

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2001 SPECIAL 301 REPORT

PALESTINIAN AUTHORITY

EXECUTIVE SUMMARY¹

IIPA recommends that USTR leave the Palestinian Authority off the Special 301 lists at this time and conduct an out-of-cycle review when conditions permit. This year's report contains information on activities as known to IIPA prior to the outbreak of violence in the region that has led to the sealing of the borders between Israel and the West Bank, and Israel and the Gaza Strip. This report's recommendations are prospective, to be followed when conditions once again permit.

Through August 2000, the Palestinian territories continued as a hub of pirate production in the Middle East, churning out thousands of optical media products and thousands of pirate videos and audiotapes per day. At the same time, authorities signaled their willingness to address the problem, including by raiding one of the largest pirate optical media producers in May 2000. With the outbreak of violence the borders with Israel were sealed and it is unlikely that much pirate output from plants in the Palestinian territories can make it into Israel, although pirate production for export to other countries is unknown. As soon as conditions warrant, the Palestinian Authority needs to be vigilant in closing down known commercial pirates of optical media (CDs), more traditional media (videocassettes and audiocassettes), and published materials, including textbooks. Losses due to piracy in 2000 are largely unknown.²

When conditions permit, the Palestinian authorities should move forward with plans to pass a modern copyright law that takes into account minimum international standards for protection (e.g., Berne/TRIPS minimum standards of protection, including the provision of express point of attachment for foreign works/sound recordings). Such a law was, according to reports, being considered for passage when the situation in the region destabilized.

PIRACY AND ENFORCEMENT IN THE PALESTINIAN TERRITORIES

Optical Media Piracy Will Require Regulatory and Enforcement Response

Prior to the current unrest, the sharp rise of illegal CD and CD-ROM production for domestic consumption and export to Israel and beyond in the West Bank and Gaza Strip continued in 2000, although the Palestinian authorities engaged in some encouraging

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

² This year, the book publishing industry reports losses of at least U.S.\$2.0 million due to piracy in 2000. In previous years, IIPA reported losses of at least U.S.\$31.0 million in 1999 due to piracy (including lower losses than in 1998 for the sound recording/musical compositions category due to five months of halted production), and losses of at least U.S.\$55.0 million in 1998 due to piracy (including sound recording/musical compositions losses based on output of the largest known plant in the areas controlled by the Palestinian Authority).

enforcement activity to curtail it. IIPA knows of five CD plants in the Palestinian territories. One known plant, Laizer, located in Wad El Bariya near Hebron (in Zone A), has three CD production lines, and all the ancillary machinery needed to make professional counterfeit or pirate CDs. This plant alone has a daily production capacity of more than 15,000 discs (approaching 6 million discs per year). Two more plants in Ramallah, and one in Nablus (which reportedly has a manufacturing capacity of 5 million discs per annum) continue to operate, producing pirate product. The ease with which these plants have begun operations over the past couple of years directly contrasts with the difficulty the copyright industries have had in closing them down.

On a positive note, the Palestinian Authority demonstrated its willingness to act against overt pirate optical media production, cooperating with industry representatives and raiding one plant, seizing 410 pirate stampers, among other things. IIPA is pleased that the Palestinian Authority has taken seriously the need to raid pirate plants just as it would any other commercial criminal actor, and looks to the authorities, when conditions permit, to continue in its pursuit toward eradicating such illegal behavior in the Palestinian territories.

Prior to the outbreak of the current violence, both the retail markets for audio CDs, as well as the retail markets for business as well as entertainment software on CD-ROMs had been close to 100% pirate. Compilation CD-ROMs containing video games or sometimes up to several dozen software programs from different manufacturers sold on the streets for as little as U.S.\$7-8. Due to porous geographical barriers and lax enforcement at the borders with Israel, the situation in the territories prior to the sealing of the borders affected the situation in Israel, especially the Arab population in Israel (over a million people).

When the situation permits, the Palestinian Authority must adopt a regulatory system for the import, export and operation of optical media production equipment and raw materials (including optical grade polycarbonate), as well as commit adequate resources to enforcement efforts. In addition, plants should be obligated to employ source identification (SID) codes on all mastering and replication equipment, adopt strict accounting for polycarbonate supplies, maintain full transparency of all orders for mastering and replication services, and submit to surprise spot inspections to assure compliance.

Videocassette and Audiocassette Duplication Labs

Through August 2000, the rise of video duplication plants in the West Bank had led to commercial losses, with an estimated 5,000 to 7,000 pirate videocassettes a day being smuggled from the areas controlled by the Palestinian Authority into neighboring Israel.

Piracy of Educational Materials, Books, Textbooks

Pirate manufacturers have long supplied pirated copies of educational textbooks as well as scientific, technical and medical (STM) books to the Palestinian Territories at low prices. The U.S. publishing industry knows of two bookstores in Nablus that have been pirating U.S. textbooks as well as STM books, selling them at prices which make it impossible for U.S. publishers to sell legitimate books into the Palestinian territories. When conditions permit, this blatant piratical activity should be halted by the Palestinian authorities.

COPYRIGHT LAW AND RELATED ISSUES

Copyright Law

The Palestinian Legislative Council, elected in January 1996 pursuant to the Interim Agreement, has drafted intellectual property laws (to replace the current regime of laws, under which the West Bank and Gaza [with certain reservations] follows the 1911 Copyright Law of the U.K.) in two parts, including a copyright law section and an industrial property law section. IIPA has not seen the draft copyright law, but reports indicate that the draft includes many good provisions, including some provisions intended to implement certain requirements of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (the WIPO "Internet" treaties). IIPA looks forward to reviewing and commenting on this draft and hope that it contains such important elements as express point of attachment for U.S. works, as well as at least minimum standards of protection (Berne, TRIPS, Geneva [phonograms] Convention) to give U.S. copyright owners the tools necessary to combat growing piracy.

Generalized System of Preferences

Both the West Bank and the Gaza Strip currently participate 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 the country meets certain discretionary criteria, including whether it provides "adequate and effective protection of intellectual property rights." At the same time as West Bank and the Gaza Strip caused losses to the U.S. due to piracy, West Bank imported (in the first 11 months of 2000) \$181,000 of products into the United States without duty (5.5% of its total imports into the U.S.). When conditions permit, the West Bank and the Gaza Strip will need to address copyright deficiencies so as to meet the discretionary criteria in this U.S. law.