

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2005 SPECIAL 301 REPORT

EGYPT

EXECUTIVE SUMMARY

Special 301 Recommendation: We recommend that Egypt remain on the Priority Watch List, and that USTR consider during the year whether the situation in Egypt warrants further review, with respect to implementation of the copyright law, first through passage of regulations, and then through follow-through deterrent enforcement against piracy.

Overview of Key Problems: Egypt has long been noted as a market essentially closed to most U.S. right holders, due to major barriers to legitimate business — piracy being the chief one. Unfortunately, the situation in 2004 worsened, with major organized criminal syndicates strengthening their hold on the retail market, flooding it with piracy. While the copyright law of 2002 contained improvements in substantive protection, issuance of copyright implementing regulations have stalled, and thus, the copyright law has had little to no effect on eradicating piracy in Egypt. The legal vacuum has also left in doubt when purview over business and entertainment software will move to the Ministry of Communications and Information Technology (MCIT) — a badly needed development for those industries. Estimated losses to the U.S. copyright industries in 2004 due to copyright piracy in Egypt were \$72.5 million.

The Egyptian government took a few actions against piracy in 2004, and, for example, the Anti-Piracy Police department in Cairo has recently become more active. However, most actions taken were against small pirate retailers. Copyright owners waited in vain for a raid against the largest criminal pirate operation in Egypt, but no raid was forthcoming in 2004, resulting in that pirate and others returning to the market in full force. The government continues to make progress in legalizing software usage in the public sector.

While the Egyptian government has had hopes for a free trade agreement with the United States, the U.S. government should not enter into such negotiations while Egypt continues to adhere to its closed trade policies, fails to afford adequate market access for U.S. copyright owners, and fails to fully implement and enforce its copyright law.

Actions to be Taken in 2005:

- Enact implementing regulations to the copyright law which cure TRIPS deficiencies, fully implement the WIPO treaties, increase penalties, and provide adequate enforcement measures.
- Complete the move to the MCIT of government responsibilities for enforcement against business and entertainment software piracy.
- Join the WIPO Internet treaties, the WCT and WPPT.
- Take sustained enforcement actions against book piracy, and instruct universities to use only legal copies of publications.
- Take sustained enforcement actions against all illegal distributors and retailers of pirate product, and significantly increase audits and enforcement against pirate end-users of business software.

- Improve court functionality and transparency, issue *ex parte* orders and injunctions, and mete out deterrent penalties in piracy cases.

For more details on Egypt's Special 301 history, see IIPA's "History" section.¹ Please also see previous years' reports.²

| EGYPT | | | | | | | | | | |
|---|-------------|-------|-------------|-------|-------------|-------|-------------|-------|-------------|-------|
| ESTIMATED TRADE LOSSES DUE TO COPYRIGHT PIRACY | | | | | | | | | | |
| (IN MILLIONS OF U.S. DOLLARS) | | | | | | | | | | |
| AND LEVELS OF PIRACY: 2000-2004³ | | | | | | | | | | |
| INDUSTRY | 2004 | | 2003 | | 2002 | | 2001 | | 2000 | |
| | Loss | Level | Loss | Level | Loss | Level | Loss | Level | Loss | Level |
| Motion Pictures | NA | NA | NA | NA | NA | NA | 15.0 | 35% | 15.0 | 35% |
| Records & Music | 7.5 | 40% | 8.0 | 45% | 8.2 | 41% | 9.2 | 41% | 12.0 | 48% |
| Business Software ⁴ | 35.0 | 68% | 34.0 | 69% | 12.7 | 52% | 14.5 | 58% | 10.0 | 56% |
| Entertainment Software | NA | 90% | NA | 90% | NA | NA | NA | 90% | 14.9 | 94% |
| Books ⁵ | 30.0 | NA | 25.0 | NA | 28.0 | NA | 32.0 | NA | 30.0 | NA |
| TOTALS | 72.5 | | 67.0 | | 48.9 | | 70.7 | | 81.9 | |

COPYRIGHT PIRACY

Book Piracy Continues to Thrive

Egypt is home to 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 estimated at 50% or higher, meaning at least half of the approximately 70,000 students in any one year who use English-language materials are using pirated materials. 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 tender system dictates that the affected publisher's only means of redress is to prosecute the university for buying pirated copies; in turn, the university brings a case against the supplying distributor.

The piracy problem is further illustrated by the continual requests received by publishers for "free" supplementary teaching materials, which are not supported by purchases of genuine text books. The piracy level for medical books is as high as 90%, and the vast portion of the

¹ <http://www.iipa.com/pdf/2005SPECIAL301HISTORICALSUMMARY.pdf>.

² <http://www.iipa.com/countryreports.html>.

³ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2005 Special 301 submission at www.iipa.com/pdf/2005spec301methodology.pdf.

⁴ BSA's final 2003 figures represent the U.S. software publisher's share of software piracy losses in Egypt, as compiled in October 2004 (based on a BSA/IDC July 2004 worldwide study, found at <http://www.bsa.org/globalstudy/>). In prior years, the "global" figures did not include certain computer applications such as operating systems, or consumer applications such as PC gaming, personal finance, and reference software. These software applications are now included in the estimated 2003 losses resulting in a significantly higher loss estimate (\$56 million) than was reported in prior years. The preliminary 2003 losses which had appeared in previously released IIPA charts were based on the older methodology, which is why they differ from the 2003 numbers in this report.

⁵ In 2002, lower losses of \$28 million to the U.S. publishers due to piracy in Egypt reflect a 40% currency devaluation. Continued devaluation of the Egyptian pound is responsible for shrinking loss figures in 2003. These figures do not reflect a decrease in piracy rates.

market for other professional reference books (such as engineering books) is pirate product.⁶ Although legitimate U.S. publishers provide books at deep discounts (sometimes as deep as 70-80%), piracy of their works continues on a commercial scale. The quality of printing is quite high, making the pirate product in some cases virtually indistinguishable from the legitimate product.

One bright spot reported by publishers is a decrease in piracy of English language teaching (ELT) materials. Publishers and schools have worked together to form a system of “certificates of origin,” which has helped to minimize piracy for the ELT market. While IIPA questions the long-term viability of such a system, we hope that it will continue to work effectively.

Piracy remains a serious problem for other industries. The entertainment software industry reports that pirated and counterfeit software is currently found in the market, due to lack of effective enforcement and border controls. Imports of pirate console-based videogames continue to pour into Egypt from Asia, with Playstation2[®] and Xbox[®] coming from Malaysia, while GameBoy Advance[®] games are coming in from China. Entertainment software for personal computers is either produced locally or imported from elsewhere in the Middle East and Asia (piracy rates for this product in Egypt are about 60%). These piracy rings are run by large criminal syndicates, and in 2004, they began infiltrating previously legitimate stores with pirate product. These rings employ false documentation claiming they are the authorized sellers in Egypt for legitimate copyright owners’ products.

Losses to the business software industry, in addition to retail sale of pirated applications, accrue due to the unlicensed use of software in businesses (corporate “end user” piracy), which occurs in small and medium-sized companies. While this business end user piracy is still a major challenge in Egypt, the industry is pleased with the Egyptian government’s efforts to root out piracy in the government and the national educational system. The Ministry of Education renewed its licensing agreements with the concerned software companies for the legalization of software used in private and public schools.

The music industry reports a slight decline in the piracy level in 2004. This is mainly due to a growing number of enforcement actions by the Anti-Piracy Police department in Cairo. The bulk of music piracy of international repertoire in Egypt today is taking place in so-called copy-shops, where on-demand compilations are burned on CD-R on the spot from a computer database.

While not rampant due to the lack of broadband penetration, there is some Internet piracy in Egypt, mostly involving the advertising on the Internet of “hard goods” pirated product (e.g., CDs and VCDs). Internet piracy makes up about 2% 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. IIPA understands that there may be as many as 400 Internet cafés, none of which are using licensed software. The music industry also reports the occurrence of ring-tone piracy on the Internet, where ring-tones and “ring-tunes” are illegally made available for downloading. In 2005, the police computer crime unit in charge of Internet piracy must show greater willingness to tackle all these issues.

⁶ 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.

COPYRIGHT ENFORCEMENT

Little has changed in enforcement of copyright in Egypt in 2004. In general, enforcement efforts do not deter piracy in Egypt. For example, the publishing industry knows of no actions taken against rampant piracy of academic materials on and around university campuses. For the business software industry, a number of raids were conducted by the Ministry of Interior in 2003 and 2004. However, enforcement against reseller piracy still remains ineffective. Police are content merely to inspect premises, rather than engage in investigations and test purchases. Some actions have been taken against recorded music piracy by the Anti-Piracy Police, especially in the Cairo area, but these raids have focused on small retailers, which have had a minimal effect on overall piracy. Enforcement actions by the Censorship Department continue to be ineffective at fighting piracy. The Egyptian government has touted the progress made against unauthorized satellite retransmissions in Egypt.

The situation could hardly be bleaker for the entertainment software industry. No *ex officio* actions have been taken against the largest organized pirates in Egypt or any other retail outlets. The entertainment software industry sent out warnings in April 2004, which led to some decrease in piratical activity for a time. However, no actions occurred, and thus the pirates returned in full force.

Egypt's enforcement system has long suffered from the general ineffectiveness of the Ministry of Culture, including, in some cases, evidence of fraudulent endorsement by the MOC of piratical practices. The Ministry of Interior has been one exception, running raids on behalf of the recording industry and the software industry, and in 2004, IIPA was encouraged by the activity of the Anti-Piracy Units⁷ and the Computer Crime Unit in the Ministry of Interior. However, with annual transfer of the officers in these units, the overall effect on piracy in Egypt is minimal. Egypt must take the cue from other countries that have had more success solving their piracy woes (e.g., UAE), in part by appointing a single effective agency, i.e., the Ministry of Interior, and a competent leader to head the fight against piracy.⁸ Since the change in responsibilities over protection of business and entertainment software to the Ministry of Communications and Information Technology has not occurred, IIPA recommends that this be accomplished by executive order immediately.

The court system continues to be marred by structural defects from initial raid to judgment. Copyright cases brought in Egypt continue to 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. For cases that have resulted in positive judgments being awarded to right holders, collections take an unreasonably long time in Egypt.

MARKET ACCESS ISSUES

Egypt is one of the world's most restrictive markets when it comes to trade in copyrighted materials.

⁷ In 2003, 26 new Units were created in the Ministry of Interior, for "combating crimes related to 'classified' works" which includes copyright. IIPA has asked, but has not received, lists of officers from these units so that they could be considered for enforcement training.

⁸ The Business Software Alliance has established a bi-annual training program with the Ministry of Interior for those officers in the Units.

The copyright industries regularly face discriminatory *ad valorem* duties upon import into Egypt, namely, Egypt bases the import customs' valuation of 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 the motion picture industry, duties and additional import taxes have been known to represent as much as 87% of the price of the film print, whether duties are computed using the invoice value of the film or a specific duty of 120 Egyptian pounds (US\$20.66) per kilogram plus 5% (Egyptian Customs authorities use whichever method of calculation results in the highest yield). 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: the cost of the print, including freight charges, customs duties and other import taxes. Import costs are further increased by a release tax imposed on foreign films. Before a foreign film can clear customs and be released in Egypt, it must obtain a censorship certificate from a Film Censorship Office within the Ministry of Culture. A release tax of 700 Egyptian pounds (US\$120.54) is levied upon issuance of the certificate. This discriminatory tax is not imposed on domestic films and should be removed.

The U.S. recording industry and the entertainment software industry similarly report high import duties, significantly increasing the price of legitimate products (e.g., imported video game products for play on the console platform), making it even more difficult to compete with pirates. The import duty on finished music CDs is 32% of the total value (cost according to invoice plus freight charges). An extra 10% sales tax is then added to the total value, including import duties. It should, in this context, also be noted that the import duty on blank CD-Rs is a mere 2%. This adds to an environment where legitimate product can simply not compete with pirate product, especially bearing in mind that music piracy in Egypt is predominantly “burned” CD-Rs.

In addition, the Egyptian authorities are considering imposing a sales tax on software products and licenses. The business software industry is concerned about this possibility, which will no doubt increase prices of business software and negatively impact computer literacy in Egypt.

Certain other barriers effectively restrict market access for U.S. copyright industries in Egypt. First, there is the requirement 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. Second, 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. 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%. In addition, only five prints may be imported for any major U.S. film title imported into Egypt.

On April 24, 2003, Egypt joined the WTO “Information Technology Agreement,” which requires Egypt to remove all tariff barriers to information technology products, including software. Egypt should be encouraged to remove tariff barriers with respect to all digital products, including software or not, but at least Egypt’s authorities should clarify that music CDs, entertainment software CD-ROMs and console-based CDs, VCDs, DVDs, and reference materials on CD-ROM will have tariffs removed.

COPYRIGHT LAW AND RELATED ISSUES

Implementing Regulations Must Be Issued Forthwith

Egypt's new IPR Code, signed into law on June 2, 2002 (effective date June 3), provides the basis for protection of U.S. works and sound recordings, and should be immediately implemented and enforced against copyright infringement and copyright piracy. The Code also clearly extends the protection of copyright to the digital environment, including protection of temporary copies, broad exclusive rights of exploitation that appear to encompass digital communications and transmissions over digital networks, and attempted implementation of other key provisions of the WIPO "Internet" treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), including provisions prohibiting the circumvention of technological protections employed by copyright owners to protect their rights. The final version of the Code also ended up with exceptions with respect to software that come closer to compliance with international norms. IIPA has communicated many changes which must be made to make the law completely TRIPS-compatible, and has also made suggestions as to what is needed in implementing regulations to adequately strengthen the law for the fight against piracy in Egypt.⁹

It is unconscionable that the Egyptian government has not yet released even a draft of implementing regulations for the copyright law, which was passed more than two-and-a-half years ago.¹⁰ Further delay is causing serious harm to right holders and sending the wrong message to the public as to the seriousness of the Egyptian government in fighting copyright piracy.

Generalized System of Preferences

Egypt currently participates in the U.S. GSP 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 whether it provides "adequate and effective protection of intellectual property rights." In 2003, almost \$32 million worth of Egyptian goods were imported into the U.S. duty-free, accounting for over 2.8% of its total imports to the U.S. For the first 11 months of 2004, almost \$33.2 million worth of Egyptian goods entered the U.S. duty-free under the GSP program, accounting for 2.76% of its total imports into the U.S. 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.

Association Agreement with the EU Promises "Effective Means" of Enforcement of IP

On June 1, 2004, the Association Agreement between the European Union (EU) and the Arab Republic of Egypt entered into force. It contains several IPR-related articles, including the obligation to "grant and ensure adequate and effective protection of intellectual property rights in accordance with the prevailing international standards, including effective means of enforcing

⁹ IIPA commented in great detail in the 2003 Special 301 report on Egypt, which can be read at <http://www.iipa.com/rbc/2003/SPEC301EGYPT.pdf>.

¹⁰ IIPA understands that USAID has begun a new program of foreign aid to Egypt to work on copyright law and enforcement. IIPA urges sharing of information on this program so that the most effective legal environment and so that effective enforcement can emerge from their efforts.

such rights.” IIPA hopes that this Agreement will help prompt further improvements in Egypt’s legal regime, immediate drafting and eventual issuance of strong implementing regulations, and effective enforcement on the ground in Egypt.

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