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UPDATE ON COMPLIANCE WITH INTELLECTUAL PROPERTY RIGHTS IN JORDAN

February 14, 2007

This publication was produced for review by the United States Agency for International Development. It was prepared by Tabbaa & Partners

UPDATE ON COMPLIANCE WITH INTELLECTUAL PROPERTY RIGHTS IN JORDAN

SUSTAINABLE ACHIEVEMENT OF BUSINESS EXPANSION AND
QUALITY (SABEQ)

CONTRACT NUMBER: 278-C-00-06-00332-00

BEARINGPOINT, INC.

USAID/JORDAN ECONOMIC OPPORTUNITIES OFFICE (EO)

FEBRUARY 14, 2007

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SO 10: IMPROVED ECONOMIC OPPORTUNITIES FOR
JORDANIANS

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Abbreviations and Acronyms

AMIR	Achievement of Market-Friendly Initiatives and Results (Program)
DNL	Department of National Library
GOJ	Government of Jordan
IPPD	Industrial Property Protection Directorate
IPR	Intellectual property rights
JAC	Jordan Audiovisual Commission
JCD	Jordan Customs Department
JOD	Jordanian Dinars
JFDA	Jordan Food & Drug Association
JISM	Jordan Institute for Standards and Metrology
JUSFTA	Jordan-U.S. Free Trade Agreement
MIT	Ministry of Industry and Trade
PCT	Patent and Cooperation Treaty
SABEQ	Sustainable Achievement of Business Expansion and Quality (SABEQ)
TRIPS	Agreement on Trade Related in Intellectual Property
USAID	United States Agency for International Development
WCT	WIPO Copyright Treaty
WIPO	World Intellectual Property Organization
WPPT	WIPO Performance and Producers of Phonograms Treaty
WTO	World Trade Organization

Executive Summary

Jordan's legislative effort over the past several years has led to the adoption of numerous intellectual property laws dealing with minimum standards of protection outlined in the World Trade Organization (WTO) TRIPS Agreement. The signing of the Jordan-U.S. Free Trade Agreement (JUSFTA) in 2001 meant that a new round of legislative reform would have to take place to comply with JUSFTA intellectual property obligations.

The purpose of this report is to provide an update of Jordan's compliance in the field of intellectual property rights (IPR). The report outlines areas of positive developments, and concerns, in the areas of legislative compliance in copyright, trademarks, patents, data protection, industrial designs, and plant variety. The report also details issues relating to enforcement, government and judicial implementation, market surveys and statistics, piracy and counterfeiting.

The following are the main findings of the report:

1. The considerable level of compliance with JUSFTA obligations is encouraging, but additional work is necessary to bring Jordan into full compliance.
2. There are outstanding issues in the field of patents that should be addressed to ensure full compliance of Jordan with JUSFTA obligations (including finalizing the accession of Jordan to the Patent Cooperation Treaty (PCT)).
3. There are outstanding issues in the field of trademarks that should be addressed to ensure full compliance of Jordan with JUSFTA obligations (including finalizing the accession of Jordan to the Madrid Protocol).
4. Several issues in the field of copyright should be addressed by adopting the required legal instruments to ensure Jordan's full compliance with JUSFTA. The adoption of draft copyright regulations/instructions to enhance copyright compliance is a positive step in this regard.
5. JUSFTA obligations regarding data protection of new chemical entities or new uses of old chemical entities have not been reflected in the Unfair Competition and Trade Secrets Law or Jordan Food & Drug Administration regulations and instructions (despite actual application of some of these commitments by concerned authorities).
6. The creation of an independent IP entity is viewed by GOJ as an essential step in ensuring better IP protection and administration.
7. Provisions concerning border measures in the Customs Law should be amended to ensure better enforcement and prosecution of trademark and piracy cases, as well as achieving compliance with relevant JUSFTA obligations.
8. The empowerment of a government administrative body with ex officio powers in the field of trademark counterfeiting would greatly enhance enforcement in the market, as well as achieving compliance with relevant JUSFTA obligations. The

draft amendment to the Standard and Metrology Law is a positive achievement in this regard.

9. The number of ex officio raids is positive but judicial decisions remain ineffective in deterring copyright piracy
10. Proper legal actions are not being taken against street vendor markets in down town Amman as well as other major cities engaged in selling pirated goods.

This report also provides specific proposals on several issues that require action by GOJ, including:

1. Adoption of amendments to the patent, trademark, copyright, unfair competition and customs laws to ensure JUSFTA compliance:
 - a. Patents: Draft Patent Law amendments concerning PCT should be passed by Parliament without further delay. Other required JUSFTA obligations should also be included in the latest draft patent law to save on time and effort needed to enact separate amendments.
 - b. Trademarks: Draft Trademark Law amendments concerning Madrid Protocol should be passed by Parliament without further delay. Other required JUSFTA obligations should also be included in the latest draft trademark law to save on time and effort needed to enact separate amendments

Amendments to Standard and Metrology Law should also be given priority.
 - c. Unfair Competition & Trade Secrets: Law should be amended to reflect JUSFTA obligations concerning data protection.
 - d. Copyright: Amendment of Copyright Law by GOJ should be realized in the future to ensure legal consistency and compliance with JUSFTA obligations.
2. Enactment of regulations in the fields of copyright, data protection and government software procurement to ensure JUSFTA compliance:
 - a. Copyright: Regulations and Instructions proposed by copyright reform committee should be adopted by GOJ as a high priority
 - b. Data Protection: JFDA should issue Instructions relating to data protection of new chemical entities and new uses of old chemical entities.
 - c. Government Software: GOJ should enact regulations that would institutionalize the procurement and use of legal software in Jordan.
3. GOJ should give priority to the establishment of an independent IP entity that would strengthen the administration and enforcement of IP in Jordan
4. Effective actions should be taken to ensure that judicial decisions are a deterrent to copyright piracy
5. Effective coordination between the Department of National Library and the Jordan Audiovisual Commission (JAC) is needed to ensure effective copyright enforcement.
6. Enforcement actions should be taken against physical markets in Amman and other major cities.

A) TRIPS Compliance, FTA Implementation and Other IP-Related Issues

Background

Jordan has seen significant legislative changes over the past seven years in the area of intellectual property rights (IPR). More than eleven (11) intellectual property-related laws (copyright, patents, trademarks, industrial designs, unfair competition, trade secrets, integrated circuits, geographical indications, and new plant varieties) were passed from 1999 to 2004, five of which were introduced for the first time. Moreover, recent intellectual property legislative amendments in Jordan have increased the level of protection to comply with the JUSFTA.¹

However, full compliance with JUSFTA is yet to be realized. The outline below provides an overview of recent legislative efforts of Government of Jordan (GOJ) to comply with JUSFTA.

I. Patents

A new Patent Law was enacted in 1999 to comply with TRIPS Agreement obligations.² In addition, new Patent regulations were introduced in 2001.³ The Patent legislation of 1999 is considered to be compatible with TRIPS Agreement.

JUSFTA introduced several new obligations in the field of patents and regulated products.⁴ A summary of the main new obligations and efforts to comply with said obligations are outlined below:

(1) *Commitment to the join the Patent Cooperation Treaty (PCT).*

GOJ presented a draft amendment to the Patent Law in June 2004 to the Jordanian Parliament.⁵ The Law is yet to be discussed and approved by the Parliament.

Action Required:

Patent Law amendments should be passed by Parliament without further delay.

¹ JUSFTA obligations are contained in Article 4 of the Agreement, in addition to Memorandum of Understanding on Issues Relating to Intellectual Property Rights

² Law No 32 for the Year 1999

³ Regulation No. 97 for the Year 2001.

⁴ JUSFTA confirmed several obligations contained in the TRIPS Agreement which Jordan has complied with in 1999

⁵ USAID funded AMIR Program assisted in drafting of amendments to the Patent Law

- (2) *When it is not possible to provide a sufficient written description of the invention to enable others skilled in the art to carry out the invention, each Party shall require a deposit with an “international depository authority”⁶ (Article 4(21))*

GOJ has not taken the necessary steps to introduce amendments to Patent Law that would comply with above commitment.

- (3) *Notification of patent owner if third party requests marketing approval during term of patent. (Article 4(23))*

This commitment is discussed further in part (B) below.

- (4) *Jordan should extend patent term in case of unreasonable curtailment of the patent term as a result of the marketing approval process. (Article 4(23))*

GOJ has not taken the necessary steps to introduce amendments to Patent Law that would comply with above commitment.

- (5) *Raise criminal fines to a minimum of JOD 3000 to a maximum of 6000. (Paragraph 3 MOU)*

GOJ has not taken the necessary steps to introduce amendments to Patent Law that would comply with above commitment.

- (6) *Clarify that the exclusion from patent protection of “mathematical methods” in Article 4(B) of Jordan’s Patent Law does not include such “methods” as business methods or computer-related inventions. (Paragraph 5 MOU)*

GOJ has not taken the necessary steps to introduce amendments to Patent Law that would comply with above commitment.

- (7) *Jordan should Clarify that Article 4(F) of Jordan's Patent Law shall be understood to exclude from patent protection inventions whose application for registration for the first time outside Jordan has been filed by the owner and published more than eighteen months prior to the date of filing for registration in Jordan. (Paragraph 6 MOU)*

⁶ As defined in the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1980).

In 2001, GOJ introduced a limited amendment to Article 4 of the Patent Law, to comply with above obligation.⁷

Action Required:

It is necessary for GOJ to introduce amendments to comply with points (4) to (7) above. Moreover, the inclusion of the required amendments above in the latest draft patent law (currently before Parliament) would save time and effort needed to enact separate amendments.

II. Trademarks

A new Trademark Law was introduced in 2000 to comply with TRIPS Agreement obligations.⁸ In addition, new Trademark regulations were introduced in 1994.⁹ The Trademark legislation is considered to be compatible with TRIPS Agreement.

JUSFTA introduced several new obligations in the field of trademarks. A summary of the main new obligations and efforts to comply with said obligations are outlined below:

- (1) *Commitment to join the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Article 4(2))*

GOJ presented a draft amendment to the Trademark Law in September 2004 to the Jordanian Parliament.¹⁰ The Law is yet to be discussed and approved by Parliament

Action Required:

Trademark Law amendments should be passed by Parliament without further delay.

- (2) *Give effect to Articles 1 through 6 of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of WIPO. (Article 4(1)(a))*

GOJ has not taken the necessary steps to introduce amendments to Trademark Law that would comply with above commitment.

⁷ Law No. 71 for the Year 2001

⁸ Trademark Law No. 33 for the Year 1999

¹⁰ USAID funded AMIR Program assisted in drafting of amendments to the Trademark Law

- (3) *Commitment not to require recordal of trademark licenses to establish the validity of the license or to assert any rights in a trademark (Article 4(9))*

GOJ has not taken the necessary steps to introduce amendments to Trademark Law that would comply with above commitment.

- (4) *Commitment to provide in cases of trademark counterfeiting, that Jordanian authorities initiate criminal actions and border measure actions ex officio, without the need for a formal complaint by a private party or right holder. (Article 4(26))*

GOJ has taken encouraging steps to comply with this commitment as detailed in section (C) and (E) below.

- (5) *Raise criminal fines to a maximum of JOD 6000. (Paragraph 3 of MOU)*

GOJ has not taken the necessary steps to introduce amendments to Trademark Law that would comply with above commitment.

Action Required:

It is necessary for GOJ to introduce necessary amendments to comply with points (2) to (5) above. Moreover, the inclusion of the required amendments above in the latest draft trademark law (currently before Parliament) would save on time and effort needed to enact separate amendments.

III. Copyright

Copyright Law was amended in 1999 to comply with the TRIPS Agreement.¹¹

In addition, JUSFTA introduced numerous new obligations in the field of copyright and related rights.¹² The Copyright Law was amended in 2001, and 2005 to bring the Copyright legislation closer to JUSFTA compliance.¹³ This legislative effort is commendable but in some aspects falls short of some JUSFTA commitments. To achieve full compliance with JUSFTA the Minister of Culture formed a committee to prepare regulations that would enhance Jordan's compatibility with JUSFTA. The committee completed its work on February 5, 2007 and submitted several draft regulations and instructions for government

¹¹ Law No. 29 for the Year 1999

¹² JUSFTA confirmed several obligations contained in the TRIPS Agreement which Jordan has complied with in 1999

¹³ Law No. 52 for the Year 2001, Law No. 5 for the Year 2005 and Law Number (9) for the Year 2005.

approval. However, to ensure legal consistency and to complete compatibility with JUSFTA obligations, GOJ must amend its Copyright Law in the future.

A summary of the JUSFTA obligations and efforts to comply with said obligations are outlined below:

- 1) *Give effect to Articles 1 through 14 of the WIPO Copyright Treaty (1996) (“WCT”); and Articles 1 through 23 of the WIPO performance and Phonograms Treaty (1996) (WPPT)*

Jordan joined WCT on April 27, 2004 and WPPT on May 24, 2004 being the first Arab country to officially join the Internet Treaties. Other implementation issues of WCT and WPPT are discussed below.

- 2) *To provide that all reproductions, whether temporary or permanent, shall be deemed reproductions and subject to the reproduction right as envisaged in the provisions embodied in WCT Article 1(4) and the Agreed Statement thereto, and WPPT Articles 7 and 11 and the Agreed Statement thereto. (Article 4(10))*

Jordan amended its Copyright Law in 2005 to comply with the above obligation.

- 3) *To provide to authors and their successors in interest, to performers and to producers of phonograms the exclusive right to authorize or prohibit the importation into each Party’s territory of copies of works and phonograms, even where such copies were made with the authorization of the author, performer or producer of the phonogram or a successor in interest. (Article 4(11))*

Jordan amended its Copyright Law in 2005 to comply with the above obligation.

- 4) *Jordan shall provide to performers and producers of phonograms the exclusive right to authorize or prohibit the broadcasting and communication to the public of their performances or phonograms, regardless of whether the broadcast or communication is effected by wired or wireless means, except that a Party may provide exemptions for analog transmissions and free over-the-air broadcasts, and may introduce statutory licenses for non-interactive services that, by virtue of their programming practices, including both the content of their transmissions and their use of technological measures to prevent unauthorized uses, are unlikely to conflict with a normal exploitation of phonograms or performances. (Article 4(12))*

Jordan amended its Copyright Law in 2005 to comply with the above obligation. However, the law did not provide an explicit provision that provides its broadcasting organizations with the exceptions and privileges laid out in Article 4(12) of JUSFTA

- 5) *In applying the prohibition under Article 11 of the WCT and Article 18 of the WPPT on circumvention of effective technological measures that are used by authors, performers and producers of phonograms in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances and phonograms, Jordan shall prohibit civilly and criminally the manufacture, importation or circulation of any technology, device, service or part thereof, that is designed, produced, performed or marketed for engaging in such prohibited conduct, or that has only a limited commercially significant purpose or use other than enabling or facilitating such conduct (Article 4(13))*

Jordan amended its Copyright Law in 2005 to comply with the above obligation. However, the amendment may fall short of JUSFTA obligations. Financial motive and inclusion of part of components must be clarified by new amendment to the law or issuance of regulations.

- 6) *Jordan shall provide that any natural person or legal entity acquiring or holding any economic rights by contract or otherwise, including contracts of employment involving protected subject matter, may freely and separately transfer such rights by contract and shall be able to exercise those rights in its own name and enjoy fully benefits of such rights.(Article 4(14))*

Jordan amended its Copyright Law in 2005 to comply with the above obligation.

- 7) *Each Party shall issue appropriate laws, regulations, or other measures (“measures”) providing that all government agencies use only computer software authorized for intended use. Such measures shall actively regulate the acquisition and management of software for government use.(Article 4(15))*

Jordan maintains that Jordanian Copyright Law and other relevant laws provide adequate civil remedies and damages. However, the problem of monetary judgments is further discussed in section (E)(III) below.

- 8) *Jordan shall confine limitations or exceptions to exclusive rights to certain special cases, which do not conflict with a normal exploitation of the work, and do not unreasonably prejudice the legitimate interests of the right holders. (Article 4(16))*

Although Article 17 of the Copyright Law provides for limitations or exceptions to the exclusive rights, it is essential that Jordan issue a regulation detailing these exceptions.

- 9) *Jordan shall provide that, at least in cases of knowing infringement of trademark, copyright and related rights, its judicial authorities shall have the authority to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered as a result of the infringement and any profits of the infringer that are attributable to the infringement that are not taken into account in computing such damages. Injury to the right holder shall be based upon the value of the infringed-upon item, according to the suggested retail price of the legitimate product, or other equivalent measures established by the right holder for valuing authorized goods. (Article 4(24))*

Please section (C)(I) below.

- 10) *Jordan shall ensure that its statutory maximum fines are sufficiently high to deter future acts of infringement with a policy of removing the monetary incentive to the infringer, and shall provide its judicial and other competent authorities the authority to order the seizure of all suspected pirated copyright and counterfeit trademark goods and related implements the predominant use of which has been in the commission of the offense, and documentary evidence. (Article 4(25))*

Statutory fines were increased in the 2005 amendments as per MOU minimum requirements. The explicit seizure of documentary evidence needs to be further clarified by amendment to the law or issuance of regulations.

- 11) *Jordan shall provide, at least in cases of copyright piracy or trademark counterfeiting, that its authorities may initiate criminal actions and border measure actions ex officio, without the need for a formal complaint by a private party or right holder. (Article 2(26))*

Please section (H) below.

- 12) *In civil cases involving copyright or related rights, Jordan shall provide that the natural 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 the 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. 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.(Article 4(27))*

Jordan amended its Copyright Law in 2005 to comply with the above obligation.

13) *Each Party shall provide that copyright piracy involving significant willful Infringements that have no direct or indirect motivation of financial gain shall be considered willful copyright piracy on a commercial scale.(Article 2(28))*

Jordan amended its Copyright Law in 2005 to comply with the above obligation. However, further clarification may be required to address issue of direct or indirect motivation through amendment of the law or introduction of new regulation.

Required Actions:

GOV should accelerate the issuance of regulations and/or instructions that would enhance the compatibility of Copyright Law with JUSFTA obligations. GOV should undertake a full revision of the Copyright Law to bring it in full compliance with JUSFTA and introduce the necessary amendments as soon as practically possible.

IV. Trade Secrets and Unfair Competition

An Unfair Competition and Trade Secrets Law was enacted in 2000.¹⁴ The objective of the Law was to comply with various TRIPS Agreement obligations relating to unfair commercial practices, tarred secrets and undisclosed test or other data relating to pharmaceuticals.

JUSFTA introduced a new and important obligation to the above law. This obligation relates to the protection of undisclosed tests or other data for new uses for old chemical entities for a period of three years. This will be discussed further in section (B) below.

Action Required:

GOJ should amend Unfair Competition and Trade Secrets Law in order to comply with JUSFTA obligation to provide three year data protection for new uses of old chemical entities.

V. Plant Variety Protection

Jordan enacted a Plant Variety Protection Law in 2000 to comply with the TRIPS Agreement.¹⁵ There are no immediate plans to amend the said law.

¹⁴ Law No. 15 for the Year 2000

¹⁵ Law No. 24 for the Year 2000

JUSFTA's only new obligation was for Jordan to give effect to Articles 1 through 22 of the International Convention for the Protection of New Varieties of Plants (UPOV). The said commitment was fulfilled when Jordan formally joined UPOV on October 24, 2004.

VI. Industrial Designs

Jordan enacted an Industrial Deigns Law in 2000 in compliance with the TRIPS Agreement.¹⁶ There are no immediate plans to amend the said law

JUSFTA did not introduce any new obligations in the field of Industrial Designs.

VII. Traditional Knowledge and Folklore

There are no current plans by Jordan to adopt any new legislation dealing with traditional knowledge or folklore. The Copyright Law contains a general provision dealing with folklore. GOJ has been attending the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, and may consider revising its law in line international trends.

VIII. New Independent IP Body

GOJ has taken the decision to establish a new independent entity dealing with all aspects of IP. The main perceived objective of this step is to:

1. Unify all fields of intellectual property under one entity (Industrial Property, Copyright and Plan Variety Protection)
2. Eliminate coordination gaps between concerned government departments
3. Establish a powerful, well-trained and equipped administrative enforcement body that would deal with copyright piracy and trademark counterfeiting (upon complaints of right holders and *ex officio*)
4. Empower government entities working in the field of IP by providing greater flexibility and administrative autonomy
5. Provide real support to Customs Department in dealing with trademark counterfeiting and copyright piracy
6. Provide advise and expertise to Judicial authorities

The Minister of Industry and Trade established a committee of public and private sector personalities to provide a report outlying a "road-map" for this entity. It is expected that this report will be finalized by the end of February 2007.

¹⁶ Law No. 14 for Year 2000

In addition, WIPO has employed the services of a Singaporean expert in the field of IPR to also assist the GOJ in planning for the creation of this entity. The final report of the said expert is expected to be submitted in April 2007.

Action Required:

GOJ should move ahead with the creation of the independent IP entity and empower it with the necessary financial, legal and human resources that would enable it to play in effective role in maintaining and enforcing IPR.

B) Data Protection

I. Five Year Data Protection for New Chemical Entities

The Unfair Competition and Trade Secrets Law provides for five year protection for undisclosed test or other data relating to new chemical entities against unfair commercial use. The Jordan Food & Drug Administration (JFDA) is responsible for granting this five year data protection. JFDA maintains that since the adoption of the law in 2000, the JFDA has provided 5 year data protection to more than 300 pharmaceutical products.¹⁷

Action Required:

Although the above is a notable development, it is important to note that JFDA has not adopted to date any detailed regulations or instructions detailing the procedures of data protection. The adoption of these legal instruments is necessary to ensure transparency and efficiency in dealing with applications.

II. Marketing Approvals for Patented Pharmaceuticals Products

GOJ is unaware of any products registered by JFDA that infringe on patents. JFDA also informed us that that they will have a permanent website dedicated to publicizing all drug applications submitted to JFDA which it hopes will be an affective notification tool to patent holders of any possible applications of generic and/or infringing products.

¹⁷ Source JFDA. They maintain that the number is large because when Unfair Competition and Trade Secrets Law was enacted it had retroactive protection and therefore several drugs were afforded protection although they were submitted for registration prior to 2000.

Action Required:

Coordination between the JFDA and IPPD needs to be strengthened to ensure compliance with JUSFTA obligations as regards data protection.

III. One-Year suspension of Drug Registration

JFDA does not approve drug registration of a new pharmaceutical product unless a minimum of one year had passed since the registration of said product in country of origin. JFDA maintains that this one year “freeze” is needed to ensure that the drug in question is suitable and has no undesired/unforeseen side effects. They also maintain that because Jordan does not have in place a national observation system that can control situations of side effects or drug recall they cannot remove this one year period. This issue needs to be discussed with experts in the field.

IV. Protection of New Uses of Old Chemical Entities

Jordan is obliged to provide a three year data protection for new uses of old chemical entities. As stated in section A(IV) above, Jordan has not amended its Unfair Competition and Trade Secrets Law to reflect this JUSFTA obligation. Nevertheless, JFDA maintains that it has been implementing this obligation since December 2004 and has approved more than 20 products in this process. Similar to the five year data protection, it is important to note that JFDA has not adopted to date any regulations or instructions detailing the procedures of approving applications of new uses of old chemical entities.

Actions Required:

JFDA must adopt instructions or regulations dealing with the approval of data protection for new uses of old chemical entities, in line with JUSFTA obligations.

GOJ must also amend Unfair Competition and Trade Secrets Law in order to comply with JUSFTA obligation to provide three year data protection for new uses of old chemical entities.

V. Calculation of Period of Data Protection

In the absence of any written instructions at JFDA, information provided to us by JFDA confirmed that JFDA’s understanding and practice is that data protection period commences on the date of registration/approval of a pharmaceutical product in Jordan.

Action Required:

JFDA should ensure that instructions/regulations issued to regulate data protection clearly state that period of protection begin on date of product registration in Jordan.

VI. Representation at Higher Council for Drugs

The Higher Council for Drugs is a committee entrusted with overseeing drug policy in Jordan pursuant to the Pharmacy and Drugs Law (No. 80 for the Year 2001). Membership of the said committee combines Jordanian government officials, academics, unions, and Jordanian pharmaceutical sector. The pharmaceutical sector has three main seats; a seat to be occupied by a Jordan Pharmaceutical industry representative, the second seat to be occupied by an owner of a pharmacy, and the third seat to be occupied by an owner of a drugstore (retail) importing foreign drugs. JFDA maintains that the representation afforded by the representative of a drug store ensures that a fair balance of interests is maintained of all concerned parties.

Although not a JUSFTA commitment, fair and balanced representation at the Higher Council could be discussed further with competent authorities in GOJ.

C) Production, Import and Export of Counterfeited Goods

There are two elements to production, sale, export and import of counterfeited goods:

I. Importation

Importation of counterfeited good is prohibited under the Jordanian Trademark Law. Moreover, Article 41 of the Customs Law provides the Jordan Customs Department (JCD) with ex officio authority to temporarily suspend the clearance of suspected shipments of counterfeited goods. (The suspension period is confined to eight (8) days from date of notifying the right holder).¹⁸ Article 4(26) of the JUSFTA, Jordan committed to provide its authorities, at least in cases of copyright piracy or trademark counterfeiting, with ex officio powers to initiate criminal actions and border measure, without the need of a formal complaint by a private party or right holder.

Therefore, the current Article 41 in the Customs Law does not satisfy JUSFTA obligation outlined above for the following reasons:

1. It is an ex officio authority to suspend clearance and release of infringed goods, and does not therefore provide the right to seize goods; if the right holder fail, within eight

¹⁸ Customs Law No. for the Year 1998 and its amendments

days after being notified of the decision to suspend release and clearance procedures, to notify the JCD that a court case has been instituted, the suspended goods are released even if JCD is aware that they are in fact counterfeit.

2. This ex officio authority does not include powers to initiate criminal actions.
3. This ex officio authority does not apply to transit goods, for which the right holder must file a petition.

A positive development is that JCD has established a specialized IP department to deal with counterfeiting and piracy cases.

Action Required:

GOJ should amend its Customs Law to fully comply with JUSFTA obligations to allow JCD or other competent departments to initiate lawsuits ex officio against known cases of trademark counterfeiting and copyright piracy.

II. Sale and Exportation of Counterfeited Goods

The Trademark Law provides several remedial options of filing criminal actions and provisional measures to seize, and/or place an attachment upon infringed products; however, those remedies are primarily confined to the right owners' actions through proceeding to the competent court and commencing litigation. Therefore, under the current regulatory framework for trademark protection in Jordan, no administrative authority enjoys an explicit mandate to ex officio initiate counterfeit seizures and file criminal actions, contrary to JUSFTA obligation outlined above.

The non-availability of an administrative body to take action against trademark counterfeiting has compelled the Jordan Institute for Standards and Metrology (JISM), which was established pursuant to the Standard and Metrology Law No. 22 of 2000, to step in and deal with numerous counterfeiting cases in the market. The authority of JISM authority in counterfeit goods is owed to the flexibility contained in the provisions of the Standards and Metrology Law No. 22 of 2000. Nevertheless, it is evident to JISM and legal experts in Jordan that the authority to seize counterfeited goods is not specific and would fall short of any legal scrutiny.

In light of the above, GOJ took a positive decision to introduce new amendments to Standard and Metrology Law to specifically allow JISM to seize, destroy and prosecute trademark counterfeiting cases. The said Law is currently in the process of being enacted in the government.

Action Required:

GOJ should continue with the effort of enabling JISM to fight trademark counterfeiting and must give high priority to the enactment of the new amendments, in conformity with JUSFTA obligation contained in Article 4(26).

D) Optical Media Piracy (CDs, VCDs, DVDs)

The piracy rate in the audiovisual sector is very high. Sources in the industry estimate piracy rate in the audiovisual sector to be extremely high. Hundreds of small shops selling pirated audiovisuals have sprung-up in Amman and several other Jordanian cities. These stores have gravely affected the businesses of the few remaining “legitimate” stores. DNL has continued its effort to fight piracy as outlined in section (E) below, but the lack of apparent coordination between several government departments have negatively affected those efforts. One example would be the confusing role of the Jordan Audiovisual Commission (JAC). The JAC is responsible for licensing any person or entity working the field of audiovisuals in Jordan, as well as “licensing” any media entering Jordan. Despite having a general provision stating that all licensed establishments must respect IPRs, the JAC has not cancelled any licenses of audiovisual shops that have been convicted of copyright piracy or are know to be pirated shops (and have been raided on many occasions by the DNL). In addition, JAC continues to stamp its “license of approval” on pirated audiovisual goods.

In addition, JCD have not stopped any shipments of optical media manufacturing equipment.

Action Required:

GOJ should ensure the coordination of the various bodies responsible for dealing with the optical media sector. In addition, GOJ should empower JAC to enforce its authority to cancel licenses of known or convicted shops selling pirated media and instruct JAC not to “license” pirated audiovisuals.

E) Enforcement

I. Number of Raids

The number of raids conducted in 2006 by DNL in the field of copyright was 334 raids¹⁹.

II. Number of Cases Presented to Court

All of the 334 raids conducted resulted in criminal prosecutions by the Public Attorney before the competent Court’s of First Instance.²⁰

¹⁹ Source: Department of National Library

²⁰ Source: Department of National Library

III. Number of Prosecutions and Type of sentences

There are no official statistics on number and type of sentences in the Jordanian Court System.

Although the number of persecutions is high, it is a known fact that judicial decisions have not provided adequate remedies or deterrent sentences. In addition, there are numerous decisions where 'not guilty' sentences were given due to technicalities that demonstrate the lack of proper comprehension of the Copyright Law. Moreover, in the instances when a guilty verdict is issued, sentences often fall far below the minimum fines prescribed in the Copyright Law. In many cases judges have resorted to other laws to guide the decision on penalties and have issued sentences for as little as JOD 50 for copyright infringement.

Action Required:

GOJ needs to take necessary steps to ensure that judicial decisions cannot be made outside the context of Jordanian Copyright Law and contrary to Jordan's TRIPS and JUSFTA obligations.

GOJ should enhance its efforts to assign specialized judges trained on IPR issues to deal with IPR cases.

GOJ should initiate, through the Ministry of Justice, an official survey of copyright prosecutions and sentences.

IV. Structural or Legislative Actions to Improve Enforcement

Competent department officials working in the field of IPR enforcement suggest two main structural and legislative initiatives to improve enforcement:

1. Establishment of an Independent IP entity (with enforcement powers)
2. Amendment of JISM Law to allow for ex officio enforcement

These departments also indicated that they are planning a training program with the assistance of USAID funded programs.

Actions Required:

GOJ should recruit and maintain highly qualified officers at the new independent IP entity and JISM.

GOJ should design sustainable training programs for enforcement officials and judiciary.

F) Awareness

DNL and private sector NGOs conducted a public awareness campaign to educate Jordanian public on importance of IPRs. The campaign was funded by the USAID-funded AMIR Program. A survey conducted after the campaign showed a 10% to 20% increase in the general public's awareness – particularly awareness among the youth – of IPR concepts, including agreement that a strong IPR regime lowers the 'brain drain', creates international confidence in Jordan and protects the investment of the creator. However, the campaign had no effect on the perceptions of university students and academic staff and no effect on the general public perception of the criminal nature of piracy.

Actions Required:

GOJ should continue to work with NGOs and other entities to establish well researched, sustainable and high impact IPR awareness campaigns.

G) Notorious Markets

There are several notorious physical markets offering pirated and counterfeited goods in Jordan. The most significant market is the one found in Down Town Amman where a large number of street vendors line the pavements and sell many types of pirated audiovisuals and software. The Greater Amman Municipality (GAM) is primarily responsible for these vendors and has the power to close and confiscate their "stalls."²¹ However, GAM has not taken any serious actions against these vendors which led to their numbers multiplying. Other municipalities outside Amman (including Zarqa, Irbid and Karak) are also witnessing the presence of large number of street vendors offering pirated products. The municipality authorities are also refusing to take action against these vendors.

Required Action

GOJ should instruct and work with GAM and other municipalities to put a stop to the street vendor phenomenon which is affecting legitimate business and sending the wrong message about tolerance of piracy.

H) Use/Procurement of Government Software

Prime Minister of GOJ issued a general directive to all government entities/bodies in 2004 instructing them to abide by the Copyright Law, particularly software protection. JUSFTA provides that Jordan "*issue appropriate laws, regulations, or other measures ("measures") providing that all government agencies use only computer software authorized for intended use. Such measures shall actively regulate the acquisition and management of software for government use.*"(Article 4(15)).

Required Action:

GOJ should issue detailed instructions/regulations that would institutionalize the procurement of legitimate computer software within the government sector.

²¹ DNL cannot prosecute these vendors because it can only take actions against entities with permanent addresses

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