

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

EGYPT

Special 301 Recommendation: IIPA recommends that Egypt remain on the Priority Watch List.

EXECUTIVE SUMMARY

The copyright community has for several years held out hope that the government of Egypt would come to recognize that a strong copyright system is in its interest. Unfortunately, the enforcement infrastructure remains under-funded and staffed by some who are less than enthusiastic about taking the steps necessary to eliminate piracy and foster legitimate growth of copyright industry in Egypt. Problems in the enforcement system abound, from the highest levels of key government agencies, to courts which do not view copyright piracy as a commercial crime, to the police who are reluctant to take actions against commercial piracy and permit pirates to thrive. On top of the piracy woes, market access barriers in Egypt make it one of the most restrictive and uninviting markets in the world to legal copyright businesses. Egypt's creative community was once one of the most vibrant in the world. With the growth of Internet connectivity in Egypt, IIPA hopes that the government will move to foster growth in the creative industries rather than douse their forward progress.

PRIORITY ACTIONS REQUESTED IN 2007:

- **Establish Effective Enforcement Unit in Ministry of Communications and Information Technology (MCIT):** In 2002, when the IP Code was enacted, business software and entertainment software right holders were assured that implementing regulations would move responsibility for copyright enforcement to the MCIT. The Implementing Decree (2005) only complicates the enforcement picture, as it is ambiguous whether MCIT is given sole purview over software. No enforcement agency took responsibility for these important copyright sectors in 2005 as a result. According to Ministry of Justice Decree No. 3286/2006, the Intellectual Property Unit at the Information Technology Industry Development Agency (ITIDA) is the enforcement authority which is empowered to take immediate action in case of software copyright infringements. Thus, it is crucial that MCIT acts to apply this Decree and establishes the necessary legal structure for the IP unit at ITIDA allowing it to take sustained enforcement actions against all illegal distributors and retailers of pirate entertainment and business software products. ITIDA must then significantly increase audits and enforcement against software piracy and unauthorized end-use of business software.
- **Tackle Book Piracy Effectively:** The book piracy situation remains bleak in Egypt, with piracy of higher-education textbooks severely undermining the market for legitimate texts. The Egyptian government must take sustained enforcement actions against book piracy, and the Egyptian Ministries of Education and Higher Education must get involved to instruct universities to use only legal copies of publications.
- **Allow Right Holders to Participate in Investigation of Piracy:** IIPA understands that even after successful raids, the Ministry of Culture is thwarting enforcement efforts by determining

that clearly pirate materials are, in their view, “genuine” (some such determinations appear to have been based on false licenses). The failure to include right holders’ experts on identifying pirate product is the cause of this problem, although there is evidence suggesting undue influence as well. The Minister of Culture must instruct his officials that piracy cases will be fully investigated and evidence will be open to inspection and forensic testing by right holders upon their request.

- **Increase Deterrence at Court:** The Egyptian courts are notoriously slow and bureaucratic. They also mete out results that utterly fail to deter copyright piracy, instead slapping pirates on the wrist with fines that do not even amount to a cost of doing business. The Minister of Justice should step in to introduce judicial reforms in the copyright area, through training and through the assignment of specialist IP judges to copyright cases. By doing so, the Minister could increase the ease with which *ex parte* orders and injunctions are issued in cut-and-dried piracy cases, and ensure that courts are meting out deterrent penalties, including high fines and jail sentences in piracy cases.
- **Ease Onerous Market Access Restrictions:** The Egyptian market is one of the most closed in the world to foreign right holders, imposing an incredible array of market access barriers. Pirates and counterfeiters do not have to contend with such restrictions, so legitimate right holders are further unable to compete with piracy. These market access barriers should all be immediately lifted (some of these violate Egypt’s current international obligations).
 - *Ad valorem* duties (46% of the value of a film, i.e., 32% for a copy of the movie, 12% on posters and 2% on the movie reel) upon import into Egypt of films, and *ad valorem* duties on sound recordings and entertainment software.¹
 - An additional sales tax (i.e., a tax on goods imported for sale in Egypt) amounting to 10% of the value of imported films, sound recordings, etc.
 - A censorship certificate release fee imposed on foreign films that is not imposed on domestic films. This discriminatory tax should be removed.
 - A 20% box office tax for theatrical motion pictures.
 - The requirement that all song lyrics on locally manufactured releases be translated into Arabic.
 - No trading rights (requirement that a commercial entity be 100% Egyptian-owned in order to import products into Egypt).
 - A discriminatory and GATT-inconsistent entertainment tax on foreign films (20% box office tax on non-Arabic language films, while the tax for Arabic-language films is only 5%).
 - A cap on the number of prints that may be imported for any major U.S. film title (five).

¹ Industry reports that this is generally a 5% duty imposed on entry into Egypt, but can be higher.

- **Amend Copyright Law (and to the Extent Necessary, the new Implementing Decree) to Cure TRIPS Deficiencies, and Implement and Accede to the WIPO Internet Treaties.**

For more details on Egypt's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years' reports at <http://www.iipa.com/countryreports.html>.

EGYPT										
ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY										
(IN MILLIONS OF U.S. DOLLARS)										
AND LEVELS OF PIRACY: 2002-2006²										
INDUSTRY	2006		2005		2004		2003		2002	
	Loss	Level								
Business Software³	47.0	63%	45.0	64%	28.0	65%	34.0	69%	12.7	52%
Books⁴	31.0	NA	30.0	NA	30.0	NA	25.0	NA	28.0	NA
Entertainment Software⁵	NA	NA	14.3	85%	NA	90%	NA	90%	NA	NA
Records & Music⁶	12.0	70%	9.0	60%	7.5	40%	8.0	45%	8.2	41%
Motion Pictures	NA	NA								
TOTALS	90.0		98.3		65.5		67.0		48.9	

PIRACY AND ENFORCEMENT UPDATE

Failure of Ministry of Communications and Information Technology (MCIT) to Take Lead on Software Piracy Leaves Enforcement Vacuum: Unauthorized use of business software in a business setting (end-user piracy of business software) and reseller software piracy cause great losses to the business software community in Egypt, while piracy of entertainment software is decimating that industry's legitimate market in Egypt. Retail malls dealing in computers continue to offer illegal business and entertainment software unchecked. Imports of counterfeit software have become a serious concern, passing freely through the borders into Egypt. Egyptian Customs has not established an effective mechanism to seize such goods at the point of entry. Resellers of counterfeit software advertise these illegal products openly in trade magazines.

While the 2005 Implementing Regulations for the IP Code (copyright chapter) officially moved purview over business and entertainment software to MCIT (the ITIDA), the regulations

² The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2007 Special 301 submission at www.iipa.com/pdf/2007spec301methodology.pdf. For information on the history of Egypt under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

³ BSA's 2006 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Egypt, and follow the methodology compiled in the Third Annual BSA/IDC Global Software Piracy Study (May 2006), available at <http://www.bsa.org/globalstudy/>. 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. BSA's 2005 piracy statistics were preliminary at the time of IIPA's February 13, 2006 Special 301 filing; the 2005 data was revised and posted on the IIPA website in September 2006 (see <http://www.iipa.com/statistics.html>), and the 2005 revisions (if any) are reflected above.

⁴ In 2002 and 2003, lower losses of \$28 million and \$25 million to U.S. publishers due to piracy in Egypt reflect currency devaluations and do not reflect a decrease in piracy rates.

⁵ ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses." The methodology used by the ESA is further described in Appendix B of this report.

⁶ The piracy level for sound recordings reflects not only physical piracy but also the growing effect of Internet piracy – still at 95% - and its increasingly devastating impact on the recording industry in Egypt.

were ambiguous as to what role the Ministry of Culture (MOC) would play. In 2006, Decree No. 3286/2006 was issued by the Ministry of Justice (May 11, 2006). The Decree granted powers to ITIDA to enforce the law against copyrights infringers.⁷ MCIT/ITIDA should immediately start activating its enforcement role and begin to take sustained enforcement actions against all illegal distributors and retailers of pirate entertainment and business software products. It should also significantly increase audits and enforcement against pirate end-users of business software.

As a result of the enforcement vacuum, there were no business software end-user raids in 2006. In addition, while the enlargement of the Police's anti-piracy unit into an "IPR Department" (which we are told will have more personnel and resources) signifies the interest in the Ministry of Interior to protect copyright, there has been no impact in the market in terms of losses felt by industry or increased sales.

Book Piracy: Egypt is one of the world's worst book piracy markets. Major losses accrue due to piracy of higher-education textbooks (which are, for example, sold at stalls set up near university campuses), with piracy levels, depending on subject matter, ranging between 50% and 90%. U.S. right holders in texts on medicine, sciences, management and even some social sciences are plagued by print piracy, illegal photocopying and illegal translations. The tender system for supply of textbooks in most universities is unduly bureaucratic and nontransparent. Distributors, who have a chokehold on the market due to the peculiarities of the bureaucratic system, routinely supply only limited numbers of legitimate texts and fill the majority of their orders with their own pirated versions, all at the publishers' official prices.

The piracy level for medical books is as high as 90%, and the vast majority of the market for other professional reference books (such as engineering books) is pirate product. Most major universities are affected by this ongoing problem.⁸ Universities are in some cases working hard to overcome this phenomenon, as they are losing money from the books they are directly importing from foreign publishers. All too frequently, however, universities are actively or tacitly involved in the problem, especially where illegal photocopies are concerned. Professors at major universities have been known to facilitate copying themselves, and the sophistication level of the copies has increased such that these illegal versions rival print versions in quality.

Burning of CDs to accompany the books (inclusion of CDs as supporting material is a longstanding practice among legitimate publishers) has become more prevalent. The piracy problem is further illustrated by the frequent requests received by publishers for "free" supplementary teaching materials, which are not supported by purchases of genuine textbooks. Egypt prides itself on its educational structure and heritage and needs to take steps to ensure the protection of quality education at its universities by ensuring use of legitimate materials in their courses. Although legitimate U.S. publishers provide books at deep discounts (sometimes as much as 70-80%), piracy of their works continues on a commercial scale. This is causing deep harm to local industry as well, with many operatives in the legitimate supply chain being forced out of business due to the devastating losses attributable this growing problem.

⁷ ITIDA had placed an ad in the press, announcing they are now in charge of software copyright, calling on businesses to register software products and work permits, and asking them to comply with copyright laws in the use of software. While this is a positive development, IIPA is concerned that ITIDA will end up working aggressively on registrations but will do very little in the area of enforcement (a recent meeting at IIPA with the head of ITIDA confirmed that ITIDA had not started enforcement and was not prepared to do so).

⁸ There are a few exceptions, most notably the Arabic Academy of Science and Technology in Alexandria, which has achieved an outstanding record of supplying legitimate texts.

In addition to the piracy plaguing the domestic market in Egypt, reports indicate that Egypt has become an exporter of pirated books, mostly to neighboring countries. The Egyptian government should look carefully at this issue before it grows to a massive scale.

Entertainment Software Piracy Decimates Window for Legal Product: Pirate and counterfeit software dominates the market, due to lack of effective enforcement and border controls. Imports of pirate console-based videogames continue to pour into Egypt from Asia, predominantly from Malaysia and Thailand, though some production also appears to be taking place domestically. The overall piracy rate for the video game products remains very high (the piracy rate was 85% in 2005). Piracy rings in Egypt continue to be run by large criminal syndicates, which also distribute to otherwise legitimate retailers. In 2005, there were instances of compromised investigations in which the Ministry of Culture thwarted enforcement efforts by determining that clearly pirate materials were, in their view, “genuine.”⁹ The failure to include right holders’ experts in identifying pirate product is the cause of this problem.

Internet Piracy in Small But Virulent Doses in Egypt: Internet usage in Egypt has grown to five million users,¹⁰ as the Middle East and Africa had among the fastest broadband growth in the world from 2005 to 2006, at over 65% growth year on year.¹¹ In fact, in the 3rd quarter of 2006, Egypt was the fastest growing DSL market in the world with a growth rate of 34.2%,¹² and Egypt was sixth in terms of percentage growth year on year, at well over 100% growth from 2005 to 2006 (only Greece, India, Croatia, the Philippines and Vietnam had higher percentage growth). Thus, it is not surprising that Internet-based piracy involving advertising websites (for pirate product on CDs, VCDs, DVDs, and the like) remains a problem. Internet piracy still makes up only a small percentage of all piracy of entertainment software in Egypt, including both CD “burning” to order (for physical distribution) and downloading of pirate “WAREZ” software from the Internet. Nonetheless, it is growing, and IIPA understands that there may be as many as 400 Internet cafés, none of which are using licensed software. The music industry, which suffers from the same forms of Internet-based piracy as the other copyright industries, also reports large-scale ring-tone piracy on the Internet, where ring-tones

⁹ An ESA member company reports that problems with the Egyptian government’s reliance on false licenses and related documentation continue, despite an understanding between the U.S. and Egyptian governments in 2001 that government sales licenses previously issued on the basis of falsified documents would be revoked. A particularly egregious case involves a company which is believed to be one of the largest distributors of pirated entertainment software products in the country. Sample product taken during a 2005 police investigation into this business were submitted to the Censorship Office of the Ministry of Culture for a determination of authenticity, and based solely on the documentation provided by the subject of the raid and absent an opportunity for the right holder to intervene, the Censorship Office determined that the products were “genuine.” Upon the insistence of counsel, the Censorship Office finally granted the right holder access to the documents upon which it had made its determination of legitimacy. Upon review of the documents, it became apparent that the Censorship Office’s determination of authenticity was (again) based on the same or similar false licenses which had been the subject of the 2001 discussions between the U.S. and Egyptian governments. The right holder has appealed this decision with the Public Prosecutor and the matter is ongoing.

¹⁰ The MCIT cites a study by the Egypt-based “Information and Decision Support Center” of November 1, 2005, finding that of 13.5 million Arab-country Internet users as of June 2005, 4.4 million were Egyptian (Egypt and Saudi Arabia had half of all Internet users in the Arab world). See Ministry of Communications and Information Technology website, at http://www.mcit.gov.eg/news_details.asp?newsid=164. This number is close to where the CIA World Factbook pegs Egypt’s Internet users, at 5 million as of 2005. See <https://www.cia.gov/cia/publications/factbook/fields/2153.html>. See also <http://www.internetworldstats.com/africa.htm#eg> (which also indicates 5 million Internet users in Egypt).

¹¹ See Point Topic, Vince Chook, World Broadband Statistics: Q3 2006, December 2006, at <http://www.point-topic.com/contentDownload/dslanalysis/world%20broadband%20statistics%20q3%202006.pdf> (“With a relatively unsaturated market, the MEA is one of the fastest growing regions with an annual growth of 67.1% between Q3 2005 and Q3 2006”).

¹² This indicator includes all countries with a total number of DSL lines over 100,000.

and “ring-tunes” are illegally made available for downloading. With a dwindling physical market for recorded music, the importance of the digital market is growing by the day. However, it is still completely dominated by piracy, which accounts for over 95% of online ‘trade’ in music.

Courts Do Not Function Effectively to Deter Piracy: The court system is completely unable to mete out deterrent justice in piracy cases. For cases that have resulted in positive judgments being awarded to right holders, the sentences are almost always non-deterrent, usually a fine of EL5,000 (US\$877).¹³ Since collections take an unreasonably long time in Egypt, it is practically not worth pursuing cases in most instances. The system in Egypt also continues to be marred by structural defects from initial raid to judgment, and cases move at a snail’s pace. Lack of transparency in the court system is a major concern, as court decisions are not published expeditiously. The situation is worse in cases initiated by the government, as there is simply no means to follow the progress of such cases.

Limited Enforcement Against Duplication Sites: Industry has received sporadic reporting about enforcement actions in Egypt. In one involving pirate duplication of recorded music on CD-Rs and audiocassettes, the Cairo Anti-Piracy Police conducted a raid on a four-story apartment which was fully equipped as a factory. The police arrested two Egyptian nationals who were suspected as being responsible for the manufacturing and distribution of the “burned” CD-Rs and cassettes containing Arabic repertoire. In total more than 200 master CDs, several hundred “burned” CD-Rs, an estimated two million CD inlay cards, 120,000 cassettes, jewel cases, five cassette copying machines and computers were seized. In a separate case a few days later, another apartment was raided by the same police unit. The premises situated outside Cairo, was used as a cassette laboratory. During the raid police seized 25,000 recorded Arabic language cassettes and seven duplicating machines.¹⁴

MARKET ACCESS ISSUES

Egypt is one of the world’s most restrictive markets when it comes to trade in copyrighted materials. Problems include:

- **Discriminatory *ad valorem* Duties:** The copyright industries regularly face discriminatory *ad valorem* duties upon import into Egypt. Egypt bases the customs’ valuation of imported CD-based goods on the invoice value of the product rather than on the value of the physical medium — the widespread and favored international practice. Such *ad valorem* duties serve as a form of double taxation, since royalties are also subject to withholding, income and remittance taxes. The outcome is that legitimate sellers cannot price to the market, because they must take the additional duty into account when pricing. Pirates circumvent these duties, and thus can always undercut the legitimate price in the market. For motion pictures, the *ad valorem* duty can be as much as 46% of the value of a film, i.e., 32% for a copy of the movie, 12% on posters and 2% on the movie reel upon import into Egypt, and there are reportedly also similar *ad valorem* duties on sound recordings and entertainment software (for example, the import duty on finished music CDs has reportedly been 32% of the total value – cost according to invoice plus freight charges).

¹³ IIPA understands that there may now be some sentences in which the proper fine, of EL5,000, is being meted out per work rather than as a maximum fine. If so, this would be a positive development; however, we understand that judges and officials in Egypt still believe the EL5,000 fine is too high. Such attitudes are not helpful to achieve the deterrence necessary to drive piracy rates down in Egypt.

¹⁴ See <http://www.ifpi.org/site-content/library/enforcement-bulletin-30.pdf>.

- **A 10% Sales Tax:** An additional sales tax (i.e., a tax on goods imported for sale in Egypt) has been levied since March 1992, which amounts to 10% of the value of imported films calculated as follows: for films, the cost of the print, including freight charges, customs duties and other import taxes; for music and games, an extra 10% sales tax is added to the import duty. An Egyptian official claims that the 10% sales tax was repealed two years ago, but sources indicate this is still being charged on films. There is reportedly also a 20% box office tax for theatrical motion pictures; this tax should be removed.
- **A Censorship Certificate Release Fee:** Import costs are further increased by a release tax imposed on foreign films that is not imposed on domestic films. This discriminatory tax should be removed.
- **Arabic Lyrics Requirement:** There is a requirement in Egypt that all song lyrics on locally manufactured releases be translated into Arabic, significantly reducing the number of back-catalog items that companies can release in Egypt, and lengthening the “censorship approval” process.
- **Failure to Afford Trading Rights:** The requirement that a commercial entity be 100% Egyptian-owned in order to import products into Egypt effectively holds U.S. companies hostage to the interests of Egyptian importers.
- **GATT-Inconsistent Entertainment Tax:** Egypt also maintains a discriminatory and GATT-inconsistent entertainment tax on foreign films — right holders must pay a 20% box office tax on non-Arabic language films, while the tax for Arabic-language films is only 5%.
- **Five-Print (Film) Cap:** Only five prints may be imported into Egypt for any major U.S. film title.

COPYRIGHT LAW AND RELATED ISSUES

2002 Law and Implementing Regulations Leave Some Gaps in Protection: The 2002 Intellectual Property Law and the 2005 Implementing Decree¹⁵ appear to provide a reasonable basis to enforce the law and uphold the rights of copyright owners against piracy, whether of domestic or foreign materials. However, the Law and the Implementing Decree left many TRIPS deficiencies, some quite severe, and other ambiguous provisions, and failed to incorporate other changes recommended by IIPA in the past in order to create a truly modern copyright regime. The following recounts some of the key deficiencies and describes, where applicable, how the Decree deals with these issues. Where there is no mention below, the Implementing Decree did not address the issue raised.

- **Criminal Remedies:** The Code contains very low criminal penalties which appear not to meet the TRIPS test of criminal penalties available that are sufficient to provide a deterrent to further infringements. Specifically, Article 181 provides a prison sentence of “not less than one month” and a fine of EL5,000 to 10,000 (US\$877 to \$1,754). The minimum sentence of “one month” imprisonment is welcome, but there is no set maximum jail term (as there was in the old law), potentially rendering this provision much weaker than it was previously. Fines on their face appear insufficient to provide a deterrent. IIPA understands that the fine is to be imposed “per work” or “per title.” Fines should be increased, and, for example, should be

¹⁵ Prime Minister Decree No. 497 for the year 2005 (effective by Issue No. 12, Official Gazette, March 29, 2005).

doubled for recidivists (as of now a recidivist receives the mandatory minimum jail term and the maximum fine).

- **Remedy as to “Materials and Implements.”** Article 179(3) in the Code is TRIPS deficient, in that it only permits the seizure of “materials” that are “serviceable” “only” for infringement. TRIPS Article 46 requires that judicial authorities shall have the authority to “order that materials and implements *the predominant use* of which has been in the creation of the infringing goods” be (seized and) disposed of, and Article 61 provides, in appropriate cases, for the seizure, forfeiture and destruction of such materials and implements.
- **Ex Parte Civil Searches.** Article 179 does not provide judicial authorities with the clear express authority to “adopt provisional measures *inaudita altera parte* (without notice to the defendant) where appropriate, in particular where any delay is likely to cause irreparable harm to the right holder, or where there is a demonstrable risk of evidence being destroyed,” as required by TRIPS Article 50. The copyright industries are examining this provision and considering a test in the courts, but in the meantime, the law should be amended to clarify the availability of this vital measure, in line with Article 50 of TRIPS.
- **Government-Sanctioned Sell-Off of Pirated Products Violates TRIPS.** Article 180 provides that “the court may support a sequester with a view to republish the [allegedly infringing] work, sound recording, broadcasting program, as well as, exploiting or offer copies of it,” and “the accrued revenue shall be deposited with the court’s treasury until the original dispute is settled.” This provision diverges from accepted practice and violates Egypt’s TRIPS obligations. Article 46 of TRIPS requires Egypt to give the judicial authorities “the authority to order that goods they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or ... destroyed.” Clearly, sale in public auction would prejudicially harm the right holder. This provision amounts to a government-sanctioned sell-off of pirated products, and must be deleted.
- **Modern, TRIPS-Compatible Presumptions.** The law does not provide expressly for presumptions of copyright ownership (as required by TRIPS) or subsistence of copyright. Such presumptions are crucial to the ability of copyright owners to effectively exercise their rights. The law must be amended to comply with TRIPS.¹⁶
- **Requirement of Translation into Arabic.** Section 148 of the Code requires translation of all literary works into Arabic within three years of publication; if not, they are deemed to fall into the public domain. This is an extremely disturbing development. This unprecedented provision violates Egypt’s TRIPS and international obligations, is highly prejudicial to all right holders, including U.S. publishers, and it must be deleted.

¹⁶ The following formulation might, for example, be appropriate:

In civil cases involving copyright or related rights, each Party shall provide that the physical person or legal entity whose name is indicated as the author, producer, performer or publisher of the work, performance or phonogram in the usual manner shall, in the absence of proof to the contrary, be presumed to be such designated right holder in such work, performance or phonogram. It shall be presumed, in the absence of proof to the contrary, that the copyright or related right subsists in such subject matter. A right holder or authorized person on his behalf may present evidence of the ownership or subsistence of rights by affidavit, which shall be presumed to be conclusive without the need to be present in court, absent specific facts to the contrary put forward by the defendant. Such presumptions shall pertain in criminal cases until the defendant comes forward with credible evidence putting in issue the ownership or subsistence of the copyright or related right.

- **Broad Compulsory License.** Article 170 of the IP Code contains a compulsory license for copying and translating works. It is not limited to literary works in printed form, and apparently extends to computer programs and audiovisual works. Such a compulsory license is contrary to international law and would be devastating to the copyright industries if the Egyptian government allows for such practices. It must be fixed or deleted altogether.¹⁷ The 2005 Implementing Decree (Articles 4 and 5) failed to resolve this issue and leaves in place a Berne- and TRIPS-incompatible compulsory license.
- **Broad Moral Rights Provision.** The moral rights provisions in the Code impinge on exclusive rights, in violation of TRIPS and Berne (TRIPS Article 9.1, Berne Articles 8 and 12). Article 142(3) provides that the author may reject “any amendment in the work, which the author considers as changing or distortion of his work,” regardless of whether the author has transferred economic rights. In this form, this provision violates Berne Article 12, as it would undermine the exclusive adaptation right. The standard for rejection of a change must be objective, as set forth in the Berne Convention, not subjective, as set forth in the Code. The Article also provides that “amendment in translation shall not be regarded as infringement, unless the translator fails to indicate points of deletion or change, or abuses the reputation and status of the author.” This would violate Berne Article 8, as it would impinge on an author’s exclusive translation right.
- **Ambiguous Protection for Pre-Existing Works/Sound Recordings.** There is no provision in the Code ensuring that pre-existing works and the objects of neighboring rights (including sound recordings) receive full retroactive protection as required under TRIPS Articles 9.1 and 14, and Berne Article 18. Even though we understand that the government of Egypt takes the position that TRIPS and Berne are self-executing in Egypt, the absence of a provision for full retroactivity for TRIPS/Berne terms of protection may lead to confusion. Therefore, it would be highly preferable for Egypt to include an express provision for full (TRIPS- and Berne-compatible) retroactivity for all subject matter under the law.¹⁸
- **Border Measures as Required by TRIPS, Including Ability to Interdict and Take Ex Officio Actions.** The law contains no provisions on border measures (TRIPS Articles 51-59). We are unaware of whether separate customs measures exist or are being drafted to provide TRIPS-level protection in the area of border measures.
- **Article 171 Exceptions.** The law contains exceptions to protection which are quite broad and may be in questionable conformity with TRIPS Article 13. Preferably, Article 171 (on exceptions to protection) should include “chapeau” language limiting excepted acts to special cases, provided that such acts “do not conflict with a normal exploitation of the work [or object of neighboring rights]” and “do not unreasonably prejudice the legitimate interests

¹⁷ The Egyptian government must confirm that, if it intended to avail itself of Articles II and III of the Berne Appendix, it has kept up its renewals of its declaration, under Article I of the Berne Appendix. Otherwise, Egypt is no longer entitled to avail itself of these provisions.

¹⁸ The simplest way to fix the retroactivity void in the Egypt draft would be to add a new article as follows:

The protection provided for under this Law applies also to a work, sound recording or performance in existence at the moment of the entry into force of this Law, and which are the subject of any international treaty, convention or other international agreement to which Egypt is party, provided that on such date the work, sound recording or performance has not yet fallen into the public domain in its country of origin and in Egypt through the expiry of the term of protection which was previously granted.

of the author [or right holder],” in line with TRIPS Article 13. The Implementing Decree (Article 10) makes an attempt to limit the computer program exception in Article 171(3).

- **Civil Remedies.** Nowhere in the Egyptian law is there provision for adequate compensatory damages, as required by Article 45 of TRIPS. Only Article 179 of the Code provides for some “cautionary measures,” including “[c]alculating the revenue of [illegally] exploiting the work or performance or sound recording or broadcast, then distraint this revenue in all cases,” although it is unclear whether this is intended to cover all civil damages. TRIPS requires the courts to have the authority to award “damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer who knowingly, or with reasonable grounds to know, engaged in infringing activity,” and in appropriate cases, suggests the availability of “recovery of profits and/or payment of pre-established damages,” even where the infringer did not knowingly (or with reasonable grounds to know) engage in the infringing activity. Egypt’s law remains deficient on provision of adequate civil remedies.¹⁹
- **Restrictions on the Ability to Freely Contract.** Articles 150, 151 and 153 are restrictions on the ability to enter into freely-negotiated contracts, and should be abolished. Specifically, Articles 150 and 151 contain transfer provisions that impose undue burdens on the freedom to contract, while Article 153 is an unreasonable restriction on the ability for an author to enter into arrangements that might include future works under a private contractual agreement.
- **Performers’ Moral Rights Provision.** In Article 155(1), the performer’s right of attribution should permit the omission of the performer’s name, if such is dictated by the manner of the use of the performance, and Article 155(2) should qualify the kinds of changes made by a right holder that would be objectionable (i.e., changes that would be prejudicial to the performers’ reputation), and provide that it is not prejudicial to the performer for right holders to make modifications consistent with the normal exploitation of a performance in the course of a use authorized by the performer.
- **Compulsory License Provision for Broadcasts.** Article 169 permits broadcasting organizations to use works without seeking authorization. This compulsory license should be deleted.

¹⁹ The following suggested text would provide a TRIPS-compliant framework for compensatory damages:

Where any of the rights conferred on the author in relation to his work under this Law [have] been infringed, the author shall be entitled to fair and adequate compensation. To qualify as adequate compensation, the infringer shall be liable for either of the following: (1) the actual damages suffered by him as a result of the infringement and any profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In determining the injury to the right holder, the Court shall look to the value of the infringed-upon item, according to the suggested retail price of the legitimate product or other equivalent measure established by the right holder for valuing authorized goods; (2) an award of statutory damages, if the copyright owner elects, at any time before final judgment is rendered, to recover these instead of actual damages and profits, for all infringements involved in the action with respect to any one work for which any one infringer is liable in a sum of not less than [X] and not more than [Y], as the court considers just. In a case where the court finds that the infringement was committed willfully, the court in its discretion may increase the award of statutory damages to a sum of not more than [Z]. The amount of statutory damages awarded should be sufficiently high to deter future infringement and to compensate the copyright owner for the harm caused by the infringement.

- **Exclusive Rights for Producers of Audiovisual Works.** Article 177(5) clearly should not apply to sound recordings and therefore the word “audio” should be stricken from this article. Also, the panoply of exclusive rights for producers of audiovisual works is unclear. The producer is defined as “the natural or legal entity who produces the ... audiovisual work, and undertakes the responsibility of such achievement” [Article 138(11)]. Article 177(5) provides that the producer “shall be considered as representative of the authors and successors in exploiting this work, without prejudice to the rights of the author of literary or musical works, unless otherwise agreed upon in writing,” and “the producer shall be considered as the publisher, and will have the rights of the publisher” Egypt should reverse this presumption, such that the producer of audiovisual works shall be presumed to have the exploitation rights unless otherwise agreed upon in writing.²⁰ The producer of an audiovisual work should have the ability to exercise all the economic rights in that work without the further consent of the authors.
- **Right of Publicity.** Article 178 appears to create a right of publicity in a person’s likeness, and does not belong in a copyright law.

Unfortunately, the Implementing Decree creates additional problems. For example, Articles 11-16 appear to codify a registration (“recordal”) and deposit requirement in Articles 184-86 of the IP Code. These requirements may not in practice interfere with the exercise of rights (since the law expressly states that registration is not a prerequisite to protection), but certainly impose burdens on right holders, since failure to register/deposit places a right holder in direct violation of the IP Code and subject to fines. Articles 184-186 should not apply to foreign right holders if Egypt is to live up to its international obligations. Article 187, dealing with registration of businesses engaged in the distribution of copyright materials, is another potentially onerous and costly burden on legitimate businesses, which has the perhaps unintended but certain consequence of further insulating pirates, who will not pay for such registrations. Article 17 of the Implementing Decree and the Table set forth an elaborate schedule of charges to legitimate businesses dealing in copyright materials.

There were two developments regarding the Intellectual Property Law No. 82/2002 in 2006. First, Prime Minister Decree No. 2202 was issued on November 26, 2006. This Decree introduced amendments to the schedule of fees related to the deposit of the works and other authorizations sought from the Ministry of Culture. Second, Decree No. 3286/2006 was issued by the Ministry of Justice on May 11, 2006, amending the powers of ITIDA.

Generalized System of Preferences: Egypt currently participates in the GSP trade program, offering duty-free imports of certain products into the U.S. from developing countries. In order to qualify for such unilaterally granted trade preferences, USTR must be satisfied that Egypt meets certain discretionary criteria, including that it provides “adequate and effective protection of intellectual property rights.” In 2005, \$65.1 million worth of Egyptian goods entered the U.S. under the duty-free GSP code, accounting for 3.1% of its total exports to the U.S. During the first 11 months of 2006, \$65.4 million worth of Egyptian goods (or 3% of Egypt’s total exports to the U.S. from January to November) entered the U.S. under the duty-free GSP code.²¹ Egypt should not continue to expect such favorable treatment at this level when it fails to meet the discretionary criteria in this U.S. law.

²⁰ The simplest formulation of the producer’s rights would be as follows: “Unless otherwise agreed upon in writing, the producer shall be entitled to exercise all the economic rights in relation to the work and copies thereof.”

²¹ By contrast, in 2004, \$38.1 million worth of Egyptian goods were imported into the U.S. duty-free, accounting for 2.9% of its total imports to the U.S.