

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2006 SPECIAL 301 REPORT

EGYPT

EXECUTIVE SUMMARY

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

Priority Actions Requested in 2006:

- **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. MCIT must immediately begin to take sustained enforcement actions against all illegal distributors and retailers of pirate entertainment and business software products, and significantly increase audits and enforcement against pirate end-users 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 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.” 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 its 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, bureaucratic, and fail to mete out deterrent results, 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 assigning specialist IP judges to copyright cases, increasing the ease with which *ex parte* orders and injunctions are issued in cut-and-dried piracy cases; and ensuring 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 observe these, 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).
 - A discriminatory *ad valorem* duty (basing the customs’ valuation of imported CD-based goods on the invoice value of the product rather than on the value of the physical medium) upon import into Egypt of films, sound recordings and entertainment software.

- 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 of 700 Egyptian pounds (US\$122).
- 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).
- **Amend Copyright Law (and to the extent necessary, the new Implementing Decree) to Cure TRIPS Deficiencies, and Implement the WIPO Treaties.**

For more details on Egypt's Special 301 history, see IIPA's "History" appendix to this filing at <http://www.iipa.com/pdf/2006SPEC301HISTORICALSUMMARY.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: 2001-2005¹										
INDUSTRY	2005		2004		2003		2002		2001	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Business Software ²	30.3	64%	28.0	65%	34.0	69%	12.7	52%	14.5	58%
Books ³	30.0	NA	30.0	NA	25.0	NA	28.0	NA	32.0	NA
Entertainment Software ⁴	14.3	85%	NA	90%	NA	90%	NA	NA	NA	90%
Records & Music	9.0	60%	7.5	40%	8.0	45%	8.2	41%	9.2	41%
Motion Pictures ⁵	NA	NA	NA	NA	NA	NA	NA	NA	15.0	35%
TOTALS	83.6		65.5		67.0		48.9		70.7	

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

¹ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2006 Special 301 submission at www.iipa.com/pdf/2006spec301methodology.pdf.

² BSA's 2005 statistics are preliminary. They represent the U.S. publishers' share of software piracy losses in Egypt, and follow the methodology compiled in the Second Annual BSA/IDC Global Software Piracy Study (May 2005), 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 2004 piracy statistics were preliminary at the time of IIPA's February 11, 2005 Special 301 filing; the 2004 data has been revised and is reflected above.

³ 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.

⁴ 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.

⁵ MPAA's trade losses and piracy levels for 2005 are available for a limited number of countries and are based on a methodology that analyzes physical or "hard" goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As loss numbers and piracy levels become available for additional countries at a later time, they will be posted on the IIPA website, <http://www.iipa.com>. Cable piracy remains a significant problem in Egypt.

piracy cause great losses to the business software community in Egypt, while piracy of entertainment software is devastating to that industry's ability to do legitimate business 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 Egyptian borders. 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 (and the Information Technology Industry Development Agency, ITIDA), the regulation was ambiguous as to what role the Ministry of Culture (MOC) may still play. The result was that no enforcement agency took responsibility for these important copyright sectors. To date, neither MCIT nor ITIDA have taken any steps toward forming an enforcement body. MCIT should immediately form an effective enforcement unit and begin to take sustained enforcement actions against all illegal distributors and retailers of pirate entertainment and business software products, and 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 2005. 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 keenness of the Ministry of Interior to protect copyright. However, there has been no impact in the market in terms of losses felt by industry or increased sales (hence, there is little change to the piracy rate).

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 80%. Texts in 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 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 textbooks. 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, including the American University of Cairo and the new German University in Cairo.⁶ 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. 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.

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.

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, with Playstation2[®] and Xbox[®] games 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 (transshipped) and Asia (piracy rates for this product in Egypt are about 60%). The overall piracy rate for the video game products is about 85%. Piracy rings in Egypt continue to be run by large criminal syndicates, and in 2005, were present in previously legitimate stores. 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.” The failure to include right holders’ experts on identifying pirate product is the cause of this problem.

Internet Piracy in Small But Virulent Doses in Egypt: The Egyptian Government claims it has the largest number of Internet users of any Arab country, at 4.4 million.⁷ Yet, broadband penetration remains relatively low. Thus Internet download piracy has not hit Egypt with full force yet, and Internet-based piracy involves mainly 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.

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\$872) regardless of the number of titles or copies involved. Since collections take an unreasonably long time in Egypt, it is practically not worth pursuing cases. 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.

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* Duty:** 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

⁷ 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 4.2 million as of June 2005.

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 EL120 (US\$21) per kilogram plus 5% (Egyptian Customs authorities use whichever method of calculation results in the higher yield). 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).

- **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.
- **A Censorship Certificate Release Fee:** 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 EL700 (US\$122) is levied upon issuance of the certificate. This discriminatory tax is not imposed on domestic films and 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.

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.

COPYRIGHT LAW AND RELATED ISSUES

Implementing Regulations Issued: On March 28, 2005, the Government of Egypt issued Prime Minister Decree No. 497 for the year 2005 (effective by Issue No. 12, Official Gazette, March 29, 2005). Unfortunately, the Implementing Decree did little to remedy TRIPS deficiencies in the 2002 Law, or to clarify ambiguous provisions, or to make other changes recommended by IIPA. The following recounts the changes called for in the IP Code (from IIPA’s 2003 Special 301 submission on Egypt), and where applicable, how the Decree dealt with these issues. Where there is no mention below, the Implementing Decree did not address the issue raised.

- **Criminal Remedies Too Low:** The Code contains non-deterrent criminal penalties. Article 181 provides a sentence of “not less than one month” imprisonment and a fine of EL5,000 to 10,000 (US\$872 to \$1,743). While a minimum sentence of “one month” imprisonment constitutes a positive development, there is no set maximum jail term (as there was in the old law), potentially making this provision much weaker as carried out in practice (for example, if only the statutory minimum, and no higher sentence, is regularly imposed). Fines on their face are totally insufficient and non-deterrent (TRIPS Article 61 requires remedies “sufficient to provide a deterrent”). IIPA understands that the fine is to be imposed “per work” or “per title.” For pirates dealing in high-end commercial software, for example, the fine would not even amount to a cost of doing business, and would be well worth the risk. Fines must be increased and doubled for recidivists (as of now a recidivist receives mandatory minimum jail term and maximum fine), and as opposed to “per work” should be meted out “per copy.” Imprisonment should be set at from three months to three years (with mandatory imprisonment for recidivists). Such penalties would be closer to TRIPS standards. The GOE must implement tougher penalties through implementing regulations to satisfy TRIPS.
- **Provide TRIPS-Compatible 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. On the other hand, 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. Implementing regulations should confirm that Article 179(3) will be read as compliant with TRIPS, namely, that the language “serviceable” “only” does not conflict with the “predominant use” standard of TRIPS, and should also confirm the availability of forfeiture and destruction as required by TRIPS.
- **Expressly Provide for *Ex Parte* Civil Searches.** Article 179 appears not to 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 implementing regulations should clarify the availability of this vital measure, in line with Article 50 of TRIPS.
- **Delete Provision Allowing for Government-Sanctioned Sell-Off of Pirated Products.** 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 completely 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.

- **Provide Modern, TRIPS-Compatible Presumptions.** The law does not provide expressly for presumptions of subsistence of copyright or for copyright ownership. Such presumptions are crucial to the ability of copyright owners to effectively exercise their rights, and Egypt's implementing regulations must be amended to include them in order to comply with TRIPS.⁸
- **Repeal Provision Requiring 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 international obligations, is highly prejudicial to all right holders, including U.S. publishers, and it must be deleted.
- **Repeal Overly Broad Compulsory License.** Article 170 of the 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 completely contrary to international law and would be devastating to the copyright industries if the Egyptian government allows for such practices. It must be fixed by implementing regulations, or deleted altogether.⁹ *The Implementing Decree (Articles 4 and 5) fails to resolve this issue and leaves in place a Berne- and TRIPS-incompatible compulsory license.*
- **Repeal Overly 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.

⁸ 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.

⁹ 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.

- **Confirm That Egypt Provides Full Retroactive Protection.** 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.¹⁰
- **Confirm That Egypt Provides 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.
- **Confirm Narrow Scope of Temporary Copy Exception.** Article 171(9) provides what IIPA hopes is a narrow exception for certain “ephemeral” copies, where such copy is made “during digital broadcasting or receiving digitally stored work,” with the proviso that such copying is performed “through normal operations used by the rightful owner.” IIPA believes that Egypt should not provide an exception for temporary copies. Barring that approach, Article 171(9) appears to be fairly narrow, since it requires that the person availing himself of the exception must be “the rightful owner.”
- **Confirm That Article 171 Exceptions Are Subject to Berne “Tripartite” Test.** The law contains overbroad exceptions to protection (TRIPS Article 13). 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). It is unclear whether it succeeds in making the exception TRIPS-compatible although it appears to at least come close.***
- **Confirm That the IPR Code Provides Adequate Civil Damages as Required by TRIPS.** 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

¹⁰ 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.

with reasonable grounds to know) engage in the infringing activity. Egypt's law remains deficient on provision of adequate civil remedies.¹¹

- **Delete Provisions That Unreasonably Restrict 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.
- **Amend 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.
- **Delete Compulsory License Provision for Broadcasts.** Article 169 permits broadcasting organizations to use works without seeking authorization. This amounts to a compulsory license and should be deleted.
- **Clarify Panoply of 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.¹² The

¹¹ 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.

¹² 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."

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.

- **Delete 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.

Not only does the Decree not deal with most of the above, but it goes backwards in a number of respects. For example, certain provisions (Articles 11-16) appear to codify a registration ("recordal") and deposit requirement in Articles 184-86 of the IP Code. These requirements may not interfere with the exercise of rights (since the law expressly states that registration is not a prerequisite to protection), but certainly impose undue 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 yet another 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.

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 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. For the first 11 months of 2005, \$59.6 million worth of Egyptian goods entered the U.S. duty-free under the GSP program, accounting for 3.2% 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.