

EGYPT

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2010 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Egypt remain on the Watch List in 2010.¹

Executive Summary: Once a country of great cultural significance in terms of creative output in the Middle East, the copyright market in Egypt today is less characterized by creative activity than it is by pirate consumption.² Local Egyptian and U.S. right holders are equally hampered by piracy and other barriers, as authors such as Alaa al-Aswany,³ and the local Egyptian film market duopoly of the Arabic Company for Production and Distribution Group and El Mottahida (which suffer from piracy, cultural burdens, narrow theatrical windows, and a dearth of screens in the country)⁴ can attest. In addition to damaging photocopy and print piracy, other piracy phenomena like retail and Internet-based piracy of music, software, games, and movies, and business software end-user piracy (which statistically worsened in 2009), caused copyright owners losses and kept them from doing legitimate business in Egypt. Internet usage continued to grow rapidly in 2009, and along with it, Internet-based piracy, especially of music, became a growing concern.

Despite a few positive developments and some enforcement cooperation in 2009, the piracy situation remained of great concern in Egypt. The establishment of new Economic Courts by Law No. 120 (2008) approved by the Shura Council and passed by the People's Assembly is clearly a positive development. Under this Law, civil and criminal copyright cases will be handled by judges with specialized training and can, as the government of Egypt's Submission in the Special 301 process indicates, promote "speedy judgments rendered."⁵ The government's Submission discussed cases in which the Ministry of Communications and Information Technology's "Information Technology Industry Development Agency" (ITIDA) had offered support, and listed several criminal convictions purporting to demonstrate improvements in the IP system. However, right holders remain concerned since cases have in the past usually resulted in non-deterrent fines, and almost never resulted in imprisonment. The Copyright Investigation Police Office in Cairo has been helpful on occasion to the publishing industry in carrying out enforcement against copy shops. However, the market remains largely overrun by piracy. The shift in jurisdiction for all software copyright (business and entertainment) to the Intellectual Property Unit at ITIDA has been helpful in leading to actions against piracy targets, and cases brought against some longstanding and notorious pirate enterprises. The Ministry of Culture, which still has enforcement purview over books, music, and motion pictures, has been less active. Finally, no legal structure is in place in Egypt to deal with growing Internet piracy, as Egypt's Internet penetration broadens faster than almost anywhere in the world.

The United States and Egypt signed a Trade and Investment Framework Agreement on July 1, 1999, and in May 2009,⁶ United States Trade Representative Ron Kirk and Egyptian Minister of Trade and Industry Rachid Mohammed Rachid met to discuss ways to expand U.S.-Egyptian economic ties, and signed a "Plan for a Strategic Partnership," which "aims to further promote economic cooperation between United States and Egypt." The Plan

¹ For more details on Egypt's Special 301 history, see IIPA's "History" Appendix to this filing at <http://www.iipa.com/pdf/2010SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' country reports, at <http://www.iipa.com/countryreports.html>.

² The independent Creative and Innovative Economy Center (CIEC) estimated motion picture piracy in 2007 to be between 90% and 95% and losses to be as much as US\$90 million to that sector. Bertrand Moullier et al, *IP and Economic Challenges in the Egyptian Film Industry*, Creative and Innovative Economy Center (CIEC) at George Washington University, October 2007, at <http://www.law.gwu.edu/NR/rdonlyres/B1EDABB1-E920-4C22-AF94-CB1A0E295C0.pdf>.

³ See Abdallah, *Alaa El Aswany*, Egypt Today, August 2004, Volume # 30 Issue 02.

⁴ See Moullier et al, *supra* note 2.

⁵ See Arab Republic of Egypt (Mona El Garf, Advisor, Minister of Trade and Industry), *USTR Section 301 Report for the Year 2009 Submission by the Arab Republic of Egypt*, February 2009, submitted to regulations.gov (on file with IIPA).

⁶ United States Trade Representative, *Joint Statement of U.S. Trade Representative Ron Kirk and Egyptian Minister of Trade and Industry Rachid Mohammed Rachid*, May 27, 2009, at http://ustr.gov/assets/Document_Library/Press_Releases/2009/May/asset_upload_file610_15662.pdf.



expressly includes "protection and enforcement of intellectual property rights" as one of the issues which may be a priority area for discussion and cooperation.

Priority Actions Requested in 2010: IIPA requests that the government of Egypt take the following actions in 2010, which would result in the most significant near term commercial benefits to the copyright industries:

Enforcement

- Fully establish specialized "Economic Courts" with specialized judges to deal with copyright matters, emphasizing speed and deterrence in piracy cases including jail sentences served, not suspended, and deterrent fines, and take active steps to develop core of specialized IP prosecutors and judges.
- Tackle book and journal piracy, both illegal reprints and photocopying, by taking sustained enforcement actions against pirate production and ensuring universities adopt policies to use only legal copies of publications.
- Fully implement laws and decrees (such as Law No. 118/1975, Decree No. 770/2005, and other measures) to seize piratical imports and exports, without guarantee amounts that are prohibitively expensive.
- Build capacity to handle Internet piracy cases, including cybercrime police to deal with infringing sites, whether hosting, deep linking, peer-to-peer, bulletin board, or cyber locker.

Legislation and Market Access

- Ease onerous market access restrictions which close the Egyptian market to legitimate copyright companies.
- Amend the copyright law and implementing decree to cure TRIPS deficiencies and resolve ambiguities, and fully implement and join the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).
- Establish mechanisms for service providers to cooperate with right holders against Internet piracy, including an expeditious way to remove infringing content, block piracy websites, enforce against illegal file sharing, and deal effectively with repeat infringers.

PIRACY AND ENFORCEMENT CHALLENGES IN EGYPT

Previous reports have discussed the piracy and enforcement challenges faced in Egypt.⁷ Piracy concerns raised included book piracy, including both pirate photocopying and pirate printing businesses, business software end-user piracy, Internet-based piracy, retail piracy, pirate distribution under false licenses (mainly of games), and mobile device piracy, among other issues. The following sections provide brief updates to the piracy and enforcement situation in Egypt. Failure to mention a specific issue does not indicate that the problem has been fully resolved.

Book Piracy – Educational Book Market Suffers From Illegal Photocopying and Some Print Piracy: The publishing industry has long complained of illegal photocopying of English language teaching (ELT) course books and other materials (e.g., grammar books, dictionaries) at universities and elsewhere in Egypt. Pirated higher-education textbooks, reference books and professional books are regularly sold at stalls set up near university campuses, and the institutions sometimes condone the activities or look the other way. Lecturers also may encourage illegal photocopying or universities may maintain bureaucratic and nontransparent adoption processes that give pirate enterprises cover (or may rent space to photocopy shops they know or reasonably should know are supplying pirate copies of texts and course packs). There are a few exceptions, most notably the Arabic Academy of

⁷ See International Intellectual Property Alliance, *Egypt*, at <http://www.iipa.com/rbc/2009/2009SPEC301EGYPT.pdf>. In 2009, the business software industry reported US\$88 million in losses due to piracy with a 60% piracy level. This is up from US\$87 million in losses and a 59% piracy level reported for 2008. In 2007, the latest year the music and record industry and book publishing industry reported, piracy losses were estimated as high as US\$119 million, and piracy levels for records and music were 75% in that year. The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2010 Special 301 submission at www.iipa.com/pdf/2010spec301methodology.pdf. BSA's 2009 statistics are preliminary, representing U.S. software publishers' share of software piracy losses in Egypt. They follow the methodology compiled in the Sixth Annual BSA and IDC Global Software Piracy Study (May 2009), available at <http://global.bsa.org/globalpiracy2008/index.html>, whose 2008 U.S. losses were also updated in February 2010. 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.

Science and Technology in Alexandria, which has achieved an outstanding record of supplying legitimate texts. The piracy level for medical books in particular is very high, and the vast majority of the market for other professional reference books such as engineering books is pirated. Online piracy, though not yet a significant problem, is a growing concern. A publisher reports that a number of its higher education textbooks are available on various BitTorrent websites.

Enforcement efforts have been at best sporadic as the authorities have not typically shown an interest in taking action against copy shops engaged in unauthorized photocopying activities. Recently, however, there have been isolated cases in which the industry has had an opportunity to work cooperatively with the Copyright Investigation Police Office in Cairo. Overall, it appears that authorities will not initiate raids and criminal prosecutions on their own without a specific complaint from rights holder representatives. Thus, book piracy, particularly illegal photocopying, remains rampant. Publishers have recently launched an anti-piracy campaign and met with several ministries and the Arab League IP office late last year. Though still in the early stages with much work to be done, the increased level of interest shown by the authorities is encouraging and welcome.

In theory, authorities indicate they are willing to take measures to stop piracy occurring on university campuses. In some cases, university administrators have indicated a willingness to take measures to stop piracy occurring on university campuses, especially when the institution is up for accreditation to 'Western' universities, and the university is evaluated on the basis of the curriculum, exams and its overall standing in the wider academic community. Unfortunately, in reality, promoting the use of legitimate published materials at most universities tends to happen on an *ad hoc* basis and varies from faculty to faculty. For example, some faculty members only allow students to register who have a book receipt for a legitimate purchase. Others appear to encourage or condone illegal photocopying. In order to truly tackle the unlawful photocopying and print production that is supplying Egypt's university campuses, the Ministries of Education and Higher Education should undertake measures to promote the use of legitimate published materials on college campuses. IIPA notes that at present, public state-funded universities are taking no responsibility for renting out space to stores that turn into pirate enterprises. There are apparently even employees of the universities that provide the shops with the books, informing them of the number of students, and helping them to sell the pirated copies at the university.

Establishment of Economic Courts to Deal With Copyright Cases a Welcome Development: The government of Egypt's February 2009 Special 301 Submission⁸ indicated that the Shura Council and the People's Assembly approved Law No. 120 for the Year 2008, establishing economic courts. According to the Ministry submission,

"These specialized courts will have jurisdiction over cases involving a number of economic laws, including the intellectual property rights law. These courts will ensure specialized judges trained in these legislations hear IPR cases and speedy judgments rendered. The courts will decide on both the criminal aspect of IPR cases as well as the civil remedies."

In the past, most copyright cases decided favorably in Egyptian courts resulted in non-deterrent fines usually a fine of no more than EP5,000 (US\$905). It is hoped that the advent of the Economic courts will result in greater numbers of cases, speedier trials, and deterrent penalties, including fines and imprisonment sentences, not suspended.

IIPA also commends ITIDA for its cooperation to date with right holders in cases under the old court system, seeking positive results,⁹ although in some of those cases, ITIDA demanded voluminous information of the type not

⁸ See *supra* note 5.

⁹ In the government of Egypt's 2009 Special 301 Submission, the government noted that ITIDA as well as other governmental authorities provide technical expertise to law enforcement officers, prosecutors, and judges involved in IPR cases, indicating, "[s]ince Jan[uary] 2008, ITIDA has provided support in investigating 1087 cases, tried in front of Egyptian courts, through providing expert/technical reports," including Case No. 8887 for the year 2008 (concerning a CD replication factory accused of copying illegal CDs worth about 8 million Egyptian pounds). The submission also mentions ITIDA support to "Electronic Arts

normally requested in simple piracy cases, to the detriment of those cases. The Egyptian government's Special 301 Submission reported five criminal case results from 2008-09, with four resulting in "imprisonment of infringers," which the Submission notes "constitutes a new trend in Egypt's judicial efforts in deterring piracy." The cases listed are:

- "Case No.14 for the year 2009, in which the court gave a sentence of imprison[ment] for 6 months."
- "Case No. 9172 for the year 2008 in which the court gave a sentence of imprison[ment] of a year plus a fine of 5000 Egyptian Pounds [US\$905]."
- "Case No.14532 for the year 2008, in which the court gave a fine of 15,000 Egyptian Pounds in addition to a sentence of pre-civil remedy of 5001 Egyptian Pounds [US\$905]."
- "Case No. 9171 for the year 2008 in which the court gave a sentence of imprison[ment] for 3 months plus a fine of 5000 Egyptian Pounds [US\$905]."
- "Case No. 20039 for the year 2008 in which the court gave sentence of imprison[ment] for 6 months plus a fine of 5000 Egyptian Pounds [US\$905]."

IIPA hopes that with the new courts, a specialized core of IP prosecutors and judges emerges and that court processes will also be improved. In particular, courts should not impose bureaucratic documentary hurdles to effective judicial enforcement, or other hurdles which could, if allowed to deny protection altogether, amount to inconsistencies with Egypt's current international obligations.¹⁰ It would also help right holders if the new courts shared court decisions in a more transparent manner by publishing them expeditiously, and in this regard, IIPA welcomes the government's reporting of the cases noted above in its Submission. Finally, somewhat indicative of the continuing turf issues between ITIDA and the Ministry of Culture, there have been in the past instances in which clearly pirate material has been deemed "genuine" by the Ministry of Culture, leading to further delays in investigations leading to legal proceedings. ITIDA and MOC should regularly invite copyright owner assistance in ascertaining the legitimacy of suspect product. In some cases, the question may come down to the authenticity of documents purporting to identify particular companies as the authorized distributor of copyright products in the country. Right holders can quickly dispense of such questions.

Internet Piracy: Egypt is witnessing an explosion of Internet growth. As of September 2008 (the latest date for aggregate statistics from the International Telecommunications Union), Egypt boasted 13.6 million Internet users,

(EA) Company by presenting a technical expert report in another case," communicating with EA "to collect specific information concerning its products for the case, which in turn helped protect the copyright holder (EA)." The report also indicated exchange of information "with multinational companies in case No. 4384 for the year 2007, concerning 2373 CDs which contained software from Microsoft and EA."

¹⁰ In several infringement cases in 2008 and 2009, ITIDA has noted that a victim company's failure to file formal deposit copies of the works involved and other documentation in line with Article 184 of the Copyright Law of Egypt is inconsistent with Egyptian law. As has been noted in previous IIPA submissions (and as discussed below), Article 184 outlines onerous deposit requirements, whereupon failure to deposit can lead to imposition of administrative penalties. In these cases, it is apparent that ITIDA would have preferred for the victim/rights holder to deposit copies of the works at issue, and notes that without so doing the rights holder risks the merits of the case. IIPA understands that the Egyptian government has taken the position that deposit under Article 184 is not a prerequisite for copyright protection. However, if failure to adhere to these deposit formalities impacts criminal enforcement of the copyrights at issue, this could be inconsistent with Egypt's international obligations under the Berne Convention and the TRIPS Agreement. The Berne Convention imposes a "no formality" principle in Article 5, by requiring copyright protection to be afforded without regard to any formality. In the Egyptian government's February 2009 Special 301 Submission, the government indicated,

"With regard to depositing and registering software, ITIDA confirms that the copyright protection is automatic according to the Egyptian law. So the author is protected automatically without any formalities. Our system is completely compliant with Berne convention and TRIPS agreement without having any inconsistency. The process of depositing or registration will help in establishing evidence if there is any dispute. It is not by any mean a barrier nor a condition for protection, and this is very clear in article (184) of the Egyptian IPR law (Law 82 of 2002)."

The Ministry pointed to "Cases No. 9040 and No. 28896 Year 2007" as evidence that registration was not required since convictions were achieved in those cases without registration. IIPA appreciates this clarification of the issue and hopes that in all cases, documentary requirements and deposit requirements, the latter which are spelled out in the law, are never used to deny copyright protection.

representing 16.7% penetration (compared with 12.9% penetration in 2007). More impressive is that Egypt added 350,000 broadband subscribers from October 2008 to September 2009, for a total of 944,000 broadband subscribers as of October 2009, according to Point-Topic. Egypt's growth ranks third in the world from July to October 2009, and fifth in the world from October 2008 to September 2009. Thus, it can come as no surprise that Internet piracy is becoming a serious issue in Egypt. Internet piracy comes in all forms in Egypt, from websites advertising physical pirate product, to illegal download sites, deep linking sites, peer-to-peer (P2P) file sharing services, cyberlockers, web bulletin board or forum websites, and BitTorrent sites. The music and record industry reported in 2008 that 97% of all digital distributions of music in Egypt are pirate, but reported that the situation actually worsened in 2009. As a result of Internet-based piracy in Egypt, the music and record industry reports that its budgets for new production shrank by 50% in 2009, due to decreasing revenue from local music, and noted that foreign music revenues were also down. These reductions resulted in less taxes paid to the government, taxes which pirate enterprises do not pay. Due to budget reductions, reductions in force have also resulted. Overall, the negative social effects of piracy have hit the music and record industry extremely hard in Egypt.

IIPA reported in the 2008 Special 301 report the activities of the Information and Internet Crime Department at the Ministry of Interior, and that the courts in 2007 handed down a preliminary court decision in what was reportedly the first lawsuit regarding Internet piracy in Egypt, ordering the defendant to pay a fine of EP10,000 (US\$1,810). IIPA appreciates that increasing numbers of cases may be needed against major Internet piracy services, or those engaging in large-scale sharing of infringing files. We also believe that a major component of dealing with Internet-based infringements is the establishment of an effective legal structure to deal with such, including laws in place that foster cooperation among IT companies and Internet service providers. At present, industry reports that ISPs do not cooperate with right holders on Internet actions in the "hosted" environment. In meetings with ISPs, copyright owners are refused relief due to the absence of a legal structure. The laws should be amended to provide for notice and takedown for the hosted environment, and incentives to cooperate with respect to other Internet-based infringements which are becoming the more prevalent kind of activity in the online environment.¹¹

Cairo Declaration on Cybercrime: Computer-based infringements are on the rise in Egypt, whether Internet-based piracy or business software end-user piracy. Thus it is crucial that the government of Egypt deal with such copyright infringement as a species of cybercrime. In November 2007, Egypt hosted an Arab regional conference on cybercrime convened by the Council of Europe, at which 400 participants from around the region and other countries discussed using the COE Cybercrime Convention as a model to guide the development of national legislation on cybercrime.¹² One of the end-results was adoption of the Cairo Declaration on Cybercrime, dated November 27, 2007. IIPA hopes that the Declaration will result in Egypt leading the way to adopt legislation to meet the requirements of the COE Cybercrime Convention (2001).¹³ The Declaration:

¹¹ First, service providers should be reminded that they can be held liable for copyright infringement occurring over their services if they directly infringe. Second, it should be established that service providers have responsibilities that extend beyond their own direct conduct to those of their subscribers. If necessary, the Copyright Law could be amended holding service providers accountable for direct infringement or facilitating the infringement of third parties, and setting into place a structure to promote responsibility among ISPs, such as a requirement to comply with notices to take down infringing materials, and effective and fair mechanisms to ensure service providers assist right holders seeking to enforce their rights against subscribers or repeat offenders who may be engaged in activities like peer-to-peer file sharing, deep linking, uploading, downloading, providing access to cyber lockers, and the like.

¹² The Conference was held under the auspices of HE Prof. Dr. Ahmed Fathy Sorour, Speaker of Parliament of Egypt, and opened by HE Dr. Tarek Kamel, Minister of Communication and Information Technology. It was organized by the Egyptian Association for the Prevention of Information and Internet Crimes and supported by the Information Technology Industry Development Agency (ITIDA), the Council of Europe, the United Nations Office on Drugs and Crime, Microsoft, Ain Shams University, IRIS, EASCLIA and other partners.

¹³ Article 10 of the COE Cybercrime Convention (2001) ("Offences related to infringements of copyright and related rights") provides,

1 Each Party shall adopt such legislative and other measures as may be necessary to 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 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.

2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the

- Expresses appreciation for “efforts underway in Egypt and other countries of the Arab region with regard to the strengthening of cybercrime legislation,” and notes that “Egypt and other countries of the Arab region may want to consider accession to this treaty in order to allow them to fully cooperate against transnational cybercrime.”
- States that “[t]he Budapest Convention (2001) on Cybercrime is recognized as the global guideline for the development of cybercrime legislation ... Countries of the Arab region are encouraged to make use of this model when preparing substantive and procedural laws.”
- Notes that “[c]riminal proceedings against cybercrime require specific skill and resources,” that “[c]ountries of the region are encouraged to set up specialized units for cybercrime investigations, as well as ensure that prosecutors and judges are sufficiently trained,” and that “[l]aw enforcement need to cooperate with service providers in the investigation of cybercrimes [and] service providers and law enforcement need to develop procedures, routines and capabilities to cooperate effectively with each other within clearly defined limits.”

Business Software Piracy: The unauthorized use of software by businesses, so-called end-user piracy of business software, and retail piracy caused serious harm to the business software industry in Egypt. The end-user piracy level rose to 60%, while losses climbed to US\$88 million in 2009. Reducing piracy in Egypt would bring positive benefits to the Egyptian economy. A study released in January 2008 by International Data Corporation demonstrated that a 10 point reduction in software piracy by 2011 would deliver nearly 1,747 new jobs in Egypt, US\$153 million in economic growth, and an additional US\$8 million in tax revenues for the governments of Egypt.¹⁴ The Business Software Alliance (BSA) has noted in the past some good cooperation of the Copyrights & Artistic Works Investigation Unit of the Ministry of Interior in carrying out raids against retail establishments that offer pirated business software. The industry has reported that MOI runs raids based on complaints by right holders and sometimes on an *ex officio* basis. BSA also reports that ITIDA raids have targeted business software as well. In Egypt’s 2009 Special 301 Submission, the government indicated that “software anti-piracy raids during the year 2008 increased by about 20% compared to 2007, reaching 70 raids per month compared to 50 raids per month in the year 2007.”

Retail Piracy Remains Severe, Including Some Imports: All the industries continue to report that physical piracy in retail shops and street stalls remains a major problem in most major cities in Egypt, including Cairo, Alexandria, Giza, Mansoura, and Asyut. Retail establishments selling computers continue to offer illegal business and entertainment software unchecked. Imports of pirate software have become a serious concern, passing freely through the borders into Egypt. Resellers of pirate software advertise these illegal products openly in trade magazines. As noted just below, Egyptian Customs authorities are apparently poised to set up a mechanism for better handling of infringing import and export cases, to seize such goods at the point of entry or exit.

Customs Measures to Deal With Unauthorized Imports and Exports Would Be a Welcome Improvement: Egypt’s February 2009 Submission to USTR regarding the Special 301 process indicated that Egyptian Customs is putting into place what it hopes will be “an effective mechanism” to deal with infringing imports and exports. Specifically, the Submission noted,

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms 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.

3 A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party’s international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.

¹⁴ Business Software Alliance and IDC, *The Economic Benefits of Lowering PC Software Piracy: Egypt*, January 2008, at http://www.bsa.org/~media/Files/idc_studies/bsa_idc_egypt_final%20pdf.ashx.

"In 2005, the Minister of Foreign Trade and Industry issued the Ministerial Decree No. 770/2005 Issuing the Executive Regulations To Implement Import and Export Law no.118/1975 as well as Inspection and Control Procedures of Imported And Exported Goods. Chapter 9 of These Regulations provided the rules governing the application of Border Measures. Competence of border measures is divided between Trade Agreements sector (TAS) under Ministry of Trade and industry and the Customs Authority. The former is competent for receiving complaints, inspection and decision making, while the latter is responsible for implementing these decisions."

The Ministry has discussed establishing an "information bank" based on trainings conducted with a brand owner. IIPA welcomes the initiative of the government to try and effectively stop pirate imports and exports. IIPA would be wary of any formality put into place, such as any mandatory title verification, which would hinder the ability of Customs to act on an *ex officio* basis. For example, almost any exports of copyright materials from Egypt will be illegitimate, so the ability to act on an *ex officio* basis serves the purpose of providing greater efficiency to the system. To the extent the government goes forward with the "information bank," it must be voluntary and not serve as a substitute for effective border enforcement against pirate copies. IIPA has noted in previous filings the absence of customs measures to provide TRIPS-level protection, but looks forward to seeing how this system discussed by the government can work to reduce infringing imports and exports.

MARKET ACCESS ISSUES

In past reports, IIPA has noted that many market access barriers in Egypt make it one of the most closed markets in the world for legal copyright businesses.¹⁵ Barriers in Egypt have included *ad valorem* duties on films imported into Egypt; *ad valorem* duties on sound recordings and entertainment software; sales taxes on imported goods; censorship certificate release fees imposed on foreign films only; a 10% sales tax on imports, and a 20% box office tax for theatrical motion pictures; a requirement that all song lyrics on locally manufactured releases be translated into Arabic; the absence of trading rights for foreign-invested enterprises; a discriminatory and GATT-inconsistent entertainment tax on foreign films; and a *de jure* discriminatory cap of five film prints for theatrical distribution for U.S. films. Pirates and counterfeiters do not have to contend with such restrictions, so legitimate right holders are further disadvantaged in the market. These market access barriers should be removed so that legitimate businesses have a better chance in the battle against piracy in Egypt.

COPYRIGHT LAW AND RELATED ISSUES

2002 Law and Implementing Regulations Leave Some Gaps in Protection: Copyright law in Egypt is governed under the Intellectual Property Law No. 82/2002 of Egypt (Copyright Law), and the 2005 Implementing Decree, Prime Minister Decree No. 497 for the year 2005 (effective by Issue No. 12, Official Gazette, March 29, 2005). The Copyright Law and the Implementing Decree contain some inconsistencies with Egypt's international obligations, many of which have been discussed in previous filings.¹⁶ The laws also failed to fully implement the WCT and WPPT, which Egypt should implement and join.¹⁷ The following is a non-exhaustive list of some important changes that should be sought in amendments:

- **Amend Law to Ensure Registration and Deposit Are Voluntary:** Articles 184 and 185 contain registration and deposit provisions for copyright. ITIDA has indicated that these deposit requirements, though not necessary for

¹⁵ See *supra* note 7. To the extent any of these problems has, in the opinion of the government of Egypt, been resolved, we appreciate the attention to the matter, and would respectfully request that the government of Egypt provide documentation, such as any written regulations or other measures resolving the issue raised.

¹⁶ *Id.*

¹⁷ In its February 2009 Submission to USTR, the Egyptian government notes that Egypt is in the process of joining the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations. Not only has Egypt not yet joined the Rome Convention, but at this stage, has taken no steps to join the relevant modern treaty as to related rights, the WPPT, as well as the WCT.

copyright protection to attach, are nevertheless useful, presumably for enforcement purposes. While the February 2009 Egyptian government Submission indicates that there have been criminal convictions obtained without deposits, the law indicates deposit is mandatory and subject to administrative penalties for failure to deposit. As such, amendments should be sought to make the system of registration and deposit voluntary. While the government insists these requirements are not intended as a bar to copyright protection as such, to the extent failure to meet these requirements denies copyright protection and the ability to enforce rights, they may rise to the level of a prohibited formality under the Berne Convention and the TRIPS Agreement. Articles 11-16 of the Implementing Decree appear to codify the registration ("recordal") and deposit requirement of the IP Code.

- **Criminal Remedies Too Low:** The Copyright Law contains very low criminal penalties which appear to be incompatible with TRIPS, which requires member nations to provide criminal penalties sufficient to deter further infringements. Specifically, Article 181 provides a prison sentence of "not less than one month" and a fine of EL5,000 to 10,000 (US\$905 to \$1,810). The minimum sentence of "one month" imprisonment is important, but there is no set maximum jail term as there was in the old law, and in practice, the minimum is being employed as a benchmark for maximum criminal sentencing, if criminal sentencing is occurring at all. Fines on their face also appear insufficient to provide a deterrent. IIPA understands that the fine is supposed to be imposed "per work" or "per title," and that in a couple of cases, this calculation method has been employed. Fines should be increased, and, for example, should be doubled for recidivists. As of now a recidivist receives the mandatory minimum jail term and the maximum fine.
- **Civil Remedies.** Nowhere does the Egyptian law provide for adequate compensatory damages, as required by Article 45 of TRIPS. Only Article 179 of the Code provides for some "cautionary measures," including "[c]alculating the revenue of [illegally] exploiting the work or performance or sound recording or broadcast, then disburse this revenue in all cases," although it is unclear whether this is intended to cover all civil damages. TRIPS requires the courts to have the authority to award "damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity," and in appropriate cases, suggests the availability of "recovery of profits and/or payment of pre-established damages," even where the infringer did not knowingly (or with reasonable grounds to know) engage in the infringing activity. Egypt's law remains deficient on provision of adequate civil remedies.¹⁸
- **Ex Parte Civil Searches.** Article 179 does not provide judicial authorities with the clear express authority to "adopt provisional measures *inaudita altera parte* (without notice to the defendant) where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed," as required by TRIPS Article 50. The copyright industries are considering a test in the courts, but in the meantime, the law should be amended to expressly provide for the availability of this vital measure.
- **Remedy as to "Materials and Implements."** Article 179(3) in the Code is TRIPS deficient, in that it provides for the seizure of "materials" that are "serviceable" "only" for infringement. TRIPS Article 46 requires that judicial

¹⁸ The following suggested text would provide a TRIPS-compliant framework for compensatory damages:

Where any of the rights conferred on the author in relation to his work under this Law [have] been infringed, the author shall be entitled to fair and adequate compensation. To qualify as adequate compensation, the infringer shall be liable for either of the following: (1) the actual damages suffered by him as a result of the infringement and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In determining the injury to the right holder, the Court shall look to the value of the infringed-upon item, according to the suggested retail price of the legitimate product or other equivalent measure established by the right holder for valuing authorized goods; (2) an award of statutory damages, if the copyright owner elects, at any time before final judgment is rendered, to recover these instead of actual damages and profits, for all infringements involved in the action with respect to any one work for which any one infringer is liable in a sum of not less than [X] and not more than [Y], as the court considers just. In a case where the court finds that the infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than [Z]. The amount of statutory damages awarded should be sufficiently high to deter future infringement and to compensate the copyright owner for the harm caused by the infringement.

authorities shall have the authority to “order that materials and implements *the predominant use* of which has been in the creation of the infringing goods” be seized and disposed of, and Article 61 provides, in appropriate cases, for the seizure, forfeiture and destruction of such materials and implements.

- **Government-Sanctioned Sell-Off of Pirated Products Violates TRIPS.** Article 180 provides that “the court may support a sequester with a view to republish the [allegedly infringing] work, sound recording, broadcasting program, as well as, exploiting or offer copies of it,” and “the accrued revenue shall be deposited with the court’s treasury until the original dispute is settled.” This provision diverges from accepted practice and is out of step with Article 46 of TRIPS, which requires Egypt to give the judicial authorities “the authority to order that goods they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or ... destroyed.”
- **Modern, TRIPS-Compatible Presumptions.** The law does not provide expressly for presumptions of copyright ownership (as required by TRIPS) or subsistence of copyright. Such presumptions are crucial to the ability of copyright owners to effectively exercise their rights. The law must be amended to comply with TRIPS.¹⁹
- **Ambiguous Protection for Pre-Existing Works/Sound Recordings.** There is no provision in the Code ensuring that pre-existing works and the objects of neighboring rights (including sound recordings) receive full retroactive protection as required under TRIPS Articles 9.1 and 14, and Berne Article 18. Even though we understand that the government of Egypt takes the position that TRIPS and Berne are self-executing in Egypt, the absence of a provision for full retroactivity for TRIPS/Berne terms of protection may lead to confusion. Therefore, it would be highly preferable for Egypt to include an express provision for full (TRIPS- and Berne-compatible) retroactivity for all subject matter under the law.²⁰
- **Requirement of Translation into Arabic.** Section 148 of the Code requires translation of all literary works into Arabic within three years of publication; if not, they are deemed to fall into the public domain. This is an extremely disturbing development. This unprecedented provision violates Egypt’s TRIPS and international obligations, is highly prejudicial to all right holders, including U.S. publishers, and must be deleted.
- **Broad Compulsory License.** Article 170 of the IP Code contains a compulsory license for copying and translating works. It is not limited to literary works in printed form, and apparently extends to computer programs and audiovisual works. Such a compulsory license is contrary to international law and could be devastating to the copyright industries if the Egyptian government allows for such practices. It must be fixed or deleted altogether. The 2005 Implementing Decree (Articles 4 and 5) failed to resolve this issue and leaves in place a Berne- and TRIPS-incompatible compulsory license.
- **Compulsory License Provision for Broadcasts.** Article 169 permits broadcasting organizations to use works without seeking authorization. This compulsory license should be deleted.

¹⁹ The following formulation might, for example, be appropriate:

In civil cases involving copyright or related rights, each Party shall provide that the physical person or legal entity whose name is indicated as the author, producer, performer or publisher of the work, performance or phonogram in the usual manner shall, in the absence of proof to the contrary, be presumed to be such designated right holder in such work, performance or phonogram. It shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter. A right holder or authorized person on his behalf may present evidence of the ownership or subsistence of rights by affidavit, which shall be presumed to be conclusive without the need to be present in court, absent specific facts to the contrary put forward by the defendant. Such presumptions shall pertain in criminal cases until the defendant comes forward with credible evidence putting in issue the ownership or subsistence of the copyright or related right.

²⁰ The simplest way to fix the retroactivity void in the Egypt draft would be to add a new article as follows:

The protection provided for under this Law applies also to a work, sound recording or performance in existence at the moment of the entry into force of this Law, and which are the subject of any international treaty, convention or other international agreement to which Egypt is party, provided that on such date the work, sound recording or performance has not yet fallen into the public domain in its country of origin and in Egypt through the expiry of the term of protection which was previously granted.

- **Article 171 Exceptions.** The law contains exceptions to protection which are broad and may be in questionable conformity with TRIPS Article 13.²¹ The Implementing Decree (Article 10) makes an attempt to limit the computer program exception in Article 171(3).
- **Restrictions on the Ability to Freely Contract.** Articles 150, 151 and 153 are restrictions on the ability to enter into freely-negotiated contracts, and should be abolished. Specifically, Articles 150 and 151 contain transfer provisions that impose undue burdens on the freedom to contract, while Article 153 is an unreasonable restriction on the ability for an author to enter into arrangements that might include future works under a private contractual agreement.
- **Broad Moral Rights Provision.** The moral rights provisions in the Code impinge on exclusive rights, in violation of TRIPS and Berne (TRIPS Article 9.1, Berne Articles 8 and 12). Article 142(3) provides that the author may reject “any amendment in the work, which the author considers as changing or distortion of his work,” regardless of whether the author has transferred economic rights. In this form, this provision violates Berne Article 12, as it would undermine the exclusive adaptation right. The standard for rejection of a change must be objective, as set forth in the Berne Convention, not subjective, as set forth in the Code. The Article also provides that “amendment in translation shall not be regarded as infringement, unless the translator fails to indicate points of deletion or change, or abuses the reputation and status of the author.” This would violate Berne Article 8, as it would impinge on an author’s exclusive translation right.
- **Performers’ Moral Rights Provision.** In Article 155(1), the performer’s right of attribution should permit the omission of the performer’s name, if such is dictated by the manner of the use of the performance, and Article 155(2) should qualify the kinds of changes made by a right holder that would be objectionable (i.e., changes that would be prejudicial to the performers’ reputation), and provide that it is not prejudicial to the performer for right holders to make modifications consistent with the normal exploitation of a performance in the course of a use authorized by the performer.
- **Exclusive Rights for Producers of Audiovisual Works.** Article 177(5) clearly should not apply to sound recordings and therefore the word “audio” should be stricken from this article. Also, the panoply of exclusive rights for producers of audiovisual works is unclear. The producer is defined as “the natural or legal entity who produces the ... audiovisual work, and undertakes the responsibility of such achievement” [Article 138(11)]. Article 177(5) provides that the producer “shall be considered as representative of the authors and successors in exploiting this work, without prejudice to the rights of the author of literary or musical works, unless otherwise agreed upon in writing,” and “the producer shall be considered as the publisher, and will have the rights of the publisher” Egypt should reverse this presumption, such that the producer of audiovisual works shall be presumed to have the exploitation rights unless otherwise agreed upon in writing.²² The producer of an audiovisual work should have the ability to exercise all the economic rights in that work without the further consent of the authors.

The Implementing Decree created some additional issues. For example, Article 187, dealing with registration of businesses engaged in the distribution of copyright materials, is another potentially onerous and costly burden on legitimate businesses, which has the unintended but certain consequence of further insulating pirates, who will not pay for such registrations. Article 17 of the Implementing Decree and the Table set forth an elaborate schedule of charges to legitimate businesses dealing in copyright materials.

²¹ Preferably, Article 171 (on exceptions to protection) could include “chapeau” language limiting excepted acts to special cases, provided that such acts “do not conflict with a normal exploitation of the work [or object of neighboring rights]” and “do not unreasonably prejudice the legitimate interests of the author [or right holder],” in line with TRIPS Article 13.

²² The simplest formulation of the producer’s rights would be as follows: “Unless otherwise agreed upon in writing, the producer shall be entitled to exercise all the economic rights in relation to the work and copies thereof.”

2006 Decrees Established ITIDA Jurisdiction Over Business and Entertainment Software: On May 11, 2006, Decree No. 3286/2006 was issued by the Ministry of Justice, indicating that the Intellectual Property Unit at the Information Technology Industry Development Agency is the enforcement authority which is empowered to take immediate action in case of software copyright infringements, including entertainment software as well as business software. ITIDA placed an advertisement in the press subsequent to the issuance of the Decree, announcing they were responsible for software copyright, calling on businesses to register software products and work permits, and asking them to comply with copyright laws in the use of software. ITIDA, as noted above, has become engaged in conducting raids involving vendors of pirated entertainment software products and in working on some important cases.

GENERALIZED SYSTEM OF PREFERENCES

Egypt currently participates in the Generalized System of Preferences trade program, offering duty-free imports of certain products into the United States from developing countries. In order to qualify for such unilateral trade preferences, the United States Trade Representative must be satisfied that Egypt meets certain discretionary criteria, including that it provides "adequate and effective protection of intellectual property rights." During 2008, almost \$56.8 million worth of Egyptian goods, or 2.4% of Egypt's total imports into the United States, enjoyed duty-free treatment under the GSP code. During 2009, almost \$45.4 million worth of Egyptian goods, or almost 2.2% of Egypt's total imports into the United States, enjoyed duty-free treatment under the GSP code. Egypt must meet the discretionary criteria in this U.S. law if it expects to enjoy favorable treatment for these imported goods.