

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2008 SPECIAL 301 REPORT

### SPECIAL MENTION

# JORDAN

**Special 301 Recommendation:** IIPA recommends that USTR actively monitor developments in Jordan during 2008 with respect to the issues discussed in this Special Mention report.

## EXECUTIVE SUMMARY

U.S. copyright owners want to be able to conduct legitimate copyright business in Jordan, but very high piracy levels make this difficult. As a result of high piracy rates and no enforcement against street piracy, the legitimate recording industry is barely able to survive. The piracy problem is viewed by the industries as all the more serious considering the fact that Jordan has an FTA with the United States, and is unjustly complacent about its track record in the field of IP protection.

IIPA believes that there is a necessity to establish a comprehensive, ongoing, anti-piracy campaign if real progress is to be made in reducing piracy levels. IIPA recommends that the Jordanian government take some concrete steps to improve the situation. Based on the experience of IIPA members fighting piracy around the world, we recommend that, as a beginning, the following steps be taken:

- A cyber crime & IPR unit (comparable to the successful Lebanese model) should be established within the Jordanian police, which would be responsible for anti-piracy actions throughout Jordan.
- A special IPR unit should be established within Jordanian Customs with a particular focus on the Syrian border.
- The governmental body in charge of enforcement (now the National Library) should allocate increased resources, including personnel, to effectively conduct regular inspections and raids, with other bodies monitoring its performance to ensure accountability.
- Cases brought against pirates out of raids should proceed in an efficient manner to final resolution in the courts, with deterrent fines and penalties meted out in appropriate cases.
- Complainants should be able to take raids *ex parte* (without notifying the defendant) more effectively.
- Complainants and/or their representatives should be able to (or should continue to be permitted to) attend (themselves or through their representatives) raids and assist with the identification of all infringing product.
- Enforcement authorities should not make unreasonable documentary demands to prove ownership and the like.
- The Law of Evidence and the Law of Criminal Courts Procedures should be amended, or an exception provided, to allow for infringing copies and tools/implements of piracy to be tagged after raids (at present, each confiscated item is registered during raids, which is onerous and time-consuming).

Finally, IIPA calls upon the government of Jordan to take immediate steps to remedy remaining FTA deficiencies in its laws and enforcement system.

## **PIRACY AND ENFORCEMENT ISSUES**

The main problem in Jordan remains the blatant selling of pirated optical discs, mainly locally burned CD-Rs/DVD-Rs but also factory-produced discs believed to be imported from neighboring Syria, on street corners and markets. CD burning now takes place in shops in Amman and elsewhere in Jordan, destroying the legitimate music market. Whereas piracy levels have always been high in Jordan (hovering at close to 80% for international repertoire), the record industry now reports the number is over 90%.

The National Library in Jordan officially states that it has conducted 815 raids on retail piracy outlets during 2007 and seized in total more than 309,000 pirate CD-Rs and almost 34,000 pirate DVD-Rs. The National Library estimates that about 30% of the seized products contain music; about 50% contain films; about 5% contain games; and about 15% contain software. Unfortunately, the National Library claims it is not responsible for enforcement actions against street vendors as this is under the jurisdiction of local authorities. The raiding activity that has occurred to date has not made a dent in high levels of piracy and the total lack of enforcement actions against street piracy does not help matters.

Intelligence reveals that some pirated CDs might be smuggled into Jordan from neighboring Syria. While industry has no access to the plants, industry believes that at least 4 optical disc plants are operational in Syria, not only distributing inside Syria, but also exporting heavily to Iraq and also to Jordan and Lebanon. The recording industry's international group, IFPI, is not aware of a single seizure of pirated optical discs by Jordanian Customs in 2006 or 2007. The lack of strict border control measures by Jordanian customs further exacerbates an already piracy-driven market.

## **FREE TRADE AGREEMENT**

The United States-Jordan Free Trade Agreement went into force on December 17, 2001,<sup>1</sup> triggering due dates for the government of Jordan to meet various requirements to protect intellectual property (as contained in Article 4 of the FTA). Jordan joined the WTO effective April 11, 2000 and the Berne Convention effective on July 28, 1999, making it subject to those international obligations as well. The triggering dates for Jordan's FTA obligations were as follows:

- December 17, 2003: WIPO Copyright Treaty Articles 1-14 and WIPO Performances and Phonograms Treaty Articles 1-23;<sup>2</sup> national treatment [Article 4(3)-(5)]; and the substantive obligations in Article 4(10)-(16) of the FTA.<sup>3</sup>
- December 17, 2004: The enforcement obligations in Article 4(24)-(28) of the FTA.

In the 2005 Special 301 cycle, IIPA urged the U.S. Government to initiate immediate dispute settlement consultations under Article 16 and 17 of the U.S.-Jordan Free Trade Agreement, and to take all steps necessary to resolve the dispute by bringing Jordan into compliance with the FTA as soon as possible. In the 2007 review, IIPA reiterated several issues as ripe for consideration for dispute settlement if the government of Jordan did not take immediate steps to remedy them. Those issues included the following FTA requirements:

- **Anti-Circumvention and Technological Protection Measures ("TPMs") [FTA Article 4(13)]**
- **Appropriately Narrow Exceptions and Limitations [FTA Article 4(16)]**

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<sup>1</sup> The FTA went into force when the United States formally notified the government of Jordan that it had taken necessary procedures to ratify the Agreement (Jordan had already ratified the Agreement in 2000).

<sup>2</sup> The FTA expressly states that the obligation to implement the WIPO Treaties does not apply to Articles 1(4) and 6(2) of the WCT, and Articles 5, 8(2), 12(2), and 15 of the WPPT.

<sup>3</sup> Jordan also needed to accede to the WCT and WPPT by December 17, 2003; it missed this deadline, but joined the WCT on April 27, 2004 and the WPPT on May 24, 2004.

- **Compensatory Damages [FTA Article 4(24)]**
- **Deterrent Statutory Maximum Fines [FTA Article 4(25)]**
- **Seizure of Documentary Evidence [FTA Article 4(25)]**
- ***Ex Officio* Enforcement Authority [FTA Article 4(26)]**
- **Presumptions of Ownership and Subsistence of Copyright [FTA Article 4(27)]**
- **Fixing Provision Allowing Alteration of Features in Seized Materials, Which Impinges on Exclusive Adaptation Right [Article 47(a)]**
- **Customs/Border Provisions – Article 59 of TRIPS**

The U.S. government has been working with counterparts in the Jordanian government to resolve many of the remaining FTA deficiencies, and good progress has been made in dealing with TPMs, exceptions, compensatory damages, seizure of documentary evidence, *ex officio* enforcement authority, and dealing with seized materials. Outstanding issues remain the deterrent effect of statutory maximum fines, presumptions, and customs/border provisions, some of which may have to be fixed through legislative amendments.

## **GENERALIZED SYSTEM OF PREFERENCES**

In addition to benefits Jordan receives under the FTA, Jordan continues limited participation in the Generalized System of Preferences (GSP) program, a U.S. trade program that offers preferential trade benefits to eligible beneficiary countries. One of the discretionary criteria of this program is that the country provides “adequate and effective protection of intellectual property rights.” During the first 11 months of 2007, \$11.1 million in Jordanian imports into the U.S. (or 0.9% of Jordan’s total exports to the U.S.) entered the U.S. under the duty-free GSP code.