

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2003 SPECIAL 301 REPORT

ISRAEL

EXECUTIVE SUMMARY¹

Israel should remain on the Priority Watch List, due to its failure to criminalize and enforce against the unlicensed use of software in a business setting, so-called corporate “end-user” piracy of business software, in violation of TRIPS.

Israel was elevated to the Watch List for the first time in 1997, in recognition of rapidly growing CD piracy. In 1998, in recognition of both CD piracy and an antiquated law, as well as the end-user piracy problem, Israel was elevated to the Priority Watch List. It has remained there since.

Recognizing the ongoing security problems and violence that have plagued Israel for more than two years, and recognizing that Israel is no longer the source of pirate production of optical discs for export that it once was, at least one chief reason remains for keeping Israel on the Priority Watch List this year: the utter failure of the government to criminalize and address the massive problem of corporate end-user piracy of business software. Israel took a major step backwards in 2002 by carving out end-user piracy from the criminal liability provisions of the Copyright Ordinance amendments (which were otherwise generally strengthening measures, and went into effect November 3, 2002). Failure to criminalize corporate end-user piracy of business software is a violation of Article 61 of TRIPS, and represents substantially worse treatment for the business software industry than may have been available a year ago. Proposed coordination between the police and customs is welcomed. On another positive note, the first successful judgment in a civil case against a corporate end-user pirate of business software was handed down in 2002.

Required actions for 2003:

- Amend Section 10(c) of the Ordinance to explicitly criminalize corporate end-user piracy of business software (by amending that article to provide, “any person **who uses**, sells hires or distributes an infringing copy of a work in a commercial scale or **to such an extent as to affect prejudicially the owner of the copyright** is committing an offence”).
- Fortify Special Police IPR Units with significantly more manpower, ensure that they use *ex officio* authority to bring about raids in critical mass to deter piracy, and allow the National Police Unit to coordinate districts, for more effective and sustained enforcement.
- Instruct police attorneys and prosecutors to expeditiously handle incoming copyright piracy files as a matter of priority and proceed with criminal prosecution of pirates within short periods of time.

¹ For more details on Israel's Special 301 history, see IIPA's “History” Appendix to this filing.

ISRAEL
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1998 - 2002²

INDUSTRY	2002		2001		2000		1999		1998	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	30.0	50%	15.0	50%	15.0	50%	15.0	50%	11.0	40%
Records & Music ³	34.0	50%	40.0	25%	45.0	30%	70.0	45%	60.0	40%
Business Software Applications ⁴	NA	39%	36.9	40%	51.3	41%	54.8	44%	47.8	48%
Entertainment Software ⁵	17.2	68%	66.5	89%	52.0	NA	30.9	54%	28.5	55%
Books	1.0	NA	1.0	NA	1.0	NA	1.0	NA	0.7	NA
TOTALS⁶	82.2		159.4		164.3		171.7		148.0	

COPYRIGHT PIRACY IN ISRAEL

Copyright piracy continues to hurt copyright owners trying to do legitimate business in Israel. It also hurts the Israeli government, which cannot collect tax revenue and accrue other social and economic benefits from legitimate copyright industries.⁷

² The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2003 Special 301 submission, and is available on the IIPA website (www.iipa.com/pdf/2003spec301methodology.pdf).

³ The recording industry losses and levels include domestic losses/levels as to U.S. repertoire only, and do not include, as in some previous years, estimate of losses due to export piracy. The legitimate market in Israel suffered terribly in 2002, and indeed, pirate unit sales also decreased, although much less so than the decrease in sales of legitimate units.

⁴ BSA's estimated piracy losses for 2002 are not available, and piracy levels for 2002 are preliminary; both will be finalized in mid-2003. In IIPA's February 2002 Special 301 filing, BSA's 2001 estimates of \$40.0 million at 39% were identified as preliminary; BSA finalized its 2001 numbers in mid-2002, and those revised figures are reflected above. BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA's trade loss numbers released separately in its annual global piracy study which reflects losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

⁵ IDSA has revised its methodology for deriving the value of pirate videogame products in-country. IDSA reports that the decrease in the value of pirated videogame products in Israel in 2002 appears to be due primarily to the methodological refinements which allowed IDSA to more comprehensively evaluate the levels of piracy in the personal computer (PC) market.

⁶ In IIPA's 2002 Special 301 submission, IIPA estimated that total losses to the U.S. copyright-based industries in Israel were \$162.5 million. Because BSA's losses and levels were revised, estimated total losses to the U.S. copyright-based industries in Israel in 2000 are adjusted to \$159.4 million.

⁷ By their very nature, pirates operate underground, hidden from the eyes of the law and tax authorities. Since piracy along with counterfeiting involves a considerable volume of undeclared/unreported business activity, Israel suffers a significant

- **Corporate End-User Piracy of Business Software.** A large portion of software used by businesses and other end-users in Israel is still pirated. Corporate end-user piracy is the single greatest barrier to the development of the software industry in Israel. Corporate end-user piracy affects not only U.S. companies, but also local Israeli software producers.⁸ Unfortunately, the Israeli government, instead of taking action to support trade and the growth of local industry, substantially rolled back protection against this most financially devastating form of business software piracy.
- **CD-R Piracy.** The method of “burning” content onto CD-Rs has slowly become the method of choice for pirates since the pirate optical disc production-for-export problem was resolved in Israel. For example, in 2002, roughly 90% of the pirate music market was “burned” CD-Rs (while only 10% of the pirate music market in 2002 remained imported CDs from faraway loci such as Russia and Thailand). The recording industry notes a climb in overall piracy levels (all repertoire, including Israeli, International, and U.S.) to 50%, largely because of CD-R “Burning.”⁹ Stores in major marketplaces, including in Tel Aviv, Haifa, and Herzlia engage in “in-store burning” of major motion picture titles, as well as their own CD-R compilations of games and business software, sometimes putting hundreds of software titles onto a single CD-R.¹⁰ CD-R burning operations are also the main source of pirate entertainment software in Israel, although factory produced (silver discs) pirate personal computer (PC) games continue to be shipped from Russia. Piracy of PlayStation® games continues on a massive scale, though piracy of games for the PlayStation2® platform is not yet sizeable. Pirate entertainment software product can still be found in retail stores, though the primary source of pirate videogames is flea markets. The popularity of CD-R piracy in the motion picture industry is increasing because of the availability of subtitles on the Internet that can be overlaid onto a movie that has also been downloaded from the Internet.
- **Optical Disc Piracy.** Manufactured optical discs (CDs, CD-ROMs, VCDs, DVDs) remain popular in Israel, although, as noted, they made up a smaller percentage of pirate music and audiovisual works than in the past, being replaced rapidly by the “burned” CD-R. At the same

loss in revenues. In 2002, several copyright-based and other industries affected by counterfeiting estimated that Israel loses at least NIS 500 million (US\$102.8 million) due to unreported sales of pirated/counterfeit goods (VAT, custom duties, purchase tax, income tax).

⁸ A number of Israeli companies have recently approached the BSA for membership, concerned that piracy is negatively impacting their businesses.

⁹ The domestic retail piracy situation for recorded music is worse now than at the height of optical disc production for export. Ironically, the situation has gotten worse for local music as the use of Special IPR Police Units in Israel has increased. During the late 1990s, the recording industry was battling massive optical disc pirate production for export, both through private channels and through the use of civil proceedings. After all avenues were exhausted, the Israeli government filed specific criminal claims against pirate optical disc plants and their owners. All concerted actions (including civil actions, in which raids could be taken any time, including weekends or holidays) succeeded in weeding out pirate production for export, and the music piracy level fell to 20%. By the end of 2000, the recording industry reported that only seven pirate sales points were active in “Carmel Market” and “New Central Bus Station” in Tel Aviv. By contrast, piracy now accounts for 50% of the market. In 2002, as in the late 90s, dozens of market stalls are back in Israel (30 or so in Carmel Market and New Central Bus Station) selling pirated CDs.

¹⁰ Raids on such market vendors are usually non-deterrent, as pirates replace one vendor who has been caught with another without a criminal record in order to minimize the possible penalties to the offender.

time, the audiovisual industry began to suffer more directly from OD piracy in 2002; the average cost of a VCD/DVD player was the same as that of a VCR in Israel, and pirate VCDs and DVDs imported from Asia and from Russia became widely available at street and flea markets, as well as advertised on the Internet. Nonetheless, there were not significant seizures of pirate VCDs and DVDs in 2002.¹¹ Parallel imports of Zone 1 DVDs (DVDs programmed for playback and distribution in North America only) are still widely available in Israel. Russian-language business software products remain in plentiful supply. Pirate factory-produced entertainment software (mostly of console games), imported from Turkey, Eastern Europe and Asia, can be found in flea markets and small retail shops. "Outlets" (flea markets, kiosks, etc.) are overrun with older format console-based videogames, due to the dumping of huge quantities by pirate producers in Asia, milking what they can out of those older formats as the game companies (and the pirates) transition to newer formats.

- **Videocassette Piracy.** The current security situation in Israel has affected the videocassette piracy market. In the past, thousands of videocassettes a day were entering the country from Palestinian Authority-controlled areas. The number produced and sent into Israel has now fallen dramatically, but local Israeli labs have taken up the slack, and seizure levels are about the same as they were in previous years.¹² The level of piracy in retail stores is estimated to be 20%, and ALIS (the local anti-piracy organization working on behalf of the motion picture industry) now puts the overall rate of video piracy at about 50%.
- **Internet Piracy.** As a country that prides itself on its technological know-how, Israel is fast becoming a hot spot for piracy over the Internet. Israel now boasts 1.94 million Internet users.¹³ Dozens of Internet sites are taking advantage of this increasing percentage of Netizens, by listing stores that will "custom burn" content onto CD-Rs and ISPs are aggressively advertising their broadband capacity in connection with the possibility to download copyrighted content at high speeds. The borderless nature of the Internet also means that such piracy needn't be hemmed in by national boundaries – those same sites and stores also deliver pirate content anywhere in the world. Sites hosted in Israel have been found to contain illegal downloads, "cracks," "serial numbers" and other information to circumvent copy protection.

¹¹ ALIS (the local anti-piracy organization working on behalf of the motion picture industry) seized 18,786 illegal VCDs and 1,858 DVDs in 2002. Pirate DVDs have recently declined in popularity due to importation problems and the absence of Hebrew subtitles.

¹² The motion picture industry estimates a pirate market of about 1.5 million pirated cassettes/disks being sold to the public each year in Israel. According to intelligence information, close to 30 pirate recording/duplication studios operate within Israel and the territories of the Palestinian Authority, which distributes about 2,000 counterfeit cassettes and disks a day. The average number of VCRs used to produce the pirate cassettes in each studio ranges from 20 to about 200 VCRs (found in a large pirate studio located within the territory of the Palestinian Authority). Within Israel, those running pirate studios are usually ex-cons, who for some reason found in this occupation a way to make an easy profit and the sense that they are not committing an offense that would draw the attention of the law enforcement agencies in Israel. The owners of the pirate studios within the territories of the Palestinian Authority maintain business contacts with Israeli cons with whom they jointly run these pirate studios. The Israelis are usually the ones that set up the distribution networks in Israel. According to assessments of the intelligence agencies, there are about 40-50 big distributors who receive the cassettes/disks from the pirate studios, which they distribute on the markets and in stores on order.

¹³ The World Factbook reports that there were 21 Internet service providers in Israel as of 2000, with 1.94 million users as of 2001. See <http://www.odci.gov/cia/publications/factbook/geos/is.html#Comm> (citing Nielson NetRatings to derive the Internet universe of 1.94 million users as of July 2002).

- **Public Performance Piracy of Motion Pictures.** Illegal public screenings continue to be a problem in cafes and pubs, one that has grown since the introduction of pirate DVDs/VCDs and new sophisticated performance equipment.
- **Book Piracy.** While there are relatively few pirate producers of published materials in Israel, police raids conducted in 2002 yielded seizures of tens of thousands of pirate books produced in the Palestinian Territories and brought into Israel.¹⁴ Such reprint pirated books are distributed in stores as original products, selling for full price, thereby making it difficult for consumers and enforcement officers to identify. Moreover, there is a serious problem involving the photocopying and reproduction of textbooks by various educational institutions, from elementary schools to universities. These activities are carried out privately by students and by teaching staff in various institutions, who produce study files that include reproduced material. In the field of photocopy reproductions, several business organizations operate openly and undisturbed.

COPYRIGHT ENFORCEMENT IN ISRAEL¹⁵

ISRAEL CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 1999

ACTIONS	MOTION PICTURES	ENTERTAINMENT SOFTWARE
Number of raids conducted		28
Number of cases commenced	126	28
Number of defendants convicted (including guilty pleas)		2
Acquittals and dismissals		Unknown
Number of cases Pending	126	26
Total number of cases resulting in jail time		0
Suspended prison terms		
Maximum 6 months		0
Over 6 months		0
Over 1 year		0
Total suspended prison terms		0
Prison terms served (not suspended)		

¹⁴ One recent example involved the pirate photocopying of 60,000 copies of a best selling novel by author Tzruya Shalev, which were distributed on the market at half the market price of the legal publication.

¹⁵ In 2002, several industry groups affected by piracy and counterfeiting in Israel, assembled a work plan for fighting piracy and counterfeiting. IIPA agrees that the plan set out presents a laudable set of goals for the Israeli government to achieve. The essential features of the plan are to involve the joint activity of various government ministries and enforcement agencies. For example, the Ministry of Industry & Commerce would be assigned to visit business establishments and markets and to exercise their authorities, including confiscation of goods and imposing fines. The Ministry of Finance would allocate resources as part of the State budget to fight piracy and counterfeiting, earmarking at least 50 positions for a special police unit (as noted below, in 2002 there were only 22 positions of the Special IPR Police Unit filled). The MOF would also incorporate the Income Tax and VAT commissions in comprehensive activity, and investigate piracy and counterfeiting activities on its own in order to reap tax and VAT benefits for the State. The Ministry of Justice would update legislation to further stiffen penalties, including against corporate end-user piracy of business software. The MOJ would continue activities aimed at raising awareness among judges of the importance of IPR and the need to impose deterrent punishment. The Ministry of Internal Security would allocate more positions for the Special IPR Police Units and fill those positions already allocated, and increase the frequency of raids, and shorten the time from the filing of a complaint to enforcement of the law. The Ministry of Education would initiate an educational project concerning intellectual property that would incorporate as part of the homeroom class a set of lessons on intellectual property and wise consumer habits, and regulate the practice of photocopying and duplication of books in the possession of the educational institutions, which today constitutes copyright infringement as well as payment of royalties for their use.

Maximum 6 months		0
Over 6 months		0
Over 1 year		0
Total prison terms served (not suspended)		0
Number of cases resulting in criminal fines		
Up to \$1,000		0
\$1,000 to \$5,000		0
Over \$5,000		0
Total amount of fines levied		0

ISRAEL CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 2000

ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE	ENTERTAINMENT SOFTWARE
Number of raids conducted		91	76
Number of cases commenced	215		76
Number of defendants convicted (including guilty pleas)	40	3	0
Acquittals and dismissals			Unknown
Number of cases pending	301		76
Total number of cases resulting in jail time			0
Suspended prison terms			
Maximum 6 months			0
Over 6 months			0
Over 1 year			0
Total suspended prison terms			0
Prison terms served (not suspended)			
Maximum 6 months			0
Over 6 months			0
Over 1 year			0
Total prison terms served (not suspended)			0
Number of cases resulting in criminal fines			
Up to \$1,000			0
\$1,000 to \$5,000			0
Over \$5,000			0
Total amount of fines levied			0

ISRAEL CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 2001

ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE
Number of raids conducted		126
Number of cases commenced	209	126
Number of defendants convicted (including guilty pleas)	122	16
Acquittals and dismissals		
Number of cases pending	301	258
Total number of cases resulting in jail time		1
Suspended prison terms		
Maximum 6 months		1
Over 6 months		
Over 1 year		
Total suspended prison terms		1
Prison terms served (not suspended)		
Maximum 6 months		
Over 6 months		

Over 1 year		
Total prison terms served (not suspended)		
Number of cases resulting in criminal fines		
Up to \$1,000		
\$1,000 to \$5,000		
Over \$5,000		
Total amount of fines levied		
Total amount of compensation paid to private prosecutor		75,000 USD

ISRAEL CIVIL COPYRIGHT ENFORCEMENT STATISTICS FOR 1999

ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE
Number of civil raids conducted	319	12
Post-search action	338	
Cases pending		6
Cases dropped		1
Cases settled or adjudicated	66	8
Value of loss as determined by right holder (\$USD)		
Settlement/judgment amount (\$USD)		81,000 USD

ISRAEL CIVIL COPYRIGHT ENFORCEMENT STATISTICS FOR 2000

ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE
Number of civil raids conducted	332	11
Post-search action	275	
Cases pending		NA
Cases dropped		0
Cases settled/adjudicated	57	4 / 5
Value of loss as determined by right holder (\$USD)		less than settle amt
Settlement/judgment amount (\$USD)		\$28,900 / NA

ISRAEL CIVIL COPYRIGHT ENFORCEMENT STATISTICS FOR 2001

ACTIONS	MOTION PICTURES
Number of civil raids conducted	280
Post-search action	254
Cases pending	
Cases dropped	
Cases settled or adjudicated	89
Value of loss as determined by right holder (\$USD)	
Settlement/judgment amount (\$USD)	

ISRAEL CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 2002

ACTIONS	MOTION PICTURES
Number of raids conducted	
Number of cases commenced	319
Number of defendants convicted (including guilty pleas)	61
Acquittals and dismissals	0

Number of cases Pending	612
Total number of cases resulting in jail time	1
Suspended prison terms	
Maximum 6 months	
Over 6 months	1
Over 1 year	
Total suspended prison terms	
Prison terms served (not suspended)	
Maximum 6 months	
Over 6 months	
Over 1 year	
Total prison terms served (not suspended)	1
Number of cases resulting in criminal fines	60
Up to \$1,000	
\$1,000 to \$5,000	
Over \$5,000	
Total amount of fines levied (in US\$)	

ISRAEL CIVIL COPYRIGHT ENFORCEMENT STATISTICS FOR 2002

ACTIONS	MOTION PICTURES
Number of civil raids conducted	350
Post-search action	226
Cases pending	759
Cases dropped	
Cases settled or adjudicated	163
Value of loss as determined by right holder (\$USD)	
Settlement/judgment amount (\$USD)	

New Law Lacks Criminal Remedy Against Corporate End-User Piracy, But Civil Actions Against End-User Piracy Successful in 2002

The new Copyright Ordinance amendments (discussed below), while strengthening criminal penalties against piracy in general, were formulated specifically to exclude corporate end-user piracy of business software from criminal liability. This exclusion makes it legally impossible to take criminal actions against corporate end-user pirates, and indicates to businesses that they needn't consider unlicensed use of software a serious form of piracy. As a result, the Business Software Alliance's educational and public relations campaigns aimed at educating the public on the detrimental harm inflicted on software developers/right holders due to unlicensed software usage cannot be effective.

It remains the case in Israel that no person has ever spent a day in jail or been fined for unlicensed use of software in a business setting. Now that a criminal remedy has explicitly been excised from the law, the only possible avenue is civil relief. In 2002, the Israeli courts began to respond more favorably in civil cases against corporate end-user pirates. For example, in August, 2002, the Haifa District Court delivered a favorable civil judgment against an end-user pirate (a company involved in end-user piracy and its manager), awarding NIS210,000 (US\$45,000) in damages. Notably, the award was based on the lower end of Israel's statutory damages system

(approximately US\$2,000 per title, not per copy).¹⁶ Another important decision implicating end-user piracy was delivered by the Jerusalem District Court in November, 2002, in which the court held that the separation of the genuine end-user license from the genuine physical software (CD) amounted to a breach of the license agreement.¹⁷ [Upheld in the Supreme Court decision of 29 January 2003 (reference motion for leave for appeal 10994/02).] Finally, IIPA learned of a raid in January 2003 against a major company to determine whether there was any end-user piracy of software.¹⁸ Nonetheless, positive case results as these do not hide the overall lack of deterrence in the system caused by lack of a criminal remedy to fight corporate end-user piracy of software.

More Raids and Seizures in 2002 Against Piracy, But ...

All the copyright industries had their share of positive raids in 2002. The Business Software Alliance reports that in 2002, there were 173 police seizures (complaints filed to the Police, not *ex officio* actions), 9 customs seizures and 6 seizures in conjunction with civil/criminal actions brought against piracy. These raids resulted in the seizure of well over 90,000 pirate discs, broken down into 68% PlayStation® games, 15% business software applications, and 17% games for personal computer.¹⁹ However, these cases also demonstrate the high prevalence of piracy and do very little to address the more significant economic loss represented by end-user piracy of business software.

The Motion Picture Association, through its local organization, ALIS, continued to be highly successful carrying out raids in 2002, resulting in the seizure of thousands of pirate products.²⁰ Many of these raids were conducted against CD-R burning laboratories that were producing large amounts of pirate discs. These raids often netted 10 or more CD burners and pirate DVDs that were being used as masters. The police have also stepped up their actions against retail stores carrying pirate product. One indication of increasing boldness on the part of Israeli enforcement authorities is that they raided a pirate optical disc plant near Ramallah in the West Bank town of Beitunya in

¹⁶ The case was followed by substantial PR and media coverage. See Civil File 554/00 in the District Court of Haifa, dated August 4, 2002.

¹⁷ See *Microsoft Corporation v. Agama Ltd.* (Jerusalem District Court, Civil Case 4219/02), November 11, 2002. The Judge in the case also held, for the first time ever in Israel, that the doctrine of “contributory breach” (a tort doctrine) applies to copyright in addition to patent. In this context, the sale of a license separately from the media contradicts the terms of the license, thus the sale of that “worthless” license contributes to a tort, namely, infringement of copyright committed by the end-user who has purchased the (worthless) “license.” In marketing the license separate from the medium, the defendant assisted in the “authorization” of illegal software and in doing so prejudiced the intellectual property of the claimant in the case.

¹⁸ Sapir Peretz, *BSA Raids ORS Office to Look for Pirate Software*, Globes, Jan. 12, 2003, at <http://www.globes.co.il> (describing the BSA action against ORS Human Resources in the Tel Aviv District Court, in which it is suspected ORS is using NIS250,000 worth of unlicensed software; the Tel Aviv District Court issued a search warrant for the ORS offices in Tel Aviv, and the company's computers were examined to see whether they carried pirated Microsoft software).

¹⁹ Civil enforcement statistics for the business software community in 2002 indicate three civil raids conducted, two cases pending, and five cases settled, for total damages collected amounting to \$96,096.

²⁰ For example, on May 21, 2002, ALIS working with the police raided an optical disc lab in Netanya, seizing ten CD-R burners, two color copy machines, 103 pirate VCDs, hundreds of pirate PlayStation games, and 69 pirate videocassettes. One suspect was arrested] In another raid, an optical disc pirate was raided on Sept. 11, 2002, in Ashdod city after months of investigation. Pirate CD-Rs of Disney's films including 100 copies of *Monsters Inc.*, as well as 280 pirate CD-Rs containing other films, 1,500 labels, 2 computers, 15 CD-R burners and one color photocopier were seized in the raid. A DVD of *Monsters Inc.* that was apparently used as the master was also found.

August.²¹ The head of the plant and a worker were arrested, and an estimated 40,000 tapes and discs were seized.²² IIPA congratulates the government for tracking this plant, that cost right holders literally millions of dollars during its operation. Other raids by the recording industry yielded similar successful results.²³

Each industry has a stronger tale to tell in 2002 than in previous years on successes in the fight against Internet piracy in Israel, but the problem of Internet piracy continues to grow and an increasing number of illegal sites and/or ISPs directly or indirectly involved in making illegal sound files available challenge the copyright industries, encouraged by a sense of immunity from the law. Internet piracy is increasing as to audiovisual works as well, and ALIS (the local anti-piracy organization working on behalf of the motion picture industry) recently conducted a number of successful Internet raids. Three criminal cases were filed against Internet pirates in 2002.

... Criminal Enforcement Not A Government Priority, and Special Police Units Remain Understaffed/Underfunded, Fostering Recidivism

Israeli law enforcement authorities and prosecutors have shown little inclination to undertake criminal enforcement of the existing copyright legislation against commercial pirates. In addition, the police are not actively pursuing Internet piracy cases (and only in rare instances are the police willing to assist in the raiding of Internet pirates). These factors leave self-help groups like ALIS (the motion picture industry's anti-piracy organization) heavily reliant on civil search warrants to conduct raids. It is partly due to these factors, but also because of general lack of deterrence in sentencing, that Israel has to sustain extraordinarily high recidivism rates, which amounted to more than 50% of investigated offenses in 2002.

The Israeli government's establishment of Special IPR Police Units for intellectual property rights enforcement in 1999 was positively viewed by the copyright industries as ushering in a new era of cooperation with right holders.²⁴ The main advantage of the Units is their existence as a specialized group to investigate, raid, and file claims against suspects in criminal IPR proceedings. However, more than three-and-a-half years later, the Units remain insufficiently staffed and funded to deal with the volume of cases being presented to them, and in fact, even lost personnel in 2002.²⁵ As a result of continued lack of resources, the number of raids being run by the police is

²¹ Yehezkel Laing, *Counterfeit CD Plant Raided Near Ramallah*, The Jerusalem Post, August 28, 2002, p. 3.

²² Police reportedly worked for six months to uncover the plant, which cost millions of dollars to the Israeli and foreign record industries, churning out tapes sold to Israeli distributors for NIS 4-NIS 6, a fraction of the market price for legitimate product. In addition to the tapes and optical discs, the police found many machines for the manufacture of the counterfeit materials. Tapes and CDs seized included those of famous Israeli musicians like Eyal Golan, Sarit Hadad, Aviv Gefen, Rita, and Rami Kleinstein, as well as song compilations.

²³ For example, recording industry forensics experts examined eleven infringing discs seized in a January 2002 raid on a pirate reseller, discovered the plant (a newly opened plant in Israel) that produced them, and raided the plant on February 18, 2002, seizing 126 suspect stampers (the valuable "mother" discs from which pirate CDs can be mass-duplicated) and 3,500 pirate compact discs. Eight suspects were arrested, their computers removed and their equipment sealed. The plant is now subject to close supervision and regular checks.

²⁴ The Israeli Police IPR Unit was established in 1999 following extensive pressure from right holders.

²⁵ Initially, when the IPR unit was planned, it was intended to include about 70 officers operating within the four districts in the country, in addition to a national unit in command of the district units that could manage large cases that extended

decidedly small – too small to form a critical mass sufficient to deter piracy. In addition, it is the Units' practice to wait for copyright owners to bring forward evidence of infringement rather than taking actions *ex officio*. As a result, right holders are often left paying for investigations, a very costly undertaking.²⁶ Further, the Units act separately from one another and appear to have no central coordination of effort or management of large cases running across district lines.²⁷ The agents of the units are also called upon for other duties and only work during regular office hours. This makes the whole system ineffective for the fight against pirate sales at evening markets and during the weekends (see below).

Other problems abound, leading to hefty delays and inefficiencies in the enforcement process. After all the evidence has been supplied to the police regarding a raid target, the police take a minimum of one month but usually longer to conduct the raid, resulting in tip-offs and loss of evidence. Post-raid preparation of the case for prosecution can take months or longer (up to three years).²⁸ In addition, Units refuse to act on Fridays, Saturdays and holidays, which also happen to be some of the busiest times for pirates. Finally, due to budgetary constraints among police in Israel, to this day no depots have been allocated to store seized pirate product, and therefore, 2.1 million pirate music units (CDs and audiocassettes) and more than 500,000 business and multimedia units continue to be stored at industry sites, creating a potentially dangerous situation for the chain of evidence, since pirates will claim the evidence of the alleged crime was under the continuous control of an interested party.²⁹

Progress on “Sampling” Pirated Goods

Another issue that plagued right holders in the past involved the inability in a raid to rely upon “sample affidavits” in order to commence a criminal action. In 2001, the sampling procedure for initiation of prosecution improved based upon an agreement signed by the chief economic crime

over several districts. In reality, the Unit has never functioned as envisioned. In its first year, there was only one officer from the national unit and a ‘pilot’ unit operating in the Tel-Aviv district. In 2001-2002, the IPR unit had a total of 20-22 personnel, well below the promised 70. IIPA understands that the Central District Unit (in Kfar Saba) lost one officer in 2002 (there are now only two investigators). The Central District Unit also lacks equipment, computers, and Internet access, hindering its ability to combat piracy including Internet-related piracy issues.

²⁶ Unduly relying upon right holders to pay for and run their own investigations complicates and raises costs of the complaint process, because it often requires right holders to hire private investigators, e.g., to conduct test purchases. Right holders must also send representatives on each raid, collect the seized pirate materials, and store them in warehouses rented and insured by them, again raising costs of enforcement in a tangibly burdensome way.

²⁷ There is no central coordination from the national unit, meaning that each district unit, such as the Tel Aviv District, or the Central District, Unit is run by its own officer, with the national officers having little or no say in the district's affairs.

²⁸ For instance, in a case brought against Millenium Computer, in which three illegal computers were purchased (in which the seller engaged in illegal “hard-disk loading” of pirate software onto the computer prior to sale), the investigation by the police took over 12 months (ending in 2001), but to date the case is still with the public prosecutor with no court date fixed. Such undue delay in achieving a judicial result is on its face a bar to effective enforcement that constitutes a deterrent to further infringement, as required by TRIPS. Such delays further demoralize the Police IPR Units, since their cases which get forwarded to the police attorney get stuck in bottlenecks, and it is often one to three years before the raid target defendants are indicted. In addition, most prosecutors wish to close cases by letting defendants plead out (guilty plea), not wishing to await a court's ruling. In such cases, pirates are rarely detained for more than 48 hours and rapidly are back in business.

²⁹ It should be noted, however, that the warehouses are guarded by the police at all times.

prosecutor, by which he now accepts sample affidavits of 10 out of 200 seized CDs (200 CDs being the number of CDs that fit into a standard carton box for optical discs), if all the titles are different, and 5 out of 200 CDs if all the titles are the same. Still, large seizures require extensive sampling of hundreds of CDs, which burns up a significant amount of industry time and resources.³⁰

Criminal Sentences Slowly Increased in Length and Severity in 2002, But Some Procedural Hurdles Remain at the Courts

The Israeli government seems to be coming around to recognize the problem of lack of deterrence and the important role strong criminal sentencing plays in achieving reductions in piracy.³¹ This recognition from the police, prosecutorial, and judicial levels has resulted in the imposition by courts of some incrementally stronger criminal sentences in 2001 and 2002.³² In at least five known cases in 2001-2002, jail time was actually served.³³ Nonetheless, most of those cases involve relatively small-time pirate resellers at flea markets in Israel, not against managers of the larger warehouses or production facilities. And, such strong sentences, including imprisonment, still make up but a drop in the bucket of criminal investigations, most of which, due to police and prosecutorial bottlenecks, result in very few arrests (most defendants are never detained for more than two days, meaning they are back on the streets and in business swiftly, except in one case reported by ALIS in which the defendant was held without bail until his trial), and most cases result not in convictions but in guilty pleas, with negligible fines that hardly constitute a cost of doing business for the pirate. Further, as noted, there has never been a conviction in Israel against a corporate end-user pirate of business software, and the copyright amendments in 2002 may have precluded the possibility, without further amendment, that such a criminal action could be taken.

A couple of procedural hurdles at the court level hinder right holders' abilities to seek enforcement through the courts. One problem involves the difficulty right holders have in obtaining *ex parte* civil search (Anton Piller) orders (i.e., a civil order to search and seize pirated product that is granted by a court without giving notice to the suspected pirate). This procedure became more

³⁰ Each month the Business Software Alliance has to conduct sampling for around fifteen seizures per month.

³¹ In February 2001, the Ministry of Justice published a report, *Recent Developments in Intellectual Property Rights in Israel*, in which it referred to the need to make an intensive effort against those who organize counterfeiting and "to achieve criminal sentences that will provide a deterrence to future criminal activity of this kind" (report, page 10).

³² For example, two recidivists from Ashdod City, who owned a pirate video business that operated in Tel Aviv, Jaffa, and Holon, received 10-month suspended sentences and were fined a total of \$29,000 in late January 2003. This was the largest fine ever imposed in Israel for copyright piracy, and the suspended sentences are much longer than the usual three months.

³³ See Howard Poliner, *Criminal Enforcement of Copyright and Trademark Rights in Israel: Recent Trends*, World Intellectual Property Report, May 2002, Vol. 16, at 22-23. The author cites *State v. Massika* (Tel Aviv, Crim. App. 70758, August 2001) in which the defendant was sentenced to 13 months' imprisonment (and an additional 20 months suspended) upon conviction for possession with intent to sell hundreds of pirate videocassettes and packaging (the 13 months was calculated by adding a prior seven month suspended sentence with an additional six month sentence for the instant offence). The author also cites *State v. Amir* (Kfar Saba, 3090/00, September 2001) (five month sentence for flea market CD/audiocassette stand, served consecutively with separate drug sentence), *State v. Ben Lulu* (Be'er Sheva, 2550/01, November 2001) (12 month sentence plus six month suspended sentence, plus a US\$1,200 fine, for 22-year old recidivist pirate reseller at flea markets), *State v. Levy* (Nazareth 2091/00, February 2002) (12 months imprisonment for recidivist pirate reseller in flea market), and *State v. Swissa* (Eilat, 1453/99, July 2001, on appeal by State for heavier sentence) (six months' community service and 12-month suspended sentence plus a US\$15,000 fine for possession and sale of pirate goods over a long period of time).

burdensome in 2001 due to a change to the Rules of Civil Procedure prohibiting plaintiffs' lawyers from acting as receivers.³⁴ This rule adds an additional layer of cost and makes the Anton Piller order procedure even more burdensome than before. The only improvement in recent years occurred when courts began setting more reasonable guarantee terms on Anton Piller orders (between US\$5,000 and \$7,500 per case) following the passage of the 1999 Commercial Torts Law. In one recent positive decision, an Anton Piller Order was granted against a "Doe" defendant.³⁵

Another longstanding problem, proving subsistence of copyright ownership, appears to have been dealt with in legislation in 2002. Under the old law there was a refutable presumption of ownership, which resulted, in some cases in which defendants placed the presumption at issue, in requests by judges that senior executives of software companies fly to Israel to testify on such basic matters. Under the 2002 amendments to the copyright law, the old presumption is deleted and replaced by a new presumption, which will be applicable for both criminal and civil proceedings (a notable improvement). The amendments (Section 9 of the Copyright Ordinance) provide that if a name of a person appears on the work he is presumed to be the author and owner of the copyright, "unless proven otherwise."³⁶ This amendment appears to put into place a strong presumption that can only be rebutted by proof to the contrary. IIPA hopes that this new, stronger presumption, will avoid the circumstance by which a defendant can force a copyright owner to fly to Israel to prove subsistence of copyright ownership simply by placing the question of copyright ownership at issue.

Some Gains in Government Software Management

Some of the greatest software success stories worldwide involve government's leading public and corporate efforts to legitimize software usage. For example, when governments issue executive orders instructing government agencies to (1) conduct audits; (2) assess software needs; (3) budget for those needs; (4) purchase properly licensed software and support services – industry tends to follow suit. This role of government as a leader in proper use of software is critical to demonstrate leadership in a host of other IT related areas. Appropriate use of software by governments demonstrates an overall commitment to growing a local information technology industry and an information technology literate population. Managed use of software requires new thinking and understanding of the value of digital technologies. Legitimate use of software by a government also indicates a sincere commitment to implement its WTO obligations.

Israel has taken some positive steps to properly license business software by its government agencies. In 2001 and 2002, the "Inter-Ministerial Committee" on intellectual property policy was active in working with the business software industry to address proper use of software

³⁴ August 2001 amendments to the Rules of Civil Procedure prohibit any person who has a "personal or professional relationship" with any of the parties to be appointed as receiver (the person who executes the Anton Pillar order), unless the parties agree or the court is of the opinion that deviating from the rule is required and would not harm efficient and equitable performance of the order for special reasons that the court must specify. In practice, right holders must now hire lawyers and separate receivers in order to carry out civil raids.

³⁵ This decision is particularly helpful to copyright owners. Normally, in order to get a civil search warrant, the right holder needs to specify the name, identification number, and the address of the defendant, which for the stalls and markets is extremely difficult information to come by. The court's willingness to grant "Doe" orders will enable right holders to obtain warrants more easily, and raid a pirate stall regardless of who the seller is at that moment.

³⁶ It also provides that the presumption will apply to pseudonyms if known in the public, and that for anonymous works, the publisher shall be presumed to be the owner.

and to provide guidance to each of the government ministries. They have established clear government targets and have conducted investigations of many of these targets in 2002. Despite the positive efforts, the compliance rate of local municipalities with these guidelines has not matched that of the central government. Further, for those central government agencies moving to use licensed software, the efforts seem to be piecemeal. Licensing occurs on some forms of software, but not all.

MARKET ACCESS ISSUES IN ISRAEL

New Provision Curtails U.S. Programmers' Freedom to Sell Advertising, Violates WTO Services Agreement

On May 9, 2002, Israel's Council for Cable and Satellite Broadcasting adopted a new provision – an add-on to the existing Bezeq Law – that regulates the pay television industry. The provision prohibits foreign television channels from carrying advertising aimed at the Israeli market. This provision violates Israel's commitments in the WTO Services Agreement to provide full market access and national treatment for advertising services and should be deleted. This provision is not applicable to foreign broadcasters transmitting to at least eight million households outside of Israel.

COPYRIGHT LAW AND RELATED ISSUES

New Legislation in 2002 Leaves Out Criminalization of End-User Piracy of Business Software

Following on a Ministry of Justice memorandum proposing certain amendments to the Copyright Ordinance purporting to strengthen criminal enforcement in Israel, the Knesset passed the Bill for the Amendment of the Copyright Ordinance (No. 8), 5762-2002 (effective November 3, 2002). The new law strengthens criminal liability in a number of ways. For example, the Law increases the maximum prison sentences to five years for certain offenses ("making of infringing copies for commercial purposes" or "import of infringing copies for commercial purposes") and up to three years for other offences ("the sale, rental or distribution of infringing copies not as a business but in a commercial volume" and the "holding an infringing copy in order to trade therein"). In addition, the law will impose improved presumptions regarding copyright ownership that apply to both civil and criminal proceedings, and while it appears that the new presumption is very strong (in that the burden is on defendant to show proof to the contrary regarding subsistence of copyright ownership), it remains unclear how this provision will be interpreted in practice. Finally, criminal liability will be imposed on the officer of a company in which an offence is committed (unless he proves he did everything possible to prevent the offence from being committed). Companies shall be subject to double fines for copyright offences.

Unfortunately, the Law represents a major step backwards for the business software industry since it excludes corporate end-user piracy of business software from criminal liability.³⁷

³⁷ The former criminal liability provisions were replaced with provisions making it a crime to engage in the commercial activity of piracy. However, because the provision now limits liability to persons engaged in the sale, hire or distribution of infringing work "as their business," corporate end-user piracy of business software is left without a criminal remedy, in violation of TRIPS. The memorandum released by the Ministry of Justice in 2001 which described the legislation it was

The failure of the Law to criminalize corporate end-user piracy of business software implicates Israel's TRIPS obligations. Article 61 of the TRIPS Agreement requires criminal penalties to be applied at least in cases of commercial piracy, including corporate "end-user" piracy of business software. Under the criminal provisions of the Israeli law prior to passage of the 2002 amendments, a respectable argument had been made that Section 3(c) of the Copyright Ordinance might allow for an interpretation that included corporate end-user piracy of business software.³⁸ Section 10 in the new law is unambiguous in its exclusion of corporate end-user piracy. Section 10(a) provides that any person making an infringing copy of a work for the purpose of "trading in that copy" commits an offence. Section 10(c) provides that "any person engaged in the business of sale, hire, or distribution of an infringing copy of a work or sells, hires or distributes infringing copies of a work on a commercial scale" commits an offence. Both provisions clearly exclude the unlicensed use of business software in a business setting. Section 10(c) should be amended to expressly criminalize corporate end-user piracy of business software.³⁹

Ministry of Justice Position on Payment for the Broadcasting and Public Performance of U.S. Repertoire Violates Israel's Obligations

The Israeli government astonished the recording industry in 2001 by issuing a legal opinion to an Israeli court, opining that payment for the broadcasting and public performance of U.S. sound recordings is no longer necessary. This opinion, elaborately drafted by the Ministry of Justice, conflicts with Israel's bilateral undertaking to accord national treatment to U.S. record producers in their sound recordings.⁴⁰ If this opinion is followed in Israel, would amount to a reversal of current

considering made it fairly clear that corporate end-user piracy of business software would fall outside the scope of what the Ministry understood by the term "by way of trade," i.e., they never intended to criminalize corporate end-user piracy of business software in this legislation. That is highly unfortunate. Specifically, the Memorandum stated,

The expression "by way of trade" is intended to distinguish between a single or random act or one of a private nature, and between actual commerce. Into this framework will enter, for example, the owner of a record store, or a peddler in the market who sells an infringing copy of a CD, the owner of a video rental library who rents an infringing copy of a movie, a computer company which sells computers to its clients, including unauthorized copies of computer software, etc. It must be noted that "by way of trade" is not necessarily "during the course of business" of a distributor. It is possible that the commercial distributor is legally engaged in another business, and the distribution of the infringing copies was done outside the framework of his business. It must also be noted that the commercial distribution does not require consideration: even distribution free of charge, which is intended to promote other commercial interests such as advertisement for a distributor or the encouragement to purchase another product, is likely, according to that suggested, to formulate criminal liability.

³⁸ Section 3(c) provided that a person who knowingly makes or has in his possession any plate for the purpose of making infringing copies of any work in which copyright subsists commits an offence. It was long thought by right holders, and indeed, some key scholars in Israel agreed, that this formulation was broad enough to encompass unlicensed use of software in a business setting. Other theories included the possibility that "distribution" could be interpreted to include the distribution within an office of unlicensed software; informal discussions with the Ministry of Justice confirmed that this was possible, but one question that arose was whether one computer was enough for criminal liability, or whether the unauthorized use of software in a business setting had to extend to multiple users. The 2002 amendments appear to have closed the door on these possible arguments.

³⁹ We propose that Section 10(c) be amended to provide that "any person who uses, sells hires or distributes an infringing copy of a work on a commercial scale or to such an extent as to affect prejudicially the owner of the copyright commits an offence."

⁴⁰ Israel protects sound recordings as "works" under the Berne Convention and should be bound under that Convention to

practices in which U.S. repertoire is compensated. The Ministry of Justice continues to aggressively pursue this policy wherever and whenever possible.

The U.S. and Israel indeed have committed to provide national treatment to each other's nationals. The U.S.-Israel bilateral copyright agreement was reached on May 4, 1950, and consists of an exchange of notes between U.S. Secretary of State Dean Acheson, and Eliahu Elath, Ambassador of Israel. The Agreement provides assurances from the government of Israel that "all literary and artistic works published in the United States are accorded the same treatment as works published in Israel, including mechanical reproductions of musical compositions." Therefore, the Israeli government must immediately declare that it has abandoned its position, and will abide by its agreement with the United States.

Israeli Copyright Laws Still TRIPS-Deficient

Even after amendment of the Ordinance, Israel's copyright laws remain out of sync with the TRIPS Agreement. The legal regime in Israel includes a modified version of the Copyright Act, UK (1911), which was adopted in the Copyright Order (1924), and the Performers and Broadcaster Rights Law (1984) providing neighboring rights to performers and broadcasters (and limited rights to an employer of a performer).⁴¹ Some provisions of the Israeli legal framework remain TRIPS-incompatible:

Substantive Deficiencies

- An exception is made to the sound recording rental right if the sound recording is not the "principal object" of the rental. This is at least a technical violation of TRIPS Article 14.4. TRIPS permits the exception with respect to computer programs, but there is no analogous exception for sound recordings. It is unclear whether this added provision has any practical impact that would render the provision incompatible with TRIPS.
- There is a "rule of the shorter term" for sound recordings in violation of TRIPS. Nothing in Article 14 of TRIPS covering sound recordings permits the application of this Berne

extend national treatment. More important, the U.S. and Israel committed to provide national treatment to each other's nationals, under the U.S.-Israel Bilateral Copyright Agreement, reached on May 4, 1950. That agreement consists of an exchange of notes between U.S. Secretary of State Dean Acheson, and Eliahu Elath, Ambassador of Israel. According to the note from Secretary Acheson,

The Government of the United States of America accordingly considers your Excellency's note and the present note as constituting an agreement between the Government of the United States of America and the Government of Israel, which shall be considered effective on and after May 15, 1948.

The Agreement provides assurances from the government of Israel that "all literary and artistic works published in the United States are accorded the same treatment as works published in Israel, including mechanical reproductions of musical compositions."

⁴¹ Other ancillary legislation includes the Copyright Order (Berne Convention) (1953) (as amended through 1981), which implemented the provisions of the Berne Convention (Brussels Act [1948] text) in Israel, and the Copyright Order (Universal Copyright Convention) (1955), which implemented the UCC in Israel. The United States and Israel entered into a bilateral copyright agreement on May 4, 1950, agreeing that "all literary and artistic works published in the United States are accorded the same treatment as works published in Israel, including mechanical reproductions of musical compositions."

exception to national treatment to sound recordings.

- There is no exclusive right in sound recordings to control the “direct or indirect reproduction” as required by TRIPS Article 14.2.
- Recent amendments to the copyright law failed to address rental rights issues for software. Copies of software acquired prior to January 1, 2000 do not carry a rental right in violation of TRIPS Article 11. The transitional provisions of the 1999 Amendments provided that copies of computer software acquired prior to the effective date of the law do not carry a rental right. This is TRIPS-incompatible, since Berne Article 18 permits no such exception.

Enforcement Deficiencies (On Their Face)

- Corporate end-user piracy of business software is not made subject to criminal penalties, as required by Article 61 of TRIPS.

Enforcement Deficiencies (In Practice)

- In Section 7C of the Copyright Ordinance, the court may only order the destruction of the manufactured objects so long as the party filing the motion notifies the police and the police are present to hear the motion. The requirement for police presence seems unreasonable, in light of the fact that the police are already understaffed and under-supported. If, in practice, this requirement results in the failure of courts to order destruction of manufactured objects, such a failure may defeat the effectiveness of the provision and render it inconsistent with Article 61 of TRIPS.
- Israel must provide adequate protections for witnesses who seek to report copyright infringement, and it must dedicate adequate police, prosecutorial, and judicial resources to the problem. It also must simplify and expedite enforcement procedures and process a greater volume of cases, with greater results, through its judicial machinery.
- Procedures to obtain an *ex parte* civil search are too burdensome. The recent amendments to the Civil Procedure Regulations requiring the attorney who executes the search order to be an attorney different from the one who obtained the order adds even more expense and complexity to an already overly burdensome and costly procedure.

Civil Remedies in Israel are Inadequate and Ineffective

Israel must reform its copyright law to provide adequate compensatory and deterrent civil damages. At present, unless a right holder is willing to endure substantial burdens, delays and risks, it can only recover a specified statutory sum that is artificially and unreasonably low (i.e., NIS 10,000 -NIS20,000, or roughly US\$2,053 - \$ 4,106), calculated per infringed title rather than infringed copy and infringing act (i.e., so the damages are the same, whether there is one illegal copy of a work or one million, or whether there is one illegal download, for example, or one million). As noted above, without the option to sue for meaningful statutory damages measured per copy and/or per infringing act (in addition to the existing per infringed title option), illegal resellers and end-users can regard these minimal penalties as merely a cost of doing business, and infringement

becomes a rational business choice.

Unauthorized Retransmissions by Cable Operators

For a number of years, Israeli cable operators have been retransmitting U.S., European and Russian content without the authorization of right holders. As a consequence, the motion picture industry and concerned right holders filed a legal action in early 2000 under the auspices of the international producers' collection society, AGICOA, against cable operators for royalties that should have been paid to the right holders. Israeli cable operators continue to insist that they can take these signals without payment. Mediation efforts having failed in early 2002, the first hearing was held on June 18, 2002. These efforts may be facilitated by a recent, unrelated decision by the Supreme Court holding that cable retransmissions are subject to copyright protection.⁴² In addition, the Israeli government has reportedly considered draft amendments to the Telecommunications Law that would authorize cable operators to retransmit unencrypted satellite services (of original programming) by means of a compulsory license mechanism. If this draft were to make it forward to the Knesset, that body should reject this totally unacceptable compulsory license as completely out of line with international practice. Copyright owners of content over Hertzian and satellite signal programming should retain the ability to license programming as market forces dictate and not be subject to government-imposed compulsory licenses.

Israel Should Move Forward to Adopt WIPO Treaties, the WCT and WPPT

Since 1989, the Israeli authorities have planned to overhaul and modernize the copyright system. While the Ministry of Justice (in charge of drafting) had intended to put the comprehensive overhaul forward in 1999, in part because they received an overwhelming number of comments, the overhaul was put aside in favor of stop-gap legislation to attempt to address the immediate TRIPS deficiencies. IIPA highly encourages the government of Israel to swiftly implement the WIPO "Internet" treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), to which Israel is a signatory, and both of which came into force in 2002.

⁴² In a separate case against Tevel, one of the three cable operator defendants in AGICOA's action, the Supreme Court of Israel held that works retransmitted by cable are subject to copyright protection. That order was appealed to the full Supreme Court panel, with the appeal triggering a stay in further proceedings against Tevel.