

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2004 SPECIAL 301 REPORT

EGYPT

EXECUTIVE SUMMARY

Special 301 Recommendation: We recommend that Egypt be elevated back to the Priority Watch List.

Overview of Key Problems: Egypt has long been noted as a market essentially closed to most U.S. right holders, due to major barriers to legitimate business – piracy being the chief one. There was little change to this situation in 2003. While copyright protection on the books improved with passage of a new IPR Code in 2002, implementing regulations issued in the fall of 2003 did not implement the copyright law provisions, leaving in doubt when purview over business and entertainment software would move to the Ministry of Communications and Information Technology (MCIT) – a badly needed development for the business and entertainment software industries. . The move to MCIT, which is dictated by the law, is necessary because it ensures that enforcement officials with the necessary expertise would be handling software cases. It is hoped that the new IPR Code is implemented and the new mandate of MCIT is fully exercised without further delay.

Meanwhile, little enforcement was taken against massive book piracy, stifling that industry's efforts to do business in Egypt. There was one enormous enforcement action against audiocassette piracy, yielding over 2 million pirate cassettes and uncovering a piracy ring. A significant number of raids were conducted against resellers dealing with pirated software by the Ministry of Interior (MOI). However, the Ministry of Interior did not carry out any actions against end-user piracy of business software, and the few corporate end-user raids that were carried out by the Ministry of Culture did not result in any significant court actions and were vastly ineffective. While there were hopes for a free trade agreement with the United States, Egypt's other trade policies have made this potential vehicle for moving forward copyright protection in Egypt impossible to achieve.

Actions to be taken in 2004

- Enact implementing regulations to the copyright law which cure TRIPS deficiencies, fully implement the WIPO treaties, increase penalties, provide adequate enforcement measures, and complete the move of business and entertainment software to the MCIT.
- Join the WIPO "Internet" treaties, the WCT and WPPT.
- Take sustained enforcement actions against book piracy, including photocopy shops and reprint facilities, and instruct universities to use only legal copies of publications.
- Take sustained enforcement actions against all illegal distributors and retailers of pirate product, and significantly increase audits and enforcement against pirate end-users of business software.
- Improve court functionality and transparency, issue *ex parte* orders and injunctions, and mete out deterrent penalties in piracy cases.

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

EGYPT
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1999 - 2003³

INDUSTRY	2003		2002		2001		2000		1999	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	NA	NA	NA	NA	15.0	35%	15.0	35%	15.0	50%
Records & Music ⁴	8.0	45%	8.2	41%	9.2	41%	12.0	48%	12.0	50%
Business Software ⁵	NA	NA	12.7	52%	14.5	58%	10.0	56%	26.4	75%
Entertainment Software	NA	90%	NA	NA	NA	90%	14.9	94%	6.2	65%
Books ⁶	25.0	NA	28.0	NA	32.0	NA	30.0	NA	30.0	80%
TOTALS⁷	NA		48.9		70.7		81.9		89.6	

COPYRIGHT PIRACY IN EGYPT

Egypt is one of the world's worst countries in terms of book piracy. Major losses accrue due to piracy of higher-education textbooks (which are, for example, sold at stalls set up near university campuses), with piracy levels estimated at up to 50%, meaning at least half of the approximately 70,000 students in any one year who use English-language materials are using pirated materials. There is even evidence of bogus requests 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 portion of the market for other professional reference books (e.g., engineering, etc.) is taken up by pirate product.⁸ Although legitimate U.S. publishers continue to provide their books at deep discounts (sometimes as deep as 70-80%), their works continue to be pirated on a commercial scale in Egypt. The quality of printing has improved dramatically in Egypt, making the pirate product in some cases virtually indistinguishable from the legitimate product. Pirated "ESL" (English as a Second Language) materials can also readily be found. Publishers have received some evidence of imported infringing product from East Asia, as well as possible exports from Egypt to surrounding territories.

¹ <http://www.iipa.com/pdf/2004SPEC301HISTORICALSUMMARY.pdf>.

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

³ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2004 Special 301 submission at <http://www.iipa.com/pdf/2004spec301methodology.pdf>.

⁴ The piracy rate for international products is roughly 70%, while it is roughly 50% for the local Egyptian industry.

⁵ BSA's 2003 piracy statistics were not available as of February 13, 2004, and will be made available in the near future and posted on the IIPA website at <http://www.iipa.com/>. BSA's statistics for 2003 will then be finalized in mid-2004 and also posted on the IIPA website. BSA's trade loss estimates reported here represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA's trade loss numbers released separately in its annual global piracy study which reflect losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

⁶ In 2002, lower losses of \$28 million to the U.S. publishers due to piracy in Egypt reflect a 40% currency devaluation. Continued devaluation of the Egyptian pound is responsible for shrinking loss figures in 2003. These figures do not reflect a decrease in piracy rates.

⁷ In IIPA's 2003 Special 301 report, IIPA estimated that total losses to U.S. copyright-based industries in Egypt were \$36.2 million. IIPA's revised loss figures are reflected above.

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

Piracy remains a serious problem for other industries, although the recording industry notes some improvement over the past three years. The entertainment software industry report that imports of pirate console-based videogames continue to pour into Egypt from Asia, with Playstation2[®] and Xbox[®] coming from Malaysia, while GameBoy Advance[®] games are coming in from China. Entertainment software for personal computers is either produced locally – a new phenomenon – or imported from elsewhere in the Middle East and Eastern Europe. The largest losses to the business software industry, aside from the retail sale of pirated applications, accrue due to the unlicensed use of software in businesses (corporate “end-user” piracy), which occurs in small and medium-sized companies. While this business end user piracy is still a major challenge in Egypt, the industry is pleased with the Egyptian government’s efforts to root out piracy in the government and the national educational system. The Ministry of Education renewed its licensing agreements with the concerned software companies for the legalization of software used in private and public schools.

While not rampant, there is some Internet piracy in Egypt, mostly involving the advertising on the Internet of “hard goods” pirated product (e.g., CDs and VCDs). Internet piracy makes up about 2% of all piracy of entertainment software in Egypt, including both CD “burning” and downloading of pirate “WAREZ” software from the Internet.

COPYRIGHT ENFORCEMENT IN EGYPT

While copyright enforcement varied by industry in 2003, in general, enforcement efforts failed to have a deterrent effect on piracy in Egypt. For example, for the U.S. publishing industry, there were no actions taken against rampant piracy of academic materials on university campuses (the Police giving the excuse that there are “political sensitivities” with respect to taking actions against such piracy operations). Authorities did continue to take some measures against pirate stalls in cities, like Cairo, October City and Minya City, but the vast majority of illegal textbooks are distributed on the university premises, so it is imperative that action be expanded to include university campuses (no actions were taken within the university campuses in 2003). For the business software industry, a number of raids were conducted by the Ministry of Interior. The Business Software industry is particularly encouraged by the activation of both the Anti-Piracy Unit and the Computer Crime Unit in the Ministry of Interior.

As noted, the situation in Egypt has improved somewhat for the recording industry over the past three years (although sales were down in 2003). The brightest spot for industry came in July 2003, with the closing of a long-term industry investigation with the largest-ever raid against audiocassette piracy in the Middle East. In particular, the raid netted seizures of over 2.3 million audiocassettes (Arabic repertoire of many different companies), 1 million “inlay cards,” 6 audiocassette duplication machines, 2 printing machines, and 1 van used to transport the pirated cassettes. In all, authorities carried out 85 raids to combat sound recording piracy in Egypt in 2003.

Disappointingly, implementing regulations for the IPR Code were issued without coverage of copyright, meaning the change in responsibilities over protection of business and entertainment software to the Ministry of Communications and Information Technology did not occur in 2003. This changeover could also be accomplished by executive order, and IIPA hopes this (or the issuance of implementing regulations with regard to copyright) will occur in the first quarter of 2004. The delay in issuing the various Implementing Regulations of the new Copyright Law is unacceptable. More than 18 months have passed since the adoption of the new IPR Code in June 2002. Further delay will cause grave harm to right holders and send the wrong message to the public as to the seriousness of the Egyptian government in fighting copyright piracy.

One positive highlight in 2003 was the establishment of a website and a hotline by the Ministry of Interior dedicated to software piracy.

The court system continues to be marred by structural defects from initial raid to judgment. Copyright cases brought in Egypt continue to move at a snail's pace. Lack of transparency in the court system is a major concern, as court decisions are not published expeditiously; the situation is worse in cases initiated by the government, as there is simply no means to follow the progress of such cases. For cases that have resulted in positive judgments being awarded to right holders, collections take an unreasonably long time in Egypt.

MARKET ACCESS ISSUES

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

The copyright industries regularly face discriminatory *ad valorem* duties upon import into Egypt, namely, Egypt bases the import customs' valuation of CD-based goods on the invoice value of the product rather than on the value of the physical medium. The widespread and favored international practice would have the valuation of CD-based goods or videos premised on the value of the physical medium. Such *ad valorem* duties serve as a form of double taxation, since royalties are also subject to withholding, income and remittance taxes. The outcome is that legitimate sellers cannot price to the market, because they must take the additional duty into account when pricing. Pirates circumvent these duties, and thus, can always underprice in the market. For the motion picture industry, duties and additional import taxes can represent approximately 87% of the value of a film print, whether duties are computed using the invoice value of the film or a specific duty of 120 Egyptian pounds per kilogram plus 5% (Egyptian Customs authorities use whichever method of calculation results in the highest yield). An additional sales tax (i.e., a tax on goods imported for sale in Egypt) began being levied in March 1992, which amounts to 10% of the value of imported films calculated as follows: the cost of the print, including freight charges, customs duties and other import taxes. Import costs are further increased by a release tax imposed on foreign films. Before a foreign film can clear Customs and be released in Egypt, it must obtain a censorship certificate from a Film Censorship Office within the Ministry of Culture. A release tax of 700 Egyptian pounds is levied upon issuance of the certificate. This discriminatory tax is not imposed on domestic films and should be removed.

The U.S. recording industry, in addition to the entertainment software industry, similarly reports high import duties, significantly increasing the price of legitimate products (e.g., imported video game products for play on the console platform) and making it even more difficult to compete with pirates.

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

Certain other barriers effectively restrict market access for U.S. copyright industries in Egypt. First, there is the requirement that all song lyrics on locally-manufactured releases be translated into Arabic, significantly reducing the number of back-catalog items that companies can release in Egypt, and lengthening the "censorship approval" process. Second, the requirement that a commercial entity be 100% Egyptian-owned in order to import products into Egypt effectively holds

U.S. companies hostage to the interests of Egyptian importers. Egypt also maintains a discriminatory and GATT-inconsistent entertainment tax on foreign films. Non-Arabic language films must pay a 20% box office tax, while Arabic language films only pay a 5% tax. In addition, only five prints may be imported for any major U.S. film title imported into Egypt.

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

COPYRIGHT LAW AND RELATED ISSUES

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

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 2002, over \$23.5 million worth of Egyptian goods were imported into the U.S. duty-free, accounting for almost 1.8% of its total imports to the U.S. For the first 11 months of 2003, almost \$28.5 million worth of Egyptian goods entered the U.S. duty-free under the GSP program, accounting for almost 2.7% 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.

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

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