

# LEBANON

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

**Special 301 Recommendation:** Lebanon should remain on the Watch List in 2009.

**Executive Summary:** Lebanon made incremental progress in legitimizing the copyright market in 2008. For example, progress was made on the perennial issue of cable and pay TV piracy, as two companies, through successful lawsuits, have been able to convince many pirates engaged in unauthorized cable retransmission to pay them for both Arabic language channel and U.S. programming. Piracy remains a significant hurdle to legitimate business for record companies, motion picture companies, publishers, business software producers, and entertainment software companies. Since late 2006, the United States and Lebanon have been party to a Trade and Investment Framework Agreement,<sup>1</sup> which sets the stage for regularized discussions on many trade matters, including intellectual property. IIPA hopes that copyright concerns will be a permanent fixture in the TIFA agenda going forward. At the same time, a review remains ongoing by the U.S. government of Lebanon's IPR regime to determine whether Lebanon should continue to receive duty-free treatment for many of its goods imported into the United States. Specifically, the review focuses on: (1) deficiencies in the copyright law in Lebanon that render protection inadequate and ineffective; (2) 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. Unfortunately, reported draft amendments to the Copyright Law would further weaken protection, and IIPA calls upon the government and Lebanese National Assembly to reject any amendments which weaken the law.

**Priority Actions Requested in 2009:** IIPA requests that the government of Lebanon take the following actions, which would result in the most significant near term commercial benefits to the copyright industries:

### Enforcement

- Continue to address cable piracy by issuing a licensing decree and commencing enforcement.
- Ensure that the special police bureau, the Cyber Crime and Intellectual Property Rights Bureau (CCIPRB) Unit, continues actively running raids against retail targets, major operations producing pirate product or shops producing "burned" to order discs, and book piracy operations, including photocopying and print formats.
- Ensure that Customs authorities step up *ex officio* actions to interdict and seize pirate product entering the country or destined for export.
- Prosecute criminal copyright cases, seeking maximum deterrent sentences in Lebanese courts under the law.
- Continue to monitor the one known optical disc plant in the country for illegal activity.

### Legislation

- Reject recent draft amendments to the Lebanese Copyright Law (1999) which would weaken protection for software and make other detrimental changes. Instead, the Copyright Law should be amended to make it compatible with major international copyright treaties and implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, so that Lebanon can join these crucial treaties for digital-age copyright protection.
- Pass legislation to permit Lebanon to join the Berne Convention (Paris 1971 text) and draft and pass legislation to join the WCT and WPPT.

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<sup>1</sup> *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](http://www.ustr.gov/Document_Library/Press_Releases/2006/November/United_States_Lebanon_Sign_Trade_Investment_Framework_Agreement.html).



LEBANON										
Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2004-2008 <sup>2</sup>										
INDUSTRY	2008		2007		2006		2005		2004	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music	3.0	70%	2.8	60%	2.6	60%	3.2	75%	3.0	70%
Business Software	28.0	74%	24.0	73%	23.0	73%	20.0	73%	15.0	75%
Books	NA	NA	NA	NA	NA	NA	4.0	NA	3.0	NA
Entertainment Software	NA	NA	NA	NA	NA	NA	NA	NA	NA	75%
Motion Pictures	NA	NA	NA	NA	NA	NA	1.0	1%	10.0	80%
TOTALS	31.0		26.8		25.6		28.2		31.0	

## PIRACY CHALLENGES IN LEBANON

**Some Progress on Cable Piracy by Efforts to Legalize Unlicensed Operators:** Cable piracy has long been the major piracy problem for the motion picture industry in Lebanon, as upwards of 600 to 800 of small cable systems had engaged in the illegal retransmission of broadcast programming, charging customers for these “pirate” pay television services. As of 2007, pirate cable operators served over 80% of the Lebanese population through 720,000 subscriptions for an average monthly fee of US\$10.<sup>3</sup> Finally, in 2008, a positive breakthrough occurred, since reportedly, two legitimate licensees succeeded to legalize many former cable pirates to pay for Arabic and U.S. programming. Both the Minister of Posts and Telecommunications and the head of the Lebanese Telecommunications Regulatory Authority have taken an interest in the fight against cable piracy,<sup>4</sup> but despite being provided with a draft decree that would allow the Minister to regulate and legalize the cable market, the decree has not been issued to IIPA’s knowledge. Also to IIPA’s knowledge, no new court decisions regarding cable piracy were handed down in 2008. It should also be noted that the Lebanese Copyright Law already outlaws unauthorized retransmissions by rogue cable companies, so the current Copyright Law on its face is adequate and could be applied to deal with the cable piracy problem.

**Book Piracy:** Book piracy remains a major problem in Lebanon, with illegal photocopying of academic materials taking over as the primary problem for the industry. Major commercial photocopying enterprises are situated near most campuses to serve students and lecturers who wish to copy books. Most universities have taken little or no action to discourage use of photocopied materials on campus.<sup>5</sup> Enforcement and education officials should work together to target the massive illegal photocopying taking place in and around these institutions. Print piracy, especially common in the scientific, technical and medical sectors, continues as well. Authorities have reportedly been somewhat responsive to complaints during 2008; this cooperation should continue in 2009.

**Retail Piracy:** Although the actions of the CCIPRB have had an impact on the availability of pirated materials in street stalls and shops, retail piracy in brick-and-mortar shops remains a problem. Retail piracy involves optical discs (predominantly “burned” CD-Rs) of sound recordings, movies, entertainment software, and business software. Some of the “burned” CD-Rs are sourced back to Syria – a major transit country for pirated optical discs smuggled into Lebanon – and the Palestinian territories. Goods are smuggled into Lebanon via “military roads” between Syria and Lebanon, which have no effective customs checkpoints. Disturbingly, industry has reported that at least four optical disc plants are operational in Syria,<sup>6</sup> not only distributing inside Syria, but also exporting heavily to Iraq and also to Jordan and Lebanon. In addition,

<sup>2</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2009 Special 301 submission at [www.iipa.com/pdf/2009spec301methodology.pdf](http://www.iipa.com/pdf/2009spec301methodology.pdf). BSA’s 2008 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 2008), available at <http://global.bsa.org/idcglobalstudy2007/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. For more details on Lebanon’s Special 301 history, see IIPA’s “History” Appendix to this filing at <http://www.iipa.com/pdf/2009SPEC301HISTORICALSUMMARY.pdf>, as well as the previous years’ country reports, at <http://www.iipa.com/countryreports.html>.

<sup>3</sup> Each cable operator retransmitted about 100 different television channels, including a minimum of four movie channels that broadcasted motion pictures 24 hours a day. Motion pictures were frequently retransmitted by these pirate cable operators prior to their theatrical release or legitimate broadcast by television stations in Lebanon. As a result, there were instances in which local broadcast television stations cancelled longstanding licenses with copyright owners because they could not compete with the pirates.

<sup>4</sup> MPT’s website can be found at <http://www.mpt.gov.lb/>. TRA’s website can be found at <http://www.tra.gov.lb/>.

<sup>5</sup> An illustrative list of institutions where enforcement is due includes Notre Dame University, Haigazian University, Balamand University and Lebanese University.

<sup>6</sup> There is one known optical disc production factory in Beirut, Lebanon (Skyline), which was visited in 2006 as part of the record industry “IFPI plant visit program,” and reportedly, the plant owner fully cooperated.

several large and small-scale CD-R burning facilities remain operational, while small quantities of pirated pressed discs are still imported from Asia, with some discs from China and Eastern Europe. Pre-theatrical and pre-video release movies reproduced from pirate and parallel imported source copies are common in Lebanon (as are illegal copies taken on camcorders, as reported in previous years). Finally, new information indicates that circumvention devices (to avoid technological protection measures used by right holders to prevent users from accessing or copying works without authorization) are being imported into Lebanon. This phenomenon highlights the urgent need for Lebanese legislators to pass a law amending the Copyright Law to prohibit the circumvention of TPMs and the trafficking in circumvention devices (and related services).

**Business Software Piracy:** The business software industry continues to suffer from high rates of piracy in Lebanon, attributable to the unauthorized use of software in a business setting as well as the loading of unlicensed software onto hard drives of computers for sale.

**Entertainment Software Piracy:** Entertainment software publishers have reported a worsening of game piracy in recent years. Both factory replicated pirated optical disc product and CD-R burning is found in the market, and the Internet continues to serve as a medium for advertising pirated products. Pirate products are sold in retail shops and through street vendors. Lebanon is also believed to be a transshipment point of pirated video game products into Kuwait (and other countries in the region).

**Internet Piracy (and Mobile Device Piracy):** Notwithstanding the high cost of telecommunications and significant bureaucratic hurdles, Lebanon's latest Internet usage statistics (according to the International Telecommunications Union, August 2007) indicate there are roughly 950,000 Internet users in Lebanon, or a 23.9% penetration rate. Broadband penetration remains very low, at roughly 170,000 broadband connections, or 4.3% penetration, again mainly due to bureaucratic hurdles. Notwithstanding these numbers, Internet piracy is on the rise in Lebanon. In the past, such piracy consisted primarily of offers to sell hard goods (computer software, music CDs, and DVDs, and, e.g., online services offering illegal music compilations for sale in Lebanon via the Internet or e-mail), but P2P downloading has also increased, as have other websites offering direct downloads of copyright materials. The Lebanese government has regularly been alerted to the existence of these illegal services, but to IIPA's knowledge, has taken no action regarding these sites to date. Mobile device piracy – the unauthorized loading or preloading of illegal copyright content onto mobile devices such as mobile telephones, iPods, other MP3 players, and recordable media such as flash drives and memory sticks – has not become a major issue to date in Lebanon.

## **ENFORCEMENT CHALLENGES IN LEBANON**

**Increasing Cooperation with Lebanese Government Agencies:** Enforcement efforts have picked up in Lebanon over the past several years, in particular because of the establishment and growth of the special police bureau, the Cyber Crime and Intellectual Property Rights Bureau (CCIPRB) Unit. The Unit has remained available and willing to conduct and participate in retail raids. In 2007, the Unit grew from 25 officers (5 ranking officers and 20 junior officers) to 33 total officers (15 ranking officers and 18 junior officers). Like other police units in Lebanon, the Unit does not have a formal budget. The Unit's police officers are generally more knowledgeable in intellectual property and cybercrime than their predecessors or other fellow officers. While *ex officio* actions are not accepted as a matter of course in Lebanon, (i.e., the police need to be instructed by the prosecutors' office in order to take action), because of the improved relationship with CCIPRB, copyright owners have been able to request raids prior to filing a formal complaint. In addition to the good work of the CCIPRB Unit, there is reportedly increased cooperation with Lebanese Customs on tackling imports (especially) and with inspectors of the Ministry of Economy and Trade.

**Preparing Cases for Court – More Emphasis Needed on Criminal Investigative Techniques:** While raiding activity has picked up in the past few years, prosecutorial activity has lagged, evidenced by the fact that, for example, only four criminal cases were filed in 2008 involving business software piracy. Problems start in the investigative process, with investigators leaving behind crucial evidence. For example, in some recent investigations into CD-R burning operations, involving "burn-to-order" businesses, computers and servers were sealed and left at the premises. Because of this, the pirates are able quickly to make back-up copies via USB ports before the authorities return with a court order (sometimes

weeks or months later) to confiscate the computers and servers. IIPA members also have experienced some instances of undue influence on prosecutors resulting in inaction.

**Courts Have Failed to Deter or Adequately Compensate for Piracy:** The judiciary continues to be the government agency with the least concern about fighting piracy. IIPA members' experience in the courts has been one marred by incessant delays in simple piracy cases, as postponements in court, even of urgent matters, are the norm, leading often to years of delay. Members have also experienced from time to time judges who are unaware of and unsympathetic with the IP laws and copyright claimants. In one cable piracy case of note, a civil injunction was revoked *ex parte* without informing the plaintiff. 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.<sup>7</sup> The Lebanese government must encourage judicial authorities to adjudicate promptly all intellectual property cases and to impose the maximum penalties allowed under the law. IIPA also calls upon the Lebanese government to seriously consider establishing a special IP tribunal and to assign special IP prosecutors who can specialize and gain expertise in IP cases.

## TRAINING AND TECHNICAL ASSISTANCE

IIPA members have provided various training to the government of Lebanon over the past several years.<sup>8</sup> This has included drafting assistance as to the Copyright Law, assistance to the Ministry of Telecommunications with draft legislation aimed at regulating Lebanon's cable industry, training seminars by industry for inspectors of the Ministry of Economy and Trade, and training for the CCIPRB Unit. IIPA recommends that future capacity building be directed at the CCIPRB Unit, Customs, Ministry of Economy and Trade officials, Ministry of Interior officers, and prosecutors to discuss all aspects of piracy investigations, from the raid, securing the raid site, seizing and removing tools and implements used for piracy in addition to pirate product, and preparing dossiers for prosecution. It is hoped that such trainings could create an enforcement reporting mechanism between ministries. Joint training could be a useful way of promoting close cooperation between CCIPRB (the most effective anti-piracy group thus far in Lebanon) and prosecutors to prepare cases for criminal proceedings. IIPA also recommends judicially-oriented trainings, i.e., training a number of prosecutors who will become experts in bringing copyright cases and training for judges who will be hearing IP cases. Additional training for judges is crucial, to review the basics of IP laws and the importance of deterrent sentencing. Judges should also be sensitized to the significance of IP offenses and the damage IP offenses cause to creators, as well as the impact lack of deterrence in IP cases would have on Lebanon. It is hoped that through such trainings, it could be impressed upon the government of Lebanon that assigning specially qualified judges to hear copyright cases would improve the overall efficiency of the court system.

## MARKET ACCESS

**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.

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<sup>7</sup> In one very disturbing development in late 2004, the Beirut Court of Appeals reversed a conviction handed down by the trial court against Jammal Trust Bank, a local bank which was adjudged, on the basis of a court-appointed expert, to be using unlicensed software. The Court of Appeals reached its decision, ruling that the use of the software by the bank did not result in any commercial benefits to the bank. This decision is very troublesome, and shows the lack of familiarity of the judge with the copyright law as well as the problem of piracy and its implications.

<sup>8</sup> Industry continues to be engaged in copyright issues in Lebanon, and providing training. Industry groups (including MPA, BSA and IFPI) organized training seminars for police officers of the Cybercrime and IPR Bureau (this took place in the UK in 2006). Another training seminar was organized in late 2007 in Australia (BSA and IFPI participated). The publishing industry has also been actively engaged over the past two years, working with the MOET to raise awareness on campuses of the importance of copyright. On September 5, 2007, IIPA and MPAA representatives sat down with the head of the Lebanese Telecommunications Regulatory Authority to discuss approaches to effectively addressing cable piracy in Lebanon.

## COPYRIGHT LAW AND RELATED ISSUES

**The Copyright Law of Lebanon Should be Modernized, and TRIPS Deficiencies Fixed; Reported Draft Amendment Goes in Entirely the Wrong Direction:** The Copyright Law of Lebanon (effective June 14, 1999) provides a sound basis to enforce against piracy of works and sound recordings, including stiff penalties (in theory) for copyright infringement, stiff penalties against 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 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”). The law further provides right holders with a broad communication to the public right (Article 15), but does not fully implement the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. 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. Finally, while broadband is still only on the horizon, legislation should provide sufficient remedies against piracy over the Internet, including notice and takedown provisions so that Internet service providers will cooperate with right holders.

Unfortunately, the law remains deficient with respect to international standards in several respects,<sup>9</sup> including:

- Most significantly, deterrent penalties provided on the books are not carried out in practice. Lebanon’s legal framework at present pays only lip service to the severe problem of piracy.
- 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 in accordance with international treaties.
- Article 25, providing a broad exception allowing copying of software, and even as implemented 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 far 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, but not the chief area, which is that the exception is essentially a free compulsory license for students to make multiple copies of a computer program. 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 completely 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 context of Lebanon’s bid to join the WTO, and Lebanon must take measures to address these deficiencies.

**Disturbing New Reported Amendment Would Take Lebanon in the Wrong Direction:** IIPA has learned of a very disappointing development, namely, a new draft amendment to the Copyright Law which would result in reducing protection for software and other copyright works. IIPA urges the government of Lebanon in the strongest terms to refrain

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<sup>9</sup> 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.

from backtracking on gains already made in its copyright regime, and to shelve any amendments which would weaken protection, subject to reconsideration by all stakeholders.

**Bill to Join the Berne Convention (Paris 1971 Text):** On September 3, 2007, the Lebanese Government forwarded to the National Assembly a Bill 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 development. IIPA is unaware of the status of this Bill.

## **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 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. IIPA has noted in this year’s report some progress made to legalize certain unauthorized cable operators; however, the process of cleaning up this market would be further enhanced and accelerated if Lebanon will enforce criminal remedies against egregious illegal retransmission activities.

The GSP program is important to Lebanon. In 2007, Lebanon imported \$49.5 million worth of products into the United States duty-free, or 47% of its total imports into the U.S. In 2008, Lebanon imported another \$48.6 million worth of products into the United States duty-free, or almost 49.1% of its total imports into the U.S. It is in Lebanon’s economic and political interest to take steps to maintain its eligibility as a beneficiary under the GSP program. In October 2007 written and oral testimony before the GSP Committee, IIPA recommended that, given “some signs of improvements in enforcement by the Cybercrime and IPR Bureau, but with courts remaining ineffective and the cable piracy problem remaining largely unchecked,” the GSP Subcommittee should “provide the Lebanese government with some additional time, maintain this petition in the short-term, continue to monitor progress in key problem areas, and ultimately recommend to the President that he determine that Lebanon fails to meet the GSP standards if serious progress is not made in that short-term period.” In the upcoming country practice reviews in 2009, IIPA expects once again to weigh in on progress, and will be looking specifically at the three deficiencies noted above to determine whether enough progress has been made to recommend that Lebanon remain eligible for GSP benefits.