

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2004 SPECIAL 301 REPORT

LEBANON

EXECUTIVE SUMMARY

Special 301 Recommendation: Lebanon should remain on the Priority Watch List.

Overview of Key Problems: The market in Lebanon continues to be dominated by piracy. Cable piracy destroys the local market for audiovisual materials, as over 1,000 pirate cable operators serve 60% of Lebanon's population. Retail piracy of optical discs (CDs, VCDs, DVDs, CD-ROMs, "burned" CD-Rs, etc.) of business and entertainment software, sound recordings, published materials, and movies remains blatant and open in Lebanon. Some discs are produced locally in one unregulated optical disc plant, while many more are imported from Asia, particularly Malaysia, and lesser quantities from Eastern Europe. Syria is a major transit country for pirated optical discs from Malaysia, and large quantities of those transshipped discs and discs locally burned (CD-Rs) in Syria are being smuggled into Lebanon. The government has done nothing to shut down the one optical disc plant; however, in 2003, Customs increased its activities in intercepting pirate products at the borders. Book piracy remains serious, including production for export of pirated scientific, medical and technical materials to other countries in the Middle East and the Gulf, and music piracy (music CDs and cassettes) remains a major problem with astonishingly high piracy levels. The government lacks the will to reduce piracy; it follows that staffing and resources of key ministries also remain inadequate. A few raids in 2003 yielded significant numbers of pirate products, but police often left pirated goods with the raided stores as "judicial custodians," and only intermittently seize. Cases proceeding to criminal court are marred by delays, procedural hurdles and non-deterrent results. On September 3, 2003, USTR accepted a Petition brought by IIPA against Lebanon under the Generalized System of Preferences (GSP) program for failure to meet the criteria of "adequate" and "effective" copyright protection, and review of that Petition is currently under way.

Actions to be taken in 2004

- Issue a statement at the highest level of the Lebanese government that copyright enforcement will be treated with a higher priority.
- Form a specialized IPR unit of the police, with dedicated resources and power to act *ex officio* anywhere in Lebanon.
- Appoint a national network of specialized prosecutors dedicated to copyright cases.
- Improve the efficiency of the court system, through the streamlining of IPR cases, creation of specialized courts, or other equivalent methods.
- Close down all unlicensed "community cable" television stations in Lebanon.
- Carry out raids and initiate prosecutions against many pirate retail stores and street vendors.
- Instruct police during raids to seize all clearly infringing materials, regardless of whether they are specifically identified in the complaint.
- Instruct Customs authorities to take *ex officio* action to interdict and seize pirate product entering the country.
- Amend the copyright law to comply with TRIPS and the WIPO "Internet" treaties, including deletion of overly broad exceptions (e.g., for educational use of business software); accede to the WCT and WPPT.

- Adopt an optical disc regulation, requiring optical disc manufacturing plants to obtain licenses and conduct themselves in accordance with specific business practices that promote due care and discourage piracy.

For more details on Lebanon's Special 301 history, see IIPA's "History" Appendix to this filing.¹ Please also see previous years' reports.²

LEBANON
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1999 – 2003³

| INDUSTRY | 2003 | | 2002 | | 2001 | | 2000 | | 1999 | |
|--------------------------------|-----------|-------|-------------|-------|-------------|-------|-------------|-------|-------------|-------|
| | Loss | Level | Loss | Level | Loss | Level | Loss | Level | Loss | Level |
| Motion Pictures | 10.0 | 80% | 8.0 | 80% | 8.0 | 80% | 8.0 | 60% | 8.0 | 60% |
| Records & Music ⁴ | 2.5 | 70% | 2.0 | 65% | 2.0 | 65% | 2.0 | 68% | 2.0 | 60% |
| Business Software ⁵ | NA | NA | 3.5 | 74% | 1.1 | 79% | 1.3 | 83% | 1.6 | 88% |
| Entertainment Software | NA | 80% | NA | NA | NA | NA | 1.5 | 96% | 0.5 | 70% |
| Books | 2.0 | NA | 2.0 | NA | 2.0 | NA | 2.0 | NA | 2.5 | NA |
| TOTALS⁶ | NA | | 15.5 | | 13.1 | | 14.8 | | 14.0 | |

COPYRIGHT PIRACY IN LEBANON

Rampant cable piracy (90% piracy level for U.S. content) continues to devastate the local theatrical, video, and television markets. There remain well over 1,000 cable operators that serve over 60% of the Lebanese population, retransmitting domestic and foreign terrestrial and satellite programming without authorization to their subscribers for an average monthly fee of US\$10. Occasionally, these systems also use pirate videocassettes and DVDs to broadcast directly to their subscribers, including the broadcasting of recent popular movies and TV shows, and movies that have yet to be released theatrically in Lebanon.⁷ The theatrical market continues to suffer,⁸ and the legitimate video market has been almost entirely destroyed by the various forms of piracy in Lebanon. Local broadcast television stations have canceled long-standing licenses with copyright owners because they cannot compete with the pirates.⁹

Lebanon has become a producer of pirated materials and an exporter of piracy. One

¹ <http://www.iipa.com/pdf/2004SPEC301HISTORICALSUMMARY.pdf>.

² <http://www.iipa.com/countryreports.html>.

³ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2004 Special 301 submission at <http://www.iipa.com/pdf/2004spec301methodology.pdf>.

⁴ Loss figures for sound recordings represent U.S. losses only.

⁵ BSA's 2003 piracy statistics were not available as of February 13, 2004, and will be made available in the near future and posted on the IIPA website at <http://www.iipa.com/>. BSA's statistics for 2003 will then be finalized in mid-2004 and also posted on the IIPA website. 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 reflect losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

⁶ In IIPA's 2003 Special 301 submission, IIPA estimated that total losses to the U.S. copyright-based industries in Lebanon were \$12.0 million. IIPA's revised loss figures are reflected above.

⁷ 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.

⁸ Largely as a result of cable piracy, receipts from ticket sales to movie theaters dipped approximately 27% in 2002, compared with sales in 2001.

⁹ While IIPA supports a law to regulate the cable television industry, and looks forward to assisting the Lebanese government in addressing this sector, such a law cannot substitute for aggressive enforcement against cable piracy under existing laws.

unregulated CD plant operating in Beirut has been producing over 150,000 discs per month, of a range of unauthorized copies of copyrighted products including entertainment software, business software, and sound recordings. There is also increasing evidence of massive “burning” of CD-Rs of music and other copyrighted materials. Some of the CD-Rs are sourced back to Syria¹⁰ and the Palestinian territories, while most imported optical discs come into Lebanon from Asia (mainly Southeast Asia),¹¹ Ukraine, or elsewhere in Eastern Europe. As a result, pirated optical discs (CDs, VCDs, DVDs, CD-ROMs, etc.) of copyrighted materials (movies, business software, entertainment software, sound recordings, and published/reference materials) inundate the Lebanese market. The government of Lebanon must immediately contact and investigate any known plants to ensure that they are engaged in the production of authorized product, and if necessary, seize infringing copies and machinery, and impose civil, administrative, and criminal penalties under the current laws (including the Copyright Law) to deter the organized manufacturing and distribution of pirate product.

Other piracy problems abound. Pirate videocassettes of motion pictures not yet released in the theaters or on video continue to cause major commercial damage in Lebanon (an estimated 80% of videos in Lebanon are pirate). Such pirate copies are often of poor quality, having been taken with camcorders inside theaters. Locally and regionally manufactured music sound recordings on CD or audiocassette are ubiquitous in Lebanon, including at an airport shop. Retail piracy of business software takes several forms, including the sale of hardware loaded with unlicensed software (“hard-disk loading” piracy), in addition to the mass CD replication of pirate copies of business software. End user piracy of business software remains prevalent in Lebanon, particularly in small and medium enterprises. Book piracy remains a serious problem, as 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. In 2003, the legitimate university community continued to make some efforts to have students use only legitimate textbooks.

COPYRIGHT ENFORCEMENT IN LEBANON

The lack of proper enforcement in Lebanon is chiefly due to a lack of political will on the part of the Lebanese government to make fighting piracy a priority. Enforcement agencies do not self-initiate actions, waiting for complaints by right holders before commencing an investigation. Staffing and training of the Department of Intellectual Property Protection at the Ministry of Economy continues to be meager. In mid-2003, a joint task force that includes inspectors from the Ministry of Economy, the Ministry of Finance, and Lebanese Customs was formed. It was tasked with raiding targets identified in complaints filed with the Department of Intellectual Property Protection. However, that task force refuses to act on its own, and the results have been mostly non-deterrent so far.

In 2003, some raiding activity was taken by the police, continuing the positive trend that started in 2002.¹² And, for the first time in 2003, the Minister of Economy improved the Ministry's

¹⁰ Syria is being used as a major “transit country” for shipments of pirated discs into Lebanon from Malaysia. The pirated goods are mostly “smuggled” into Lebanon via so called Military roads between Syria and Lebanon. There are no real Customs checkpoints at these roads as they are used by the military.

¹¹ We are also aware that CD-Rs “burned” with “MP3” music data files are being imported from Malaysia.

¹² In 2002, the police, in conjunction with the business software and recording industries, conducted more than 20 store raids, revealing substantial numbers of pirate business software, entertainment software, and sound recording titles. After the raids, the pirate CDs were left with the store owners as “judicial custodians.” It took many months of meetings and discussions with the Chief Public Prosecutors office to convince him to have the pirate CDs and the computers used to produce them removed from the premises and stored in a police warehouse. Recently, those pirates were indicted, and referred to the criminal court of Baabda for trial.

enforcement track record and participated in several raids and copyright awareness drives. For the record industry, the Ministry of Economy in Lebanon conducted roughly 20 raids in 2003 on warehouses and retail outlets in Lebanon. Separately, Customs authorities stopped a large number of piratical imports of optical discs, predominantly originating from Southeast Asia. Seizures by the MOE and Customs included a total of more than 155,000 music carriers (1,000 audiocassettes, 74,000 pirated audio CDs, 5,000 pirated audio CD-Rs by the MOE; and another 75,000 pirate audio CDs by Customs). Furthermore, the Prime Minister and the Minister of Economy have met with representatives of the copyright industries and issued strong statements of support for IPR, in sharp contrast to previous years' meetings, in which industry had been told it would take several years before copyright enforcement could begin. The President and the Prime Minister should continue to issue political statements to make fighting copyright piracy (including cable piracy) a high priority for all Lebanese government agencies. Such a step is absolutely essential to break the chain of indifference exhibited by Lebanese authorities for years.¹³

In the past, raids were fraught with problems, as targets were often tipped off, or the Lebanese officials left pirated materials in the hands of the pirates as "judicial custodians." Lebanese Customs officials were notorious for letting pirated materials into the country even when given adequate evidence of the illegality of the goods.¹⁴ IIPA hopes that the early indications of increased enforcement activities in 2003 are a good sign of what is to come in 2004. Lebanon's leaders still should establish a specialized IPR unit, in the police or elsewhere, with dedicated resources to deal with copyright infringements. Such a unit should be given *ex officio* authority.

The situation in the courts needs improvement. IIPA has noted in previous reports detailed instances of prosecutorial error in preparing piracy cases – errors which have doomed those otherwise straightforward piracy cases to failure (in one set of cases, the prosecutors filed the cases in the wrong court). Movement should be made to establish a specialized group of prosecutors, trained in copyright, to handle all copyright cases. Such a core group would work with the IPR unit or other enforcement officers (e.g., Customs) to prepare cases for prosecution. It would also be a positive development if a cadre of judges who have received specialized training in copyright could be regularly assigned to hear such cases.

A judiciary sensitized to the copyright law, aware of the severe economic damage caused by piracy, and aware of the technologies employed by pirates, is sorely needed in Lebanon. There were a few positive court results in 2003 which give some cause for hope. Civil copyright cases brought against pirates in Lebanon have never led to deterrent results.¹⁵ The criminal justice system showed some promise in 2003. In July 2003, 41 cable pirates were sentenced for cable piracy in the first such criminal convictions in the country's history.¹⁶ Unfortunately, the sentences included no jail time, and the fines ranged from a mere US\$4,533 for some defendants to \$9,335 for the

¹³ There are only four part-time inspectors in the Department of IP Protection tasked to fight piracy. In the area of software piracy, these inspectors lack computer knowledge. In addition, startlingly, these officers only work until 2 p.m. and won't work with computer experts. Even when these inspectors have been given targets to raid, many problems in enforcement have ensued (e.g., the pirate reseller at 4 p.m. at a computer fair could not be raided, because it was "after working hours").

¹⁴ Even though the recording industry has repeatedly requested written answers from the police and enforcement authorities, no explanation has been forthcoming as to why pirated CDs from Ukraine continue to be allowed into Lebanon.

¹⁵ Procedural problems in two cases in 2002 resulted in ineffective enforcement against known cable pirates. In one case (the "Elio Sat" matter), lack of police cooperation following a court-ordered inspection rendered it impossible to obtain the evidence necessary to successfully conclude the case. In yet another cable piracy case (the "Itani" matter), a court-appointed expert was unable to act quickly enough to catch the pirate cable operator to obtain the evidence necessary to proceed.

¹⁶ One conviction in 2001 and three convictions in 2002 against software pirates resulted in sentences, including for the first time, in April 2002, a one month jail sentence handed down by the Criminal Court of Beirut, but again, the fines were non-deterrent.

most egregious defendants, hardly a deterrent.¹⁷ In August, 2003, a judge in Beirut issued the first-ever injunction against seven cable pirates (responding to requests brought by two petitioners, Showtime, and Arab Radio & Television). The judge also imposed a fine equal to US\$333 per day for any of the pirates that violated the injunction. Nonetheless, most cases get bogged down by procedural problems, judges' relative lack of familiarity with intellectual property laws, inefficient handling, and delays in adjudication. It should be noted that in a recent case, a judge refused to issue an injunction because the plaintiff did not register his copyright in Lebanon with the Ministry of Economy and Trade; this bench decision, if not reversed, would directly place Lebanon in violation of international copyright standards, which do not permit formalities (such as a registration) to interfere with the exercise of rights.

COPYRIGHT LAW AND RELATED ISSUES

The Copyright Law of Lebanon (effective June 14, 1999) provides, on its face, a sound basis for copyright protection for U.S. works and sound recordings,¹⁸ including stiff penalties (on the books) for copyright infringement, stiff penalties against cable pirates, confiscation of illegal products and equipment, the closure of outlets and businesses engaged in pirate activities, and a Berne-compatible evidentiary presumption of copyright ownership. The law also provides right holders with a broad communication to the public right (Article 15), but does not take other necessary steps to fully implement the WIPO "Internet" treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).¹⁹ The government of Lebanon should be encouraged to fully implement these important treaties, and accede as soon as possible.

Unfortunately, the law remains deficient with respect to international standards in several respects,²⁰ including:

- There is no direct point of attachment for U.S. sound recordings (however, point of attachment for U.S. sound recordings can be achieved by simultaneous publication in the U.S. and any Rome Convention Member).
- Works and sound recordings are not explicitly given full retroactive protection in accordance with international treaties.
- Article 25, even as implemented by decision No. 16/2002 (July 2002), still does not meet the standards/requirements of the Berne Convention or the TRIPS Agreement. While many modern copyright laws include specific exceptions for the copying of computer programs under narrowly defined circumstances, and/or exceptions allowing the copying of certain kinds of works for "personal use" (but almost never computer programs, except for "back-up" purposes), Article 25 sweeps far more broadly than comparable provisions of either kind, to the detriment of copyright owners. The implementing decision addresses some areas of concerns raised by IIPA in the past, but not the chief area, which is that the exception is essentially a free compulsory license for students to make multiple copies of a computer program. Such an

¹⁷ IIPA does recognize that the total award to the two right holders, US\$160,000 for one and US\$20,000 for the other, was relatively substantial for copyright cases decided in Lebanon

¹⁸ Lebanon is a member of the Berne Convention (Rome [1928] Act) and the Rome Convention. Lebanon should be urged to accede to the Paris Act of 1971 of the Berne Convention, and should join the Geneva (phonograms) Convention in order to provide clearer protection to international sound recordings.

¹⁹ For example, the law should prohibit circumvention of technological protection measures used by copyright owners to protect their works in the digital environment from unlawful access or unlawful exercise of rights. The law should also prohibit preparatory acts (e.g., manufacture) of circumvention devices or provision of circumvention services.

²⁰ A more detailed discussion of remaining deficiencies in Lebanon's copyright law can be found in the 2003 Special 301 report, at <http://www.iipa.com/rbc/2003/2003SPEC301LEBANON.pdf>. The government of Lebanon must consider the far-reaching consequences of its failure to bring its law into compliance with international standards, including potential negative effects on its chances to quickly accede to the World Trade Organization. WTO Members will expect Lebanon to achieve minimum standards of intellectual property protection as spelled out by the TRIPS agreement.

exception violates the requirements of Berne and TRIPS since it “conflicts with a normal exploitation of the work” (software aimed at the educational market) and it “unreasonably prejudices the legitimate interests of right holders” (eliminating completely the educational market for software).

- There are certain other overly broad exceptions to protection (e.g., Article 32).
- Most significantly, since the deterrent penalties provided on the books are not carried out in practice, Lebanon’s legal framework at present pays only lip-service to the severe problem of piracy. Each of the items noted would arise in the WTO accession process, and Lebanon must take measures to address these deficiencies.

Because Lebanon has emerged as a major producer of pirated optical discs (including “burned” CD-Rs), Lebanese authorities must move toward implementation of effective measures against optical disc piracy. In particular, the Lebanese government should introduce effective optical media plant control measures, including the licensure of plants that produce optical discs; the registration of locations engaging in the commercial duplication of optical discs onto recordable media (CD-R “burning”); the tracking of movement of optical disc production equipment, raw materials, and production parts (so-called stampers and masters); the compulsory use of identification codes (both mastering codes and a mould code), in order successfully to track the locations of production; plenary inspection authority as to licensed plants and search and seizure authority as to all premises; and remedies, including revocation of licenses, civil, administrative, and criminal penalties for violations of the law.

Generalized System of Preferences

On September 3, 2003, the United States Trade Representative “accepted for review” a Petition filed by the IIPA with the U.S. government as part of its “Country Eligibility Practices Review” of the Generalized System of Preferences (GSP) trade program. To qualify for benefits under the GSP Program, namely, duty-free imports of many important Lebanese products into the U.S., USTR must be satisfied that Lebanon meets certain discretionary criteria, including whether it provides “adequate and effective protection of intellectual property rights.” IIPA’s Petition noted three major deficiencies in Lebanon’s protection of copyright that caused economic harm to U.S. right holders that result in Lebanon failing to meet the GSP standard of providing “adequate and effective” copyright protection in practice: (1) deficiencies in the copyright law in Lebanon that render legal protection inadequate and ineffective; (2) the failure to enforce criminal remedies against pirate cable TV operators, making protection of U.S. audiovisual works inadequate and ineffective; and (3) enforcement efforts against piracy in Lebanon that are inadequate and ineffective.

USTR, in its 2003 Special 301 decision in May, reiterated the concern of the U.S. government regarding “Lebanon’s severe copyright piracy problem and the lack of a comprehensive government commitment to eliminate piracy and foster legitimate business.”²¹ The decision continues:

Despite the entry into force in 1999 of a new copyright law, there has been little action by Lebanon against piracy. Some raids of pirate store and operations occurred in 2002, leading to the first sentencing of a software pirate and financial penalties in other cases. However, pervasive cable piracy continues to undermine legitimate theatrical, video, and television service providers. Overall Lebanon had made little progress in 2002 in addressing its significant IPR deficiencies. The United States urges the Lebanese Government to press forward with its recent proposal to draft a law regulating the cable television industry and to mount an aggressive campaign against pirates. End-user piracy of computer software is

²¹ USTR 2003 Special 301 Report, May 1, 2003, available at the USTR website at <http://www.ustr.gov/reports/2003/special301-pwl.htm#lebanon>.

widespread among large companies, banks, trading companies, and most government ministries. Also troubling is an overly broad software exception for certain educational uses in the new copyright law that seriously undermines the viability of this market for legitimate products. Book piracy also remains a serious problem...A committed and vigorous program to enforcement intellectual property rights, particularly copyright protection, is essential to the success of the Lebanese Government's efforts to reform its economy, increase trade and foreign direct investment and prepare for accession to the WTO.

Lebanon should heed USTR's language, and take concrete steps toward eradicating piracy in 2004; otherwise, its trade benefits under GSP should be suspended (IIPA urges Lebanon's industrial sector to review the goods that benefit from current GSP benefits, and to consider whether it is in their interest for the government of Lebanon to further delay action against copyright piracy, at the risk of cutting off the trade benefits they currently enjoy). During the first 11 months of 2003, Lebanon imported almost \$28.2 million of products into the United States without duty, or almost 33.6% of its total imports into the U.S.²²

²² During 2002, Lebanon imported almost \$22.7 million of products into the United States without duty, or almost 37.7% of its total imports into the U.S.

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