

LEBANON

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2011 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: Lebanon should remain on the Watch List in 2011.¹

Executive Summary: With political events concerning the current Lebanese government coalition still unfolding,² the current business climate in Lebanon has become somewhat unstable and the prospects for the future uncertain. Understanding these facts, IIPA makes this submission in the hope that stability can be restored and that Lebanon's development goals, including its WTO accession process, can be resumed. IIPA has noted incremental progress in copyright protection in previous submissions and in recent testimony before USTR, although problems remain.³ In this submission, IIPA highlights the importance for Lebanon to establish a proper legal framework for copyright protection, including online, and to fully implement those laws to reduce piracy and foster growth in the creative sectors in Lebanon.⁴

Priority Actions Requested in 2011:

- Ensure that draft amendments to the Lebanese Copyright Law (1999) are compatible with major international copyright treaties, including the TRIPS Agreement and the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT).
- Pass accession legislation to permit Lebanon to join the Berne Convention (Paris 1971 text), and deposit the ministerial acts of ratification of the WCT and WPPT with WIPO in Geneva.
- Ensure that the special police bureau, the Cyber Crime and Intellectual Property Rights Bureau (CCIPRB) Unit, continues actively running raids against piracy targets, including end-user software piracy, and take steps to provide the Unit with *ex officio* raiding authority, authority to employ investigative techniques to detect piracy practices (such as "hard-disk loading"), and a regular operating budget.

COPYRIGHT LAW AND RELATED ISSUES

The Lebanese government has been working on amendments to the Copyright Law (1999) and related laws in order to ready itself for World Trade Organization accession and to implement the relevant international treaties related to WTO accession.⁵ These include most notably the TRIPS Agreement, the Berne Convention to which Lebanon has expressed interest in ratifying the latest text (1971 Paris text),⁶ and the WCT and WPPT, both of which Lebanon ratified on March 6, 2010, by the National Assembly passage of Laws No. 77 (WPPT) and 78 (WCT). Under Lebanon's Civil Law system, international treaties are self-executing, and therefore Lebanon is currently bound by

¹ For more details on Lebanon's Special 301 history, see IIPA's "History" Appendix to this filing at <http://www.iipa.com/pdf/2011SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years' country reports, at <http://www.iipa.com/countryreports.html>.

² See, e.g., Paul Kujawsky, *Hizbolla Dissolves Lebanese Government Over Impending Indictments*, Examiner.com, January 14, 2011, at <http://www.examiner.com/middle-eastern-policy-in-los-angeles/hizbolla-dissolves-lebanese-government-over-impending-indictments>.

³ Since late 2006, the United States and Lebanon have been party to a Trade and Investment Framework Agreement. See *United States and Lebanon Sign Trade and Investment Framework Agreement*, November 30, 2006, at http://www.ustr.gov/Document_Library/Press_Releases/2006/November/United_States_Lebanon_Sign_Trade_Investment_Framework_Agreement.html. Copyright protection issues should be a permanent part of the TIFA agenda.

⁴ In July 2007, the World Intellectual Property Organization released Roger Malki's report, *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, while 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.

⁵ See Tamara Qiblawi, *Beirut Boosts Efforts to Protect Copyright Owners*, The Daily Star, December 10, 2010, at http://dailystar.com.lb/article.asp?edition_id=1&categ_id=3&article_id=122371. This article cited a recent World Intellectual Property Organization meeting at which Economy Ministry Director General Fuad Fleifel asserted that the government has intensified its campaign against intellectual property rights violations in recent months by increasing surveillance and urged copyright owners to make use of special judicial courts.

⁶ Lebanon currently adheres to the Rome (1928) text of the Berne Convention. In 2007, legislation was prepared and forwarded to the National Assembly to ratify the Berne Convention 1971 Paris text; passage of this legislation would be a welcome development.



both treaties. Nonetheless, the government of Lebanon should take immediate steps to complete the ministerial act of depositing their ratifications at WIPO. It is important that the government implement these accords into domestic legislation and deal with outstanding WTO/TRIPS accession issues.

The current Copyright Law provides a sound basis of protection of works and objects of related rights (sound recordings and performances).⁷ At the same time, there are some deficiencies which must be addressed as part of Lebanon's WTO accession process and otherwise result in a more effective statute. These include (but are not limited to) the following issues:⁸

- The presumption provisions are incomplete and need to be strengthened for WTO/TRIPS compatibility (and should be made equally applicable to related rights).
- 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). The amendments must ensure proper point of attachment for U.S. works, sound recordings and performers for WTO/TRIPS compatibility.
- Works and sound recordings are not explicitly given full retroactive protection in line with WTO/TRIPS standards.
- Article 25, providing a broad exception allowing copying of software, and even as limited by Decision No. 16/2002 (July 2002), 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 prejudice of copyright owners. As such, Article 25 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).
- The current "private" copy exception (Article 23) must be re-examined in light of new technologies and recalibrated to ensure it does not collide with international treaties standards.
- The current 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.
- The law does not fully implement the WCT and WPPT.
 - Amendments should ensure explicit protection for temporary reproductions, as well as a WCT- and WPPT-compatible "making available" right for authors, producers of sound recordings, and performers.
 - Amendments should also ensure protection against the unlawful circumvention of technological protection measures, and the trafficking in (and providing services as to) circumvention devices and technologies used by copyright owners to protect their works from unlawful access or exercise of exclusive rights. Remedies should include both civil and criminal provisions. Amendments should also protect rights management information (RMI) in line with the WCT and WPPT.

⁷ The law includes civil remedies and criminal penalties against copyright infringement, the possibility of confiscation of illegal products and equipment, and closure of businesses engaged in pirate activities. 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 the public who pay a fee to receive such broadcasting").

⁸ A more 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>.

- Amendments should deal with online piracy, including notice and takedown provisions, and provisions to ensure that Internet service providers take responsibility for, and have incentives to cooperate with right holders in dealing with, online infringements.
- Amendments should be made to the current law (e.g., Article 17) to preserve the ability of parties to freely contract with respect to copyright licenses and transfers, including ownership issues, to avoid collisions with the exercise by copyright holders of exclusive rights guaranteed by international treaties. The law should not restrict parties' ability to freely contract, nor interpret private agreements by statute.
- The amendments should ensure that moral rights (Articles 21 and 44) abide by the Berne Convention (and the WPPT) and do not impinge on or otherwise interfere with the exercise of economic rights guaranteed by the law (and the Berne Convention and TRIPS).
- The amendments should provide that deposit should be voluntary, and that any presumption must not act as a formality to protection or enforcement under the law.
- In line with the international trend, Lebanon should extend terms of protection to life of the author plus 70 years, or 95 years in the case of sound recordings and audiovisual works.
- Enforcement measures should be strengthened to, among other things: 1) strengthen civil remedy measures to ensure adequate compensatory damages are available (measured by the legitimate retail price of the good infringed) and provide for pre-established damages; 2) increase the minimum and maximum criminal fines to ensure deterrence; 3) ensure that criminal penalties apply to infringements which may cause significant damage to the market notwithstanding the motive of the infringer; 4) ensure that a provisional and criminal seizure, forfeiture, and where applicable, destruction remedy is available; 5) provide for information sharing by civil, criminal, and border officials regarding evidence of infringement and those participating in such activities; and 6) provide adequate border measures against both imports and exports (as well as in-transit materials).

PIRACY AND ENFORCEMENT UPDATES IN LEBANON

Piracy Challenges Remain Largely Unchanged in 2010: Notwithstanding the incremental progress noted at the outset of this report, piracy continues to harm right holders in Lebanon.⁹ Piracy phenomena include end-user piracy of business software, cable and pay TV piracy, retail piracy (of movies, music, entertainment software/games, business software, published materials), 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 mobile devices (either mobile downloads or resellers pre-loading content), hard-disk loading of software onto computers at the point of sale, and the sale of circumvention devices, particularly pay TV decoders. Meanwhile, the industries reporting data show continuing high piracy levels notwithstanding incremental progress. For example, the Business Software Alliance reported a 72% piracy level in 2010, still well above the worldwide average. BSA also reported that preliminary estimates of the commercial value of unlicensed U.S.-vendor software

⁹ Failure to mention any specific issue previously noted by the IIPA should not necessarily be taken as an indication that the problem has been resolved.

was \$28 million in 2010.¹⁰ It has been demonstrated that the Lebanese government is losing out as well due to piracy, in terms of lost taxes, social security contributions, and earnings.¹¹

Enforcement Cooperation with CCIPRB Good, Although They Lack *Ex Officio* Authority and a Formal Budget: Industry reports continued good relationships with those in the Ministry of Interior's CCIPRB,¹² which provides raid support upon request.¹³ IIPA members believe it is important that CCIPRB have *ex officio* raiding authority so that CCIPRB can proactively address and investigate piracy cases. 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 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 receive assistance on computer crime issues. Finally, the CCIPRB Unit should be given a formal budget to help the Unit become even more stable and effective in its functioning.

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. Prosecutors, starting with the Chief Public Prosecutor, will not take action without complaints from right holders, and will not employ tools that would strengthen their hand such as informants.¹⁴ Once a case is brought to court, right holders experience 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 seriously consider 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

IIPA continues to urge a certain level of training and technical assistance in Lebanon so that officials are 1) more aware of the importance of IP laws and their enforcement in Lebanon, including commitments under the international treaties which Lebanon has joined or is preparing to join; and 2) more willing to employ effective tools for deterrent enforcement. IIPA continues to participate when requested in technical trainings and visitor programs, having hosted the most recent visitor program in September 2010.

¹⁰ BSA's 2010 statistics are preliminary, representing U.S. software publishers' share of commercial value of pirated software in Kuwait. They follow the methodology compiled in the Seventh Annual BSA and IDC Global Software Piracy Study (May 2010), <http://portal.bsa.org/globalpiracy2009/index.html>. These figures cover packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA's 2011 Special 301 submission at <http://www.iipa.com/pdf/2011spec301methodology.pdf>. BSA's final piracy figures will be released in mid-May, and the updated US software publishers' share of commercial value of pirated software will be available at <http://www.iipa.com>.

¹¹ 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.

¹² As of 2009, the CCIPRB Unit comprised 33 total officers (15 ranking officers and 18 junior officers).

¹³ For example, in 2010, BSA initiated a criminal complaint in the South of Lebanon that resulted in the raid of five outlets selling pirate software in the city of Saïda in the South of Lebanon.

¹⁴ Industry has tried to convince the Chief Public Prosecutor, but to no avail, to allow the police to use special "informants" who would not encourage pirate traders but, e.g., would report when buying hardware if a seller voluntarily offered to load pirate software onto a computer. As a result, outlets selling computers continue to load pirate software onto computers, so-called "hard disk loading," with impunity as industry has no support from the police or prosecutors in providing evidence of such illegal activity. Computers are now either being delivered to the homes of buyers or are handed over to the buyer at a fixed time to avoid detection.

MARKET ACCESS AND RELATED ISSUES

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

GENERALIZED SYSTEM OF PREFERENCES

While the GSP statute expired on December 31, 2010, should it be reauthorized, the Petition filed by the IIPA to review whether Lebanon should continue to receive Generalized System of Preferences (GSP) duty-free treatment for many of its goods imported into the United States should remain ongoing at least until the enactment of the draft legislation currently being considered.¹⁵ The GSP program has been important to Lebanon's economy. In 2009, Lebanon imported almost \$43.6 million worth of products into the United States duty-free under the GSP program, or 56.5% of its total imports into the United States. In 2010, Lebanon imported almost \$38.4 million worth of products into the United States duty-free under the GSP program, or 45.7% of its total imports into the U.S.

¹⁵ 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.