

JORDAN

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2009 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA submits this Special Mention report on Jordan to highlight continuing piracy problems there, and to ensure that Jordan lives up to its obligations under the U.S.-Jordan Free Trade Agreement.

Executive Summary: More than seven years ago, the U.S.-Jordan Free Trade Agreement went into effect, and copyright owners have waited patiently since for the piracy situation to improve. U.S. copyright owners wish to conduct legitimate copyright business in Jordan, but very high piracy levels (for example, music piracy remains in the 90% range, while piracy levels for business software remain quite high around 60%) means that copyright owners can barely survive commercially. Meanwhile, Jordan has enjoyed significant benefits from the FTA, bringing into the United States almost one quarter of its imports – more than \$279.8 million worth in 2008 alone – under a special FTA customs line. Jordan continues to enjoy its benefits under the Free Trade Agreement with the United States, and must now uphold its end of the bargain by protecting U.S. copyrights. After years of waiting, finally, the government in 2008 took several initial steps recommended by IIPA to help improve the situation. An IPR Division (comparable to the successful Lebanese model) has been established within the Jordanian Police (the “IPRs Protection Division at the Public Security Directorate”). The Division is responsible for anti-piracy actions throughout Jordan. IIPA also understands that an IP Division at the Customs Department has been established. IIPA applauds the Department of the Jordan National Library Copyright Office for devoting additional resources to fight piracy in Jordan, although even more resources are now needed.

Priority Actions Requested in 2009: IIPA requests that the government of Jordan, in addition to amending its copyright law to fully implement the FTA, take the following actions to fix the enforcement system, which would result in the most significant near term commercial benefits to the copyright industries:

- Allocate more resources from the Jordan National Library, including personnel, to effectively conduct regular inspections and raids, with other bodies monitoring the National Library's performance to ensure accountability.
- Ensure that cases brought against pirates arising from raids proceed in an efficient manner to final resolution in the courts, with deterrent fines and penalties meted out in appropriate cases.
- Ensure that right holders can obtain *ex parte* orders more efficiently.
- Permit complainants and their representatives to attend raids and assist with the identification of all infringing product.
- Ensure that the IPR unit within Jordanian Customs pays particular attention to possible pirate imports coming in at the Syrian border.
- Ensure that enforcement authorities do not make unreasonable documentary demands to prove ownership.
- Amend the Law of Evidence and the Law of Criminal Courts Procedures 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).

JORDAN				
Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2007-2008 ¹				
INDUSTRY	2008		2007	
	Loss	Level	Loss	Level
Business Software	11.0	58%	11.0	60%
Records & Music	NA	90%	NA	90%
Motion Pictures	NA	NA	NA	NA
Books	NA	NA	NA	NA
Entertainment Software	NA	NA	NA	NA
TOTALS	11.0		11.0	

PIRACY AND ENFORCEMENT ISSUES

Retail Piracy Remains Severe, and There Is Evidence of Smuggling from Syria: 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. Downtown Amman has several mega shops selling pirated software, videos, movies and games, and CD-R and DVD-R burning now takes place in shops in Amman and elsewhere in Jordan, destroying the legitimate markets for such products. Whereas music 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%. Due to piracy, the legitimate market in Jordan for music, audiovisual works, and other creative products has suffered. In previous years, intelligence revealed that some pirate CDs and DVDs had been smuggled into Jordan from neighboring Syria. While industry has had no access to the plants, industry believes that at least four optical disc plants are operational in Syria, saturating the domestic market with pirate product but also exporting product heavily to Iraq and also to Jordan and Lebanon.

Business Software Piracy Rates Remain High: Software piracy levels in Jordan have decreased over the past few years. However, losses have increased because the overall IT and software market has grown in Jordan. Retail software piracy remains rampant in markets like Gardens Street in Amman.

Enforcement Actions Continued, Although at a Lower Level than 2007: The Department of the Jordan National Library Copyright Office coordinates copyright enforcement in Jordan, while the IP Division at the Customs Department, and the newly established IPRs Protection Division at the Public Security Directorate of the Jordanian Police play crucial subsidiary roles. The relationship with these authorities improved for the industries in 2008, although information from the Library indicates that the sheer number of raids may have gone down (information shows there were 815 raids in 2007, but only 351 in 2008). IIPA welcomes the Police Department's establishment of a new IPRs Division late in 2007. The new Division has reportedly been cooperating well with the National Library. The IP Division at the Customs Department enjoys *ex officio* authority, and industry reports good relations with this IP Customs Division as well.

Court Results Remain Non-Deterrent: The court system remains a weak link at deterring piracy with low non-deterrent fines being the norm. The penalty structure in the Copyright Law is too low to deter piracy. IIPA supports statements by the Director of the Jordan National Library that deterrence could be achieved if maximum penalties, including imprisonment in appropriate cases, are regularly meted out, and would like to see this theory tested. The range of penalties is currently three months to three years imprisonment and/or JD1000 (US\$1,420) to JD6000 (US\$8,517) in fines. IIPA members are working with a U.S. Agency for International Development-funded program to establish a one year training for judges that would be the nucleus of a specialized IP Chamber within competent courts. It is hoped this training can result eventually in a highly-qualified group of judges and prosecutors able to bring efficient judicial trials in what for the most part are uncomplicated commercial copyright piracy cases.

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2009 Special 301 submission at www.iipa.com/pdf/2009spec301methodology.pdf. BSA's 2008 statistics are preliminary, representing U.S. software publishers' share of software piracy losses in Jordan. They follow the methodology compiled in the Fifth Annual BSA and IDC Global Software Piracy Study (May 2008), available at <http://global.bsa.org/idcglobalstudy2007/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. For more details on Jordan's Special 301 history, see IIPA's "History" Appendix to this filing at <http://www.iipa.com/pdf/2009SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' country reports, at <http://www.iipa.com/countryreports.html>.

FREE TRADE AGREEMENT IMPLEMENTATION; OTHER LEGISLATION

The United States-Jordan Free Trade Agreement went into force on December 17, 2001, 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;² national treatment [Article 4(3)-(5)]; and the substantive obligations in Article 4(10)-(16) of the FTA.
- December 17, 2003: Accede to the WCT and WPPT; it missed this deadline, but joined the WCT on April 27, 2004 and the WPPT on May 24, 2004.
- December 17, 2004: The enforcement obligations in Article 4(24)-(28) of the FTA.

Unfortunately, the government of Jordan has not met all its deadlines and the laws (including Copyright Law No. 22 of 1992, as last amended by Law No. 9 of 2005)³ remain out of compliance with the FTA as of February 2009 (which could subject the government of Jordan to Dispute Settlement under the Agreement). Since the 2005 Special 301 cycle, IIPA has urged the U.S. government to insist that the government of Jordan immediately take all steps necessary to bring its laws into compliance with the FTA. In the 2007 and 2008 reviews, IIPA reiterated several issues as ripe for consideration for possible 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)].
- 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 worked with its counterparts in the Jordanian government to resolve many of the remaining FTA deficiencies, and progress in 2007 had been made to deal with the deficiencies related to TPMs, exceptions, compensatory damages, seizure of documentary evidence, *ex officio* enforcement authority, and dealing with seized materials, through implementing regulations. Unfortunately, it now appears the government of Jordan has taken the position that implementing regulations will not suffice to fix FTA deficiencies, and are back to the drawing board on copyright law amendments. A new draft Copyright Law amendment has reportedly been formulated and currently sits with the Cabinet of Ministers for approval. Once approval is obtained, the draft amendments would be forwarded to Parliament for its approval. It is hoped that the amendments will be formally adopted by 2009, and that stakeholders may be consulted prior to its enactment. The amendment should at least deal with all the FTA issues bulleted above.

IIPA understands there is an initiative afoot in Jordan to draft and adopt a cybercrime law. IIPA would look forward to reviewing any draft made available, and would recommend that the drafters implement the Council on Europe Cybercrime Convention (Sept. 10, 2001). Article 10 of that Convention provides that a party to the Convention will

"establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971

² 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.

³ Copyright Law No. 22 of 1992, amended by Law No. 14 of 1998, Law No. 29 of 1999, Amended Law No. 52 of 2001, Law No. 8 of 2005, and Law No. 9 of 2005.

revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed willfully, on a commercial scale and by means of a computer system.”

IIPA also welcomes a reported draft amendment requiring government agencies to use only legitimate software.

FTA AND GSP BENEFITS

As noted, Jordan has enjoyed significant benefits from entering into a Free Trade Agreement with the United States. Specifically, Jordanian businesses brought into the United States more than \$312 million in goods in 2007 under a special FTA customs line, representing 23.5% of all Jordan’s imports into this country, and more than \$279.8 million in imports to the U.S. under that customs line in 2008, representing an even higher 24.6% of all of Jordan’s imports into the U.S.

In addition to the benefits Jordan receives under the FTA, Jordan continues limited participation in the Generalized System of Preferences 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.” Jordan enjoyed duty-free imports into the United States of more than \$12.1 million in 2007, or nearly 1% of its total imports to the U.S., and during the first eleven months of 2008 that number grew to \$16.2 million, or 1.4% of Jordan’s imports to the U.S. that came into this country under the duty-free GSP code.

TRAINING AND PUBLIC AWARENESS

In addition to the USAID judicial training that industry representatives are participating in, industry has also regularly participated in other training events held by the government of Jordan, the World Intellectual Property Organization, and private sector associations. The Business Software Alliance has been particularly active in participation in trainings. In April 2008, IIPA staff participated in a digital video conference under the auspices of the U.S. State Department. Participants from Jordan in the DVC included several dozen government representatives, professors, private sector specialists and students, and topics ranged from copyright piracy, digital copyright issues, and copyright protection and its link to economic development.