

MOROCCO

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2024 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Morocco be placed on the Watch List in 2024.¹

Executive Summary: Morocco has extremely high rates of piracy for film and music. Enforcement against copyright piracy is limited due to shortcomings of the existing customs recordation system and a weak legal framework that does not adequately empower authorities to address digital piracy. Moreover, administrative authorities have not acted against many instances of piracy, despite their authority to do so. Education of the public on the harms of infringement and the rights of copyright holders could significantly decrease the piracy rate in Morocco because local rights holders and the public at large lack a basic understanding of copyright principles. IIPA urges Morocco to improve enforcement efforts, educate the public on general copyright principles, and revise its legal framework to reduce its piracy problem.

PRIORITY ACTIONS REQUESTED IN 2024

Enforcement

- Implement effective administrative enforcement against those involved in illegal distribution of copyrighted materials, specifically streaming and IPTV services through the enforcement of harsher penalties.
- Educate the public and government officials about the damaging effects of copyright piracy.

Legal Reforms

- Modify the current customs recordation system to allow rights holders longer than ten working days to initiate legal proceedings.
- Encourage adoption of a legal framework to improve and expedite administrative actions against illegal IPTV and streaming services in a rapid manner.
- Amend the powers of the *Bureau Marocain des Droits d'Auteur et Droits Voisins* (The Moroccan Office of Copyright and Related Rights, BMDAV) to allow rights holders autonomy in the management of their rights.
- Affirmatively declare that copyright protection extends beyond Moroccan citizens and residents.

ENFORCEMENT

- **Implement effective administrative enforcement against those involved in illegal distribution of copyrighted materials, specifically streaming and IPTV services through the enforcement of harsher penalties.**

Enforcement in Morocco is currently not adequate to make a meaningful impact on copyright piracy. Illegal Internet protocol television (IPTV) is rampant in Morocco. Many illegal IPTV services have professionalized, with some offering business cards and after-sale technical assistance to legitimize their reputation and increase sales. These IPTV services are operated out of Morocco and/or by Moroccan nationals. The yearly subscriptions to these illegal services are typically inexpensive, between 150 and 500 dirhams (~US\$50-\$150) per year. These types of subscription

¹ For more details on Morocco's Special 301 history, see previous years' reports, at <https://iipa.org/reports/reports-by-country/>. For the history of Morocco's Special 301 placement, see <https://www.iipa.org/files/uploads/2024/01/Appendix-B-2024.pdf>.

services no longer require a receiver or physical equipment, which makes purchasing easier and selling less risky. IPTV subscriptions are especially popular in Morocco because of the cultural interest in soccer games.²

A flea market in Casablanca, *Derb Ghallef souk*, is a hub for pirated content with over 1,500 storefronts.³ Infringing copies of copyrighted works are sold within this neighborhood for redistribution nationally. Consumers are attracted to pirated copies of works because of their lack of awareness of the law and the cheap cost of infringing works in these marketplaces. Due to the size and the longevity of markets like *Derb Ghallef* (which has existed since the beginning of the 1900s⁴), the availability of pirated goods is rampant in the large cities of Morocco.

Rights holders are often frustrated by the process of enforcing their rights, which leads to a decline in complaints filed overall. The BMDAV is the Moroccan copyright office and also functions as a collective management organization (CMO) created through public law and granted financial autonomy. The BMDAV is thus responsible for the protection and exploitation of copyright and related rights in Morocco.⁵ Rights holders have lodged complaints against many known sellers of infringing content, but the BMDAV has not initiated enforcement actions.

- **Educate the public and government officials about the damaging effects of copyright piracy.**

A lack of understanding regarding basic copyright principles creates significant resistance to compliance by infringers. Morocco has an extremely high rate of piracy for films and music. A staggering 93% of consumers in Morocco are engaged in piracy of films and music.⁶ Social acceptance of the purchase and sale of pirated content contributes greatly to the spread of infringing activity. In June of 2023, cafes and restaurants were charged for licenses to utilize copyrighted works in their businesses (e.g., playing music in a café). The owners of these establishments filed a complaint with the Court of First Instance in Rabat against the Moroccan Copyright Office alleging that it was acting without a basis in law.⁷ These business owners claimed that the radio stations or television stations performing the works to the public were the only entities responsible for licensing the material.

Steps to educate local citizens on the illegality of illegal IPTV services could greatly reduce the pervasiveness of these illegal streams. This lack of awareness, the ease with which Moroccans are able to subscribe to illegal IPTV services, the low cost of these illegal services, and the professionalism of the sellers all contribute to rampant infringement, as discussed above.

Improving the education of Moroccan enforcement officials and local rights holders would result in faster and better results in enforcement actions. In February of 2023, the United States Patent and Trademark Office organized a workshop in Casablanca to educate prosecutors and judges on digital copyright infringement, illegal services, and methods of identification of the anonymous operators of these illegal entities. Also in February of 2023, the Court of Algiers organized a day for industry members to learn about the protection of intellectual property (IP) on the Internet. Both events are examples of productive educational efforts.

LEGAL REFORMS

² See Mehdi Hitane, HESPRESS English, *World Cup 2022: Copyright watchdog prides itself for taking down Morocco piracy ring, but to no avail*, November 21, 2022, available at <https://en.hespress.com/53418-world-cup-2022-copyright-watchdog-prides-itself-for-taking-down-morocco-piracy-ring-but-to-no-avail.html> (In 2022 the Alliance for Creativity and Entertainment shut down two of the most popular sports piracy sites in Morocco just before the World Cup. These two sites had recorded 20.6 million collective visits in October of 2022 alone.)

³ See Aziza Belouas, La Vie Eco, *In Derb Ghallef, activity is not about to resume, shopkeepers are worried*, October 5, 2020, available at <https://www.lavieeco.com/influences/societe/a-derb-ghallef-lactivite-nest-pas-pres-de-reprendre-les-commerçants-sinquietent/>.

⁴ See Abouammar Tafnout, H24Info, *From the skin trade to microchips, the surprising story of Derb Ghallef*, September 30, 2018, available at <https://www.h24info.ma/du-commerce-de-peaux-aux-puces-electroniques-la-surprenante-histoire-de-derb-ghallef/>.

⁵ See BMDAV, *Who Are We?*, available at <https://bmda.ma/>.

⁶ See MINISTÈRE DE L'ÉCONOMIE, DES FINANCES ET DE LA SOUVERAINETÉ INDUSTRIELLE ET NUMÉRIQUE, *Morocco Intellectual Property*, available at <https://www.tresor.economie.gouv.fr/Pays/MA/propriete-intellectuelle>.

⁷ See Morocco Latest News, *Cafes and Restaurants Take Legal Action*, June 20, 2023, available at <https://moroccolatestnews.com/cafes-and-restaurants-take-legal-action/>.

- **Modify the current customs recordation system to allow rights holders longer than ten working days to initiate legal proceedings.**

Under Morocco's current customs recordation system, rights holders or their representatives may file requests with the Central Administration of Customs to seize or suspend pirated goods at the ports of entry in Morocco.⁸ The BMDAV may also file these requests in the case of copyrighted goods. Once customs has detained goods as requested, the rights holder has a maximum of ten days from the date of notification to request a formal order for a seizure to continue until a bailiff can visit the port to inspect the goods. If this order is not filed, the goods are released after ten days. Ten days is an extremely short time period and rights holders need more time to investigate these issues and prepare before initiating proceedings. This is especially necessary in the case of foreign rights holders or those who are not physically located in Morocco, for whom this narrow time frame is especially restrictive. IIPA urges Morocco to update the customs recordation system to increase the time for rights holders have to initiate legal proceedings.

- **Encourage adoption of a legal framework to improve and expedite administrative actions against illegal IPTV and streaming services in a rapid manner.**

The BMDAV does not initiate action against known infringers, or investigate complaints lodged by rights holders. Law No. 25-19 on the Moroccan Copyright and Neighboring Rights Office has clarified the status of the BMDAV as a legal entity under public law with financial autonomy to investigate reports of infringement.⁹ Legislative or regulatory framework requiring the BMDAV to initiate action or affirmatively decline action requested by a complaint is necessary to keep the BMDAV accountable to rights holders.

Under Article 65.2 of Morocco's Copyright Law, copyright infringement may be subject to proceedings ordered by the Public Prosecutor's Office without a complaint from a private party or rights holder.¹⁰ However, an expert report is required to initiate the action; thus, rights holders must file a request to the national court to appoint an expert. It can take between two and three months to receive an expert appointment. While these appointments are technically subject to a deadline between ten days and one month, the deadline is almost never met given the limited number of available experts. Even then, some experts reject appointments because of their lack of technical knowledge on digital piracy. This can extend the proceedings greatly, which ultimately results in prolonged infringing activity. While this process is a step in the right direction, education of experts, expansion of the expert pool, and expedition of this process are necessary to effectively implement reform.

- **Amend the powers of the *Bureau Marocain des Droits d'Auteur et Droits Voisins* (BMDAV) to allow rights holders autonomy in the management of their rights.**

The current collective rights management system and enforcement mechanisms in Morocco grant BMDAV a legal monopoly for the management and enforcement of all forms of copyright exploitations. This system must change to allow rights holders autonomy in exploiting their rights and choosing collective management methods.

Article 4 of Law 25-19 requires rights holders to become members of the BMDAV, a state-run CMO. BMDAV provides all collective rights management services per Law 25-19, which precludes rights holders from establishing their own CMOs.¹¹ The provisions in Law 25-19 ultimately restrict rights holders from deciding whether to manage their rights individually or collectively.

⁸ See Law No. 17-97 on the Protection of Industrial Property, Article 176.4.

⁹ See Law No. 25-19 on the Moroccan Copyright and Neighbouring Rights Office, WIPO LEX, available at <https://www.wipo.int/wipolex/en/legislation/details/21930> (2022).

¹⁰ See Law No. 2-00 on Copyright and Related Rights, WIPO LEX, available at <https://www.wipo.int/wipolex/en/text/567196> (2000).

¹¹ See Law No. 25-19 *Relative au Bureau Marocain des Droits D'Auteur et Droits Voisins*, WIPO LEX, available in French at <https://www.wipo.int/wipolex/en/text/587394> (2022).

Further, the effects of the requirement for rights holders to join the BMDAV CMO are not limited to Morocco. This is because the newly adopted Article 49.1 of the Copyright Law could be interpreted to extend the scope of BMDAV licenses, including licenses covering related rights, outside of Morocco. Morocco should provide sound recording producers with exclusive rights for broadcasting and communication to the public. Exclusive rights enable record companies to negotiate commercial terms for the public performance and broadcast of sound recordings.¹²

Article 59.6 of the Copyright Law contains a distribution key, which unfairly prejudices phonogram producers for collections of the private copying levy. Phonogram producers are allocated only 10% of these collections, versus 35% for authors and performers respectively.¹³ This distribution key is arbitrary and does not accurately reflect the economic value of the rights at issue. Given that the BMDAV manages exclusive rights, there is concern that this distribution key may be the basis of distributions of monies collected from other exploitations. Article 59.6 should be reevaluated and if necessary revised to ensure an economically proportionate and fair distribution to rights holders.

- **Affirmatively declare that copyright protection extends beyond Moroccan citizens and residents.**

Article 67 of Morocco's Copyright Law establishes the scope of copyright protection. Phonograms specifically are limited to (i) those, the producer of which is a national of Morocco, (ii) those, the first fixation of which took place in Morocco, and (iii) those produced for the first time in Morocco.¹⁴ Article 68 of Morocco's Copyright Law gives international treaties (such as the WIPO Performances and Phonograms Treaty) to which Morocco is party precedence over the national law in the case of a conflict. To eliminate all doubt, Article 67 should affirmatively declare that foreign nationals of nations that are parties to treaties to which Morocco is also party are entitled to the same scope of copyright protection under Morocco's Copyright Law as Moroccan nationals.

¹² See *id.*

¹³ See Law No. 79-12 *Complétant la loi no. 2-00 Relative aux Droits D'Auteur et Droits Voisin*, WIPO LEX, available in French at <https://www.wipo.int/wipolex/en/text/570011> (2014).

¹⁴ See Law No. 2-00 on Copyright and Related Rights, WIPO LEX, available at <https://www.wipo.int/wipolex/en/text/567196> (2000).