon.

Few Other Enforcement Actions Against Piracy

Other than the actions outlined above, precious little has been done by the Lebanese

government to go after piracy, even when the pirates are well known and the law is completely clear as to their activities' illegality. For example, to date, only one enforcement action against software piracy has been brought by the Lebanese government. In January 2000, the Central Detectives Division conducted a raid against a reseller in Beirut and seized a small number of pirate products. At the same time, no action has been taken against five companies using illegal software, for which the business software industry filed petitions with the Ministry of Economy in December 1999, despite extensive follow-up. Industry has provided Minister of Economy Nasser Saidi with an appropriate "target list" for his investigators (in the IPPA) but, while he has indicated in several seminars that he supports strong intellectual property protection, apparently he is not willing to put his money where his mouth is.

The business software industry launched an awareness campaign in the Lebanese media in 1998, months before passage of the new Copyright Law, and this awareness exercise has continued to this day. Some companies, including Microsoft, opened offices in Beirut because of Lebanon's passage of copyright law and in the anticipation that enforcement would follow. Educational discounts for students and educational institutions were offered, including the possibility of the establishment of training centers and the establishment of programs to wire schools and governmental offices to the Internet. The industry is deeply disappointed by the lack of enforcement actions by the Lebanese government, and would gladly offer increased training if the government demonstrated more of a willingness to enforce the copyright law. The Ministry of Economy in particular has emerged as a force against legitimate right holders, criticizing industry for asking to institute actions against blatant pirates, and supporting the suspects during raids carried out. In addition, the police raids that have been conducted generally only occur only in response to a great deal of effort and pressure from industry representatives.

The copyright industries have also spent enormous amounts of time and capital on enforcement trainings and seminars, and on seminars devoted to Lebanon's new copyright law. Extensive copyright-related seminars have been run, but to no avail; indeed, it is clear that distributors and users of illegal software have decided they are safe in ignoring the promises of senior government officials to support the copyright law. Due to the complete lack of will to enforce the law, the vast majority of companies feel free to totally disregard legal warning letters alleging software piracy.

Defunct Judicial System

The most significant impediment to enforcement in Lebanon is a severely backlogged and inefficient court system. Postponements, even of urgent matters, are the norm, and criminal cases can take years to reach judgment. Although the police carried out the first criminal raids against pirate resellers and one end user of software, no court actions (and therefore no decisions) have resulted. The motion picture industry has now brought private criminal complaints to the Public Prosecutor to obtain the initiation of criminal actions against pirate cable operators. IIPA will be monitoring these and other cases very closely to assess whether Lebanon is fulfilling its promise to implement and enforce the copyright law.

There are no courts specializing in IP matters, and Lebanese judges often mistake copyright law for patent or trademark. *Ex officio* public criminal actions against copyright infringers have never been taken in Lebanon, meaning that private criminal complaints must be filed even to seek to obtain copyright enforcement. In order to facilitate enforcement, piracy should be made an *ex*

officio crime, prosecutable by public authorities. The Lebanese government should encourage judicial authorities to promptly adjudicate all intellectual property cases and to impose the maximum criminal penalties allowed under Lebanese law. Special prosecutors and judges should also be designated for intellectual property cases.

COPYRIGHT LAW AND RELATED ISSUES

The Copyright Law of Lebanon (which entered into force on June 14, 1999) provides, on its face, a firm basis for copyright protection for U.S. works and sound recordings, including protection of life plus 70 years (70 years of publication in the case of cinematographic works and works authored by legal entities), stiff penalties for copyright infringement, 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 grants right holders the ability to authorize or prohibit the communication of their works to the public (Article 15), and prohibits the installation and use of descrambling devices (Articles 87 and 88). Unfortunately, the law remains deficient with respect to international standards in various respects.

Article 25 Violates Berne (and TRIPS)

The software exception created by Article 25 of the new Copyright Law of Lebanon violates Article 9(2) of the Berne Convention (Paris [1971] text). It is not limited to "certain special cases," but appears to allow unauthorized copying for any purpose; it "conflicts with a normal exploitation of the work," especially with regard to software aimed at the educational market; and it "unreasonably prejudices the legitimate interests of right holders," by threatening to eliminate completely a market that many copyright owners already serve on extremely generous terms. 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 (but almost never computer programs, except for "back-up" purposes) for "personal use," Article 25 sweeps far more broadly than comparable provisions of either kind, to the detriment of copyright owners.

Specifically, Article 25(1) authorizes "not-for-profit" educational institutions and public libraries to make copies of original computer programs they have acquired and to lend such copies to students for free. Such copies are made without the copyright owner's authorization and without compensation. The last sentence of Article 25(1) provides, "[t]he student shall have the right to make one copy for his personal use." This clause does not state whether the student must first have a license to use the software before being allowed to make a copy. It is not clear if this provision is intended to allow a student to make a copy of any computer program regardless of whether he is entitled to use of such program, and regardless of whether the program in question is itself original or is already a copy. Such a provision could be interpreted to allow the making of limitless copies from a single piece of original software.

Implementing regulations for Article 25 were issued on November 25, 1999. The regulations set numerous conditions for educational institutions and public libraries to copy original software. While IIPA has not fully analyzed these regulations, it is clear that they do not cure the provision's inconsistency with well established international legal standards. For example, condition 8 requires educational institutions and public libraries to "program" the copy made so that it does not function if it is copied. Such "programming" could be interpreted to be an unauthorized alteration

of the work, an infringement of copyright or moral rights. Moreover, we are not aware of any readily available process to limit copying in this manner, thus making the requirement unworkable as a practical matter.

Ultimately, Lebanon must delete Article 25 to comply with international treaty obligations (Berne, Paris [1971] text, TRIPS, WIPO Copyright Treaty).

Other Deficiencies

- There is no express distribution or rental right for sound recordings (which would violate TRIPS Article 14).
- There is no direct point of attachment for U.S. sound recordings (Article 36) (although point of attachment for U.S. sound recordings can be achieved by simultaneous publication in the U.S. and any Rome Convention Member).
- There are overly broad exceptions to protection (Articles 23, 25-30, 32-34).
- It is unclear in the law whether works and sound recordings are protected with full retroactive protection in line with international treaties (Berne and TRIPS).
- There is a mandatory deposit requirement, including onerous costs and documentary burdens; implementing regulations should clarify that this deposit requirement does not apply to foreign works or sound recordings.

Lebanon is a member of both the Berne Convention for the Protection of Literary and Artistic Works (Rome [1928] Act), as well as the International (Rome) Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961). Lebanon should be urged to accede to the Paris Act of 1971 of the Berne Convention as well as the Geneva Convention, in order to provide clearer protection to international sound recordings.

WIPO Treaties

Several of Lebanon's lawmakers have already signaled a desire to join the necessary treaties in order to participate in and fully enjoy the emerging global information society. Economy Minister Saidi has indicated a strong desire to pass a slate of e-commerce-related legislation. An important component of such participation would be ratification and implementation of the WIPO "Internet" treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), which bring copyright protection into the digital age. Specifically, the WIPO treaties require effective legal remedies against the circumvention of technical measures used by content owners to protect their property from theft and mutilation. This legal framework that permits content owners to provide for the security of their property online is essential for successful electronic commerce. Lebanon has resolved at several international copyright seminars to consider swift accession and implementation of these treaties. The WIPO national seminars in Beirut in September 1999 and the regional seminar on the treaties in November have provided Lebanon with technical know-how on the treaties. Lebanon should be urged to join the treaties as the legal framework for Lebanon's growing information society.

Generalized System of Preferences

Lebanon currently participates in the U.S. GSP Program, offering duty-free imports of certain products into the U.S. from developing countries. In order to qualify for such unilaterally granted trade preferences, USTR must be satisfied that Lebanon meets certain discretionary criteria, including whether it provides "adequate and effective protection of intellectual property rights." At the same time that Lebanon caused losses to the U.S. due to piracy, Lebanon imported (during the first eleven months of 2000) \$26.9 million of products into the United States without duty (60.3% of its total imports into the U.S.). Lebanon should not continue to expect such favorable treatment at this level if it fails to meet the discretionary criteria in this U.S. law.