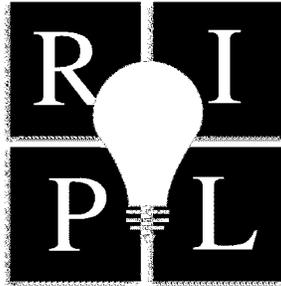


THE JOHN MARSHALL REVIEW OF INTELLECTUAL PROPERTY LAW



POST SADDAM RESTRUCTURING OF INTELLECTUAL PROPERTY RIGHTS IN IRAQ
THROUGH A CASE STUDY OF CURRENT INTELLECTUAL PROPERTY PRACTICES IN
LEBANON, EGYPT, AND JORDAN

ELIZABETH MIRZA AL-DAJANI

ABSTRACT

When the United States invaded Iraq in 2003, it did so with the ambitious goal to completely transform an isolationist government into an international democracy. The Coalition forces created laws designed to conform Iraq to international standards, including three Orders tracking the language of the WTO and its IP enforcement mechanism, the TRIPs Agreement. These standards, however, are often inapposite of unique cultural and religious beliefs of an Arab Middle Eastern country that views ideas, concepts, and knowledge as communal. This comment analyzes similarly situated countries in various stages of dealing with the transition and suggests affirmative steps to expedite the process. Finally, this comment concludes that for a seamless transition into the global economy, Iraq should be supplied aid to acclimate its judiciary, attorneys, and citizenry to these new standards and allowed a reservation in Iraq's accession agreement regarding the patenting of seeds.

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POST SADDAM RESTRUCTURING OF INTELLECTUAL PROPERTY RIGHTS IN IRAQ
THROUGH A CASE STUDY OF CURRENT INTELLECTUAL PROPERTY PRACTICES IN
LEBANON, EGYPT, AND JORDAN.

ELIZABETH MIRZA AL-DAJANI*

“The protection of intellectual property is vital to economic growth and global competitiveness.
And it has major consequences for a country’s ability to promote security and stability.”¹

INTRODUCTION

On March 19, 2003, a coalition led by the United States² invaded Iraq and overthrew the Ba’athist regime led by Saddam Hussein.³ The purpose was to form a democratic state, accountable politically and economically in a global forum.⁴ To effectuate these goals, in May 2003, the invading forces created the Coalition Provisional Authority (“CPA”). Led by Administrator L. Paul Bremer III, the CPA’s job was to oversee the reconstruction of Iraq,

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¹ Carlos Gutierrez, Secretary of Commerce, *The United States Patent and Trademark Office: Notable Quotes*, October 18, 2005, http://www.uspto.gov/web/offices/dcom/olia/ip_quotes.htm.

² U.S. Led Coalition Forces in Iraq, <http://www.usiraqprocon.org/pop/coalitionmembers.html> (last visited Mar. 1, 2007). When the coalition invaded on March 19, 2003 there were fifty six countries as members. *Id.* This eventually dwindled to twenty five by the end of March 2005. *Id.*

³ THE CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK 271 (2007), available at <http://www.cia.gov/cia/publications/factbook/geos/iz.html> (last visited Mar. 1, 2007) [hereinafter *CIA Iraq*]. Under a cloud of suspicion regarding whether Iraq actually possessed weapons of Mass Destruction, Iraq submitted a 12,000 page report describing its weapons programs per U.N. Resolution 1441. Judith Richards Hope and Edward N. Griffin, *The New Iraq: Revising Iraq’s Commercial Law is a Necessity for Foreign Direct Investment and the Reconstruction of Iraq’s Decimated Economy*, 11 CARDOZO J. INT’L & COMP. L. 875, 882 (2004). Resolution 1441 required that in return for Iraq’s refusal to allow weapons inspectors in the country, Iraq was charged to submit a report within thirty days. *Id.* The report was required to give a current and truthful description for any and all

programmes to develop chemical, biological, and nuclear weapons, ballistic missiles, and other delivery systems such as unmanned aerial vehicles and dispersal systems designed for use on aircraft, . . . [including] all other chemical, biological, and nuclear programmes, including any which it claims are for purposes not related to weapon production or material.

S.C. Res. 1441, ¶ 3 U.N. Doc. S/RES/1441 (Nov. 8, 2002). The resolution also stated that Iraq is warned and has been repeatedly warned of the serious consequences for a violation of this resolution. *Id.* The UN found that report incomplete and in breach. Hope and Griffin, *supra* note 3, at 875–76. President Bush issued an ultimatum for Saddam Hussein to either relent or be invaded; two days later Iraq was invaded. *See id.*

⁴ Gregory H. Fox, *The Occupation of Iraq*, 36 GEO. J. INT’L L. 195, 196 (2005).

including the Iraqi legal system.⁵ Specifically relevant to this comment, CPA Order Numbers 80, 81, and 83 amended the half-century-old Iraqi IP laws.⁶

The new Iraqi government's non-repeal of the CPA Orders suggests that Iraq fully intends to continue to integrate itself in the international economy. Iraq, which is beginning to control its own destiny, must take additional steps to attain this goal. Particularly, Iraq needs to reconcile the divide between the CPA Orders designed to assimilate Iraq into the international family of nations and its own unique cultural and religious environment that prevents a full assimilation from taking place. The purpose of this comment is to analyze specific Arab Middle Eastern systems facing similar challenges, and propose affirmative steps Iraq can take to create an internationally reliable IP system.

First, Iraq needs foreign investment for a stable economy. Second, the international yardstick measuring economic stability is membership within the World Trade Organization ("WTO") and compliance with the Trade Related Aspects of Intellectual Property Rights ("TRIPS").⁷ Third, however, these western-dominated prevailing standards, so crucial to foreign investment, could damage Iraq's cultural, religious, and internal interests.

Part of creating an accountable democratic state is creating a stable economy that will entice foreign investors. Intellectual property rights are a vital component of economic stability. Without effective IP laws, foreign investors are less likely to enter a country of great instability. The CPA Orders, created by Administrator Bremer, attempted to remedy these concerns.

CPA Regulation Number 1 set the tone for the regulations that would follow. It authorized the CPA, under the jurisdiction of the UN Security Council, to act temporarily in a governmental capacity during the transition between Saddam's regime and the new Iraq.⁸ From May 16, 2003 to its dismissal on June 28, 2004,⁹ the CPA created twelve Regulations, one hundred Orders, seventeen Memoranda, and twelve Public Notices.¹⁰ These CPA Orders related to all aspects of the commercial reconstruction of Iraq. These amendments attempted to conform Iraqi law to current international IP standards. In fact, the preamble to each CPA Order clearly established the goal of the Iraqi IP system, i.e., Iraq's compliance with the WTO requirements, including TRIPS.

⁵ Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law: Use of Force and Arms Control: Coalition Laws and Transition Arrangements During Occupation of Iraq*, 98 AM. J. INT'L. L. 601, 601 (2004).

⁶ Coalition Provisional Authority Regulation Number 80, Amendment to Trademark and Descriptions Law No. 21 of 1957 CPA/ORD/26 APR 4/80 (Apr. 26, 2004), available at http://www.iraqcoalition.org/regulations/20040426_CPAORD_80_Amendment_to_the_Trademarks_and_Descriptions_Law_No_21_of_1957.pdf [hereinafter *CPA Number 80*]; Coalition Provisional Authority Regulation Number 81, Patent, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law of 2004, CPA/ORD/26 APR 4/81 (Apr. 26, 2004), available at http://www.iraqcoalition.org/regulations/20040426_CPAORD_81_Patents_Law.pdf [hereinafter *CPA Number 81*]; Coalition Provisional Authority Regulation Number 83, Amendment to the Copyright Law, CPA/ORD/29 APR 2004/83 (Apr. 29, 2004), available at http://www.iraqcoalition.org/regulations/20040501_CPAORD_83_Amendment_to_the_Copyright_Law.pdf [hereinafter *CPA Number 83*].

⁷ See Remigius N. Nwabueze, *What Can Genomics and Health Biotechnology Do for Developing Countries?*, 15 ALB. L. J. SCI. & TECH. 369, 395 (2005) ("In the mid-1990's, efforts were made at the international level to set some minimum standards for the grant of a patent and these are now embodied in [TRIPS].").

⁸ Coalition Provisional Authority Regulation Number 1, www.iraqcoalition.org/regulations/20030516_CPAREG_1_The_Coalition_Provisional_Authority.pdf. The regulation cites UN Resolution 1483 of 2003 and "the laws of usages of war," as granting the CPA jurisdiction. *Id.* § 1(2).

⁹ U.S. Dep't of State, *State Department Issues Background Note on Iraq*, U.S. FED. NEWS, Aug. 1, 2005 [hereinafter *Background Note Iraq*].

¹⁰ CPA Official Documents, www.iraqcoalition.org/regulations/#Regulations (last visited Sept. 26, 2005).

Essentially, Administrator Bremer and the CPA instantly planned Iraq's future accession to the WTO¹¹ as a means of creating political and economic accountability in an international forum.

The WTO is an organization comprising states from every continent, region, and level of development. Through agreements binding its members to a uniform set of laws, its goal is to create a fluid cross-continental system of trade. The agreements developed within the WTO, such as TRIPS,¹² are the agreed upon standards of the majority of the world in development, and here specifically, in intellectual property.¹³ The TRIPS agreement, signed in 1994, comprises five main aspects from a trade system developed around IP principles,¹⁴ from the creation of IP laws to their enforcement and the settlement of disputes between members.¹⁵

Nevertheless, becoming a member of the WTO is not a panacea for the potential IP problems facing Iraq. Indeed, comparable Middle Eastern economies continue to experience significant problems even after these countries join the WTO. This may be due in part to the traditional societal culture and religious beliefs, or due to the lower degree of economic development and low poverty level. Three Middle Eastern countries involved with the WTO, Egypt,¹⁶ Lebanon,¹⁷ and Jordan,¹⁸ all have similar cultural, religious, and economic concerns and are facing continuing challenges with IP enforcement. Currently, Jordan is the benchmark of Arab Middle Eastern IP

¹¹ Tariq Marouf, *Iraq: Trademark Registration*, EUROMONEY INST. INVESTOR, Dec. 1, 2005, at 81(3).

¹² TRIPS: TEXT OF THE AGREEMENT, http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm (last visited Mar. 4, 2007). The TRIPS agreement is in Annex C of the Marrakesh Agreement establishing the World Trade Organization on April 15, 1994. *Id.* The agreement defines the "appropriate measures [that] may be needed to prevent the abuse of intellectual property rights or practices which unreasonably restrain trade or adversely affect the international transfer of technology." Agreement on Trade Related Aspects of Intellectual Property, art. 8 ¶ 2, April 15 1994, 1869 U.N.T.S. 299, 33 I.L.M. 1197. [hereinafter *TRIPS*]. The rights that are protected by the TRIPS agreement "include patents, copyrights and related rights, trademarks and related marks, geographical indications, industrial designs, sui generis protection for integrated circuits and plant varieties, and trade secrets (undisclosed information)." *Id.* at 8 ¶ 31.

¹³ See TRIPS, *supra* note 12, at Art. 1. In the Nature and Scope of Obligations in Article 1, the general requirements of the signatories are stated. *Id.* The members must create and enforce laws, which grant extensive protection to IPRs. *Id.* The members are to independently determine the best methods of integrating the TRIPS requirements in their own legal infrastructure. *Id.* In addition, the signatories must provide equal treatment for persons of other states, the same protection "provided for in the Paris Convention (1967), the Berne Convention (1971), the Rome Convention and the Treaty on Intellectual Property in Respect of Integrated Circuits." *Id.*

¹⁴ TRIPS, *supra* note 12. The agreement comprises seven parts, and many sub articles. *Id.* The agreement revolves around the "contribution that the protection and enforcement of IPRs should make to the promotion of technological innovation and the transfer and dissemination of technology." U.N. CONFERENCE ON TRADE AND DEV., THE TRIPS AGREEMENT and DEVELOPING COUNTRIES at 7 ¶ 27, UNCTAD/ITE/I, U.N. Sales No. 96.II.D.10 (1997).

¹⁵ See generally Understanding the WTO: The Agreements; Intellectual property: protection and enforcement, http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm7_e.htm (last visited Sept. 26, 2005) (providing a general introduction to the TRIPS agreement, which marked the first time intellectual property rights became transnational).

¹⁶ Understanding the WTO: The Organization Members and Observers, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last updated May 26, 2005) [hereinafter *Understanding WTO*]. Egypt became a member of the WTO on June 30, 1995. *Id.* Subsequently, Egypt created Patent, Trademark, Copyright, and Industrial Design laws in 2002. Egypt, National Legislation Profile, <http://www.wipo.int/about-ip/en/ipworldwide/pdf/eg.pdf> (last visited Mar. 1, 2007). It reports to have issued 117 patents to residents and 640 to non-residents; 67,328 Trademarks to residents, and 35,481 Trademarks to non-residents; and 1,833 Industrial designs to residents of Egypt. *Id.*

¹⁷ Accessions: Lebanese Republic, http://www.wto.org/english/thewto_e/acc_e/a1_liban_e.htm (last visited March 1, 2007); Accessions: Iraq, http://www.wto.org/english/thewto_e/acc_e/a1_iraq_e.htm (last visited March 1, 2007). Lebanon applied for accession to the WTO on January 20, 1999. *Id.*

¹⁸ Member Information: Jordan and the WTO, http://www.wto.org/english/thewto_e/countries_e/jordan_e.htm (last visited March 1, 2007). Jordan became the 136th member of the WTO on April 11, 2000. *Id.* At this time there have been no complaints filed against Jordan or any disputes involving Jordan. *Id.*

compliance, Lebanon is struggling to the point that it has not fully acceded to the WTO after six and a half years of effort, and Egypt is in-between.

This comment describes the present and developing intellectual property system in Iraq and compares it with the systems in these countries. Through these case studies, this comment concludes that while Iraq's full membership in the WTO and compliance with TRIPS should still be a primary goal in attaining IP stability, additional attention to Iraq's unique environmental customs and socio-political needs is necessary. The background section discusses the changes in Iraq's IP laws, and the current Egyptian, Lebanese, and Jordanian IP systems. The analysis section then compares the varying degrees of success these countries have had with the current Iraqi system. Finally, the proposal suggests some integrated solutions to Iraq's IP system as a part of the general reconstruction of Iraq physically, economically, and developmentally.

I. BACKGROUND: WTO; TRIPS; AND IRAQ

Iraq filed for accession for full membership to the WTO over two years ago on September 30, 2004.¹⁹ Generally, it takes two years to become a member of the WTO, although membership can take much longer depending on the complexity of the negotiations.²⁰ The latest activity with respect to Iraq's application was on November 28, 2006, when it responded to questions and replies by the working committee; however, Iraq has yet to move through the remaining five steps for acceptance.²¹

Because Iraq has not acceded, it only has observer status in the WTO.²² This means that Iraq may have a presence, but no official effect upon standards within the WTO. As a result of this status, Iraq is currently not bound by WTO agreements. Upon accession, however, Iraq will be required to comply with all WTO standards, including TRIPS. The prevailing standard for IP protection is the TRIPS agreement, and it is one of the strongest WTO treaties in force.²³

Nonetheless, the potential economic and social value of full membership cannot be overstated. The former Deputy Secretary of Commerce, Theodore Kassinger, notes the aspiration for Iraq to become a member of the WTO "may buttress support for the laws beyond the need to assure Iraqi and foreign businesses that their intellectual property rights will be respected."²⁴ Additionally, efforts to comply with agreements such as TRIPS "provide a sense of security to

¹⁹ *Understanding WTO*, *supra* note 16.

²⁰ Polly Stuart, *Oman and the WTO – the real impact*, OMAN ECON. REVIEW (2000), http://www.oeronline.com/php/2000_march_april/cover.php.

²¹ TRIPS, *supra* note 12, at art. 1. The nine steps to membership are: (1) Receipt of Application; (2) Establishment of a Working Party; (3) Memorandum; (4) Questions and Replies; (5) Meetings of the Working Party; (7) Market Access Negotiations; (8) Factual Summary; and, (9) the Draft Working Party Report. *Id.*

²² *Understanding WTO*, *supra* note 16. As of December 11, 2005, the WTO was comprised of 149 members, and thirty three observer governments. *Id.* Other Middle Eastern observer governments include Afghanistan, Iran, and The Lebanese Republic. *Id.* Iraq was extended its observer status in February 2004. *Background Note Iraq*, *supra* note 9.

²³ See TRIPS, *supra* note 12, § 1 art 41.1. The Agreement highlights the obligations of members for the enforcement of IPRS in Section 1. The members are to have enforcement procedures within their systems that are available and effective to not only target infringers, but also serve as a deterrent to future violators. *Id.* In regards to IP prosecution the process must be neither complicated nor costly. *Id.* Additionally, regarding IP litigation all court decisions must be: 1) in writing; 2) reasoned; 3) and allow opportunity for appeal by a final court. *Id.* The agreement also provides for damages and remedies. *Id.* Article 44 allows for the judicial authorities to order an injunction to stop the pirated product's entry into the channel of commerce. *Id.* art. 44. It also proscribes awarding attorney's fees if a damage award is issued. *Id.* art. 45.

²⁴ Theodore W. Kassinger and Dylan J. Williams, *Commercial Law Reform Issues in the Reconstruction of Iraq*, 33 GA. J. INT'L & COMP. L. 217, 227 (2004).

investors, signal a stable investing environment, and correspondingly lower the risk premium required by entrepreneurs.”²⁵

Analyzing Iraq’s relationship with foreign manufacturers and investors before the allied invasion demonstrates just how far Iraq must go to achieve its goals. When Iraq invaded Kuwait, the UN placed a full trade embargo on Iraq.²⁶ In a reaction to the full embargo,²⁷ the Iraqi government enacted laws strictly prohibiting foreign ownership of business and property in Iraq.²⁸ This undoubtedly isolated Iraq from the benefits of a global economy.

Indeed, Iraq’s relationship with the global economy before the sanctions mimicked the Arab world’s relationship as a whole. From 1975 to 1998, the total distribution of foreign investment to the entire Arab world was less than one percent of total global investment.²⁹ Iraq is beginning to take affirmative steps to invite international investment needed to spur economic growth. For example, the current Iraqi leadership has not repealed CPA Order number 29, which requires that all foreigners be treated in the same manner as national Iraqi citizens in the course of business, trade, or investment.³⁰ The Order has a profound effect—foreigners are no longer precluded from filing for intellectual property protection for their works.

To continue in the right direction, the Iraqi government must analyze similar attempts by Arab countries to globalize their economies before Iraq can effectively obtain its goals. Subsection A describes the CPA Orders enacted and their intended purpose to help facilitate Iraq’s transition to members of the WTO. Subsection B discusses Pan-Arab difficulties with IP piracy, even with current members of the WTO. Lastly, this section concludes with subsection C, which describes Egypt’s, Lebanon’s, and Jordan’s interactions with the global IP community.

A. Changes Made by the CPA

During the fourteen-month tenure of Administrator Bremer, the CPA rewrote the commercial laws of Iraq.³¹ The areas of law include, “banking, taxation, trade, foreign investment, corporations, bankruptcy, intellectual property, securities regulation, the media, [and] state-owned enterprises.”³² In regards to intellectual property, the CPA made three regulations: Nos. 80 (Trademark); 81 (Patent); and 83 (Copyright).³³

CPA Order No. 80, established on April 26, 2004, amends the Iraqi Trademark Descriptions Law No. 21 of 1957.³⁴ The Order renamed the 1957 law as the “Trademark and Geographical

²⁵ Judith Richards Hope and Edward N. Griffin, *supra* note 3, at 899–90.

²⁶ S.C. Res 661, U.N. Doc. S/RES/661 (Aug. 6, 1990).

²⁷ *CIA Iraq*, *supra* note 3. After a fruitless war with Iran, lasting eight years, Iraq invaded Kuwait in 1990 and was forced out by UN coalition forces. *Id.* Thereafter, the UN Security Council required that Iraq dispose of its weapons of mass destruction. *Id.* United Nations Resolution 661 of 1990 provided a full trade embargo for any goods to and from Iraq, except for medical supplies and items of humanitarian need. *Id.* S.C. Res. 661, U.N. Doc. S/RES/661 (Aug. 6, 2000). The sanctions were in response to the Iraqi invasion of Kuwait. *Id.*

²⁸ Hope & Griffin, *supra* note 3, at 890.

²⁹ Fox, *supra* note 4, at 288.

³⁰ See Constitutional Provisional Authority Order Number 39, Foreign Investment, CPA/ORD/19 September 2003/39, http://www.iraqcoalition.org/regulations/20031220_CPAORD_39_Foreign_Investment_.pdf (last visited September 28, 2005).

³¹ James Thuo Gathii, *Commerce, Conquest, and Wartime Confiscation*, 31 *BROOK. J. INT’L L.* 709, 734–35 (2006).

³² *Id.* (discussing in detail sections of the commercial reconstruction in Iraq facilitated by the CPA).

³³ CPA Number 80, *supra* note 6; CPA Number 81 *supra* note 6; CPA Number 83 *supra* note 6.

³⁴ CPA Number 80, *supra* note 6.

Indications Law.”³⁵ Section 1(3) defines a trademark as “any sign, or any combination of signs, capable of distinguishing the goods of one undertaking from those of other undertakings.”³⁶

Under the new Order, eligibility for trademark registration applies to “such signs, in particular words including personal names, letters, numerals, figurative elements and colors as well as any combination of such signs.”³⁷ Additionally, Order No. 80 created an exception for well known trademarks, which will be protected even if not registered in Iraq.³⁸ The Iraqi Trademark Office began accepting trademark applications on September 19, 2005. Currently, however, applications at the trademark office are being processed according to the old law, No. 21 of 1957, in order to avoid any possible delays, while the interim government takes Law No. 80 into consideration.³⁹

The patent reforming provision, CPA Order Number 81, renamed the Patent and Industrial Designs Laws and Regulations (No. 65 of 1970) the “Patents, Industrial Design, Undisclosed Information, Integrated Circuits and Plant Variety Law.”⁴⁰ Amended Article 2 states that “patents of invention shall be granted pursuant to the provisions of this Law for each invention that is industrially applicable, novel and involves an inventive step, either concerning new industrial products, new industrial methods, or new application of known industrial methods.”⁴¹ The renamed law also defines the term of a patent as ten years unless the registrant defaults on the tax maintenance payments.⁴² However, the Patent Office has yet to accept applications since the Coalition forces invaded Iraq in 2003.⁴³

In the realm of copyright, CPA Order Number 83 amends Copyright Law No. 3 of 1971. It protects authors of original works, including “literary, artistic and scientific works, whatever their type, method of expression, importance and purpose.”⁴⁴ CPA Order 83 also provides copyright protection for fifty years from the date a work becomes public or is registered, whichever comes first.⁴⁵ However, like Iraq’s new patent law, the copyright law is not yet implemented.⁴⁶

As a result of the 2003 U.S. invasion of Iraq and continuing military action, implementation of the new IP laws is understandably difficult. A good illustration is the difficulty of filing trademark applications in Iraq.⁴⁷ Because there is a lack of communication resources in Iraq, it is virtually impossible for a foreign IP firm to contact an associate at an Iraqi firm. Consequently, some IP firms have resorted to sending taxis from Jordan to Iraq to file the trademark applications and multiple legal documents to authenticate authorship of the intellectual property by agents in Baghdad.⁴⁸

³⁵ *Id.* § 1(1).

³⁶ *Id.* § 1(3).

³⁷ *Id.* § 1(3).

³⁸ *Id.* § 1(13)(2).

³⁹ Interview with Sana Al Fahoum, Managing Director, Assana Intellectual Property Establishment, in Amman, Jordan (Jan. 7, 2006) (notes on file with author). Ms. Fahoum founded the Assana Intellectual Property Establishment nineteen years ago to promote the awareness of intellectual property rights. *Id.* She has acted as an agent on behalf of others registering intellectual property in Jordan and Iraq, both before and after the current war in Iraq commenced in 2003. *Id.*

⁴⁰ CPA Number 81, *supra* note 6. The Order became effective April 26, 2004. *Id.*

⁴¹ *Id.* § 1(5).

⁴² *Id.* § 1(27).

⁴³ Al Fahoum, *supra* note 39.

⁴⁴ CPA Number 83, *supra* note 6, § 2(1.1). This Order became effective April 29, 2004. *Id.*

⁴⁵ *Id.* § 2(11.5).

⁴⁶ Al Fahoum, *supra* note 39.

⁴⁷ Al Fahoum, *supra* note 39.

⁴⁸ Al Fahoum, *supra* note 39. Ms. Fahoum commented that there is a lack of infrastructure for communications in Iraq, such that one is not capable of merely sending the original documents by mail to be registered or to the Iraqi agents for her firm. *Id.* In order to ensure the documents’ safe arrival, delivery by taxi is the only viable solution. *Id.*

The military and cultural turmoil affecting Iraq leaves the new IP laws under-enforced. Because the laws are under-enforced, there is great potential for IP piracy. Piracy, however, is not confined to war-torn Arab Middle Eastern countries.

B. Piracy, the Need for Intellectual Property Reform in the Middle East, and Islam

Intellectual property piracy runs rampant in the Middle East.⁴⁹ Many Arab countries, regardless of WTO membership, are classified in the United States Trade Representative (“USTR”) Special 301 report either under the priority watch list or the watch list.⁵⁰ The USTR list is a compilation of countries the United States perceives to have varying degrees of potential trade problems, and is the generally cited source for country-specific IP development in the world. Countries appear on these lists for reasons, ranging from specific fundamental problems with the countries’ IP laws or enforcement of those laws to the presence of a continued threat to IP interests, despite progress.

For an example of the latter, Kuwait⁵¹ and Saudi Arabia,⁵² both now WTO members, appeared on the 2005 USTR Special 301. Even though Saudi Arabia did not become a member of the WTO until 2006, both countries received praise for internal programs instituted to combat IP piracy. Nevertheless, the 2005 USTR Special 301 placed Kuwait on the priority watch list and Saudi Arabia appeared on the watch list. Evidently, for some Middle Eastern countries, WTO membership does not remedy IP enforcement problems.

Egypt and Lebanon provide additional compelling examples. In 2003, Egypt, a member of the WTO and therefore bound by TRIPS, seized approximately two million counterfeit audio cassettes, covers, and inlays.⁵³ Despite these seizures and new legislation intended to curb piracy, Egypt is still consistently viewed with skepticism by the international community because of enforcement challenges. In 2004 and 2005, the United States considered Egypt a country about which the United States had concerns regarding trade issues and the protection of intellectual property. Subsequently, Egypt was placed on the USTR⁵⁴ report.⁵⁵

⁴⁹ Richard E. Vaughn, *Defining Terms in the Intellectual Property Protection Debate; Are the North and South Arguing Past Each Other When We Say “Property”?* A Lockean, Confucian, and Islamic Comparison, 2 ILSA J. INT’L & COMP. L. 307, 308, 336 (1996). Although intellectual property has existed since the 13th century, that piracy only became an issue in the last twenty years. *Id.* at 308.

⁵⁰ USTR, Intellectual Property Protection 2005 Special 301 Report, available at http://www.ustr.gov/assets/Document_Library/Reports_Publications/2005/2005_Special_301/asset_upload_file519_7649.pdf [Hereinafter *USTR 2005*].

⁵¹ *Id.*

⁵² *Id.*

⁵³ Adrian Strain, Fiona Harley, and Willem Van Adrichem, *Police Seize 2 Million Tapes in Egypt’s Biggest Ever Piracy Raid*, INT’L FED’N OF PHONOGRAPHIC INDUS. (2003), http://www.ifpi.org/content/section_news/20030707.htm. Black’s law dictionary defines piracy relating to intellectual property as “the unauthorized and illegal reproduction or distribution of materials protected by copyright, patent, or trademark law.” BLACK’S LAW DICTIONARY 1186 (8th ed. 2004).

⁵⁴ USTR Intellectual Property Protection 2004 Special 301 Report, http://www.ustr.gov/assets/Document_Library/Reports_Publications/2004/2004_Special_301/asset_upload_file16_5995.pdf (last visited Oct. 30, 2005) [hereinafter *USTR 2004*]; USTR 2005, *supra* note 50. The United States Trade Representative is the product of three reorganizations of the original Office of Special Trade (“STR”) created in 1963 by President Kennedy. History of the United States Trade Representative, http://www.ustr.gov/Who_We_Are/History_of_the_United_States_Trade_Representative.html (last visited Oct. 29, 2005). The USTR “has [the] lead responsibility for all negotiations under the auspices WTO.” *Id.* It “examines in detail the adequacy and effectiveness of intellectual property rights (IPR) protection in 90 countries.” *USTR 2005*. The report is a means for the U.S. Government to protect IPRs for

In fact, in 2004, Egypt's status on the USTR list deteriorated from the Watch List to the Priority Watch List. This change was purportedly from:

shortcomings related to the unauthorized marketing approvals granted for patent-infringing pharmaceutical products, deficiencies in Egypt's intellectual property right ("IPR") enforcement regimes for copyrights and trademarks, and problems with its judicial system, because little progress has been made.⁵⁶

Egypt's problems with audio piracy pale in comparison to Lebanon's. In Lebanon, music piracy dramatically increased by seventy percent between 2001 and 2003.⁵⁷ The 2004 USTR describes Lebanon as a country in significant need of the enforcement of IP rights.⁵⁸ The 2005 report praises the Government of Lebanon for beginning to resolve continued IPR problems. These actions include "large-scale raid[s] on pirated optical disc warehouses . . . result[ing] in the imposition of jail sentences . . .," additional "enforcement raids against pirate vendors," and Lebanese Customs act of "carry[ing] out ex officio inspections and seizures along the borders."⁵⁹ The report adds that although some pirates have been targeted, there are continuing problems with "rampant cable piracy, retail piracy of pre-recorded optical discs, computer software piracy, and pharmaceutical counterfeiting."⁶⁰

Despite WTO membership and some countries' promulgation of new laws targeting piracy, pervasive piracy problems continue to exist in the Arab Middle East. One cause of the piracy will always be the relative economic condition of the country. However, another factor, one that often goes unconsidered, is the effect of fundamental societal differences.

1. Islam and Intellectual Property

Some suggest that Middle Eastern countries using Islamic legal systems have an entirely different definition of property, one not compatible with exclusive IP rights.⁶¹ The Islamic system regards property as communal and owned by God, thus making it impossible to view piracy as stealing.⁶² For example, one explanation for widespread piracy in Islamic countries is that the "Islamic approach to copyright has been that there should be no obstruction to the duplication of original material since the most widespread dissemination of knowledge is for the good of all."⁶³

In particular, Islamic societies regard knowledge of medicines and education materials to be communal and for the benefit of the entire community.⁶⁴ This approach poses a problem to foreign pharmaceutical and educational companies that desire to obtain intellectual property

companies with U.S. products sold abroad. *Id.* The data provided by the USTR is a result of "close consultations with affected industry groups, other private sector representatives, and Congressional leaders." *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Strain, Harley, & Adrichem, *supra* note 56.

⁵⁸ USTR 2005, *supra* note 50.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ Vaughn, *supra* note 49, at 336.

⁶² *Id.* at 355–56.

⁶³ *Id.* (quoting Simon Buckingham, *In Search of Copyright Protection in the Kingdom*, 11 MIDDLE E. EXECUTIVE REP. 5, 11, May 1988).

⁶⁴ *Id.* at 356.

protection.⁶⁵ Depending on the interpretation of the Islamic concept of knowledge as a benefit to the entire community, certain forms of intellectual property may run contrary to public policy. This interpretation “may give rise to a belief, under the doctrines of economic and social justice, that Northern technology,⁶⁶ particularly when it comes to medicines and educational materials, must be shared for the good of all.”⁶⁷

The effects of these beliefs cannot be underestimated. Indeed, one source claims “one-fifth to one-sixth of the world’s population in countries ranging from the Middle East, Africa, and West Asia to Indonesia, live under Islam. Many of these nations have been placed on the USTR’s (United States Trade Representative) Priority Watch List and general Watch Lists.”⁶⁸ While there may be a myriad of reasons why these countries are included on the IPR watch lists—such as poverty level, societal values, and culture—one common factor is that some intellectual property protection runs contrary to public policy from an Islamic perspective. To study these issues more closely, the next section discusses these predominately Muslim Arab countries, Egypt, Lebanon, and Jordan.

C. Case Studies: Egypt, Lebanon and Jordan

Egypt, Lebanon, and Jordan are politically, culturally, and religiously similar to Iraq. All three countries lie at different levels of development within the WTO and the implementation of TRIPS. Iraq can learn from their successes and mistakes. This section explains the similar political and social backgrounds of Lebanon, Egypt, Jordan, and Iraq.

Lebanon,⁶⁹ Egypt,⁷⁰ and Jordan⁷¹ are the countries in the region most similar to Iraq in post-World War I history and political culture.⁷² All four are predominately Arab Muslim countries,

⁶⁵ *Id.* at 358.

⁶⁶ *Id.* at 312.

⁶⁷ *Id.* at 358.

⁶⁸ Vaughn, *supra* note 49, at 350.

⁶⁹ THE CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK, 319–22. Lebanon (2007), available at <http://www.cia.gov/cia/publications/factbook/geos/le.html> (last updated Oct. 20, 2005) [hereinafter *CIA Lebanon*]. Lebanese day of Independence from the League of Nations Mandate under French rule is November 22, 1943. *Id.* Its legal system is a “mixture of Ottoman law, canon law, Napoleonic code, and civil law; [there is] no judicial review of legislative acts; [and] has not accepted compulsory ICJ jurisdiction.” *Id.* Lebanon has a 59.7% Muslim majority and 39% Christian minority. *Id.*

⁷⁰ THE CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK, 171–73 Egypt (2007), available at <http://www.cia.gov/cia/publications/factbook/geos/eg.html> (last visited Aug. 31, 2006). Egypt became independent of British rule on February 28, 1922. *Id.* However, the current government is a result of the last revolution which occurred on July 23, 1952. *Id.* The population of Egypt is ninety-four percent Muslim and six percent Christian (mainly Coptic). *Id.* The Egyptian legal system is “based on English common law, Islamic law, and Napoleonic codes; [there is] judicial review by Supreme Court and Council of State (oversees validity of administrative decisions); [and it] accepts compulsory ICJ jurisdiction, with reservations.” *Id.*

⁷¹ THE CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK, Jordan (2007), available at <http://www.cia.gov/cia/publications/factbook/geos/jo.html> (last visited Aug. 31, 2006). The citizenry of Jordan is approximately ninety-two percent Sunni, six percent Christian, and two percent other, which is defined as Druze and Shiite. *Id.* Jordan became independent from the League of Nations British Mandate on May 25, 1946. *Id.* Its legal system is a mixture of Islamic and French law. *Id.* There is “judicial review of legislative acts in a specially provided High Tribunal; [and it] has not accepted compulsory ICJ jurisdiction.” *Id.*

⁷² *CIA Iraq*, *supra* note 3. For hundreds of years Iraq was occupied by the Ottoman Empire. *Id.* Then, after its demise, during World War I, Iraq was occupied by the United Kingdom, and then mandated to the British administration by the League of Nations. *Id.* Iraq became an independent Kingdom in 1932, and was declared Republic by the Ba’athist supported by Saddam Hussein. *Id.* Iraq has a Gross Domestic Product estimate for 2005 of \$24.3 billion with a GDP per capita estimate for 2005 of \$870, and a projected unemployment rate of twenty-eight percent. *Background note Iraq*, *supra* note 9.

with Lebanon also having a strong Christian minority.⁷³ All four date the creation of their current political states from the same point in history, the Sykes-Picot agreement of 1916.⁷⁴ When the British, French, and Russians divided the Middle East into different regions for their rule, Jordan (then referred to as Trans-Jordan) did not yet exist.⁷⁵ Similarly, Lebanon, which was part of the Syrian dynasty, was carved out of the Ottoman Empire by the French government,⁷⁶ while Egypt and Iraq were placed under British suzerainty.⁷⁷ The first rulers of Jordan and Iraq were brothers, Faisal and Abdullah Hussein.⁷⁸ Additionally, all four countries either have become members of the WTO⁷⁹ or have applied for accession,⁸⁰ making intellectual property reform an absolute necessity for all of them.

Finally, these countries are still engaged in the internal struggle of adapting to international norms and effectively changing the country's culture and practices to actively accept these norms. Most importantly, these three countries are at different stages of development regarding the various types of IP protections. Analyzing these countries in comparison to Iraq sheds light on the various practices capable of helping Iraq in its development.

II. ANALYSIS: CASE STUDY OF CURRENT INTELLECTUAL PROPERTY REGIMES IN SIMILAR SURROUNDING COUNTRIES; LEBANON, EGYPT, JORDAN, AND IRAQ

Pre-invasion Iraq, although isolated, had an effective IP system. The invasion introduced to Iraq not only an external military, but also external IP concepts meant to make Iraq an international contender for foreign investment. Iraq, in its general reconstruction and democratic rebirth, is now facing a pivotal question of development with its pending accession to the WTO. Will Iraq continue in non-compliance with the new CPA Orders mimicking TRIPS and delay the inevitable roadblocks it will face in integration, or will Iraq evaluate its harmonization problems with these new standards and reap the benefits of membership in the IP family of nations? Iraq, or at least Paul Bremer, answered the call for integration by enacting the laws, and the new Iraqi government has not objected to or withdrawn from the CPA Orders. But, will the new Iraqi government take the necessary additional steps to complete the process of full integration into the international economy?

Evaluation of other recent Arab Middle Eastern countries that have embraced the international market economy reveals a distinct pattern. They have all started as internally sufficient, yet have regressed upon exposure to the external demands of the global economy. An

⁷³ Al Fahoum, *supra* note 39.

⁷⁴ ALBERT HOURANI, *THE HISTORY OF THE ARAB PEOPLES* 318 (MJF Books 1991). In 1922, the League of Nations Mandates stated that "Britain would be responsible for Iraq and Palestine and France for Syria and Lebanon. [Also] to create an independent state under Husayn's [Hussein's] son Faysal [Faisal] was suppressed by the French, and two political entities were set up: the state of Syria, and that of Lebanon." *Id.* In regards to Jordan, it stated that Transjordan [Jordan] would be established and ruled by another of Husayn's son's, Abdullah. *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.* Both Jordan and Lebanon did not exist as countries or cultures prior to their creation by western powers. *See id.* This justifies their comparison as younger states possibly facing similar IP issues stemming from their artificial origins. *See id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Understanding WTO*, *supra* note 16. Egypt became a member of the WTO in 1995, and Jordan became a member in 2000. *Id.*

⁸⁰ Accessions: Lebanese Republic, http://www.wto.org/english/thewto_e/acc_e/a1_liban_e.htm (last visited March 1, 2007); Accessions: Iraq, http://www.wto.org/english/thewto_e/acc_e/a1_iraq_e.htm (last visited March 1, 2007). Lebanon applied for accession to the WTO on January 20, 1999, and Iraq applied for accession on September 30, 2004. *Id.*

Arab Middle Eastern country passes through four distinct phases during integration into the international economy. The first phase begins the evolution by restructuring the existing domestic IP laws, tracking the language of the international standards. This eases the country into the second phase: the transition into membership of the international community, i.e., the WTO. Once the newly agreed upon laws are adopted internally and the country has become a member of the organization, the country's third phase begins, the enforcement of the new legal norms. This phase exposes fundamental differences between the idealized standards and the actual possibilities of realization. This leads to the final phase, a sea of change where the stumbling blocks exposed by enforcement are ameliorated.

Currently, Iraq is transitioning between the first and second phases, as it has overhauled its laws to comply with international standards, but still must await accession to the WTO. This section discusses three similarly situated Pan-Arab countries and compares them with Iraq in its current condition. Subsection A examines Iraq in context with Lebanon's current status. Lebanon, like Iraq, is between phases one and two, but is merely one step away from accession to the WTO, whereas Iraq still has six remaining steps to accession. Subsection B analyzes Iraq against Egypt's current state. Egypt has WTO status, but is struggling with the third phase, enforcement. Finally, subsection C, analyzes Iraq in the context of Jordan's status. Jordan has strengthened its enforcement and has entered the final phase by trying to change the fundamental societal perceptions of IP that prohibit full integration.

A. *Lebanon, a country stuck in the process of Accession to the WTO.*

Lebanon is currently in between the first and the second phases of integration, as it is attempting to attain membership into the WTO. In 1999, Lebanon began enacting new IP laws and currently has eight laws, seven resolutions, and one decree regarding IPRs.⁸¹ The most recent copyright law, the law on the Protection of Literary and Artistic Property (No. 75), was enacted on April 3, 1999.⁸² It provides copyright protection of a work with economic and moral rights for a period of the life of and fifty years after the author's death.⁸³

Patent Law No. 240⁸⁴ contains a requirement for varying annuity fees for twenty years.⁸⁵ Violation of this law results in both a civil infringement case at the discretion of the true patent owner and criminal penalties.⁸⁶ For example, a violation can carry a fine from five to fifty million Lebanese Pounds and can include a prison term from three months to three years.⁸⁷

According to the Ministry of Economy and Trade for Lebanon, as of February 23, 2004, there were 4,804 registrations for the five types of intellectual property, namely Archeological,

⁸¹ Ministry of Economy and Trade, Legislation, Laws, <http://www.economy.gov.lb/MOET/English/Panel/IPR/Legislation/> (last visited March 1, 2007).

⁸² Law on the Protection of Literary and Artistic Property (No. 75 of April 3, 1999), *available at* <http://www.economy.gov.lb/MOET/English/Panel/IPR/Legislation/> (last visited March 1, 2007).

⁸³ *Id.* at Chs. V ¶ 14, VIII ¶ 49. For joint authors, the law provides that the Copyright is protected for the life of both of the authors and fifty years after the death of the last author. *Id.* at Ch. VIII ¶ 50.

⁸⁴ Patent Law No. 240, *available at* <http://www.economy.gov.lb/MOET/English/Panel/IPR/Legislation/> (last visited March 1, 2007).

⁸⁵ *Id.* at art. 18. The applicant is allowed a six month grace period; however, if the annuity fees remain unpaid the application lapses. *Id.*

⁸⁶ *Id.* at Ch 2, § 1, art. 42.

⁸⁷ *Id.* The only exception from criminal prosecution for violation of the law is if the violation was for non-commercial or non-industrial personal gain or for the purpose of scientific research. *Id.* The approximate exchange rate of five to fifty million Lebanese Pounds is between 3,306 and 33,068 U.S. dollars as of March 7, 2007. Currency Calculator, <http://www.bloomberg.com/invest/calculators/currency.html> (last visited March 7, 2007).

Literary, Industrial Designs, Inventions, and Trademarks.⁸⁸ Having fulfilled the first step of creating domestic law tracking the language of the main international agreement, TRIPS, Lebanon has been awaiting accession to the WTO for six years.

Although Lebanon has fairly modern IP laws, there is still a continued problem with IP enforcement. The USTR report for 2005 listed Lebanon as one of the countries with increasing amounts of media piracy and trademark counterfeiting.⁸⁹ Lebanon received praise for its customs raids against private owners, its raids of pirated optical disc warehouses, and imposition of prison sentences upon those responsible for the piracy.⁹⁰ However, Lebanon remains on the Priority Watch list due to its “continuing problems with rampant cable piracy, retail piracy of prerecorded optical discs, computer software piracy, and pharmaceutical counterfeiting.”⁹¹

The violation of IPRs in Lebanon has become an increasing problem even though it is a party to the Universal Copyright and Berne Conventions.⁹² Most Lebanese expect that when the government is notified of violations nothing will result from the notification.⁹³ The perception is that before the Ministry of Economy and Trade will investigate an IPR violation, the injured party must bring the issue to court.⁹⁴ This is a dangerous view because it means Lebanon is essentially allowing many unreported instances of piracy to go uninvestigated.

The black market in Lebanon includes an increasing number of pirated items. The International Intellectual Property Alliance Special 301 2005 report establishes that since 2000, the amount of money lost due to copyright piracy in Lebanon for the categories of Motion Pictures, Records and Music recordings, Business Software, Entertainment Software, and Books has increased from fourteen million to thirty-one million.⁹⁵ Another report prepared by the Heritage Foundation, estimated that in 1999, the piracy rate for software was approximately eight-eight percent.⁹⁶ Some companies, notably Microsoft, are attempting to minimize their losses by giving discounts on software for educational purposes and allowing equal exchanges of pirated software copies for the authorized program.⁹⁷ This, arguably, encourages purchasers to buy only the legally authentic programs and dissuades purchases of illegal copies.⁹⁸

Because of Iraq’s similar problems with IP enforcement, Microsoft has refused to go into business in Iraq due of the lack of IPR enforcement.⁹⁹ Microsoft is aware that a copy of their Office program can be bought for the value of a few U.S. dollars and that there is no way to compete under such circumstances.¹⁰⁰ In general, the supply and demand in the black market for

⁸⁸ Ministry of Economy and Trade, Republic of Lebanon, Total Records of Registration for the Protection of the Intellectual Property in the year 2004, <http://www.economy.gov.lb/MOET/Arabic/Panel/Statistics/IPR.htm> (last visited Oct. 29, 2005) (document translated by Amjad Al-Dajani).

⁸⁹ USTR 2005, *supra* note 50.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² John Carroll, *Intellectual Property Rights in the Middle East: A Cultural Perspective*, 11 FORDHAM INTELL. PROP. MEDIA & ENT. L.J. 555, 562 (2001).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, 2002 SPECIAL 301 REPORT: LEBANON 175, (IIPA 2005), available at <http://www.iipa.com/rbc/2002/2002SPEC301LEBANON.pdf> (last visited March 7, 2007); INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE, 2005 SPECIAL 301 REPORT: LEBANON 175, (IIPA 2005), available at <http://www.iipa.com/rbc/2005/2005SPEC301LEBANON.pdf> (last visited March 7, 2007).

⁹⁶ 2001 Index of Economic Freedom, HERITAGE FOUND. REPORTS (The Heritage Foundation) Nov. 2000, at 241.

⁹⁷ John Carroll, *supra* note 92, at 571.

⁹⁸ *Id.*

⁹⁹ Timothy Mills, Keith Crane, & O. Lee Reed, Special Conference Section: Conference: From Autocracy to Democracy: The Effort to Establish Market Democracies in Iraq and Afghanistan: Panel 3: The Development of a Market Democracy, 33 GA. J. INT’L & COMP. L. 195, 199 (2004).

¹⁰⁰ *Id.*

protected goods has skyrocketed since the U.S. invasion.¹⁰¹ Although Iraq has filed for accession to the WTO, it has yet to sign a single international treaty for IPR enforcement.¹⁰²

Clearly, Iraq is in a similar position to that of Lebanon; it has replaced its IP laws to reflect the international standards for IP protection and has filed for accession. Iraq is also similar to Lebanon because it is struggling with violent internal conflict, much like Lebanon in the summer of 2006. Although both countries stand in similar positions with respect to many issues, Iraq remains far behind Lebanon in its development through the four phase process. While Lebanon is processing IP applications, Iraq is only accepting trademark applications, but not proceeding with review.¹⁰³ This places Iraq at the lowest level of IP development of these four countries, and quite possibly the Arab Middle East. Due to the current situation in Iraq, the trademark registrar's office is open for only one day and then closes for the rest of the week.¹⁰⁴ The office opened two years ago to permit the filing of applications.¹⁰⁵ However, no information has been provided as to how the applications are processed.¹⁰⁶ According to agents who filed one year ago, no progress has been made on the applications at all.¹⁰⁷ In addition, the new CPA laws that remain in force are not utilized. Instead, the old Iraqi laws are still in use in the registrar's office.¹⁰⁸

In addition, the other large problem plaguing Iraq's non-application of the new IP laws and processing of trademark applications is that it has issues with security and lacks communication resources. Lebanon also recently faced, and may continue to face, a detriment to security spurred by the violent conflict in the summer of 2006.¹⁰⁹ These security problems are initial issues that must be resolved for the newly adopted laws to be viewed as effective. A second sub-issue involving only Iraq is the lack of communication resources. Although there have been improvements in the development of Internet usage and facsimile, some IP firms are reduced to sending taxi's across Jordan to Iraq just to file a trademark application, because there is no other effective way to ensure that the proper documents reach local agents in Iraq.¹¹⁰

Interestingly, under Saddam's rule, Iraq employed several trained patent examiners, called the Research Center for Scientific Research, allowing Iraq to claim it processed the largest number of registered patents in the Arab World.¹¹¹ Today, it has been noted that it is incredibly hard to file in Iraq, although the demand for filing has not subsided.¹¹² Of the large number of IP agents formerly in Iraq, only a few remain today. This has left a large gap, which Jordanian IP agents have filled. Because the demand for filing has not subsided, Jordanian agents have taken on the business, and send the documents via Aramex (the Arab component to Federal Express) or by taxi to the trademark office in Iraq or a remaining Iraqi agent.

The problems that continue to plague Lebanon and the actions that foreign companies have been forced to take to ameliorate this issue place Lebanon on a low level of IP development.

¹⁰¹ Zaid Sabah, *Pirated DVD's among hottest items on shelves*, USA TODAY, Jan. 20, 2006, at 12A. The author notes that other popular pirated items are "sunglasses, jeans, perfumes, TV's, air conditioners and sportswear." *Id.*

¹⁰² *Id.*

¹⁰³ Al Fahoum, *supra* note 39.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ Chris Lawrence and Jim Clancy, Lebanon Truce Holds Despite Clashes, <http://edition.cnn.com/2006/WORLD/meast/08/14/mideast.main/index.html> (discussing to the recent violent clashes in Lebanon, which lead to thirty-four day conflict).

¹¹⁰ Al Fahoum, *supra* note 39.

¹¹¹ *Id.*

¹¹² *Id.*

Lebanon has enacted new IP laws with the help of the United States,¹¹³ and is making strides towards consistent IP protection, but it has not yet attained membership.¹¹⁴ Iraq, which is at an even lower level, not having implemented the new CPA laws, is faced with additional roadblocks to accession to the second stage of IP development and leading into the third stage, enforcement.

B. Egypt: A Struggle to Achieve Intellectual Property Stability

Egypt is at the third stage of the integration cycle, enforcement of the international norms codified in domestic law, and compliance with the terms of its membership, namely the TRIPS agreement. In 2002, Egypt fulfilled the first stage by sweepingly amending all of its intellectual property laws.¹¹⁵ All of the IP laws are now combined into one statute, the Intellectual Property Rights No. 82 of 2002, book 1 for Patents and Industrial Designs, book 2 for Trademarks, and book 3 for Copyrights.¹¹⁶ Law No. 82 replaces Patent law No. 132 of 1949, Copyright law No. 304 of 1954, and Trademark law No. 57 of 1939.¹¹⁷

In addition to the considerable reform, Egypt made a further commitment to these norms on June 9, 2003, when it became a contracting party to the Patent Cooperation Treaty (“PCT”).¹¹⁸ In the year following PCT ratification, the number of patent applications in Egypt doubled.¹¹⁹ In 2003, 545 patent applications were filed, of which 325 were granted.¹²⁰ In 2004, 1,118 applications were filed, of which 638 were granted.¹²¹ Also in 2002, residents of Egypt had 67,328 trademarks approved out of 152,693 applications, and 1,833 Industrial Designs approved out of a total of 1,862 applications.¹²² There were 35,292 non-resident trademark applications approved, but no non-resident Industrial design applications.¹²³ The completed registrations listed above provide evidence that there is no problem with Egypt’s structure of laws and its execution in granting registrations. Its sole problem now is the enforcement provisions to these laws.

Egypt has faced difficulties in enforcing its IP laws. In discussing enforcement of IPRs in Egypt, the United Nations Conference on Trade and Development explained that there are strategies for enforcing IP rights in developing nations.¹²⁴ These include raids conducted by

¹¹³ John Carroll, *supra* note 92, at 567.

¹¹⁴ Osama Habib, *Lebanon Closer to WTO Accession*, THE DAILY STAR, Sept. 21, 2004, available at http://www.dailystar.com.lb/article.asp?edition_id=1&categ_id=3&article_id=8552.

¹¹⁵ Egypt, <http://www.wipo.int/about-ip/en/ipworldwide/pdf/eg.pdf> (last visited October 30, 2005).

¹¹⁶ *Id.*

¹¹⁷ ALAN S. GUTTERMAN & BENTLEY J. ANDERSON, *INTELLECTUAL PROPERTY in GLOBAL MARKETS: A GUIDE for FOREIGN LAWYERS and MANAGERS* 357–62 (Kluwer Law International Ltd. (1997)).

¹¹⁸ Patent Cooperation Treaty (WTO), <http://scientific.thomson.com/support/patents/patinf/expiries/updates/october/wo.html> (last visited March 6, 2007). Egypt became the 121st country to join the PCT treaty on June 9, 2003. *Id.* Originally signed by eighteen states in 1970, it was amended in 1974, 1981 and 2001. *Id.* It allows an applicant to file one patent application, which is then dispersed to the members for review. Howard Eisenberg, *Patent Law You Can Use*, YALE OFFICE OF COOPERATIVE RESEARCH, Dec. 17, 2003, http://www.yale.edu/ocr/invent_guidelines/PCT.html. Although it provides a central depository for patent applications, it does not guaranty that the application will be granted by an individual country. *Id.*

¹¹⁹ Annual Technical Report 2004 on Patent Information Activities Submitted by Egypt, http://www.egypo.gov.eg/inner/english/PDFs/office_report.pdf (last visited Oct. 30, 2005).

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Egypt, <http://www.wipo.int/about-ip/en/ipworldwide/pdf/eg.pdf> (last visited March 1, 2007).

¹²³ *Id.*

¹²⁴ U.N. CONFERENCE on TRADE and DEV., THE TRIPS AGREEMENT and DEVELOPING COUNTRIES at 23 ¶ 92, UNCTAD/ITE/1, U.N. Sales No. 96.II.D.10 (1997).

police to confiscate any tools or devices used to create pirated material and all illegal reproductions of copyrighted works.¹²⁵ However, at the conference it was commented that “customs control is available but only upon request of private interests, and customs authorities are not equipped to undertake monitoring and discovery activities without prior notification.”¹²⁶

Egypt remained on the Priority Watch List in the USTR report for 2005.¹²⁷ The United States estimated that in 2004 alone, its copyright industry lost approximately 72.5 million dollars solely to copyright infringement in Egypt.¹²⁸ In the report, the United States continued to allege that Egypt had failed to fully implement the Berne Convention or the Internet Treaties.¹²⁹ The United States further suggested that for Egypt to improve its position it should improve the judicial enforcement of the IPRs.¹³⁰

Iraq is having similar problems with extreme copyright infringement and a lack of prosecution. Piracy in Iraq, once considered to occur on a smaller scale compared to its neighboring countries, now runs rampant, even reaching U.S. Marine bases.¹³¹ This problem is particularly pervasive with regard to pirated American and European music and movies.¹³² Such goods are sold in the open market without fear of reprisal by the Iraqi Police.¹³³ They are sold in shops that advertise brand name items and sell only pirated products.¹³⁴ The very force propelling the IP revolution in Iraq has simultaneously become a factor in curbing its success. One important difference between Iraq and Egypt, however, is that Iraq has filed for accession to the WTO, but has yet to sign a single international treaty for IPR enforcement.¹³⁵

Egypt, by contrast, was praised by the international watchdog, the USTR, on its initial steps of compliance with TRIPS and protection of IPRs. It was credited with: (1) the creation of a new plant variety office for the Ministry of Agriculture; (2) the opening of a patent mailbox on January 1, 2005; (3) the training of trademark inspectors in March of 2005; (4) the issuing of the third and final regulation for the 2002 IP laws; and (5) Egypt’s becoming a member of the WIPO Nice Agreement.¹³⁶ Egypt remains in the middle stage of IP development for the Arab Levant and not yet at the third stage of integration.

One reason Iraq is still suspended between the first two stages is its *de facto* suspension of the registration process. Ostensibly, the numbers indicate Egypt has been quite successful in prosecuting its IP applications, certainly more so than Lebanon. Iraq, however, has seemingly stalled out, failing to move beyond the filing stage in trademark applications. The further these countries proceed from step two, the more apparent it becomes that Iraq must appreciate the

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ USTR 2005, *supra* note 50.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Email from Captain Brian Dollar, Anbar Province, Iraq March 05-06, (March 5, 2007 2:44CST) (on file with author). “I absolutely remember Iraqi[s] selling pirated DVDs to the Marines. Their products would have two or three movies on one DVD. As far as hardware, it looked like knock-offs, but nothing stolen.” *Id.* Another Marine in referring to Iraqis coming onto U.S. property in Iraq said, “every base has them [pirated movies]. The troops bought the DVD’s – they went for between \$5-10. I always wondered where the money was going . . . but then MCCS wasn’t going to get you Star Wars Episode III one day after it came out in the U.S” Email from Marine #2, currently in Iraq, (March 5, 2007 2:44CST) (name withheld for security purposes) (notes on file with author).

¹³² Sabah, *supra* note 101.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ USTR 2005, *supra* note 50.

lessons its fellow neighbors painfully learned, i.e., that it is imperative to catch up and not linger in each stage.

C. Jordan: Achievement of Assimilation and Compliance to the WTO

Jordan, like Iraq, Lebanon, and Egypt, has recently updated its IP laws, which attempt to track the language of the WTO and TRIPS. Jordan has enacted seven new or amended laws and one regulation relating to IPRs. They cover the areas of Trademarks, Patents, Trade Secrets and Unfair competition, Models and Industrial Designs, Integrated Circuits, Copyrights, and Plant Variety Protection.¹³⁷ In response to the large amount of software development in Jordan and to the U.S.-Jordan Free Trade Agreement, Jordan enacted a new Copyright Law.¹³⁸ This new law provides a fifty year term of protection from the date of publication for the author from the date of their creation, except for works of photography and applied arts.¹³⁹

In furtherance of Jordan's commitment to conformity with international standards, Jordan signed a Free Trade Agreement with the United States on October 24, 2000, that became effective in 2002.¹⁴⁰ Since then, trade between the United States and Jordan has positively affected Jordan's economy. Indeed, Mohammad Nsour, in an article devoted to the United States-Jordan Free Trade Agreement, states that "Jordan is outperforming its Arabic peers in building trade and generating business with the United States."¹⁴¹

¹³⁷ Jordan's Foreign Trade Policy, Laws and Regulations, <http://www.jftp.gov.jo/main.htm>. The laws in detail are: (1) Law No. (34) for the year 1999 amending Trademarks Law No. (33) for the year 1952 (11/1/1999); (2) Patents Law No. (32) for the year 1999 (11/1/1999); (3) Trade Secrets and Unfair Competition Law No. (15) for the year 2000 (4/2/2000); (4) Models and Industrial Designs Law No. (14) for the year 2000 (4/2/2000); (5) Integrated Circuits Law No. (9) for the year 2000 (4/2/2000); (6) Law No. (29) for the year 999 amending Copyrights. Law No. (22) for the year 1992 and its amendments (10/2/1999); (7) Plant Variety Protection Law No. (24) for the year 2000 (7/2/2000); and, Regulation No. (37) for the year 2000 amending Trademarks Regulation No. (1) for the year 1952 (8/13/2000). *Id.* Specifically, the new trademark law gives a renewable term of ten years from registration. The Law Amending the Trademarks Law, Law No. 34 For the Year 1999, available at <http://www.jftp.gov.jo/Docs/Trademarks%20Law%20Amendment.pdf> (last visited March 7, 2007). Additionally, the patent law provides protection for twenty years, if approved, from the time of filing. *Id.* Violation of the law requires imprisonment for a minimum of three months and a maximum of one year, accompanied by a fine between one hundred and three thousand Jordanian dinars. *Id.*

¹³⁸ Mohammad Nsour, *LLM Perspectives: Fundamental Facets of the United States-Jordan Free Trade Agreement: E-Commerce, Dispute Resolution, and Beyond*, 27 *FORDHAM INT'L L.J.* 742, 769 (2004). An important element of the new copyright law "is the acknowledgement that copyright ownership of all works created by employees shall rest with the employer if such works are related to the business of the employer and if the employer's equipment and facilities were used for production of a copyrightable work." *Id.*

¹³⁹ The Law Amending the Copyright Protection Law, Law No.29 for the Year 1999, Arts. 10, 11, available at <http://www.jftp.gov.jo/Docs/Copyright%20Law%20Amendments.pdf>. These articles repeal articles 31 and 32 of the original law. *Id.*

¹⁴⁰ Office of the United States Trade Representative, Jordan Free Trade Agreement http://www.ustr.gov/Trade_Agreements/Bilateral/Jordan/Section_Index.html (last visited Oct. 30, 2005). The site further explains that this was only the third FTA signed by the United States and that it was the first with an Arab nation. *Id.* The FTA provides that each party must eliminate the customs costs on goods originating from the other party. United States (U.S.)-Jordan: Agreement Between The United States of America and The Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, art. 2 ¶ 1. Additionally it requires that each intellectual property system include service marks, collective marks, and certification marks in the category of trademarks. *Id.* at art. 4 ¶ 6.

¹⁴¹ Nsour, *supra* note 138, at 743. The author attributes this economic growth to the Qualifying Industrial Zone in Irbid, Jordan, which allows duty-free access to the United States, per the Free Trade Agreement. *Id.* He lists the expected outcome in 2003 to reach 650 million USD, multiplying the current export by almost seventy five percent. *Id.*

These laws and treaties have spurred foreign investment in Jordan. For example, in 2002, Jordanian textile exports were estimated to be \$400 million U.S. dollars.¹⁴² Jordan's desire for further economic growth caused it to sign a Free Trade Agreement with Singapore on May 7, 2004.¹⁴³ In addition, the United States helped craft the new Patent, Compulsory licensing, Moral Rights, and Work-for-hire laws in Jordan.¹⁴⁴

The 2005 USTR report praised Jordan for having (1) mandated the use of only authorized software by government ministries; (2) provided a period of protection against reliance on data during application, per TRIPS; and (3) acceded to both the WIPO Performances and Phonograms Treaty (May 24, 2004) and the Copyright treaty (April 27, 2000).¹⁴⁵ However, the USTR report states that some provisions of the treaties and the U.S.-Jordan Free Trade Agreement still need to be implemented.¹⁴⁶ These steps have begun to prove fruitful for Jordan. For example, in 2000, there were reportedly six copyright infringement cases filed. In 2001, that number rose drastically to 149, and in 2002 it increased again to 210 cases.¹⁴⁷

Since the adoption of the Copyright law, there have been 1,350 criminal court cases, resulting in penalties between three month and three year sentences, with a minimum fine of 1,000 Jordanian Dinars.¹⁴⁸ At the same time, there was not only an increase in the number of copyrights issued, but enforcement for the protection of those rights. With respect to trademarks, there is a proposed amendment in Parliament that would comply with the Madrid agreement, allowing electronic filing and better international access to the Jordanian IP registration process.¹⁴⁹

Jordan's commitment to IPR's and compliance with TRIPS is also evident from its attempts to educate businesses about the importance and benefit of IPRs by holding an annual Jordan IP Week.¹⁵⁰ The 2004 conference provided six workshops on topics, including "Tackling Counterfeiting and Piracy, and IP Strategies for Licensing and Franchising."¹⁵¹ Additionally, there are laws to enforce such rights in a court of law. In fact, the Department of the National Library, which is responsible for the enforcement of Copyrights, has embarked on a three-month

¹⁴² *Id.*

¹⁴³ Singapore Ministry of Trade and Industry Conclusion of Negotiations for the Singapore-Jordan Free Trade Agreement, http://www.mti.gov.sg/public/NWS/firm_NWS_Default.asp?sid=38&cid=2008 (last visited Oct. 29, 2005).

¹⁴⁴ Interview with Abdullah Khashroom, Lawyer, Creativity Center for Law and Intellectual Property, in Amman, Jordan (Jan. 8, 2007).

¹⁴⁵ *USTR 2005*, *supra* note 51.

¹⁴⁶ *Id.*

¹⁴⁷ Nadim Kayyali, The Jordanian Experience in the Protection of Intellectual Property Rights and the Need for Specialized Intellectual Property Courts, *available at* http://www.iipi.org/Conferences/IP_Courts/Presentation_Kayyali.pdf (last visited Nov. 20, 2005).

¹⁴⁸ Interview with Mamoun Th. Talhouni, Director General, Department of the National Library, in Amman, Jordan (Jan. 5, 2006). The numbers were provided by the Department of the National Library in the interview from an internal table of cases. *Id.*

¹⁴⁹ Interview with Khaled Arabeyyat, Director, Ministry of Industry & Trade Industrial Property Protection Directorate, in Amman Jordan (Jan. 5, 2006).

¹⁵⁰ Technology Transfer and National Innovation: Jordan IP Week 2004, *available at* http://www.iipi.org/topics/technology_transfer_national_innovation.asp (last visited March 5, 2007). Some of the speakers included representatives from "the International Intellectual Property Institute ("IPI"), [the United States] Patents and Trademarks Office ("USPTO"), [the] World Intellectual Property Organization ("WIPO"), Microsoft, Judges, professors and ministers" of government. *Id.* The conference included such topics as Intellectual Property and Technology, Technology Licensing Strategies at Universities, Technology Clustering, Intellectual Property through Universities and Business Partnerships, Intellectual Property Management, and Patent Law and Policy Regarding New Information and Biotechnologies. Jordan Intellectual Property Week 2003: Conference Agenda, *available at* http://www.iipi.org/Conferences/Jordan_IP_Week_2003/Agenda.asp (last visited March 1, 2007).

¹⁵¹ Jordan IP Week 2004 to highlight the vital role of IP in commerce, THE JORDAN TIMES, *available at* <http://www.jordanembassyus.org/08182004001.htm> (last visited March 7, 2007).

Public Awareness campaign with the World Intellectual Property Organization (“WIPO”) and the King Abdullah the Second Center for Copyright Protection.¹⁵² This campaign is comprised of articles, both in Arabic and English, discussing the need for intellectual property right protection of individuals and the state, and the consequences for any violation.¹⁵³

Those opposed to the enforcement of IPRs in Jordan say that piracy is necessary for survival.¹⁵⁴ Those opposed to IPR enforcement object on the grounds that it would force the “closure of all sorts of businesses that sell music tapes, videotapes, and software. Such businesses constitute a sizable sector of Jordan’s business community, employing hundreds of personnel. The social repercussions of closing them down have to be taken into consideration.”¹⁵⁵

Another issue facing Jordan in the enforcement of its IP laws is that Jordanian judges have had at best minimal education in intellectual property law.¹⁵⁶ Currently, Jordan lacks courts specializing in IP however, the Jordan Intellectual Property Association has asked for specialized courts or specialized training for judges.¹⁵⁷

In addition to the many steps Jordan has taken, which extended further than Iraq, Lebanon, and Egypt, problems still remain. They are not the problems Lebanon faces in attempting to execute the laws, nor the myriad of problems Egypt faces in beginning to enforce the laws. Instead, the fundamental problems discovered in the enforcement stage have proven to be hurdles for Jordan’s true integration. The problem is this: how to convince a society whose frame of reference is that certain items, such as pharmaceuticals, were for the greater good, and therefore unpatentable, that these inventions are now patentable, not “owned by God,” but by the antithesis, big business? This is the final issue, one that has stunted Jordan’s development and is struggling to wade through. To counteract this, Jordan has taken the affirmative steps of training both Judges and attorneys, and creating a public education campaign.

Iraq might also encounter considerable problems at this stage, because of its similar religious and cultural make up. Since the blanket reforms instituted by the CPA primarily aim to hasten Iraq’s membership in the WTO, Iraq has not yet addressed these substantial internal problems. One such problem has proved especially difficult. Truly living up the name Fertile Crescent, Iraq is still dominated by an agrarian culture. Indeed, farming is a popular way of life. If Iraq’s new laws were in effect, these farmers would find themselves in a precarious situation, due to a provision intended to mimic TRIPS in the patenting of seeds.

CPA Order Number 81 provides for the protection for newly-developed seeds. A predicament arises for Iraqi farmers, who currently replant seeds annually.¹⁵⁸ Under the new law, Iraqi farmers have to buy new seeds every year. Two factors affecting this legislation will make enforcing this law an impossibility. First, farmers would either be required to license out the use of the seeds for a period of years, or as a term of their purchase agree to buy new seeds each year.

¹⁵² Talhouni, *supra* note, 148. Some examples of publications in English are, *Official Warning Issued Against Media Piracy*, THE JORDAN TIMES, Nov. 8, 2005, available at <http://www.jordantimes.com/tue/index.htm> (last visited Jan. 15, 2006) (only the general website, back issues not available); and, *New Shopping Practices Encourage IP Protection in Jordan*, AGIP NEWS, Dec. 28, 2005, available at <http://www.ag-ip-news.com/> (last visited Jan. 15, 2006) (only the general website, back issues not available).

¹⁵³ Talhouni, *supra* note at 148.

¹⁵⁴ John Carroll, *supra* note 92 at 591. In fact, the author continues to explain that some original Arabic, and Jordanian software is being sold in shops known for pirated material. *Id.* The proprietors are selling only original local software, and pirated versions of foreign software. *Id.* at 592.

¹⁵⁵ *Id.* at 591–92.

¹⁵⁶ Kashroom, *supra* note 144.

¹⁵⁷ *Id.*

¹⁵⁸ Brian Boyko, *No Blood for . . . Canola Oil?*, DAILY TEXAS VIA U-WIRE, Nov. 18, 2004 (stating that approximately ninety-seven percent of Iraqi farmers currently replant their seeds).

Second, this law ignores the unique occurrence of the intense Shamal winds.¹⁵⁹ Farmers who plant non patented seeds may become infringers if patented seeds blow into their fields and grow there.

Depending on the problems that surface during the enforcement stage, it may be too costly to institute training programs and public campaigns, but at least changing the public frame of reference in regards to IP is possible. Unlike Iraq, Jordan does not face the considerable hardship brought on by a fundamental difference caused by its climate that cannot be fixed through money and training. This is an issue that must be evaluated by Iraq now, while it awaits accession.

III. PROPOSAL

In a study of developing countries and their struggle to implement TRIPS, the United Nations created a list of factors that developing countries must address to comply fully with the treaty. They include:

- (a) improving the relevant legal framework in the line with the general obligations of the Agreement;
- (b) strengthening or establishing the relevant administrative offices;
- (c) enhancing enforcement mechanisms for the relevant laws and regulations;
- (d) extending adequate training;
- and (e) fostering the capability to monitor transfer of technology arrangements within and between enterprises, as well as ensuring that competition authorities are knowledgeable about potential IPR abuses. The legal and administrative changes are likely to be costly in budgetary terms, as some predictions suggest, and as discussed in this report.¹⁶⁰

This list suggests several fundamental concerns for Iraq and some problems that Lebanon, Egypt, and Jordan have faced in their different stages of IP development. These concerns include training the legal community, mitigating the cost for implementation, and initiating a public educational campaign.

The proposal describes several possible remedies for Iraq's IP problems through the evaluation of the case studies and successful actions by those countries, particularly Jordan. These include a proposal for IP training, a discussion of the cost of implementation and a proposal of funding for implementation, a proposal for a public campaign to inform Iraqis about IPRs, and suggestions for terms within the Iraqi WTO accession agreement.

A. Training the Legal Community

¹⁵⁹ U.S. NAVY, WINTER SHAMAL IN THE PERSIAN GULF, 3-15 § 3.6 (2003), available at http://www.nrlmry.navy.mil/forecaster_handbooks/WinterShamal/Winter%20Shamal%20in%20the%20Persian%20Gulf.03.pdf (last visited March 5, 2007). "The strong, gusty northwesterlies lift the fine topsoil of the Tigris-Euphrates valley (dried by the over 1000 F heat of the previous summer season and untouched by rainfall since the previous winter) and carry it, suspended, out over the northern Gulf." *Id.* The strong Iraqi winds are also known to occur in the Spring and carry on for hundreds of miles. Andrew Revkin, *A Nation at War: Weather; Front That Brought Winds and Dust Is Due to Lift*, N.Y. TIMES, Mar. 26, 2003, at 4.

¹⁶⁰ U.N. CONFERENCE ON TRADE AND DEV., THE TRIPS AGREEMENT AND DEVELOPING COUNTRIES at 2 ¶ 12, UNCTAD/ITE/1, U.N. Sales No. 96.II.D.10 (1997).

In accordance with the United Nations findings, and to ensure that the Iraqi system complies with and implements the TRIPS agreement, it is imperative to have a comprehensive system for the training of government officials and judges. As frequently cited in the USTR reports, the current intellectual property laws in Lebanon were enacted in 1999.¹⁶¹ Yet Lebanon still struggles for adequate enforcement of any IPRs other than copyrighted works because officials and judges lack proper training. An example of such training is the recent United States program where USPTO attorneys conducted a one-week IP enforcement program to train IP enforcement officials from Nigeria, Ethiopia, Egypt, and various Central American countries on how to develop an enforcement system that is TRIPS-compliant.¹⁶² As Iraq contemplates the remaining three phases, it should consider these training programs, so that it does not languish for half a decade, as Lebanon has done.

B. The Cost of Implementation

An additional consideration for Iraq in evaluating the problems and successes of the Arab Middle Eastern countries that have preceded it in the integration process is the financial burden that the restructuring of its intellectual property system will place on a developing, essentially reborn, country. For example, "in Egypt, the fixed costs were estimated at \$800,000 with additional annual training costs of around \$1 million."¹⁶³ The World Bank recently estimated it could cost 1.5 to 2 million U.S. dollars to protect IPRs in a developing country. In fact, other similar World Bank projects have cost much more, fueling speculation that the costs could surge much higher than the two million dollar estimate.¹⁶⁴

In order to offset the serious financial burden that this program will place on the Iraqi people, there should be a foreign-funded training system similar to the USPTO's programs for other similarly situated countries. For example, the USPTO and WIPO held a four-day enforcement conference in October 2003. Thirty-eight officials, including judges and customs officials from

¹⁶¹ Al Fahoum, *supra* note 39.

¹⁶² James E. Rogan, Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, the Subcommittee on Commerce, Justice, State and the Judiciary Committee on Appropriations U.S. House of Representatives, *available at* http://www.usembassy.it/file2002_04/alia/a2042309.htm (last visited Nov. 20, 2005).

¹⁶³ INTEGRATING INTELLECTUAL PROPERTY RIGHTS and DEVELOPMENT POLICY Ch. 7: Institutional Capacity 145 (IPR Commission) (2002), *available at* http://www.iprcommission.org/papers/text/final_report/chapter7htmfinal.htm (last visited Nov. 20, 2005).

¹⁶⁴ *Id.* According to the website the IPR commission, "was set up by the British government to look at how intellectual property rights might work better for poor people and developing countries. The first Commission meeting was in London on May 8th and 9th 2001, and the final report was published on 12th September 2002." Commission on Intellectual Property Rights: Integrating Intellectual Property Rights and Development Policy, *available at* <http://www.iprcommission.org/home.html> (last visited Nov. 20, 2005). The committee disbanded on September 12, 2002, after the completion of the report. *Id.*

The site further explains the questions that were the focus of its investigation:

How national IPR regimes could best be designed to benefit developing countries within the context of international agreements, including TRIPS.

How the international framework of rules and agreements might be improved and developed, for instance in the area of traditional knowledge - and the relationship between IPR rules and regimes covering access to genetic resources.

The broader policy framework needed to complement intellectual property regimes, including for instance controlling anti-competitive practices through competition policy and law.

Commission on Intellectual Property Rights: Integrating Intellectual Property Rights and Development Policy, *available at* <http://www.iprcommission.org/graphic/about.htm> (last visited Nov. 20, 2005).

twenty-six countries participated in the training.¹⁶⁵ With this aid, Iraq would have the opportunity to appropriately train all individuals regarding proper enforcement of the new Iraqi IP laws, and fund the actual enforcement of the laws.

C. Public Education Campaign

At the fourth phase, a general change in the cultural fundamental perceptions of IP, Iraq should consider a path taken by Jordan: the creation of a Public Awareness Campaign. Jordanian officials have admitted that the hardest aspect of implementing the new IP laws is convincing a society that has never had to adhere to such restrictions to start obeying them. In essence, the new laws ask the Islamic community to change the collective societal culture of piracy.¹⁶⁶

To encourage international applications in Iraq, funds must be allocated to address the communication problems that have arisen amongst IP lawyers, the Iraqi Trademark Office, and the international community. Dispatching documents by taxi from Jordan to Iraq is not a viable option for agents of international companies and certainly is not safe in the current post-war climate.¹⁶⁷

The USPTO Enforcement Office has reportedly obtained the necessary funding from the U.S. State Department Middle East Partnership Initiative for “capacity-building and technical assistance programs in the Middle East and North Africa region.”¹⁶⁸ These types of programs funded by the United States, WIPO, or other non-governmental or inter-governmental organizations, could aid in the post-war reconstruction of Iraq. To succeed in the international global economy, Iraq must achieve domestic economic success. To do so, it must succeed in the international global economy.

D. Terms of the Iraqi-WTO Accession Agreement

The WTO assumes that the acceding member will adapt the WTO standards internally to create systemic laws among WTO members. Faced with this requirement, Iraq might resolve some of its issues with harmonization between TRIPS and its environment in WTO accession negotiations. Where Iraq might face considerable harm, specifically with the Patenting of Seeds provision, it might negotiate a reservation from the TRIPS agreement so that it will not be held in breach for failing to enforce that provision. This allows Iraq to join the WTO and reap the benefits associated with such membership, establish itself in the international community, and

¹⁶⁵ United States Patent and Trademark Office, Performance and Accountability Report: Fiscal Year 2004 (USPTO 2005), 40, available at <http://www.uspto.gov/web/offices/com/annual/2004/2004annualreport.pdf> (last visited Nov. 20, 2005). The report further describes a USPTO training workshop in Oman in January 2004, for IP “enforcement officials, prosecutors, and judges from seven Middle Eastern countries” with the purpose of education them for IP enforcement. *Id.*

¹⁶⁶ Interview with Zain Al Awamleh, Head, Trademark’s Registration Section Ministry of Industry and Trade, in Amman Jordan, Jan. 5, 2006; see also Talhouni, *supra* note 148; Arabeyyat, *supra* note 149. Each of the above-persons interviewed agreed that the one major challenge the enforcement of the new IP laws is the resistance from the society. *Id.* Because the state existed for so long without such strong IP laws and without a commitment to protect them that, it developed a general culture resistant to such laws and enforcement. *Id.*

¹⁶⁷ *Iraq death toll 'soared post-war'*, BBC NEWS, available at http://news.bbc.co.uk/2/hi/middle_east/3962969.stm (last visited Feb. 1, 2006). As of October 2004, groups such as the Brookings Institute have estimated that between 10,000 and 37,000 civilians had been killed from the post-war violence alone in Iraq. *Id.*

¹⁶⁸ *Id.*

provide protection for IP in the expected fashion of the WTO, but with one caveat, protecting its farmers over foreign investors. The international community may need to make some exceptions, like the reservation to the TRIPS agreement, for this process to work and to expedite Iraq's membership in the WTO. While there are many more steps Iraq has to take beyond the awareness campaigns, the judicial training, and the WTO negotiations, these specific peripheral suggestions have been shown to bring a country similar to Iraq to the point of overall integration into the global economy.

IV. CONCLUSION

The invitation to participate in the international community cannot be a one way street. When countries such as Lebanon, Egypt, and Jordan put their best efforts into complying with international standards but have considerable trouble realizing true harmonization of these laws, some concessions may need to be made. There are still going to be lingering obstacles, such as the Shamal winds.

The economist Paul Romer has said "that the accumulation of knowledge is the driving force behind economic growth. For countries to promote growth . . . their economic policies should encourage investment in new research and development (R&D) and subsidize programs that develop human capital."¹⁶⁹

If Romer's theory is true, then Iraq has but one path to take to become part of the international family of nations. In traveling down that path, Iraq must earnestly comply, even under impoverished circumstances, with the TRIPS agreement, and begin resolving the problems that have faced Lebanon, Egypt, and Jordan. Such compliance and action will encourage the importation of goods, as the case studies of Lebanon, Egypt, and Jordan have shown, and, therefore, generate jobs. Iraq, so desperate for a role in the global economy and WTO, must take hold of this great opportunity and reap the full benefits from these associations.

¹⁶⁹ KAMIL IDRIS, WORLD INTELLECTUAL PROPERTY ORGANIZATION, INTELLECTUAL PROPERTY: A POWER TOOL FOR ECONOMIC GROWTH 4 (WIPO) (2003).