

EGYPT

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2012 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Egypt remain on the Watch List.¹

Executive Summary: The Egyptian Government has undergone significant changes and unrest in the past year plus, culminating in the revolution of January/February 2011. The situation since then has somewhat stabilized, allowing us to better gauge progress in IPR protection. It remains the case that local Egyptian and U.S. right holders are equally hampered by piracy and other barriers, as the experiences of authors such as Alaa al-Aswany,² and the local Egyptian film market duopoly of the Arabic Company for Production and Distribution Group and El Mottahida (which suffer from piracy, cultural burdens, narrow theatrical windows, and a dearth of screens in the country) can attest. In addition to photocopy and print piracy, other piracy phenomena like piracy of music, software, games, and movies, and business software end-user piracy (which statistically worsened in 2010), caused losses to copyright owners and kept them from doing legitimate business in Egypt.

Law enforcement has mostly had its hands full adjusting to the new political realities after February 2011, but it appears that some positive transformative changes that had begun prior to the revolution have not been completely cast aside. IIPA is pleased that the Copyrights & Artistic Works Investigation Unit of the Ministry of Interior became more proactive, including some *ex officio* raids and actions regarding piracy of books and journals; further training can make this unit even more effective. IIPA applauded the establishment of new Economic Courts in 2008 (under Law No. 120 (2008)), under which civil and criminal copyright cases are to be handled by specially-trained judges; the Egyptian Government has expressed the hope that these courts would promote “speedy judgments rendered.”³ Industry reports that some of the more recent decisions of the Economic Courts have been stronger than those under the Commercial courts previously. IIPA had further hoped that the shift in jurisdiction for business and entertainment software to the Ministry of Communications and Information Technology’s “Information Technology Industry Development Agency” (ITIDA) would result in significant improvements, and the Egyptian Government has noted some significant cases arising out of ITIDA actions, but results have been mostly non-deterrent fines. Further, we urge ITIDA to form an enforcement unit and assist with awareness campaigns regarding software piracy. The Ministry of Culture, which still has enforcement purview over books, music, and motion pictures, remains largely inactive.

The United States and Egypt signed a Trade and Investment Framework Agreement on July 1, 1999, and there has been sporadic movement toward deepening the trade relationship; IP has continued to be one of the key issues for engagement. In late January 2012, United States Trade Representative Ron Kirk and Dr. Mahmoud Eisa, Egyptian Minister of Industry and Foreign Trade announced a Joint Statement declaring their intention to pursue steps to promote the U.S.-Egypt Trade and Investment Partnership and provide opportunities for job creation. The Joint Statement notes that U.S. and Egyptian officials would finalize an Action Plan to realize the individual elements

¹For more details on Indonesia’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>.

²See Abdallah, *Alaa El Aswany*, Egypt Today, August 2004, Volume # 30 Issue 02.

³See Arab Republic of Egypt (Mona El Garf, Advisor, Minister of Trade and Industry), *USTR Section 301 Report for the Year 2009 Submission by the Arab Republic of Egypt*, February 2009, submitted to regulattions.gov (on file with IIPA). The Submission indicated that the Shura Council and the People’s Assembly approved Law No. 120 for the Year 2008, establishing economic courts. According to the Ministry submission,

“These specialized courts will have jurisdiction over cases involving a number of economic laws, including the intellectual property rights law. These courts will ensure specialized judges trained in these legislations hear IPR cases and speedy judgments rendered. The courts will decide on both the criminal aspect of IPR cases as well as the civil remedies.”



of the Partnership including “protecting intellectual property rights and promoting innovation.”⁴ It is hoped that the enforcement, legislative, and market access issues raised in this filing can be properly addressed through the U.S.-Egypt relationship.

PRIORITY ACTIONS REQUESTED IN 2012

Enforcement

- Form a software copyright enforcement unit within ITIDA, and increase actions, particularly to legalize larger enterprises.
- Fully establish specialized “Economic Courts” with specialized judges to deal with copyright matters, emphasizing speed and deterrence in piracy cases (including end-user piracy of business software) and take active steps to develop core of specialized IP prosecutors and judges.
- Tackle book and journal piracy, both illegal reprints and photocopying, by taking sustained enforcement actions against pirate production and distribution, and ensuring universities adopt policies to use only legal copies of publications.
- Fully implement laws and decrees (such as Law No. 118/1975, Decree No. 770/2005, and other measures) to seize piratical imports and exports, without “guarantee” amounts that are prohibitively expensive.

Legislation, Market Access, and Public Awareness

- Ease onerous market access restrictions which close the Egyptian market to legitimate copyright companies.
- Amend the copyright law and implementing decree to cure other TRIPS deficiencies and resolve ambiguities, and fully implement and join the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT).
- Amend the law (or regulations) to provide that enforcement authorities shall destroy pirated and counterfeit products.
- Amend border measures regulations in order to lower the onerous official fees required to be paid by a right holder in order to seize suspected counterfeit products, and to provide Customs with needed *ex officio* authority to detain pirated and counterfeit goods.
- Launch and execute a public awareness campaign on the importance of copyright protection to Egypt, the dangers of piracy, and the consequences of engaging in piracy, including end-user software piracy.

PIRACY AND ENFORCEMENT CHALLENGES IN EGYPT

Previous reports have discussed the piracy and enforcement challenges faced in Egypt.⁵ The following sections provide brief updates to the piracy and enforcement situation in Egypt. Failure to mention a specific issue does not indicate that the problem has been fully resolved.

Business Software Piracy: The unauthorized use of software by businesses, so-called end-user piracy of business software, and retail piracy continue to cause serious harm to the business software and IT industries in Egypt.⁶ Reducing piracy in Egypt would bring positive benefits to the Egyptian economy. A study released in 2010 by

⁴United States Trade Representative, *U.S. Trade Representative Kirk, Egyptian Minister of Industry and Foreign Trade Eisa Adopt Joint Statement on a Trade and Investment Partnership*, January 25, 2012, at <http://www.ustr.gov/about-us/press-office/press-releases/2012/january/us-trade-representative-kirk-egyptian-minister-ind>.

⁵See International Intellectual Property Alliance, *Egypt*, at <http://www.iipa.com/rbc/2010/2010SPEC301EGYPT.pdf>.

⁶BSA'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 Egypt was 60%, representing a commercial value of unlicensed software attributable to U.S. vendors of US\$108 million. 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>.

IDC and BSA found that reducing the PC software piracy rate in Egypt by 10 percentage points over four years would generate US\$254 million in GDP, US\$33 million in additional tax revenues and 1,978 new IT jobs. The benefits would be even greater if this reduction was achieved in two years, which would yield US\$338 million in GDP and US\$44 million in additional tax revenues.⁷

The software industry notes good relationships with the Copyrights & Artistic Works Investigation Unit of the Ministry of Interior in carrying out raids, including *ex officio* raids, against retail establishments that offer pirated business software and corporations using unlicensed software. While relations with ITIDA are good, the lack of an enforcement unit within ITIDA has hindered their ability to take meaningful actions to address software piracy. Overall, there was an increase in raiding in 2010 and in early 2011. Several fundamental problems persist, however, in the enforcement system in Egypt: 1) the lack of an enforcement unit inside ITIDA to take copyright raids; 2) the lack in general of deterrent sentencing even by the more active Economic Courts; 3) low compensatory damages, which could be assisted by the adoption of pre-established, or statutory damages; 4) the lack of an effective destruction remedy in the Customs Regulations; 5) the unwillingness of authorities in general to seek legalization of software usage by publicly-owned companies, and difficulties obtaining evidence with regard to the illegal practices of such companies; 6) overall difficulties in obtaining sufficient evidence in Egypt to warrant an *ex parte* civil search (a TRIPS requirement); and 7) the lack of police interest in piracy cases unless they are visibly large amounts of piracy or counterfeiting (hence, Internet cases and end-user piracy cases often get short shrift).

A couple of additional problems are worth noting. First, the industry has identified some banks and hospitals which are using unlicensed software. However, due to the rigid criminal procedure rules which would require confiscation of hardware, and due to the essential nature of their operations, the problem of end-user piracy in these organizations is largely ignored. In addition, the software industry has experienced the problem of seized pirates and counterfeit products being put up for sale in auction by the Egyptian Government/District Attorney. This is a practice that as a general rule would violate Egypt's international obligations (for example, under Article 46 of the TRIPS Agreement). Finally, the industry notes enforcement hurdles, e.g., too many enforcement authorities must approve a copyright infringement action, thus discouraging right holders from coming forward to bring cases.

Book Piracy Continues to Hinder the Development of Legitimate Publishing Industry in Egypt:

Publishers report that print piracy continues to hinder the development of the local legitimate publishing market. Pirate enterprises in Egypt generally profit from prints of English language higher-education textbooks, English language teaching (ELT) materials, best-sellers, and books in translation. Local Egyptian publishers, Egyptian authors, and Egyptian distributors are as negatively affected as foreigner publishing entities. Unauthorized photocopying of ELT course books at universities and piracy of key ELT trade titles, particularly grammar titles and dictionaries, continues to be a significant problem. Regarding print piracy, which is the larger phenomenon in Egypt, assistance has been inconsistent. Nevertheless, industry has had some cooperation in pursuing isolated cases through the Copyrights & Artistic Works Investigation Unit in Cairo. Efforts were initiated in 2010 to raise law enforcement awareness of book/journal piracy and it is hoped that these efforts can be resumed soon. Most enforcement actions occur on the basis of complaints, not *ex officio*.

As previously reported, there have been a limited number of cases where Egyptian Government authorities were willing to take measures to address piracy occurring on university campuses (for instance, when accreditation to 'Western' universities is threatened). Unfortunately, legalizing most universities' practices tends to happen on an *ad hoc* basis and varies from faculty to faculty. For example, some faculty members only allow students to register who have a book receipt for a legitimate purchase. Others appear to encourage or condone illegal photocopying. In order to meaningfully tackle the unlawful print reproduction and photocopying that supply university campuses, the Ministries of Education and Higher Education should launch a campaign to legalize published materials used on college campuses. At present, public state-funded universities are taking no responsibility for ensuring that on-

⁷Business Software Alliance and IDC, *Piracy Impact Study: The Economic Benefits of Reducing Software Piracy: Egypt, 2010*, at http://portal.bsa.org/piracyimpact2010/cps/cp_egypt_english.pdf.

campus stores, presumably subject to a lease agreement with the university, does not engage in infringing activity. Unfortunately, it appears that some university employees provide the shops with the books, informing them of the number of students, and helping sell the pirate copies to students.

Establishment of Economic Courts to Deal With Copyright Cases a Welcome Development: IIPA welcomed the establishment of Economic Courts in 2008, and industry reports obtaining slightly better hearings in copyright cases since that time. The Egyptian government's 2009 Special 301 Submission reported five criminal case results from 2008-09, four "imprisonment of infringers," which the Submission notes "constitutes a new trend in Egypt's judicial efforts in deterring piracy."⁸ IIPA hopes that with the new courts, a specialized core of IP prosecutors and judges emerges and that court processes will also be improved. In particular, courts should not impose bureaucratic documentary hurdles to effective judicial enforcement, or other hurdles which could, if allowed to deny protection altogether, amount to inconsistencies with Egypt's current international obligations.⁹ It would also help right holders if the new courts shared court decisions in a more transparent manner by publishing them expeditiously, and in this regard, IIPA welcomes the government's reporting of the cases noted above in its Submission. There have been past instances in which clearly pirate material has been deemed "genuine" by the Ministry of Culture, leading to further delays in investigations leading to legal proceedings. ITIDA and MOC should regularly invite copyright owner assistance in ascertaining the legitimacy of suspect product. In some cases, the question may come down to the authenticity of documents purporting to identify particular companies as the authorized distributor of copyright products in the country. Right holders can quickly dispense of such questions.

Legal Framework Should be Established to Protect Authors and Artists in the Online Space: As of December 2010, Egypt had 20.1 million Internet users (according to the International Telecommunications Union), having more than doubled the number of users in just three years. Egypt also has more than one million broadband users as of 2010 by some industry statistics. Internet development (as well as mobile development) as a whole declined during the 2011 uprising, with decreased investment and deployment of new services in 2011. By early 2012, the situation had returned to relative normalcy. By that time, however, the music industry in Egypt had already suffered the ill effects of unlawful distribution models deployed on the Internet in Egypt.¹⁰ These models include

⁸The cases listed are:

- "Case No.14 for the year 2009, in which the court gave a sentence of imprison[ment] for 6 months."
- "Case No. 9172 for the year 2008 in which the court gave a sentence of imprison[ment] of a year plus a fine of 5000 Egyptian Pounds [US\$905]."
- "Case No.14532 for the year 2008, in which the court gave a fine of 15,000 Egyptian Pounds in addition to a sentence of pre-civil remedy of 5001 Egyptian Pounds[US\$905]."
- "Case No.9171 for the year 2008 in which the court gave a sentence of imprison[ment] for 3 months plus a fine of 5000 Egyptian Pounds [US\$905]."
- "Case No. 20039 for the year 2008 in which the court gave sentence of imprison[ment] for 6 months plus a fine of 5000 Egyptian Pounds [US\$905]."

⁹In several infringement cases in 2008 and 2009, ITIDA has noted that a victim company's failure to file formal deposit copies of the works involved and other documentation in line with Article 184 of the Copyright Law of Egypt is inconsistent with Egyptian law. As has been noted in previous IIPA submissions (and as discussed below), Article 184 outlines onerous deposit requirements, whereupon failure to deposit can lead to imposition of administrative penalties. In these cases, it is apparent that ITIDA would have preferred for the victim/rights holder to deposit copies of the works at issue, and notes that without so doing the rights holder risks the merits of the case. IIPA understands that the Egyptian Government has taken the position that deposit under Article 184 is not a prerequisite for copyright protection. However, if failure to adhere to these deposit formalities impacts criminal enforcement of the copyrights at issue, this could be inconsistent with Egypt's international obligations under the Berne Convention and the TRIPS Agreement. The Berne Convention imposes a "no formality" principle in Article 5, by requiring copyright protection to be afforded without regard to any formality. In the Egyptian Government's February 2009 Special 301 Submission, they indicated,

"With regard to depositing and registering software, ITIDA confirms that the copyright protection is automatic according to the Egyptian law. So the author is protected automatically without any formalities. Our system is completely compliant with Berne convention and TRIPS agreement without having any inconsistency. The process of depositing or registration will help in establishing evidence if there is any dispute. It is not by any mean a barrier nor a condition for protection, and this is very clear in article (184) of the Egyptian IPR law (Law 82 of 2002)."

The Ministry pointed to "Cases No. 9040 and No. 28896 Year 2007" as evidence that registration was not required since convictions were achieved in those cases without registration. IIPA appreciates this clarification of the issue and hopes that in all cases, documentary requirements and deposit requirements, the latter which are spelled out in the law, are never used to deny copyright protection.

¹⁰For example, the music industry reported in 2008 that 97% of all digital distributions of music in Egypt were pirate, but reported that the situation worsened in 2009, and that as a result of Internet-based piracy in Egypt and the resulting decrease in revenues from local music, the music industry's budgets for new production shrank by 50% in 2009. Foreign music revenues were also down. These losses meant less taxes paid to the government. Due to budget reductions, reductions in force have also resulted. Overall, the negative social effects of piracy hit the music industry extremely hard in Egypt.

illegally hosted content, deep linking sites, streaming sites, P2P services, BitTorrent, and auction sites which are being used for infringement of copyright.¹¹

The government is reportedly working with ISPs on a code of ethical conduct to encourage ISPs to take affirmative action against cybercrimes, child pornography, and IP online crimes. IIPA members have been encouraged by the Ministry of Interior Cyber Crime Unit's measured responses to local sites offering illegal copyright content based on complaints. Problems appear to exist in terms of enforcement with foreign sites, since authorities are unclear what the laws are in Egypt with respect to infringements originating outside the country. The laws should be amended to provide the proper legal framework for the Internet environment. The work with ISPs to establish guidelines in the form of a code of conduct is commendable, and it is hoped that a fair and effective legal framework for dealing with both hosted content (e.g., notice and takedown) and non-hosted infringements (e.g., providing incentives to cooperate) can be developed.

Pirate DVD Channels/Rogue Stations: The motion picture industry reports that at least three free-to-air channels in Egypt broadcasting on the NileSat and NorSat satellite have been telecasting films acquired from pirate DVD stores without authorization from or payment to the applicable right holders. The independent film and television industry (IFTA) indicates the channels involved are reported to be Panorama Action, Top Movies and Time Movies. This form of broadcast piracy is becoming increasingly prevalent in the region, and the government should take immediate steps to cease these broadcasts of pirated materials, whether under the Copyright Law or business licensing provisions, since the entities involved should be subject to license revocation for showing unauthorized materials from an unlawful source.

Cairo Declaration on Cybercrime: Computer-based infringements are on the rise in Egypt, whether Internet-based piracy or business software end-user piracy. Thus it is crucial that the government of Egypt deal with such copyright infringement as a species of cybercrime. In November 2007, Egypt hosted an Arab regional conference on cybercrime convened by the Council of Europe, at which 400 participants from around the region and other countries discussed using the COE Cybercrime Convention as a model to guide the development of national legislation on cybercrime.¹² One of the end-results was adoption of the Cairo Declaration on Cybercrime, dated November 27, 2007. IIPA hopes that the Declaration will result in Egypt leading the way to adopt legislation to meet the requirements of the COE Cybercrime Convention (2001).¹³ The Declaration notes that "[t]he Budapest

¹¹The independent segment of the film and television industry (IFTA) reports that online (as well as physical) piracy remain a significant export constraint in Egypt for independent producers and distributors, the majority of which are small to medium-sized businesses. Independent producers and distributors confirm that DVD sales have been particularly impacted since pirated digital copies are routinely offered for free online and with the same quality viewing experience that a DVD can provide. Piracy severely undermines and may permanently damage legitimate distribution networks essential to reaching consumers in Egypt and leaves little confidence for investment in intellectual property.

¹²The Conference was held under the auspices of HE Prof. Dr. Ahmed Fathy Sorour, Speaker of Parliament of Egypt, and opened by HE Dr. Tarek Kamel, Minister of Communication and Information Technology. It was organized by the Egyptian Association for the Prevention of Information and Internet Crimes and supported by the Information Technology Industry Development Agency (ITIDA), the Council of Europe, the United Nations Office on Drugs and Crime, Microsoft, Ain Shams University, IRIS, EASCI and other partners.

¹³Article 10 of the COE Cybercrime Convention (2001) ("Offences related to infringements of copyright and related rights") provides,

1 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of copyright, as defined under the law of that Party, pursuant to the obligations it has undertaken under the Paris Act of 24 July 1971 revising the Bern Convention for the Protection of Literary and Artistic Works, the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Copyright Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed willfully, on a commercial scale and by means of a computer system.

2 Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law the infringement of related rights, as defined under the law of that Party, pursuant to the obligations it has undertaken under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome Convention), the Agreement on Trade-Related Aspects of Intellectual Property Rights and the WIPO Performances and Phonograms Treaty, with the exception of any moral rights conferred by such conventions, where such acts are committed willfully, on a commercial scale and by means of a computer system.

3 A Party may reserve the right not to impose criminal liability under paragraphs 1 and 2 of this article in limited circumstances, provided that other effective remedies are available and that such reservation does not derogate from the Party's international obligations set forth in the international instruments referred to in paragraphs 1 and 2 of this article.

Convention (2001) on Cybercrime is recognized as the global guideline for the development of cybercrime legislation ... Countries of the Arab region are encouraged to make use of this model when preparing substantive and procedural laws,” and that “[c]riminal proceedings against cybercrime require specific skill and resources,” that “[c]ountries of the region are encouraged to set up specialized units for cybercrime investigations, as well as ensure that prosecutors and judges are sufficiently trained,” and that “[l]aw enforcement need to cooperate with service providers in the investigation of cybercrimes [and] service providers and law enforcement need to develop procedures, routines and capabilities to cooperate effectively with each other within clearly defined limits.”

Retail Piracy Remains Severe, Including Some Imports: All the industries continue to report that physical piracy in retail shops and street stalls remains a major problem in most major cities in Egypt, including Cairo, Alexandria, Giza, Mansoura, and Asyut. Retail establishments selling computers continue to offer illegal business and entertainment software unchecked. Imports of pirate software have become a serious concern, passing freely through the borders into Egypt. Resellers of pirate software advertise these illegal products openly in trade magazines. As noted just below, Egyptian Customs authorities are apparently poised to set up a mechanism for better handling of infringing import and export cases, to seize such goods at the point of entry or exit.

Customs Measures to Deal With Unauthorized Imports and Exports Would Be Welcome Improvement: Egypt’s February 2009 Submission to USTR regarding the Special 301 process indicated that Egyptian Customs is putting into place what it hopes will be “an effective mechanism” to deal with infringing imports and exports. Specifically, the Submission noted,

“In 2005, the Minister of Foreign Trade and Industry issued the Ministerial Decree No. 770/2005 Issuing the Executive Regulations To Implement Import and Export Law no.118/1975 as well as Inspection and Control Procedures of Imported And Exported Goods. Chapter 9 of These Regulations provided the rules governing the application of Border Measures. Competence of border measures is divided between Trade Agreements sector (TAS) under Ministry of Trade and industry and the Customs Authority. The former is competent for receiving complaints, inspection and decision making, while the latter is responsible for implementing these decisions.”

The Ministry had previously discussed establishing an “information bank” based on trainings conducted with a brand owner. IIPA welcomes the initiative of the government to try and effectively stop pirate imports and exports. IIPA would be wary of any formality put into place, such as any mandatory title verification, which would hinder the ability of Customs to act on an *ex officio* basis. For example, for U.S. publishers, it is a fact that almost any print editions destined for export from Egypt will be illegitimate, so the ability to act on an *ex officio* basis serves the purpose of providing greater efficiency to the system. To the extent the government goes forward with the “information bank,” it must be voluntary and not serve as a substitute for effective border enforcement against pirate exports of books. IIPA looks forward to seeing how this system discussed by the government can work to reduce infringing imports and exports.

MARKET ACCESS ISSUES

There remain several market access barriers in Egypt which make it more difficult for foreign right holders to operate in the market. For example, foreign movies are subject to a 46% import tax and are also subject to discriminatory sales and box office taxes. Pirates and counterfeiters do not have to contend with such restrictions, so legitimate right holders are further disadvantaged in the market. These market access barriers should be lifted.

COPYRIGHT LAW AND RELATED ISSUES

2002 Law and Implementing Regulations Leave Some Gaps in Protection: Copyright law in Egypt is governed under the Intellectual Property Law No. 82/2002 of Egypt (Copyright Law), and the 2005 Implementing

Decree, Prime Minister Decree No. 497 for the year 2005 (effective by Issue No. 12, Official Gazette, March 29, 2005). The Copyright Law and the Implementing Decree contain some inconsistencies with Egypt's international obligations, many of which have been discussed in previous filings. The laws also failed to fully implement the WCT and WPPT, which Egypt should implement and join. The following is a non-exhaustive list of some important changes that should be sought in amendments:

- **Amend Law to Ensure Registration and Deposit Are Voluntary:** Articles 184 and 185 contain registration and deposit provisions for copyright. ITIDA has indicated that these deposit requirements, though not necessary for copyright protection to attach, are nevertheless useful, presumably for enforcement purposes. While the February 2009 Egyptian government Submission indicates that there have been criminal convictions obtained without deposits, the law indicates deposit is mandatory, subject to administrative penalties for failure to deposit. As such, amendments should be sought to make the system (of registration and deposit) voluntary. While the government insists the requirement is not intended as a bar to copyright protection as such, to the extent failure to meet these requirements deny copyright protection and the ability to enforce rights, the IP Code should be amended to ensure registration and deposit are voluntary.
- **Criminal Remedies Too Low:** The Copyright Law 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\$905 to \$1,810). The minimum sentence of “one month” imprisonment is important, 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 also appear insufficient to provide a deterrent. IIPA understands that the fine is supposed to be imposed “per work” or “per title,” and that in a couple of cases, this calculation method has been employed. Fines should be increased, and, for example, should be doubled for recidivists. As of now a recidivist receives the mandatory minimum jail term and the maximum fine.
- **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.¹⁴
- **Ex Parte Civil Searches.** Article 179 of the Code 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

¹⁴The 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.

a demonstrable risk of evidence being destroyed,” as required by TRIPS Article 50. The copyright industries are considering a test in the courts, but in the meantime, the law should be amended to expressly provide for the availability of this vital measure.

- **Remedy as to “Materials and Implements.”** Article 179(3) in the Code is TRIPS deficient, in that it provides for 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.
- **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 is out of step with Article 46 of TRIPS, which 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.”
- **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.¹⁵
- **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.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 must be deleted.
- **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

¹⁵The 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.

¹⁶The 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.

the copyright industries if the Egyptian government allows for such practices. It must be fixed or deleted altogether. The 2005 Implementing Decree (Articles 4 and 5) failed to resolve this issue and leaves in place a Berne- and TRIPS-incompatible compulsory license.

- **Compulsory License Provision for Broadcasts.** Article 169 permits broadcasting organizations to use works without seeking authorization. This compulsory license should be deleted.
- **Article 171 Exceptions.** The law contains exceptions to protection which are 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 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).
- **Restrictions on the Ability to Freely Contract.** Articles 150, 151 and 153 of the Code 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.
- **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.
- **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.
- **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.¹⁷ 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.

¹⁷The 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.”

The Implementing Decree created some additional issues. For example, 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 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.

GENERALIZED SYSTEM OF PREFERENCES

The 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. Egypt has been a major beneficiary of the GSP program. During the first eleven months of 2011, nearly US\$44 million in imports to the U.S. from Egypt enjoyed duty-free treatment under the GSP Program, or almost 2.5% of Egypt's entire imports into the U.S.¹⁸ 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 Egypt, provide free and open markets and high levels of protection to the copyrights on which this trade depends. Egypt should provide adequate and effective protection for intellectual property rights of U.S. creators, and equitable and reasonable market access to U.S. creative products and services, to meet the requirements of this program.

¹⁸During 2010, nearly US\$51.5 million in imports to the U.S. from Egypt enjoyed duty-free treatment under the GSP Program, or more than 2.3% of Egypt's entire imports into the U.S.