

LEBANON

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

Special 301 Recommendation: Lebanon should remain on the Watch List in 2010.¹

Executive Summary: The current government of Lebanon, formed in July 2008, stands poised to make some real gains in establishing a better framework for copyright protection and enforcement in the country. IIPA has noted some incremental progress in enforcing copyright in previous submissions and in recent testimony before USTR. For example, in 2008, two companies, through successful lawsuits, convinced many pirates engaged in unauthorized cable retransmission to pay them for both Arabic language channels and U.S. programming, resulting in improvements in the longstanding problem of illegal cable and pay TV hookups. In addition, the Lebanese Police Cyber Crime and Intellectual Property Rights Bureau (CCIPRB) Unit has provided needed support to the industries in bringing raiding actions against open pirate retail activities, especially among street stalls. Notwithstanding these signs of incremental progress in Lebanon, piracy remains a significant hurdle to legitimate business for the industries, including problems like end-user piracy of business software which continues to cause enormous losses to U.S. software companies, book piracy, retail piracy (of all kinds of copyright materials), cable and pay TV piracy, and some growing Internet-based and mobile device piracy.²

It is important for Lebanon to establish the proper legal framework for copyright protection and fully implement the laws to reduce piracy and foster growth in the creative sectors in Lebanon. The Lebanese government is considering an overhaul of its 1999 Copyright Law, early drafts of which would have posed major problems for copyright owners and would have failed to resolve longstanding problems with the original law. IIPA understands that recent discussions have focused on crafting a bill that will be fully TRIPS-compatible and implement with the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT). IIPA also understands that in January 2010, a Joint Committee of Parliament approved Lebanon's accession to the WCT and WPPT, which would mean Lebanon can deposit the two Treaties soon, furthering its path toward establishing its laws for effective copyright protection in the online environment.³ Since late 2006, the United States and Lebanon have been party to a Trade and Investment Framework Agreement,⁴ which has regularized discussions on many trade matters, including intellectual property protection. Copyright protection issues should be a permanent part of the TIFA agenda. Lebanon's IPR regime continues to undergo a review by the U.S. government to determine whether Lebanon should continue to receive Generalized System of Preferences (GSP) duty-free treatment for many of its goods imported into the United States. IIPA views this review as necessary to ensure the law does not get amended to become less protective.

¹ For more details on Lebanon'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 See *Piracy in Lebanon is Sinking Cinema and Music Industry*, Nahar Net, February 20, 2009, at <http://www.naharnet.com/domino/tn/NewsDesk.nsf/AwayPolitics/9F1377FE28A27631C225756300270824?OpenDocument>, which describes much of the problem in Lebanon accurately. It cites the government for the proposition that piracy is one of the main factors preventing Lebanon from joining the World Trade Organization, and quotes Bassam Eid, production director for Empire Cinemas and agent for Columbia/Sony and 20th Century Fox, noting, "[c]inemas have seen their revenues drop by more than 50 percent in 10 years," and also noting, "[i]t cost a million dollars for cinema distribution rights to 'Valkyrie' and you can find it everywhere." Eid also notes, "[f]rom time to time the police destroy seized disks but these represent only one percent of the ones on the market." The article cites "an unstable political situation, a lack of resources and a certain indifference to the problem" as reasons for a "lack of action by the state."

³ Lebanon's cabinet had approved adherence to the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT) in November 2008. See U.S. Commercial Service, Lebanon: Investment Climate, at http://www.buyusa.gov/lebanon/en/investment_climate_2.html.

⁴ *United States and Lebanon Sign Trade and Investment Framework Agreement*, November 30, 2006, at http://www.usstr.gov/Document_Library/Press_Releases/2006/November/United_States_Lebanon_Sign_Trade_Investment_Framework_Agreement.html.



Priority Actions Requested in 2010: IIPA requests that the government of Lebanon take the following actions, which will have the greatest short term benefits for the copyright industries:

- Ensure that the special police bureau, the Cyber Crime and Intellectual Property Rights Bureau (CCIPRB) Unit, continues actively running raids against piracy targets on request, including end-user software piracy, and take steps to provide the Unit with *ex officio* raiding authority and a regular operating budget.
- Ensure that draft amendments to the Lebanese Copyright Law (1999) are compatible with major international copyright treaties, including the TRIPS Agreement and the WCT and WPPT.
- Pass accession legislation to permit Lebanon to join the Berne Convention (Paris 1971 text), and join the WCT and WPPT.

COPYRIGHT'S CONTRIBUTION TO THE LEBANESE ECONOMY

The Lebanese government should be well aware that copyright protection, and therefore enforcement against illegal uses of copyright, is important for Lebanon's economic development. In July 2007, the World Intellectual Property Organization released a report prepared by Roger Malki entitled *The Economic Contribution of Copyright-Based Industries in Lebanon* (published in World Intellectual Property Organization, *National Studies on Assessing the Economic Contribution of the Copyright-Based Industries*, July 2007, at 491-550). That report demonstrates that in 2005, the total copyright industries in Lebanon contributed around US\$1.04 billion to the annual gross domestic product (GDP), employed almost 50,000 workers, and contributed 4.75% to the GDP and 4.49% to overall employment.⁵

Meanwhile, copyright industries continue to report high piracy levels,⁶ for example, the Business Software Alliance reports U.S. losses of \$29 million in 2009 due to piracy of all of its members' software titles, with the piracy rate growing to 75%, representing increases in losses for the fifth straight year and increased piracy levels for the third straight year (up from 73% in 2007). The record industry reported at least \$3 million in illegal sales and a 70% piracy in 2008. The Lebanese government is losing out as well due to piracy. In 2000, a study carried out by Statistics Lebanon, Ltd. between April and June 2000 estimated that, due to cable piracy alone, the Lebanese government lost approximately US\$38 million in 1999, including lost taxes, social security contributions, and the earnings of the Lebanese government if the cable industry was legitimate.

These numbers roundly demonstrate two things: 1) that copyright is important to Lebanon's economy; and 2) that copyright would contribute even more to the economy if intellectual property rights were more effectively enforced.

COPYRIGHT LAW AND RELATED ISSUES

The Copyright Law Amendments Must Not Weaken Protection, and Need to Ensure a TRIPS- and WIPO Internet Treaties-Compatible Law: The Copyright Law of Lebanon (effective June 14, 1999) provides a sound basis to enforce against piracy of works and sound recordings, including potentially stiff penalties against copyright infringers, confiscation of illegal products and equipment, and closure of businesses engaged in pirate activities, among other strong remedies. The law also outlaws the trafficking in satellite or cable decoders (i.e., devices that receive, or arrange the receipt of, unauthorized transmissions of broadcasts "dedicated to a section of

⁵ The same report indicated that in 2005, the core copyright industries generated almost US\$556 million of value added, employed over 23,300 workers, and contributed 2.53% to the GDP and 2.11% to overall employment.

⁶ BSA's 2009 statistics are preliminary, representing U.S. software publishers' share of software piracy losses in Lebanon. They follow the methodology compiled in the Fifth Annual BSA and IDC Global Software Piracy Study (May 2009), available at <http://global.bsa.org/globalpiracy2008/index.html>. 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. The methodology used by BSA, RIAA, and other IIPA member associations to calculate their estimated piracy levels, losses, and/or sales is described in IIPA's 2010 Special 301 submission at www.iipa.com/pdf/2010spec301methodology.pdf.

the public who pay a fee to receive such broadcasting"). The law further provides right holders with a broad communication to the public right (Article 15), but does not fully implement the WCT and WPPT. The Lebanese government should be encouraged to fully implement and join the WCT and WPPT as soon as possible. Specifically, the law should be amended to prohibit circumvention of technological protection measures, circumvention services, and the trafficking in circumvention devices used by copyright owners to protect their works from unlawful access or copying. Legislation should also provide sufficient remedies against piracy over the Internet, including notice and takedown provisions, and provisions to ensure that Internet service providers will have incentives to cooperate with right holders in dealing with online infringements occurring on web-based services or through the activities of subscribers.

We understand the government is finalizing a new draft which hopefully will address specific issues raised by the IIPA. The latest draft would have weakened protection compared with the current regime, and left it TRIPS- or WIPO Treaties-incompatible in important respects. The 1999 Copyright Law currently in force contains, among other issues which have been noted in previous submissions, the following deficiencies:⁷

- There is no direct point of attachment for U.S. sound recordings (however, a 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.
- Article 25, providing a broad exception allowing copying of software, and even as limited 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 more broadly than comparable provisions of either kind, to the detriment of copyright owners. The implementing decision addresses some areas of concern raised by IIPA in the past. Such an 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 or curtailing the educational market for software).
- There are certain other overly broad exceptions to protection (e.g., Article 32).
- The law does not accord a right of legal action to exclusive licensees, which is a significant obstacle to efficient enforcement, given that the exclusive licensee in a territory is invariably the party with the strongest interest in stopping piracy and has the best information about it.

Each of the issues noted would arise in the context of Lebanon's bid to join the WTO, and Lebanon must take measures to address these deficiencies. The new amendments should, in addition to resolving the issues noted above, ensure the following:

- The amendments must ensure proper point of attachment for U.S. sound recordings and performers, on the basis of national treatment, and should not curtail key rights afforded on the basis of material reciprocity.
- The amendments should ensure a WCT- and WPPT-compatible "making available" right is afforded to authors, producers of sound recordings, and performers.

⁷ A detailed discussion of 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.

- The amendments should preserve the ability of parties to freely contract with respect to copyright licenses and transfers, including ownership issues. The law should not restrict parties' ability to freely contract, nor interpret private agreements by statute.
- The amendment should limit exceptions to ensure they are compatible with the Berne Convention's three-step test and, where applicable, with specifically enumerated exceptions therein (e.g., Berne Article 10(2)). In particular, it must be clear from the law that infringing peer-to-peer filesharing is not an exempted act, either as to those sharing or to those facilitating such sharing. Any amendment must also ensure that exceptions with respect to software do not run afoul of the three-step test, and certainly should not be broad enough to potentially allow, under the guise of an exception, end-user piracy of software.
- The amendments should ensure that moral rights abide by the limitations set forth in the Berne Convention (and the WPPT) and do not impinge on or interfere with other economic rights.
- The amendments should provide that deposit should be voluntary, and not made a condition for a presumption of ownership (Berne Article 15) or subsistence of copyright in Lebanon.
- The amendments should provide effective remedies for violations of involving circumvention of technological protection measures (TPMs) and rights management information (RMI) including both civil and criminal remedies. The amendments should appropriately cover access controls as well as those which restrict copying or other infringements, should cover services. Any exceptions should be narrowly tailored to allow for circumvention in certain prescribed circumstances aligned with a stated policy purpose; a gaping exception, e.g., allowing circumvention for a permitted purpose, would eviscerate the rule and would be WCT- and WPPT-incompatible.

Lebanon Reportedly Set to Join the WCT and WPPT: The Ministry of Economy and Trade announced in January 2010 that the WCT and WPPT have received Joint Parliamentary Committee approval. Lebanon's accession to the WCT and WPPT would allow the country to join the nearly 90 countries that have deposited the Treaties, and would signify Lebanon's commitment to provide key protections for copyright in the online environment, a crucial step for the growth of healthy electronic commerce in the country. Also, for several years, IIPA has heard that the Lebanese government was prepared to ratify the latest Berne Convention text, and in 2007, we understand legislation was prepared and forwarded to the National Assembly to do this (namely, to ratify the Berne Convention 1971 Paris text). Lebanon adheres to the Rome (1928) text, so accession to the 1971 Convention would be a welcome and very important development.

PIRACY AND ENFORCEMENT UPDATES IN LEBANON

Previous reports (and filings in the GSP process) have included discussions of the many piracy and enforcement challenges faced in Lebanon.⁸ The following sections provide brief updates only to the situation on the ground. Failure to mention any specific issue should not be taken as an indication that the problem has been resolved.

Piracy Challenges Remain Largely Unchanged in 2009: Notwithstanding the incremental progress noted at the outset of this report, piracy phenomena abound in Lebanon. These include end-user piracy of business software, cable and pay TV piracy (which, as discussed, has improved somewhat due to consolidation of the illegal distributors), retail piracy (of movies, music, entertainment software/games, business software, published materials),

⁸ See International Intellectual Property Alliance, *Lebanon*, at <http://www.iipa.com/rbc/2009/2009SPEC301LEBANON.pdf>. See *infra* discussion of the GSP Petition involving Lebanon and IP rights.

book piracy in the form of illegal photocopying on and around university campuses as well as illegal translations and some counterfeiting of textbooks and trade books, rising Internet-based piracy, piracy involving loading pirate content onto mobile devices, some hard-disk loading of software onto computers at the point of sale, and the sale of circumvention devices, particularly pay TV decoders. Retail piracy in Beirut's southern suburbs continues unabated, in an area that causes difficulty for enforcement agencies due to the presence of armed militias. In addition, industry reports a hike in piracy in Southern Lebanon in general along the borders.

Enforcement Cooperation with CCIPRB Good, Although They Lack *Ex Officio* Authority and a Formal Budget; Customs Acts on Some Cases Both at the Border and Within Lebanon: Industry continues to report good relationships with those in CCIPRB who continually provide raid support upon request. As of early 2009, the CCIPRB Unit comprised 33 total officers (15 ranking officers and 18 junior officers). IIPA members believe it is important that CCIPRB have *ex officio* raiding authority so that CCIPRB can proactively address and investigate piracy cases. Thus, at present, in order for CCIPRB to act, a criminal complaint must be filed with the prosecutor's office. In addition, we believe the Lebanese government should be asked, perhaps as part of the TIFA process, to provide transparency on cases they are pursuing so there is some methodology instituted for tracking statistics and success in enforcement. Third, with the various kinds of piracy activity, but with an increasing number of piracy issues involving computers (e.g., end-user piracy of business software) or the Internet (Internet-based piracy, mobile device piracy), IIPA recommends that CCIPRB consistently receive updated training on computer crime issues. This will help to ensure that law enforcement agencies are becoming properly equipped to investigate computer-based or Internet-based infringement and to document such acts of piracy. Finally, as an example of improvements that could be made, we note that, like other police units in Lebanon, the CCIPRB Unit does not even have a formal budget. Providing such a formal budget could help the Unit become even more stable and effective in its functioning.

It should be noted that in 2009, some of the responsibilities that used to fall under the jurisdiction of the CCIPRB have been transferred to another police bureau called the Financial Crimes Bureau. The transfer includes counterfeiting cases, although the industry reports copyright cases can still be handled by CCIPRB. IIPA members have also reported increased cooperation with Lebanese Customs on tackling imports and with inspectors of the Ministry of Economy and Trade. Lebanese Customs has on occasion acted *ex officio* and seized offending products when spotted at the ports of entry, and sometimes even after the offending goods enter Lebanon.

Court Processes, From Prosecutorial Preparation to Judicial Process, Do Not Lead to Deterrence or Adequately Compensation Against Piracy: The courts in Lebanon continue to be a weak link in the enforcement chain, starting with relative inactivity by prosecutors' offices, and ending in results which can hardly be said to provide a deterrent to further infringements. For example, only four criminal cases were filed in 2008 involving business software piracy. There have been problems with maintaining integrity of evidence and some leniency of prosecutors with commercial piracy operations. Once a case is brought to court, IIPA's previous reports document well delays in simple piracy cases, postponements in court, even of urgent matters, and judges who are unaware of and/or unsympathetic with the IP laws. When cases do reach judgment, the damages (in civil cases) or fines and penalties (in criminal cases) are almost always so low as to be non-deterrent. IIPA urges the continuous training of Lebanese prosecutors and judges, and urges the government to consider seriously the establishment of a special IP tribunal, at least in Beirut, and to assign special IP prosecutors, so that a group of prosecutors and judges can emerge that is familiar with IP cases and the damage caused by IP infringements in Lebanon.

TRAINING AND TECHNICAL ASSISTANCE

The Ministry of Economy and Trade, along with the Business Software Alliance, held a 5th annual Pan Arab Intellectual Property Rights Forum on January 19 and 20, 2010 in Beirut to discuss software piracy and cybercrimes issues in the region. At this forum, the Ministry of Economy and Trade announced that a Joint Committee of Lebanon's Parliament had approved accession by Lebanon to the WCT and WPPT.

MARKET ACCESS AND RELATED ISSUES

Censorship: The censorship rules in place in Lebanon still create barriers to full market access for the recording industry. Although becoming slightly more flexible over the past couple of years, there are still numerous recordings that fail to qualify under the government's opaque content review criteria. These censorship rules should be applied with great restraint, on a non-discriminatory basis, and according to transparent criteria.

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 of Lebanon's key products into the United States, USTR must be satisfied that Lebanon meets certain discretionary criteria, including that it provides "adequate and effective protection of intellectual property rights." IIPA's original Petition noted 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. 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.

The GSP program is important to Lebanon. In 2008, Lebanon imported \$48.6 million worth of products into the United States duty-free, or almost 49.1% of its total imports into the U.S. In 2009, Lebanon imported almost \$43.6 million worth of products into the United States duty-free, or 56.5% of its total imports into the U.S. On April 2, 2009, IIPA submitted written testimony before the GSP Committee,⁹ noting that "[w]hile some progress has been made on some key issues raised by IIPA in that Petition, unfortunately, the government of Lebanon still does not comply with the IPR eligibility requirements for GSP benefits." While we do not believe it is warranted to immediately suspend benefits at this time, we urge the GSP Subcommittee to keep IIPA's Petition ongoing to urge the government of Lebanon ensure that copyright law amendments fix deficiencies in the law in Lebanon that render legal protection inadequate and ineffective, and do not create significant new problems. We also continue to urge the government to take the necessary steps to enhance enforcement efforts to make them more effective, especially those that are discussed in this filing.

⁹ International Intellectual Property Alliance, *GSP Country Practices Review, 007-CP-08, Lebanon: Notice of Intent to Testify, Hearing Statement & Pre-Hearing Brief*, 74 Fed. Reg. 11141-3 (March 16, 2009), Submitted to www.regulations.gov, Docket No. USTR-2009-0009, April 2, 2009, at <http://www.iipa.com/pdf/IIPALebanonGSPRequesttoTestifyTestimonyApril2009Hearings.pdf>. IIPA also responded to additional questions posed after the hearing. See International Intellectual Property Alliance, *GSP Country Practices Review, Case No. 007-CP-08 (IPR - Lebanon), Lebanon: Responses to Additional Questions*, pursuant to 74 Fed. Reg. 11141-3 (March 16, 2009), Submitted to www.regulations.gov, Docket No. USTR-2009-0009, May 18, 2009, at <http://www.iipa.com/pdf/LebanonGSPFollowUpSubmission051309.pdf>.