# LEBANON

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)
## 2012 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** Lebanon should remain on the Watch List in 2012.[1]

**Executive Summary:** IIPA hopes that in 2012, Lebanon's development goals, including its World Trade Organization (WTO) accession process, can be moved forward, and that enhancement of intellectual property protection standards plays an appropriate role within that context. IIPA has noted incremental progress in copyright protection in previous submissions and in recent testimony before USTR, although problems remain.[2] 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.[3]

## PRIORITY ACTIONS REQUESTED IN 2012

- 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 WIPO Performances and Phonograms Treaty (WPPT).
- Take all steps necessary to join the Berne Convention (Paris 1971 text), and join the WCT and WPPT.
- 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 accession to the WTO and to implement the relevant international treaties related to WTO accession.[4] These include most notably the TRIPS Agreement, the Berne Convention, to which Lebanon has expressed interest in ratifying the latest text (1971 Paris text),[5] and the WCT and WPPT, to which Lebanon's previous National Assembly had ratified, but which reportedly the current National Assembly may need to ratify again. The WCT and WPPT should then be deposited in Geneva with the WIPO.[6] It is important that the government

[1]For more details on Lebanon's Special 301 history, see Additional Appendix available at http://www.iipa.com/pdf/2012SPEC301HISTORICALSUMMARY.pdf. Please also see previous years' reports at http://www.iipa.com/countryreports.html.

[2]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.

[3]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.

[4]*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.

[5]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.

[6]The previous National Assembly had ratified the WPPT through Law No. 77 (WPPT) and the WCT through Law NO. 78 (WCT) on March 6, 2010. However, In early January 2011, the national unity government collapsed after all ten opposition ministers and one presidential appointee resigned due to tensions stemming from the Special Tribunal for Lebanon, which was expected to indict those accused of assassinating former prime minister Rafic Hariri. The National Assembly eventually elected Najib Mikati in July 2011 as Prime Minister of Lebanon.

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take steps to implement these accords into domestic legislation in greater detail as mentioned below, as well as deal with outstanding WTO/TRIPS accession issues.

The current Copyright Law provides a relatively sound basis of protection of works and objects of related rights (sound recordings, 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 must 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, a WCT- and WPPT-compatible "making available" right for authors, producers of sound recordings, and performers.
    - Amendments should also ensure protection against the circumvention of technological protection measures used by copyright owners to protect their works from unauthorized access or use, and against trafficking in (and providing services as to) circumvention technologies, devices, and components. Remedies should include both civil and criminal provisions. Amendments should also protect rights management information (RMI) in line with the WCT and WPPT.
- 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. Measures should include legal norms that create incentives for Internet Service Providers (ISPs) to cooperate with right holders in fighting infringement taking place over their networks

[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.

or platforms, including *inter alia*: i) legal incentives for ISPs to cooperate with rights holders to effectively deal with Internet piracy; ii) rules that clarify the illegality of providing services that are intended to promote the infringement of copyright and related rights; and iii) injunctive relief and a duty on ISPs to provide information to law enforcement agencies and rights holders

- 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, consideration should be given to extending the term 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: 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; increase the minimum and maximum criminal fines to ensure deterrence; ensure that criminal penalties apply to infringements which may cause significant damage to the market notwithstanding the motive of the infringer; ensure that a provisional and criminal seizure, forfeiture, and where applicable, destruction remedy is available; provide for information sharing by civil, criminal, and border officials regarding evidence of infringement and those participating in such activities; and provide adequate border measures against both imports and exports (as well as in-transit materials).

## PIRACY UPDATES IN LEBANON

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 (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), 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.[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]

The situation for right holders over the years has improved incrementally, for example, through the establishment of the Cyber Crime and Intellectual Property Rights Bureau (CCIPRB). The CCIPRB would be an even more effective body if the following were implemented: 1) the CCIPRB should be granted *ex officio* authority in order

[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.

[10]BSA's 2011 software piracy statistics will not be available until after the filing deadline for this submission, but will be released in May 2012, at which time piracy rates and U.S. software publishers' share of commercial value of pirated software will be available at www.iipa.com. In 2010, the software piracy rate in Lebanon was 72%, representing a commercial value of unlicensed software attributable to U.S. vendors of US$27 million (up from US$25 million in 2009). These statistics follow the methodology compiled in the Eighth Annual BSA and IDC Global Software Piracy Study (May 2011), http://portal.bsa.org/globalpiracy2010/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 2012 Special 301 submission at http://www.iipa.com/pdf/2012spec301methodology.pdf.

[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.

to address intellectual property rights infringement cases more efficiently; at present, in order for CCIPRB to act, a criminal complaint must be filed with the prosecutor's office; 2) the Lebanese Government should be asked as part of the Trade and Investment Framework Agreement (TIFA) process to provide transparency on cases they are pursuing to track statistics and successes in enforcement; 3) 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), CCIPRB should continue to receive greater resources and assistance on computer crime issues; and 4) the CCIPRB Unit should be given a formal budget to help the Unit become even more stable and effective in its functioning.

One weak link noted over the years in the Lebanese copyright system is the courts. IIPA's previous reports document well the delays encountered 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 have reached judgment, 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. The courts in Lebanon should also employ tools that would strengthen their hand, such as informants.[12]

## GENERALIZED SYSTEM OF PREFERENCES

The Generalized System of Preferences (GSP) program, designed to promote economic growth in the developing world by providing preferential duty-free entry for products from designated beneficiary countries and territories, expired on December 31, 2010, but on October 21, 2011, President Obama signed legislation to reauthorize the program through July 31, 2013. GSP trade benefits became effective 15 days after the President signed the bill (November 5, 2011) and apply retroactively from January 1, 2011. The GSP program has been important to Lebanon's economy. During the first eleven months of 2011, more than US$33.6 million in imports to the U.S. from Lebanon enjoyed duty-free treatment under the GSP Program, or more than 45.2% of Lebanon's entire imports into the U.S.[13]

Among the criteria the President must take into account in determining whether a country should continue to be designated as a GSP beneficiary country are "the extent to which such country is providing adequate and effective protection of intellectual property rights," and "the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets ... of such country." 19 USC 2462(c)(4) and (5). It is essential to the continued growth and future competitiveness of these industries that our trading partners, including Lebanon, provide free and open markets and high levels of protection to the copyrights on which this trade depends.

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 GSP trade program. 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.[14] 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

[12]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.

[13]During 2010, more than US$38.3 million in imports to the U.S. from Lebanon enjoyed duty-free treatment under the GSP Program, or more than 45.7% of Lebanon's entire imports into the U.S.

[14]International Intellectual Property Alliance, *Request for Review of the Intellectual Property Rights Practices of Lebanon in the 2001 Annual GSP Country Eligibility Practices Review*, 66 Fed. Reg. 19278 (April 13, 2001), June 13, 2001, at http://www.iipa.com/gsp/2001_Jun13_GSP_Lebanon.pdf.

Lebanon that are inadequate and ineffective. The Petition questioned whether Lebanon should continue to receive GSP duty-free treatment for many of its goods imported into the United States. As noted, the GSP program lapsed on January 1, 2011, but was then renewed retroactively. In the 2011 GSP annual review, the IIPA Petition (007-CP-08) was "continued." IIPA believes the Petition should remain ongoing at least until the enactment of draft legislation to address deficiencies in the legal protection for copyright, namely, legislation which addresses Berne- and TRIPS-inconsistencies, and that otherwise implements the WCT and WPPT.