

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2003 SPECIAL 301 REPORT

# LEBANON

### EXECUTIVE SUMMARY<sup>1</sup>

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Lebanon should remain on the Priority Watch List, with an out-of-cycle review. Piracy, especially cable piracy, still dominates the market. The government of Lebanon took some initial steps to improve protection of software in 2002.

Lebanon was placed on the Watch List in 1999 and was then elevated to the Priority Watch List in 2001, where it remained in 2002. IIPA filed a petition in 2001 to have the U.S. government evaluate whether to suspend some or all of Lebanon's benefits under the Generalized System of Preferences trade program for failure to adequately protect copyright.

Cable piracy continues to decimate the market for the motion picture industry. Retail piracy of other copyrighted materials (music, movies, business software, and entertainment software) is now dominated by optical discs, some produced locally and many more imported from Syria and Asia. The cable piracy issue could be solved quickly if the government demonstrated the will and deployed the resources to do so. Some raids against activities involving pirate software were helpful in 2002, and the government has recently indicated privately its willingness to redouble its efforts to solve longstanding piracy problems.

Required Action for 2003:

#### Enforcement Coordination

- Issue a statement at the highest level of the Lebanese government that copyright enforcement will be treated with high priority.
- Form a specialized IPR unit of the police, with dedicated resources and power to act *ex officio* anywhere in Lebanon.
- Appoint a national network of specialized prosecutors dedicated to copyright cases.
- Improve the efficiency of the court system, through the streamlining of IPR cases, creation of specialized courts, or other equivalent methods.

#### Enforcement

- Close down substantially all the unlicensed "community cable" television stations operating in the country.
- Carry out raids (and initiate prosecutions) against at least 100 retail stores selling pirated optical discs containing copyrighted materials (business software, entertainment software, motion pictures, videocassettes, audiocassettes, and books).
- Instruct police during raids to seize all clearly infringing materials, regardless of whether they are specifically identified in the complaint.
- Instruct Customs authorities to take *ex officio* action to interdict and seize pirate product entering the country.

#### Legislative

- Amend the copyright law to bring it into line with TRIPS and WIPO "Internet" treaties, including deletion of overly broad exemptions for educational use of business software.

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<sup>1</sup> For more details on Lebanon's Special 301 history, see IIPA's "History" Appendix to this filing.

**LEBANON**  
**ESTIMATED TRADE LOSSES DUE TO PIRACY**  
*(in millions of U.S. dollars)*  
**and LEVELS OF PIRACY: 1998 – 2002<sup>2</sup>**

INDUSTRY	2002		2001		2000		1999		1998	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	8.0	80%	8.0	80%	8.0	60%	8.0	60%	8.0	80%
Records & Music <sup>3</sup>	2.0	67%	2.0	65%	2.0	68%	2.0	60%	2.0	40%
Business Software Applications <sup>4</sup>	NA	74%	1.1	79%	1.3	83%	1.6	88%	0.9	93%
Entertainment Software	NA	NA	NA	NA	1.5	96%	0.5	70%	0.6	70%
Books	2.0	NA	2.0	NA	2.0	NA	2.5	NA	2.5	NA
<b>TOTALS<sup>5</sup></b>	<b>12.0</b>		<b>13.1</b>		<b>14.8</b>		<b>14.0</b>		<b>12.4</b>	

## COPYRIGHT PIRACY IN LEBANON

### Cable Piracy Problem Still Destroys Market for Audiovisual Materials

Rampant cable piracy continues to devastate the local theatrical, video, and television markets. An estimated 1,300 cable operators serve over 60% of the Lebanese population, retransmitting domestic and foreign terrestrial and satellite programming without authorization to their subscribers (over 60% of the Lebanese population) for an average monthly fee of US\$10. Occasionally, these systems also use pirate videocassettes and DVDs to broadcast directly to their subscribers, including the broadcasting of recent popular movies and TV shows, and movies that have yet to be released theatrically in Lebanon. Each cable operator retransmits an average of 40 to 50 different television channels. Included among those channels is a minimum of four movie channels that broadcast motion pictures 24 hours a day. Films are frequently retransmitted by these pirate cable operators prior to their legitimate broadcast by television stations in Lebanon.

Largely as a result of cable piracy, receipts from ticket sales to movie theaters dipped approximately 27% in 2002, compared with sales in 2001. Local broadcast television stations have

<sup>2</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2003 Special 301 submission, and is available on the IIPA website ([www.iipa.com/pdf/2003spec301methodology.pdf](http://www.iipa.com/pdf/2003spec301methodology.pdf)).

<sup>3</sup> Loss figures for sound recordings represent U.S. losses only. Piracy levels represent the piracy level for "international" repertoire, whereas the "overall" piracy rate was 40% in 2001 and 45% in 2000. The piracy level for "Arabic"-only repertoire was more than 30% in 2002, indicating that the local music market is being infected by piracy as well. The piracy level for 1998 represented above is the "overall" piracy rate.

<sup>4</sup> BSA's estimated piracy loss estimate for 2002 is not available, and levels for 2002 are preliminary; both losses and levels will be finalized in mid-2003. In IIPA's February 2002 Special 301 filing, BSA's 2001 estimates of \$1.3 million at 78% were identified as preliminary; BSA finalized its 2001 numbers in mid-2002, and those revised figures are reflected above. BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA's trade loss numbers released separately in its annual global piracy study which reflects losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

<sup>5</sup> In IIPA's 2002 Special 301 submission, IIPA estimated that total losses to the U.S. copyright-based industries in Lebanon were \$13.3 million. Because of the adjustment to reflect BSA's final 2001 statistics (see footnote 4), estimated total losses to the U.S. copyright-based industries in Lebanon in 2001 are lowered to \$13.1 million.

canceled long-standing licenses with copyright owners because they cannot compete with the pirates. The legitimate video market has been almost entirely destroyed by the various forms of piracy in Lebanon.<sup>6</sup> In 2000, a study of the economic impact of cable piracy estimated that the Lebanese government is losing approximately US\$38 million per year due to cable piracy (including lost taxes, social security contributions, and the earnings of the Lebanese government if the cable industry were legitimate).<sup>7</sup>

## Lebanon Remains a Piracy Haven

Piracy continues to hurt the domestic market in Lebanon. A sampling of the market reveals:

- **Retail Piracy of Pre-Recorded Optical Discs (CDs, VCDs, DVDs, CD-ROMs) of Copyrighted Materials:** Pirate versions of virtually any copyrighted materials (business software, entertainment software, sound recording, or published interactive software such as encyclopedias or educational materials on CD-ROM) can readily be purchased in retail markets in Lebanon for US\$5 or less. Piracy of personal computer (PC) games remains the predominant form of entertainment software piracy in Lebanon. It is believed that about 70% of factory-produced pirated entertainment software product is being imported from Asia, including from Malaysia, while about 30% is domestically sourced.<sup>8</sup> Retail piracy at kiosks and open markets continues unabated. Internet piracy of entertainment software products remains relatively low due to lack of adequate access. Pirate DVDs imported from Asia are widely available. Zone I DVDs are freely imported into Lebanon and often released prior to the theatrical release of member company titles. Pirate sound recordings are sold openly at fixed location retail shops and at the airport, with Lebanese traders importing stocks of CDs from Eastern Europe and Asia. CD-Rs “burned” with “MP3” music data files are imported from Malaysia. CD-Rs “burned” with music appeared with more frequency in 2002. Syria is used as the major “transit country” for shipments of pirated discs into Lebanon.
- **Retail Videocassette/Audiocassette Piracy:** Pirate videocassettes of motion pictures not yet released in the theaters or on video continue to cause major commercial damage in Lebanon. Such pirate copies are often of poor quality, having been taken with camcorders inside theaters. The home video market in Lebanon is estimated to be 80% pirate. Locally and regionally manufactured music audiocassettes are ubiquitous in Lebanon. As with pirate music CDs, Syria supplies many pirate cassettes. Music piracy hurts local musicians and artists.<sup>9</sup>
- **Hard-Disk Loading Piracy:** Retail piracy of business software takes several forms, including the sale of hardware loaded with unlicensed software (“hard-disk loading” piracy), in addition to the mass CD replication of pirate copies of business software.

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<sup>6</sup> As an interesting aside, rampant cable piracy has even hindered the pirate video market, as the ease of watching pirated cable channels, and the wide variety of available product, has made pirate cable stations a more popular alternative than obtaining pirated product from a video store.

<sup>7</sup> The study was carried out by Statistics Lebanon, Ltd. between April and June 2000.

<sup>8</sup> In 2001, several customs seizures of product destined for South America and elsewhere were found to be sourced from Lebanon.

<sup>9</sup> Lebanon has traditionally been a very important source for repertoire that has been sold throughout the region and in Arabic populations around the globe, and U.S. record companies make significant investments in the production and distribution of Lebanese repertoire, but these investments are undermined by the current high piracy levels for music.

- **Book Piracy:** Book piracy took root during the 1980s and remains a serious problem, although the legitimate university community has recently made some efforts to have students use only legitimate textbooks. Nonetheless, pirate photocopying and pirate publications are still the norm on college campuses. Pirate scientific, technical and medical and other English-language materials continue to flow out of Lebanon into Jordan, Saudi Arabia and the United Arab Emirates, among other countries.

## Optical Disc Pirate Production in Lebanon

IIPA continues to express concern over an unregulated CD plant operating in Beirut, which had been producing over 150,000 discs per month.<sup>10</sup> Without proper controls, this plant appears to be transforming Lebanon from a country with a small domestic piracy problem to a country with an over-production and pirate export problem. The plant is believed to be involved in reproduction of a range of copyrighted products including sound recordings, entertainment software, and some business software. Lebanese authorities should immediately contact and investigate any known plants to ensure that they are engaged in the production of authorized product, and if necessary, seize infringing copies and machinery, and impose civil, administrative, and criminal penalties under the current laws (including the Copyright Law) to deter the organized manufacturing and distribution of pirate product. IIPA also urges the Lebanese government to move toward implementation of effective measures against optical disc piracy. In particular, the Lebanese government should introduce effective optical media plant control measures, including the licensure of plants that produce optical discs; the tracking of movement of optical disc production equipment, raw materials, and production parts (so-called stampers and masters); the compulsory use of manufacturer's codes (both mastering codes and a mould code), in order successfully to halt the production of pirate optical discs; plenary inspection authority as to licensed plants and search and seizure authority as to all premises; and remedies, including revocation of licenses, civil, administrative, and criminal penalties for violations of the regime.

## COPYRIGHT ENFORCEMENT IN LEBANON

### LEBANON: CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 2002

ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE
Number of raids conducted	0	21
Number of cases commenced	0	21
Number of defendants convicted (including guilty pleas)	0	5
Acquittals and dismissals	12	1
Number of cases pending	5	22
Total number of cases resulting in jail time	0	
Suspended prison terms	0	
Maximum 6 months	0	3
Over 6 months	0	
Over 1 year	0	
Total suspended prison terms	0	
Prison terms served (not suspended)	0	
Maximum 6 months	0	
Over 6 months	0	
Over 1 year	0	

<sup>10</sup> This plant has known ties to organized crime that spread throughout Lebanon, and was connected with a network in Latin America. For example, 4,000 pirate console-based videogames were seized in Miami in August 2001 bound for Paraguay from an aircraft inbound from Beirut. Other known exports from Lebanon have been found in Europe.

Total prison terms served (not suspended)	0	
Number of cases resulting in criminal fines	0	5
Up to \$1,000	0	
\$1,000 to \$5,000	0	4
Over \$5,000	0	1
Total amount of fines levied (in US\$)	0	

### LEBANON: CIVIL COPYRIGHT ENFORCEMENT STATISTICS FOR 2002

ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE
Number of civil raids conducted	0	21
Post-search action		21
Cases pending	0	5
Cases dropped	0	1
Cases settled or adjudicated	0	22
Value of loss as determined by right holder (\$USD)	n/a	
Settlement/judgment amount (\$USD)	n/a	

### LEBANON: ADMINISTRATIVE COPYRIGHT ENFORCEMENT STATISTICS FOR 2002

ACTIONS	MOTION PICTURES	BUSINESS APPLICATIONS SOFTWARE
Number of raids/searches conducted	0	1
Number of administrative cases brought by agency	0	
Number of defendants found liable (including admissions/pleas of guilt)		
Ratio of convictions to the number of raids conducted		
Ratio of convictions to the number of cases brought		
Number of cases resulting in administrative fines		
Total amount of fines levied		
US\$0-\$1,000		
\$1,001-\$5,000		
\$5,001-\$10,000		
\$10,000 and above		
Total amount of restitution ordered in how many cases (e.g., \$XXX in Y cases)		

## Some Raiding in 2002, and More Self-Help Efforts, Both Revealed and Worked to Curtail Piracy

In 2002, some raiding activity occurred, marking the first time the government of Lebanon has taken any efforts to address the massive retail piracy problem in the country. For example, the Business Software Alliance, in conjunction with the police, conducted more than 20 store raids in 2002, revealing numerous copies of pirate business software, entertainment software, and sound recordings; those results remain with the Chief Prosecutor's office for decisions as to whether to prosecute.<sup>11</sup> No progress was made during 2002 against cable piracy, though the number of

<sup>11</sup> In one of those raids, Lebanese Police, with the assistance of the BSA, raided a major holiday fair in early January 2002. Two major resellers of pirated software were caught selling dozens of pirate optical discs.

operators has been reduced through consolidation in the pirate market. The business software industry also has engaged in some “self-help” activities over the last few years in Lebanon. For example, the industry teamed with several Lebanese trade associations, including the hotel associations, in an effort to improve the legal use of computer software by corporate end-users.

## **Most Cases Languish in Court or Fail Due to Prosecutorial Error**

The Lebanese prosecutors and courts have proved wholly unsuccessful in combating cable piracy. Litigation efforts, both civil and criminal, have practically stalled, while 1,300 pirate cable operators remained largely undeterred from pirating. Of the cases brought against 17 cable pirates since late 1999, 12 were remanded by the court to the public prosecutor due to lack of jurisdiction in November 2001.<sup>12</sup> The Chief Prosecutor’s office had made the initial error of referring the cases to the wrong trial court. While the decision of the court in Beirut has been appealed, the case files have been remanded to the public prosecutor for forwarding to the appropriate court. None of the criminal cases brought thus far (including the remaining five defendants whose cases were not remanded) has led to in these cases against cable piracy a positive court decision.<sup>13</sup> Civil enforcement has demonstrated itself to be equally futile. Procedural problems in 2002 resulted in ineffective enforcement against known cable pirates.<sup>14</sup> Two other civil actions brought in 2000 against pirate cable operators resulted in orders requiring payment of trivial amounts of money in the event of further infringement. Obviously, in well over three years since the first cases were brought against known cable pirates, the courts have been entirely ineffective in deterring cable piracy.

## **Some Post-Raid Prosecutions in 2002 Resulted in Convictions and Fines**

Even when cases are brought, the judicial process is harmed by lack of specialization at the prosecutorial and court levels, and by certain procedural errors and hurdles, resulting in inefficient handling of cases, incessant delays in adjudication,<sup>15</sup> and lack of deterrent sentencing.<sup>16</sup> Notwithstanding such endemic problems in the pretrial and court system in Lebanon, IIPA hopes that 2002 marked a turning point in judicial enforcement, as a couple of sentences were handed down by the courts against pirates.

The business software industry reaped the benefits of some judicial decisions in 2002. In April 2002, the Criminal Court of Beirut sentenced the general manager of a major reseller in

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<sup>12</sup> In 1999, the Motion Picture Association filed seven criminal actions against “unknown” defendants in a Beirut court on behalf of the member companies. The public prosecutor ultimately used those initial actions to prosecute 17 individuals allegedly engaged in cable piracy. After many continuances had been granted to the defendants, the court decided on November 15, 2001 that it had no jurisdiction over 12 of the defendants who were not Beirut residents. Those cases have all been appealed, and a ruling on the 12 acquittals is expected in the first quarter of 2003.

<sup>13</sup> In the interim, the court has requested that MPA’s counsel provide U.S. copyright certificates for all the titles involved for which MPA claims ownership on behalf of the members, and that counsel restate the specific demands. These interim requests marked the first time in the case MPA’s counsel was asked for copyright certificates, and essentially requires counsel to rehash demands already made in the complaint.

<sup>14</sup> In one case (the “Elio Sat” matter), lack of police cooperation following a court-ordered inspection rendered it impossible to obtain the evidence necessary to prosecute the case. In yet another cable piracy case (the “Itani” matter), a court-appointed expert was unable to act quickly enough to catch the pirate cable operator “in the act” to obtain the evidence necessary to proceed.

<sup>15</sup> For example, postponements, even of urgent matters, remain the norm, and criminal cases can take years to reach judgment. It takes about two years to finish the trial stage of a case.

<sup>16</sup> One case which is indicative of non-deterrence in the judicial system in Lebanon was handed down on December 29, 2001 in the Criminal Court of Beirut against a pirate reseller of software, in which the court fined the pirate US\$667, and awarded the plaintiffs US\$1,334, well below the value of the software seized in the raid, and hardly a deterrent.

Lebanon to one month in jail (and ordered him to pay US\$6,600 in compensatory damages), marking the first such sentence in Lebanon against a software pirate.<sup>17</sup> The case is on appeal. In another case decided in 2002, the Criminal Court of Beirut sentenced a pirate end-user of business software (an engineering firm) to a substantial fine and compensation for damages, totaling US\$20,000 for software piracy. Third, the Criminal Court of Beirut handed down a decision against a major bank, meting out a fine of LL5,000,000 (US\$3,316) and awarding damages of LL5,000,000 (US\$3,316). This case is also on appeal. In a further case against an engineering firm, closing arguments were heard, and a decision was expected in early 2003. Unfortunately, nine other criminal cases against various pirates remained pending in 2002 due to an error in processing by the Chief Prosecutor's office (six were forwarded to the wrong trial court).

## **Enforcement Coordination Is Needed, But Many in Lebanon Lack the Political Will**

Such sparse case results (notwithstanding the success for the software industry), and the immense self-help efforts necessary to achieve even those results, indicate clearly that the enforcement system in Lebanon does not yet function in a manner conducive to deterring, much less eradicating, piracy. The main reason for this continuing lack of effective enforcement in Lebanon is the lack of motivation or government will among Lebanon government agencies. Motivating the executive branch in Lebanon to take action against piracy has been nearly impossible, but it is a key, along with improving the efficiency of the court system, to making serious inroads against piracy in Lebanon. The President and the Prime Minister should immediately issue political statements to make fighting copyright piracy (including cable piracy) a high priority for all Lebanese government agencies. Such a step is absolutely essential to break the chain of indifference exhibited by Lebanese authorities for years.

For example, in 2002, the Ministry of Economy and Trade (MOET) failed to take any actions against piracy. In one rare case from 2001, MOET inspectors actually commenced a raid, but decided to cease running the raid after the reseller became agitated. Such lack of commitment among Lebanon's government officers is commonplace.<sup>18</sup> In other instances in 2002, raid targets were tipped off as to impending raids. Sometimes, Lebanese officials simply turn their heads to the existence of piracy. For example, known pirate product from countries like Ukraine has regularly been allowed into Lebanon by Lebanese Customs officials, even though they have been given adequate evidence of the illegality of the goods entering.<sup>19</sup>

In addition to a directive at the highest level to commit to the fight against piracy, Lebanon's leaders must establish a specialized IPR unit, in the police or elsewhere, with dedicated resources to deal with copyright infringements. Such a unit should be given *ex officio* authority (no *ex officio* actions were taken in 2002 against piracy). With all the incidents of prosecutorial error noted above,

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<sup>17</sup> The decision was appealed, and there has been no appellate decision as of the date of this filing.

<sup>18</sup> There are only two to four part-time inspectors in the Department of IP Protection tasked to fight piracy. In the area of software piracy, these inspectors lack computer knowledge. In addition, startlingly, these officers only work until 2 p.m. (meaning piracy after 2 p.m. cannot be addressed), and won't work with computer experts. Even when these inspectors have been given targets to raid, many problems in enforcement have ensued (e.g., the pirate reseller at 4 p.m. at a computer fair could not be raided, because it was "after working hours"). By contrast, in June 2001, the motion picture and satellite television industries organized a press conference to launch a public education campaign urging cable subscribers to choose only legitimate cable companies. The Minister of Information opened the press conference launching the campaign, admitting that cable piracy had reached epidemic proportions, and stating that the government had a responsibility to provide a solution. Such candor and willingness to take responsibility is to be commended, but the fact remains that cable piracy continues to thrive in Lebanon.

<sup>19</sup> Even though the recording industry has repeatedly requested written answers from the police and enforcement authorities, no explanation has been forthcoming as to why pirated CDs from Ukraine have been allowed into Lebanon.

movement should be made to establish a specialized group of prosecutors, trained in copyright, to handle all copyright cases (including preparing cases for the proper court to avoid the problems experienced by the business software and motion picture industries). Such a core group would work with the IPR unit or other enforcement officers (e.g., customs) to prepare cases for prosecution. To avoid judicial delay and ineffective judicial enforcement, it would also be helpful if certain judges who have received specialized training in copyright were assigned to hear such cases.

## **COPYRIGHT LAW AND RELATED ISSUES**

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The Copyright Law of Lebanon (which entered into force on June 14, 1999) provides, on its face, a firm basis for copyright protection for U.S. works and sound recordings, including stiff penalties (on the books) for copyright infringement, stiff penalties against those who traffic in devices that receive, or those who arrange the receipt of, unauthorized transmissions of broadcasts “dedicated to a section of the public who pay a fee to receive such broadcasting” (i.e., cable pirates), confiscation of illegal products and equipment, the closure of outlets and businesses engaged in pirate activities, and a Berne-compatible evidentiary presumption of copyright ownership. The law also provides right holders with a broad communication to the public right (Article 15). Unfortunately, the law remains deficient with respect to international standards in several respects. 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. Each of the items noted below are likely to arise in the accession process, and we strongly encourage Lebanon to take measures to address these deficiencies.

### **Article 25 Violates Berne and TRIPS**

The software exception created by Article 25 of the new Copyright Law of Lebanon violates Article 9(2) of the Berne Convention (Paris [1971] text). It is not limited to “certain special cases,” but appears to allow unauthorized copying for any purpose; it “conflicts with a normal exploitation of the work,” especially with regard to software aimed at the educational market; and it “unreasonably prejudices the legitimate interests of right holders,” by threatening to eliminate completely a market that many copyright owners already serve on extremely generous terms. 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 far more broadly than comparable provisions of either kind, to the detriment of copyright owners. A new Ministerial Ordinance to implement the provisions of Article 25 of the Copyright Law was issued in July 2002. IIPA has not seen this Ministerial Ordinance, but understands that the Ordinance addresses some areas of concern raised by IIPA in the past.

Article 25(1) authorizes “not-for-profit” educational institutions and public libraries to make copies of original computer programs they have acquired and to lend such copies to students for free. Such copies are made without the copyright owner's authorization and without compensation. The Ministerial Ordinance was issued on July 1, 2002, and amended yet a previous set of regulations that allowed libraries and educational institutions to interfere with technological protection measures used on computer software (a serious concern raised in IIPA's 2002 Special 301 report on Lebanon). The Ordinance clarifies the terms under which “not-for-profit” educational institutions and public libraries may make use of the exception. Namely, we understand that they must comply with the following conditions:

- The institution or library must already possess at least one legal copy of the computer program.



- The decision to copy the program must be made by the “appropriate authority” within qualifying institution or library (which we believe indicates that the institution or library is free to designate the person to make such decisions).
- The exception only allows copying of the computer program by the institution or library.
- The computer program to be copied must have a general educational or cultural purpose. IIPA is deeply concerned that this provision is overly broad that it could lead to unintended coverage of other content.
- Only one copy per institution or library may be made available for use by students. This restriction appears to narrow the scope of the Article 25 exception somewhat.
- The copy made must be available for lending only by regularly enrolled students in qualifying institutions.
- The copy made by the public library must also be put at the disposal only of students regularly enrolled in a not-for-profit educational institution.
- The use of the copy of the computer program shall be limited to use in the premises of the qualifying institution or library.
- The copyright owner should be informed of the number of copies made, and the category and number of students that will use it.

The Ordinance appears to significantly narrow the scope of the exception in Article 25, but leaves some concerns and ambiguities intact. For example, the last sentence of the original law in Article 25(1) provides, “[t]he student shall have the right to make one copy for his personal use.” This clause appears not to be consistent with the thrust of the Ordinance, which mentions the “use” by the student as the object of the exception, not copying. An analogy may be made to lending of published materials in analog form by a school or public library. The library may lend the copy of the book to a patron, but under no circumstances consistent with international treaties may a student make a copy of the entire book! In the case of Article 25, it is patently clear that the student must not be able to make a copy of the computer program.<sup>20</sup> IIPA is unaware of any similar legal exceptions in any other copyright law worldwide that are as broad as this one. Finally, the exception in Article 25 threatens to set a precedent for newly graduated students to pirate software.

On balance, the bottom line is the same: Article 25(1) gives certain institutions the ability to copy and distribute a computer program without authorization of the right holder, and without any compensation to the copyright owner in the computer program. As such, the provision runs afoul of the well-established standards of international copyright law, and ultimately, Lebanon must delete Article 25 to comply with international treaty obligations (e.g., Berne, Paris [1971] text, TRIPS, WIPO “Internet” treaties, etc.).

## **Other Deficiencies in the Copyright Law, 1999**

- There is no express distribution or rental right for sound recordings (which would violate TRIPS Article 14).
- Point of attachment for U.S. sound recordings can be achieved by simultaneous publication in the U.S. and any Rome Convention Member, but there is no direct point of attachment for U.S. sound recordings (Article 36).
- There are overly broad exceptions to protection including Articles 23, 25-30, and 32-34.
- Exclusive licensees have no standing to bring civil claims.

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<sup>20</sup> The last clause of Article 25 also fails to meet international obligations in that it does not state whether the student must first have a license to use the software before being allowed to make a copy. It is not clear if this provision is intended to allow a student to make a copy of any computer program regardless of whether he is entitled to use such program, and regardless of whether the program in question is itself original or is already a copy. Such a provision could be interpreted to allow the making of limitless copies from a single piece of original software. The broad and unrestrained ability of a student to copy software, whether or not he has acquired an original copy, is in flagrant violation of Lebanon’s Berne commitments, and cannot comport with international standards in the TRIPS Agreement.

- Works and sound recordings are not explicitly given full retroactive protection in line with international treaties (Berne and TRIPS).

Lebanon is a member of both the Berne Convention for the Protection of Literary and Artistic Works (Rome [1928] Act), as well as the International (Rome) Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961). Lebanon should be urged to accede to the Paris Act of 1971 of the Berne Convention as well as the Geneva (phonograms) Convention, in order to provide clearer protection to international sound recordings.

## **Proposed Cable Law Must Not Substitute for Immediate Enforcement Against Cable Piracy**

The Lebanese government has recently proposed the drafting of a law to regulate the cable television industry. IIPA looks forward to assisting the Lebanese government in this effort to regulate the industry, but such a law cannot substitute for what is sorely needed: an aggressive campaign against pirates using the existing Copyright Law and other laws, which are sufficient to eradicate this damaging form of piracy.

## **WIPO Treaties**

Several of Lebanon's lawmakers have already signaled a desire to join the necessary treaties in order to participate in and fully enjoy the emerging global information society. Copyright owners must be assured of their ability to control the security and integrity of their creations as they are disseminated on the World Wide Web. Without such assurances, there will be little incentive to make these valuable works available online. Thus, inadequacies in the protection of intellectual property in the networked environment will stifle the full potential of electronic commerce. Ratification and implementation of the WIPO "Internet" treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) would bring copyright protection in Lebanon into the digital age. Specifically, the WIPO treaties require effective legal remedies against the circumvention of technical measures used by content owners to protect their works. Lebanon's representatives at international copyright seminars have made positive statements to consider swift accession to, and implementation of, these treaties. The WIPO national seminars in Beirut in September 1999 and the regional seminar on the treaties in November 1999 have provided Lebanon with technical know-how on the treaties.

## **Generalized System of Preferences**

On June 13, 2001, IIPA filed a Petition (the second in three years) 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 important Lebanese products into the U.S., USTR must be satisfied that Lebanon meets certain discretionary criteria, including whether it provides "adequate and effective protection of intellectual property rights." IIPA's 2001 Petition notes three major deficiencies in Lebanon's protection of copyright that caused economic harm to U.S. right holders: (1) the copyright law in Lebanon contains deficiencies that render legal protection inadequate and ineffective; (2) the failure to enforce criminal remedies against pirate cable TV operators makes protection of U.S. audiovisual works inadequate and ineffective; and (3) enforcement efforts against piracy in Lebanon are inadequate and ineffective. During the first 11 months of 2002, Lebanon imported \$18.6 million of products into the United States without duty, or 35.6% of its total imports into the U.S.<sup>21</sup> Lebanon should not continue to expect such favorable treatment, since it fails to meet the discretionary criteria in this U.S. law.

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<sup>21</sup> During 2001, Lebanon imported \$35.9 million of products into the United States without duty, or 39.1% of its total imports into the U.S.