

Master Thesis

**Intellectual Property Rights in Egypt
Stepped-Up Enforcement Achieves Egypt's Economic Reform**

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By

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Declaration

I hereby solemnly declare that I have written this thesis by myself and without support from any other person or source, that I have used only the materials and sources indicated in the footnotes and in the bibliography, that I have actually used all the materials listed therein, that I have cited all sources from which I have drawn intellectual input in any form whatsoever, and placed in “quotation marks” all words, phrases or passages taken from such sources verbatim which are not in common use and that neither I myself nor any other person has submitted this paper in the present or a similar version to any other institution for a degree or for publication.

Indianapolis, 19 June 2012

(Mai Riad Montaser)

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A. Introduction

Egypt as a Member State in the World Trade Organization (WTO) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is under a duty to provide effective means for the full enforcement of the TRIPS obligations and to adopt all the necessary measures for achieving the objectives of such obligations. The TRIPS establishes minimum substantives standards for the main categories of intellectual property rights (IPRs). The TRIPS Agreement also incorporates standards of enforcement which require that Member States must ensure that enforcement procedures are available under their laws and requires that procedures are applied in a manner which avoids the creation of barriers to legitimate trade. Weak intellectual property enforcement creates effects that are comparable to non-tariff barriers “because right holders increase the costs incurred to make their assets difficult to imitate”¹.

Egypt is charged with the responsibility of accommodating domestic laws to deal effectively with IPRs infringements. Although Egypt had passed law no. 82/2002 on the protection of intellectual property rights, nevertheless, actual practices on the ground indicate loose implementation of international commitments. IP infringements have long been an obvious reality in Egypt’s daily life under the “foresight”² of authorities without active action from their side which makes the Egyptian market a nightmare market for right holders who face unfolded court fight, unable to protect their IP rights, and ultimately losing confidence in the IPRs system in Egypt.

¹ Maskus, E. Keith, Intellectual Property Rights in the Global Economy, Chapter Three, The Economic of Intellectual Property Rights and Globalization: Dancing the Dual Distortion, Department of Economics, University of Colorado at Boulder

² Neil , Netanel, Impose a Non-commercial Use Levy to Allow Peer-to-Peer File Sharing. Law and Economics Working , *Harvard Journal of Law and Technology*, vol. 17, Paper no. 9, 2003

Knowing that legal and economic systems are interrelated, part one of the research illustrates Egypt's economic hardships after the revolution and from the other side emphasizes Egypt's potentiality of success in giant industries which operates within an IP framework and which holds direct economic gains that will be shrunken in the light of weak IP enforcement.

Part two discusses the prevailing deficiencies in the Egyptian IP legal system. In the patents area data protection is not safeguarded under the Egyptian system. The drug regulatory authorities do not require generic producers of drugs to independently reproduce the clinical trials as required by Article 34 of the TRIPS to prove that the process used to obtain the generic is different from the patented process. Such practice indicates that generic producers illegally gain access to data submitted by patent holders to drug regulatory authorities. Moreover, the national IPRs law does not establish periods for data exclusivity, thereby undermining the international obligations of data protection under the WTO and WHO.

Furthermore, part two describes other enforcement practices such as the suffer endured by IP right holders to obtain conservatory measures, long durations of lawsuits, non-deterrent penalties, weak civil remedies, wide scales of copyrights piracy which deprive the government and right holders million dollars of profits, and other practices which run contrary to Egypt's international obligations.

Based on part one and two, part three asserts that only by adopting the common international stepped-up measures Egypt can provide an efficient level of IPRs protection because the current enforced measures obstruct the effective implementation of Egypt's international obligations. In addition, part three proves that stepped-up measures serves the objectives of the TRIPS Agreement, and demonstrates that the counter claim against stepped-up enforcement has no basis.

Finally, part four comes with a set of recommendations designed to reach full and effective enforcement for IPRs. On the top of such recommendations is an urge for renewal discussions in the TRIPS Council to set a higher benchmark for IP enforcement and to unify enforcement rules to hinder the significant rise of IP violations which jeopardize the world economy at large.

Part One

B. Stepped-Up Provisions Increase Government Revenues

I. The Egyptian Economy Post-Revolution

Egypt's economic performance has experienced only short episodes of high growth rates resulted from economic reforms initiated in the 2000s when the government collaborated with the private sector and opened Egypt to external trade and investments. Before the 2000s Egypt's growth rate rarely exceeded 3-4%³ and population growth between 2 and 3%. In other words, the growth per capita was insignificant because it did not exceed 1% .

Egypt's economy post-revolution is recovering from a slope downturn. The rate of economic growth in 2011 did not exceed 1%, the lowest since the early 1990s, with negative effects on unemployment and poverty rates. The fiscal deficit is widening rapidly and is expected to reach 11% of GDP in fiscal year 2011/2012. The same goes for the gross public debt which is one of the highest in the developing world.⁴

In January 2012, Egypt was required by the International Monetary Fund (IMF) to draw up an economic reform plan in order to secure a loan of \$3.2 billion. The Egyptian government declared that an amount of \$11 billion is needed to avoid a balance of payments crisis, and that such a deal with the IMF would open the door to aid packages from the United States, the European Union and the Gulf⁵.

An economic reform program proposing tax reforms to increase government revenues was drafted by the Ministry of Finance, the Ministry of International Cooperation and the Central Bank. IP protection is one of the areas which need special care in the reform program. IP

³ Dabrowski, Marek, Egypt: Political Transition vs. Economic Challenges. CASE Network E.briefs, No. 07/2011, p.1

⁴ Egypt gross public debt on 2012 is 79.224 % of GDP, International Monetary Fund, April 2012.

⁵ Abdel Kouddous, Sharif, Egypt's Looming Economic Shock Doctrine, The Nation, April, 2012.

protection is felt across all sectors of the economy. The entire Egyptian economy relies on some form of IP, because every industry either produces or uses it⁶.

Stronger IPRs enforcement will increase government tax revenues. Given the illegal nature of the fake trade, consumers do not pay taxes on purchase of counterfeit or pirated goods. Further, stronger IPRs enforcement will push better off consumers to switch from illicit to legitimate IP protected products; accordingly the government will collect more tax revenues. Similarly, larger profits of IP right holders will increase corporate income tax revenues. Also, revenue will receive an additional boost because positive import tariffs and strengthened border enforcement leads to an increase in imports of legitimate goods⁷. Government will use additional revenues to improve the countries economic status and to pay down the national debt. On the other hand, IPRs infringements constitute barrier to trade, impair market access for legitimate goods, and reduce government revenues in Egypt.

Nevertheless, it must be considered that IP enforcement policies have to be in the light of the Country's economic and social realities. Low income levels in Egypt will not allow people to buy original protected commodities, therefore consumers will have two options either the illegal pirated products or none at all. To cure this, third option has to be provided by the government; namely, providing legal IP products alternatives at cheaper and affordable prices. Although revenues for the government and right holders from affordable alternatives would be less than those accumulated from the original IP products, but definitely it will be greater than no profits from fakes. Moreover, consumers will be provided with commodities of better qualities than the qualities of the fake products. This has to be in collaboration with the right holders who have to adapt their prices by issuing cheaper version for their products to be circulated in markets beside the expensive versions while each of them is IP protected. Although this trend is "sub-optimal"⁸, because the government and right holders could not achieve the profits expected in the normal circumstances, yet "less damaging" because at least profit margin will be higher than none at all in the absence of those IP alternatives. At

⁶ The Egyptian National Competitiveness Council. The Seventh Egyptian Competitiveness Report, May 2010.

⁷ Enforcing Intellectual Property Rights: an economic Perspective. By Carsten Fink, Group d'Economie Mondiale, Sciences Po Paris

⁸ Emmert, Frank, Kronthaler, Franz, and Stephan, Johannes, Analysis of statements made in favour of and against the adoption of competition law in developing and transition economies, June 2005, p. 50

the same time consumers will be benefited with affordable prices and qualities better than the fake products.

Examples for such alternatives are as follows;

- For the software products: the affordable alternative is the Open Source Software (OSS). Described in details hereinafter (Part One: 3. Software Industry).
- For music and movie products: the affordable alternative is the Noncommercial Use Levy (NUL) and the alternative reward system. Described in details hereinafter (Part Two: 2. Alternative Markets lift Government Revenues Up)

As for medicines accessibility to the consumers, it is the duty of the government to make efficient medicines available and affordable by redesigning the insurance coverage and healthcare subsidization policies. Further, drug pricing decisions and controls have to be transparent in a way that “inspires confidence”. Public participation in pricing decisions meetings, e.g. civil society, guarantees transparency through establishing “an independent drug pricing body”⁹ to safeguard consumers’ interests.

II. Enhanced IP Protection Opens Development Opportunities in Egypt

Similar neighbors in the Arab World like Jordan, Morocco, Tunisia, and Bahrain are harvesting huge gains from their IP enforcement policies. Such countries have reformed their intellectual property rights strategies, enhanced compliance with the highest international standards, implemented stronger trademark and copyright laws which all had led to fostering their trade liberalization and elimination of trade barriers, ultimately turning their countries to be investment “friendly places”¹⁰. Stepped-up enforcement boosted their economic growth and increased their national welfare¹¹.

⁹ Shaver B., Lea, Access to Knowledge in Egypt: New Research on Intellectual Property, Innovation and Development, Access to Medicines in Egypt: A Human Rights Approach to IP, Trade and Health, p.

¹⁰ NESHEIWAT K., FERRIS, The Adoption of Intellectual Property Standards Beyond TRIPS - Is it a Misguided Legal and Economic Obsession by Developing Countries?

¹¹ Alan, Study on Intellectual Property Rights, the Internet, and Copyright, Commission on Intellectual Property Rights, Study Paper 5, p. 8-14.

During 1991–2001 and before the IP reform achieved in Jordan, Jordan’s Growth Domestic Product (GDP) per capita growth was 1.0% and unemployment rate was around 14 percent. By 2009, GDP per capita growth scaled up to 4.3%. Average Real GDP growth from 2006-2009 was 6.6% and unemployment rate dropped to 12.9 percent. Further, Jordan’s external debt pushed down from 189% of the GDP in 1990 to 46.7% in 2008. Reforms also paved the road for economic cooperation and increased exports in Jordan which grew by 186% from 1996 to 2006, consequently increasing the country’s foreign exchange reserves to 6.8 billion USD from 2.8 Billion USD as recorded in 2000¹². In the Global Competitiveness Index 2011-2012, Jordan ranked 97 out of 142 in macroeconomic environments, 72 out of 142 in Health and 77 out of 142 in innovation. In August 2012, because of Jordan’s economic stability the International Monetary Fund (IMF) Executive Board has approved \$2.0 billion loan for Jordan¹³.

The same applies for Morocco’s economic profile which signals huge over all difference before and after IP reforms. During 1995-2000, the average GDP growth rate recorded to be only 1.8%, whereas after IP reform 2002-2006 economic conditions were remarkable, the average GDP growth rate scaled up to 4.4%. In 2004 the real GDP growth rate was 4.2%, and increased to reach 7.3% in 2006. In 2000 the unemployment rate was 13.6% and in 2006 it dropped down to 9.5%. Poverty rate reduced from 19% in 1999 to 14.2% in 2004. Budget deficit reduced from 4% of GDP in 2005 to 1.7% in 2006. Because of Morocco’s good economic performance, a recommendation has been made to provide for financing of reform programs and investment projects as well as the loan of UA 228 million for 2007-2011¹⁴.

¹² Central Bank of Jordan, Yearly Report, 2008.

¹³ IMF Survey August 03, 2012,
<http://www.imf.org/external/pubs/ft/survey/so/2012/int080312a.htm>

¹⁴ African Development Bank: Kingdom of Morocco, 2007-2011 COUNTRY STRATEGY PAPER <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/ADB-BD-WP-2007-17-EN-MOROCCO-2007-11-CSP.PDF>. See also, <http://info.articleonepartners.com/blog/bid/72473/Developing-IP-Economies-Morocco>

Similarly, in August 2012, because of Morocco's economic stability the International Monetary Fund (IMF) Executive Board has approved \$6.2 billion precautionary loan for Morocco¹⁵.

Regarding Tunisia, implementing the Association Agreement on March 1, 1998 with the EU, in which Tunisia had committed itself with stepped-up IP provisions to strengthen IP enforcement as discussed in Part Three and to improve the economic climate, had resulted in intensifying its trade openness with the EU and increasing its trade volume from 68% in 1986 to 126% in 2008. Besides, Foreign Direct Investment (FDI) inflows from the EU to Tunisia scaled up from 1% of the GDP in 1986 to 4% in 2005. Also, Tunisia's reform had resulted in increasing its average growth rates and decreasing its variables as follows;

- During 1986 to 1992, the average growth rate of real GDP was 4.2% with a variable or standard deviation of 3.4%.
- From 1993 to 2008, the average growth rate of real GDP increased to 5.1% and its standard deviation dropped to 1%.¹⁶

In 2010, Tunisia's Gross National Income (GNI) per capita was US\$ 3,165 which was more than half of the world GNI per capita for the same year, recoded as US\$ 6,03917.

In Bahrain, economic indicators had significantly improved due to the undertaken IP reform there. In 1990, the annual percent of the gross domestic product growth was 4.4 and rose up to 7.8 in 2005¹⁸. Suffice to mention that the Bahrain Free Trade Agreement (FTA) signed with the United States in 2004 enables 96% of Bahrain's industrial and agricultural to have "duty- free access" to the US market. In 1991, the total value of Bahrain exports was BD 1.32 billion. In 2004 the total value of Bahrain exports scaled-up

¹⁵IMF Survey August 03, 2012: <http://www.imf.org/external/pubs/ft/survey/so/2012/CAR080312B.htm>

¹⁶ International Monetary Fund: Country Report, No. 10/109, May 2010.

¹⁷ Data Source: World Bank, February 2012

¹⁸ Country Profiles for Population and Reproductive Health: Policy Developments and Indicators 2009/2010

to BD 3.77 billion¹⁹. The Egyptian government's resistance to stepped-up measures in FTA negotiations with the US had led to stalemate, ultimately what are the gains?!

The contradictory argument raised by IPRs opponents claim that IPRs are in the primary interest of developed countries which "are the main beneficiaries of IPRs" and do not hold any benefits for welfare growth in developing countries²⁰. The argument mentioned above refutes such claim and evidence that strengthening IP enforcement have remarkable repercussions in expanding trade openness and produce tangible scale up for economic indicators in similar countries because such countries facilitated doing business and upgraded their legal environment to be in line with the highest international standards.

Further more, jobs in IP-intensive industries pay well compared to other jobs. Average weekly wages for IP-intensive industries are 42 percent higher than the average weekly wages in non-IP industries²¹.

It is worth mentioning that Egypt insisted on rejecting stepped-up provisions in bilateral agreements with the USA and the EU which had diminished our opportunities for accessing the markets there and for obtaining foreign currency which had shrunk our foreign exchange reserves, and consequently missing chances for economic growth and development. Egypt currently benefits from limited exports to EFTA states because of Egypt's resistance for stepped up IP measures in the European Free Trade Association (EFTA) Agreement which has adversely affected the Egyptian economic ties and trade relations with EFTA states, in contrast with other Arab countries like Lebanon which has committed itself, in the EFTA Agreement, to do its utmost to accede to the international conventions concerning IPRs to which EFTA states are Parties, thereby paving the road for further economic cooperation. Comparing the value of Egypt's exports with that of other neighboring countries in the Arab World asserts that the Egyptian stance had led to shrinking our market share and revenues,

¹⁹ Central Bank of Bahrain, Economic Report, 2007. and Bahrain Country Profile, Economic Research Forum, December, 2008.

²⁰ Drahos , Peter, Commission on Intellectual Property Rights, Developing Countries and International Intellectual Property Standard-setting, Study Paper 8.

²¹ U.S. Intellectual Property Enforcement Coordination Joint Strategic Plan, June 2011.

e.g. in 2008 Egypt's export to EFTA states was only \$62,144 while in the same year Lebanon had got \$279,45422. Tunisia had enjoyed a huge export volume in 2008 which was more than 50% of the Country's gross domestic product²³, more than 50% of Tunisian exports goes to Europe²⁴. As for Morocco, between 2007 and 2011 its trade relationship with the EU amounted to 23.8 billion (EU exports: € 15.1 bn, EU imports: 8.6 bn)²⁵. Certainly, such impressive gains cannot be achieved in the absence of an encouraging legal environment which enables strong economic development.

Egypt has strong competitive position in areas like agriculture, communication and information technology, software industry, pharmaceutical industry, music and movie industry, which refutes the claim that IPRs are designed for the interests of developed countries and deprives developing countries from any benefits. Reinforcing IPRs in Egypt is a key factor for achieving gains from those industries while weak IP enforcement shrinks returns²⁶.

1. Geographical Indications and Agricultural Competitiveness

Geographical Indications (GIs) enable developing countries to capture a market premium for their products. However, communities with weak IP infrastructure and low capabilities will not benefit from GIs²⁷. Developing countries could use certification marks to get quality brands and protection for their products²⁸. GI protection transforms developing countries to

²² Trade Statistics-EFTA: <http://www.efta.int/free-trade/trade-statistics.aspx>

²³ World Bank, February 2012.

²⁴ UN Comtrade, February 2012

²⁵ European Commission: <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/countries/morocco/>

²⁶ OECD (Organisation for Economic Co-operation and Development). 2008. Policy Coherence for Development. – Lessons Learned. <http://www.oecd.org/dataoecd/32/8/41866464.pdf>.

²⁷ CIPR. 2002. Integrating Intellectual Property Rights and Development Policy: Report of the Commission on Intellectual Property Rights. London. http://www.iprcommission.org/graphic/documents/final_report.htm.

²⁸ Correa, Carlos and Sisule Musungu. 2002. WIPO Patent Agenda: The Risks for Developing Countries. T.R.A.DE Working Papers 12, South Centre, Geneva, 2002. http://www.southcentre.org/index.php?option=com_content&task=view&id=76&Itemid=67.

exporters of differentiated products easily identifiable in the global market, typically as what has been accomplished with Egyptian cotton which is recognized world-wide as the best of Cottons²⁹. Egypt is one of the top 20 US suppliers of textiles and apparel³⁰.

Agriculture is a critical source of economic growth and an important foreign exchange earner. In 2006 agriculture contributed 17 percent to the total deficit³¹. In 2007, the sector employed more than 27 percent of the work force and generated approximately 15 percent of the country's Gross Domestic Product (GDP). Despite its significant economic contribution, the sector's share of national investments declined from 10 percent in 2004 to 5 percent in 2007 due to sharp drop in public spending³². The agricultural sector needs increased investment in R&D along with enforcing IPRs on agriculture production.

Egypt has strong enablers for agriculture export such as its central location which increases access to international markets; the climate allows year-round cropping of a wide variety of production, fertile land, and stable water source. The Country is ripe for premium crops, high quality products, and organic crops. Also, the country has a huge potential to industrialize the agriculture sector and achieve high profits from food processing, seed and fertilizer production³³.

The government could enhance agricultural export competitiveness by meeting the sustainable agricultural criteria; namely, enforcing environmentally friendly packaging and storage and upgrading environmental standards³⁴, avoid chemical fertilizers, reduces green house gases and clean the chain's environmental footprint from carbon emissions³⁵. Worth

²⁹ Using Trademarks, Industrial Designs, Geographical Indications and Trade Secrets for the Business Success of SMES, Document prepared by the International Bureau of WIPO

³⁰ Reengaging Egypt: Options for US-Egypt Economic Relations

³¹ Egyptian Agriculture Competitiveness: New Opportunities and Future Prospects, Egyptian Economic Monitor (Ministry of Finance 2007)

³² Egyptian Ministry of Economic Development (www.mop.gov.eg/investment.htm) 2008)

³³ Egyptian Agriculture Competitiveness: New Opportunities and Future Prospects

³⁴ Cf. Capgemini (2007), Future Consumer. How Shopper Needs and Behaviour Will Impact Tomorrow's Value Chain, 2007. See also, Cf. Stringer, R., Umberger W. (2008), Food Miles, Food Chains and Food Producers: Consumer Choices in Local Markets, 2008.

³⁵ Cf. The Hartman Group (2008), The Many Faces of Organic 2008, 2008 and Willer, H. et al. (2008), The World of Organic Agriculture – Statistics and Emerging Trends 2008, Cf. European Commission (2005), Annex to: European Neighbourhood Policy, Country Report Egypt, 2005.

noting that geographical proximity to export markets makes carbon emissions for transportation low and Egypt's climate limits the need to heat greenhouses and therefore limits carbon emissions³⁶. Consequently, Egyptian commodities could be branded in premium markets and reach higher export prices and margins³⁷.

2. Communication And Information Technology (ICT)

The ICT industry, especially economic activities with knowledge and intellectual content, have contributed to overall GDP growth by more than 7%³⁸ contributing to the economy with a total of 5.2 billion US dollars received by the treasury since early 2006³⁹. ICT export industry deserves the attention of the highest political decision makers because profits from such projects lie in enhancing copyright protection⁴⁰.

Egypt has massive asset of knowledge and information included on Rosetta stones and papyrus papers, and the Library of Alexandria, the gateway for knowledge creation and accessibility⁴¹. Arabic manuscripts are another form for information and knowledge dissemination.

The Egyptian government adopted a set of information based projects aims to generate knowledge, create a culture of sharing, and develop applications that operate via emerging ICT which requires enhancing IPRs law and intellectual copyrights in Egypt because the most profitable assets in a knowledge society are intellectual.

³⁶ Cf. Capgemini (2007), Future Consumer. How Shopper Needs and Behaviour Will Impact Tomorrow's Value Chain, 2007.

³⁷ Cf. GTZ (2006), Achievements and Impact of the Citrus Improvement Program (CIP) in Egypt, 2006.

³⁸ The Net Exporter. Business Monthly, vol. 26, no. 1, pp. 54-58.

³⁹ The Use of ICT for Social Development in Underprivileged Communities in Egypt. Proceedings of the International Conference on Information Resources Management (Conf-IRM) on Information Resources Management in the Digital Economy, Niagara Falls, Ontario, Canada

⁴⁰ Socio-Economic Benefits of Intellectual Property Protection in Developing Countries. Geneva: WIPO. See also Copyright Industries in Egypt. In." Najib Harabi (ed.). Performance of Copyright Industries in Selected Arab Countries, pp. 29-74.

⁴¹ Building the African Information Infrastructure. In: Banerjee, Parthasarathi, Ray Hackney, Gupreet Dhillon and R. Jain (eds.). Business Information Technology Management: Closing the International Divide, pp.118- 144. New Delhi: Har-Anand Publications.

ICT created an open learning environment by connecting the education community through broadband and embedding ICT in the curriculum. Accordingly, a number of projects were devised; most notably the Smart Schools Network, the Egyptian Education Initiative (EEI) and ICT for Illiteracy Eradication.

Smart Schools Network (SSN) Begun in 2003, seeks to introduce innovative learning methods by using ICT-based applications, content creation, school administration software and interactive tools⁴². SSN seeks to diffuse PCs in public schools at a rate of one computer per every ten students, as well as to provide appropriate software and support for teacher training. Computers are connected to the Internet; some schools have wireless connectivity. Labs may also extend services to the local community and students after school hours and during vacations, as a community learning center. The project is financed by the United States Agency for International Development⁴³.

The Egyptian Education Initiative (EEI) is a public-private partnership with IP right holders launched in 2006 between the government, the World Economic Forum (WEF), the IT Community and different ICT multinationals and organizations operating in Egypt. Bilateral agreements have been signed with Microsoft, Intel, IBM, Oracle, Cisco, Intel, Computer Associates, HP and Siemens, as well as more than twenty- five local partners, such as the British Council and the American University in Cairo⁴⁴. Among The objectives of EEI is to build an educational reform model that can be exported throughout the Arab region. Such programs could benefit from the open source software (OSS), which is another source of economic gains to developing countries as discussed below, to scale up with an efficiency of resources.

Egypt's eCulture, which also works through an IP framework, could produce direct economic gains such as job opportunities and investment. The program seeks the production of electronic content which preserves cultural heritage and enhances Arabic digital content to

⁴² Egypt ICT Trust Fund. 2009a. Projects: Smart Schools Network. <http://www.ictfund.org.eg/SSN.html>

⁴³ United States Agency for International Development (USAID) Egypt Program Data Sheet 263-017. May 29, 2002.

⁴⁴ Egypt Education Initiative. <http://www.mcit.gov.eg/EEIBrochure.pdf>.

increase export opportunities and reflect the nation's unique cultural and historical heritage, ultimately producing direct economic gains⁴⁵. Initiative for Arabic eContent seeks to digitize culture from a variety of media, books, images, music and film to create high quality electronic content⁴⁶. The preliminary phase involved an agreement granting 24 publishers the rights to use and distribute 165 books which had already been digitized in 2007, while the next phase involves 700 books. These include theatrical publications and 400 photographs, as well as images, maps, audio and video records⁴⁷. The objective is to make the materials accessible through a license during the duration of the project, with the end goal of charging for access to the content.

Another project is Eternal Egypt which documents significant aspects of Egypt's heritage in the form of an online museum with multimedia animations, 360-degree image sequences, panoramas of important locations, virtual environments, three-dimensional scans, real-time photos from Web cameras, and thousands of high-resolution images of ancient artifacts, Eternal Egypt weaves together more than five millennia of Egyptian culture and civilization and makes it available to people all over the world⁴⁸. The project has yielded innovative resource for learning about Egyptian culture, which is accessible to students domestically and internationally in the Arabic, English and French languages. The project also constituted an important experiment in the digitization of museum collections, relying on cutting edge three dimensional scanning of cultural artifacts⁴⁹. The value of this effort will be lost in the absence of enhanced IP protections.

⁴⁵ Digital Arabic Content Industries: Models for Business Programmes, and Marketing and Multi-stakeholder Partnership Plans. (April 30) http://css.escwa.org.lb/ictd/29_30Apr08/Day1/03.pdf.

⁴⁶ Press Release: Dr. Tarek Kamel Launches Initiative for Arabic e-Content for Books and Software. May 15 2005.

⁴⁷ Egypt.'s ICT Strategy 2007-2010. May 2007. See also MCIT Yearbook 2007.

⁴⁸ IBM Corporation. 2005. Eternal Egypt: IBM and the Egyptian Government Provide Worldwide Access to Egypt.'s Cultural Heritage. http://www.ibm.com/ibm/ibmgives/downloads/eternal_egypt_brief.pdf.

⁴⁹ Rushmeier, H.E. 2006. Eternal Egypt: Experiences and Research Directions. In: Baltasvias E., A. Gruen, L. van Gool and M. Pateraki (eds.). Recording, Modeling and Visualization of Cultural Heritage, pp. 183-192. London: Taylor & Francis Group.

3. Software Industry

Open source software (OSS) works within the existing IP system and needs a critical mass of intellectual capital from right holders, therefore the government has to enable environment for healthy and legal software ecosystem. Moreover, reforming the legal environment for IP regime will lead to obtaining good terms of use from IP right holders in licensing agreements and yield positive profits for economic growth and development in Egypt.

OSS holds gains for government revenues, IP right holders, and also provides chances for small players to proliferate. OSS enables right holders who own strong financial resources to improve the differentiating factors which represent the strengths and innovative contributions of technology⁵⁰, while giving chance to the newcomers to collaborate on the non-differentiating technologies in the industry⁵¹. OSS pushes down the total cost of ownership of the technology infrastructure, which is the non-differentiating factors, such as servers, operating systems, databases, and is more relevant for developing countries, as a starting point⁵².

According to International Data Corporation (IDC), the worldwide generated revenues from OSS were \$1.8 billion in 2006, and the expected growth rate from 2006 to 2011 is 26%, with revenues expected to reach \$5.8 billion in 2011⁵³.

OSS refutes the claim that IPRs are designed for the interests of developed countries, while deprives developing countries from any benefits and also refutes the claim that IP eliminates competition because OSS provides a potential for small players to proliferate.

⁵⁰ Valduriez, Patrick. 2002. Business Models for OSS. Open Source Software: Economics, Law and Policy, Roundtable June 20, Toulouse, France, June 20-21, 2002.

⁵¹ The Emerging Economic Paradigm of Open Source.
<http://perens.com/Articles/Economic.html>

⁵² Open Source in Developing Countries. Swedish International Development Agency, SIDA, January 2004.
http://www.it-inwent.org/e2484/e3407/e3431/e3432/opensource_in_developing_countries_eng.pdf

⁵³ International Data Corporation. Worldwide Revenue from Standalone Open Source Software Will Grow 26% to Reach \$5.8 Billion by 2011, IDC Research Indicates.
http://www.businesswire.com/portal/site/google/?ndmViewId=news_view&newsId=20070531005133&newsLang=en

OSS has a source code which is freely available for users to access; therefore it is an alternative for large-scale illegal copying which deprives right holders of any income. Also, OSS generates profits for small investors and enables IP holders to sell off-the-shelf products which are unaffordable by low income consumers and consequently generate greater profit margins for IPRs holders compared to no profits due to illegal copying.

Consumers in the absence of OSS as a legal alternative are faced with one choice, either the expensive proprietary package, which is unworkable in light of low income levels, or the illegally copied version. Software piracy in Egypt, reported as 59% by the International Intellectual Property Alliance⁵⁴. OSS provides the legal alternative at affordable price to mainstream which is associated with high rates of piracy and at the same time ensures a competitive and high-quality service for consumers. OSS companies provide affordable prices and also good quality, because they have interest to retain their customers⁵⁵.

OSS provides potential for localization, creating and enabling Arabic software, and offers opportunities for customizing applications to suit the local business culture and opens market for its exportation.

The promise of OSS for development was recognized by some developing countries whose governments took positive steps to encourage the industry such as Malaysia, starting in 2004 with awareness phase, moved on in 2007 to accelerated adoption; expanding OSS adoption to all public sector bodies nationwide, and ultimately reaching self-reliance phase. Also, In Vietnam, the Ministry of Information Technology has issued instructions to government agencies and their clients to use OSS and train their personnel accordingly. Computer traders have been requested to sell personal computers installed with open source⁵⁶. In India, six local governments have adopted OSS in several fields such as education, e-government, and food and civil supplies departments⁵⁷.

⁵⁴ International Intellectual Property Alliance. Egypt Country Report 2009.IIPA. <http://www.iipa.com/countryreports.html>

⁵⁵ Access to Knowledge in Egypt: New Research on Intellectual Property, Innovation and Development Lea B. Shaver available at: <http://ssrn.com/abstract=1729370>

⁵⁶ <http://www.public-software.in/> See also Vietnam Net Bridge. 2009. Vietnam to widely use open source software, January 6. <http://english.vietnamnet.vn/tech/2009/01/822425/> .

⁵⁷ India. 2009.Public Software for the Public Sector. <http://www.public-software.in/>

Egypt does not yet participate in the global OSS market, but have strong potentialities for investing in this industry. Government should protect IPRs to reinforce chances for open source investment in Egypt. It should aim at raising awareness about OSS and should aim to establish a healthy ecosystem for software industry that involves both open source and IP proprietary models. The government should adjust its procurement policies to favor OSS, acting as a consumer to drive demand for open source solutions. Also, the government should promote OSS in trade shows, training programs, or initiatives such as the Computer for Every Home initiative.

Protecting IPRs in Egypt is a key factor for encouraging OSS projects which provide new opportunities for small players to compete internationally through exporting, outsourcing and off shoring⁵⁸. Worth mentioning that Egypt is an internationally desirable Country for outsourcing⁵⁹.

4. Pharmaceutical Industry

Egypt's pharmaceutical sector currently holds the largest domestic drug manufacturing base in the MENA region, supplying 30% of the total market. The quality of those drugs is ranked to be "the second most valuable in the Middle East Region"⁶⁰. As Egypt's manufacturing capacity develops Egypt's exports will consequently increase. Enhancing IP protection along with increasing the average spending on research and development (R&D) will increase our market share in the drugs exported by Egypt to the MENA region⁶¹.

India has strengthened IP protection and increased its average spending on research and development, therefore pharmaceutical patenting by India-based inventors has grown rapidly as a share of all patenting in the USA – to more than 2 per cent – with a similar trend in Europe.

⁵⁸ Access to Knowledge in Egypt: New Research on Intellectual Property, Innovation and Development Lea B. Shaver available at: <http://ssrn.com/abstract=1729370>

⁵⁹ The sixth Egyptian Competitiveness Report, Cairo, June 2009. Egyptian National Competitiveness Council

⁶⁰ AmCham (American Chamber of Commerce in Egypt), 2006 *"Pharmaceutical Sector Developments in Egypt. AmCham Egypt Business Studies and Analysis Center."Report No. 49*

⁶¹ Egypt Business Studies and Analysis Center.<http://www.amcham.org.eg/BSAC/StudiesSeries/Report49.asp>.

5. Music and Movie Industry

Egypt holds a privileged position in the regional artistic landscape, with many referring to it as the capital of the Arabic music scene. The country has been a fertile territory for opportunities for making gains, aspiring musicians from all over the Arab world who comes to Egypt in search for success and fame.

However sales of recorded music are generally declining due to weak IPRs enforcement. Sales of CDs with Arabic content have dropped to 5,000 CDs, as opposed to 200,000 CDs in the period from 1996 to 1999⁶². Markets in Egypt are flooded by illegally copied cassette tapes and CDs, 60% of music distribution in Egypt is of black market copies which deprives right holders and the government from huge profits. The market for illegally accessed music in Egypt is estimated to be worth \$12 million and Egypt's losses from illegal music copying are estimated to be more than \$15 million in 2007⁶³.

Regarding the movie industry, Egypt leads the Arab World in this field and is known as “The Hollywood of the Arab World”⁶⁴. Nevertheless, drawbacks in IP enforcement prevent the thriving of this industry. High rates of piracy disable producers even to cover the budget of the production. For example, Mohammed Ramzy producer of “Fool el seen el azeem” cost a budget of US \$2.9 million, which is a big budget knowing that movies in the Middle East are made of half this budget, while raised only US \$1.975⁶⁵. The reason behind this is that pirated copies and internet piracy flood the market leaving almost no chance for distributors for any gains. Such circumstances forces producers to sell their rights to TV immediately after the production of the film, even before its release in cinema screens, to catch any possible revenue. Interestingly, in an interview conducted by the World Intellectual Property Organization (WIPO) with Adel Adeeb producer of “Yacoubian Building”, won the first

⁶² Shaver B. Lea: Access to Knowledge in Egypt: New Research on Intellectual Property, Innovation and Development .

⁶³ International Intellectual Property Alliance. Egypt Country Report 2009.IIPA. <http://www.iipa.com/countryreports.html>

⁶⁴ WIPO Magazine: interview on the value of intellectual property in the film industry with Adel Adeeb.

⁶⁵ World Intellectual Property Organization: Rights, Camera, Action! IP Rights and the Film-Making Process, Creative industries, Booklet No. 2.

Egyptian nomination for an Oscar, he indicated that recently right holders became more active in protecting their IP rights, Mr. Adeeb reported that the IT department in his film production company had succeeded to tackle links which had alleged to have the film on their site. Mr. Adeeb added that in another occasion his company succeeded to report and shut down vendors in Cairo which were selling fake copies of the film on DVD.

In the same sense the government has to activate copyrights because weak enforcement shrinks returns, leads to sales decline, and discourages investments in music and movie industry. Enhancing domestic copyright law will encourage investment in the both industries and open opportunities for development⁶⁶.

III. IP Protection Reinforce Competition

Strong IPRs encourage new investors to enter the market providing consumers with variety of options, good prices and good qualities. On the other hand, lenient IP enforcement discourages potential competitors from undertaking legitimate activities when there is a risk of facing long and costly litigation and profit losses; consequently, the outcome will be limited competition, higher concentration, increased market power, higher prices, less jobs, less value added, and less innovation. Strong IPRs also allow firms to compete effectively in foreign markets.

Further, Competition law maintains the balance between the benefits of IPRs protection and legitimate competition. The Egyptian Competition and Anti-Monopoly Law (no. 3/2005) could be harnessed when it is effectively enforced and ultimately promoting greater competition and lower prices⁶⁷.

The fact that IP right holders have interest in collecting profits does not contradict with the competition policy because profits are the “main incentive for firms to innovate and to vigorously compete in the first place”⁶⁸. In this sense, a healthy competitive environment

⁶⁶ US International Trade Commission (USITC) Interactive Tariff and Trade Data web

⁶⁷ Correa, Carlos Maria. 2007. Exploring Some Issues of Relevance to Developing Countries.

⁶⁸ *Frank Emmert, Franz Kronthaler, and Johannes Stephan, Analysis of statements made in favour of and against the adoption of competition law in developing and transition economies*, June 2005

stimulates innovation and creativity because fierce competition forces firms to upgrade their products and invest on research to maintain their market position, consequently “the ideal market is one of perfect competition”⁶⁹ or more realistically “effective competition”. This view is asserted by efforts taken by the WTO Working Group to negotiate and incorporate an agreement on competition policy. Furthermore, competition policy is supposed to play a significant role in case the right holder impedes the free movement of goods and prevents the entry of other suppliers through anti-competitive practices which necessitates that competition legislations have to be well-suited for this purpose.

Egypt as a Member State in the WTO has an obligation to complement the Egyptian competition law with measures and provisions to serve liberalization of trade and eliminate entry barriers which is the main objective of the WTO as asserted by the national treatment requirement under Article III of the GATT 1947. The Egyptian competition law concentrates on preventing domestic monopoly and anti-competitive conduct only within the national market. Moreover, to reach effective enforcement for competition law an independent “supervisory authority” which has to be non-affiliated to any government department is needed to prevent any “misuse” either from the government or competitors so that it could gain the trust of the public.

Such authority has to be independent from any other governmental agency, having its own budget, competent to initiate law suits, and the head of the authority should be appointed by the parliament and not by the government. The authority will only be subject to the constitution, law, and court. The Intergovernmental Group of Experts on Competition Law and Policy (UNCTAD) explained that the authority shall maintain freedom in its daily decisions and shall be able to set its own priorities. UNCTAD recommended that officials have to be appointed on renewable terms to ensure their commitment. Also, UNCTAD stressed the significance of giving the authority the competence to comment on and recommend improvements in “public policy, regulation and legislation”. The authority should be staffed with competition professors and also has to be independent financially; its fund is to be allocated by the parliament because funds allocated by the government “opens the door

⁶⁹ Emmert, Frank, How To and How Not To Introduce Competition Law and Policy in Transitional and Developing Economies, p. 5

for political pressure". The authority should be able to discuss and negotiate the budget with the parliament. Another source of fund is the filing fees⁷⁰.

In the same sense an independent supervisory authority is needed to monitor IPRs enforcement which is not safeguarded by the mere existence of the law. Since Competition and Intellectual Property Laws are in practice new legislations for Egypt, the supervisory authority could appoint international experts from the US and the EU to advice on best practices applied in these areas⁷¹.

IV. IPRs Increase Technology Diffusion and Absorption

Stronger IPRs affect quality and composition of foreign direct investment, e.g. strong IP protection encourages FDI in high technology sectors, where IP rights play an important role⁷².

IPRs increase technology diffusion and absorption only when countries exporting technology expand knowledge to other countries importing technology through a catch-up effect or technology transfer, as long as they are assured that benefits of their investment are not unfairly accrued to their competitors⁷³.

Stronger IPRs gives greater incentives for firms to invest in R&D and transfer their discoveries through market channels such as trade, FDI and licensing. Moreover, patent systems can even stimulate the diffusion of technical information, since the inventor must publicly divulge the technical details of the new technological knowledge to obtain patent rights. The patent system can generate a huge repository of technical information in any

⁷⁰ YASSMINE, AFIFI, Independence of the Egyptian Competition Authority: Assessment and Recommendations

⁷¹ Emmert, Frank, How To and How Not To Introduce Competition Law and Policy in Transitional and Developing Economies, p. 23

⁷² UNCTAD. 2005. Information Economy Report 2004. Geneva: United Nations. http://www.unctad.org/en/docs/sdteecb20041_en.pdf.

⁷³ Reichman, Jerome H. and Keith E. Maskus. 2004. The Globalization of Private Knowledge Goods and the Privatization of Global Public Goods. *Journal of International Economic Law*, 7 (2), pp. 279-320.

technological area which can be freely used by anyone looking for information about a given technology⁷⁴.

Although such repositories could be checked through the on line patent databases in the EU and the US, still it is important that Egypt maintain its own repository in areas which are considered region specific knowledge that is needed for the competitiveness of the economy and are given specific priority by the Higher Council for Science and technology (HCST) which is established to support the scientific research and technological development. These areas are; renewable energy, water resources, health, food and agriculture, space technology, ICT and Socio-economic sciences and humanities. In this regard, the Innovation and Invention Development Sector (IIDS), which is a member of the International Federation of Inventors Associations (IFIA), promotes the transfer of technical know-how and cooperates with the Egyptian Patent Office (EGPO) by contacting the industrial institutions to assess their needs of scientific and technological research⁷⁵.

⁷⁴ Access to Knowledge in Egypt: New Research on Intellectual Property, Innovation and Development Lea B. Shaver available at: <http://ssrn.com/abstract=1729370>

⁷⁵ Science, Technology and Innovation (STI) System in Egypt:
<http://www.asrt.sci.eg/ar/pdf/ASRT-Booklet.pdf>

Part Two

C. Egypt's International Obligations v. Domestic Enforcement

Egypt as a Member State in the TRIPS Agreement is under a duty to provide effective means for the full enforcement of the TRIPS obligations. The prevailing deficiencies in the Egyptian legal system for enforcing IPRs create a safe harbor for counterfeiters and pirates. Actual practices on the ground indicate loose implementation of international commitments.

I. Pharmaceutical Disputes

1. Eli Lilly v. Apex Pharma

In 2001, Eli Lilly US-based company produced a medicine and filled a patent application in 1996⁷⁶. Apex Pharma, applied for marketing of a generic version of the same drug. Eli Lilly brought a challenge lawsuit (No. 282/56) before the Court of Administrative Justice (CAJ), which has jurisdiction over disputes involving state authorities. Apex argued that the Prime Minister had no authority to issue a decree allowing for temporary protection of pharmaceutical products without Parliamentary approval.

On 2003, the Court rightfully found against Apex reasoning that by ratifying the TRIPS Agreement, Egypt comes under a duty to implement its obligations regardless of any delays in implementation from the Parliament. Apex Pharma appealed the decision before the Supreme Administrative Court (SAC) which ruled a decision on 2004 nullifying the Prime Ministerial Decree reasoning that the government should have sought Parliamentary approval before implementing the TRIPS obligations.

⁷⁶ CAJ (Court of Administrative Justice). 2003. Decision of Court of Administrative Justice, First Circuit, case no. 282/56, Apex Pharma vs President of Academy of Science and Technology, Minister of Health and Population, the Prime Minister and the Legal Representative of the Company Eli Lilly, issued 11 March 2003.

Apex proceeded with the registration and marketing of its generic version⁷⁷. Eli Lilly sought a court injunction preventing Apex from marketing the generic. Eli filed a court motion requesting that the implementation of the SAC 2004 ruling be suspended and wrote to the Minister of Health requesting that the registration and marketing approvals granted to Apex be revoked pending the outcome of the new court motion. The MOH declined the request. In 2006, Eli Lilly filed a new court case (no. 22218/60) before the Court of Administrative Justice against the Minister of Health, the Prime Minister, and Apex arguing that it was unlawful to proceed with marketing of the generic pending the outcome of Eli Lilly's motion, requesting that the generic be immediately withdrawn from the market, and financial compensation of LE 5 million (US \$900,000) to be paid jointly by MOH and Apex. The CAJ started hearing the case in June 2006. Four months into the case, the Egyptian Patent Office granted Eli Lilly a patent for their product until 2016. On 2008, the Court found that the MOH decided to register the Egyptian generic at a time when Eli Lilly had no exclusive marketing rights and therefore, the government was not liable for any compensation⁷⁸. The Court also dismissed Eli Lilly's argument that the generic drug's approval was granted while a motion was still pending before courts reasoning that the motion had no legal effect because it was filed before a civil court which had no jurisdiction over the matter.

2. Pfizer v. EIPICO

In 1998, Pfizer had registered the drug Lipitor, obtained market authorization and, submitting a patent application for it. In 2000, a generic version of the drug was registered by the Egyptian International Pharmaceutical Industries Company (EIPICO). Pfizer challenged the decision in court (case no. 1855/2002 Zagazig Court 2003) asserting that the generic was registered on the basis of confidential clinical data provided by Pfizer to the drug registration

⁷⁷ Access to Knowledge in Egypt: New Research on Intellectual Property, Innovation and Development Lea B. Shaver available at: <http://ssrn.com/abstract=1729370>

⁷⁸ Decision of Court of Administrative Justice, Circuit of Economic and Investment Disputes, case no. 22218/60, Eli Lilly vs the Legal Representative of Apex Pharma, the President of Academy of Science and Technology, Minister of Health and Population and the Prime Minister, issued 20 December 2008.

authorities⁷⁹. EIPICO claimed that it was possible to manufacture the generic without reliance on undisclosed data⁸⁰. On 2005, the Court found against Pfizer.

3. Pfizer v. Pharma

In 2003, Delta Pharma a privately owned company, surprisingly, collaborated with the public sector company Memphis Pharmaceuticals and Chemicals, to produce generic version for Pfizer's medicine (Lipitor). Pfizer initiated lawsuit against the two companies seeking a temporary order to impede the distribution of generics to stop such unfair competition, Pfizer filed a motion before the Court of Provisional Matters. Normally, the motion sought an immediate injunction to stop all production, marketing, sales and distribution of the generic⁸¹. The Court of Provisional Measures was not convinced that the matter merited such a drastic injunction. Accordingly, the motion (no. 43/2004) was denied on 2004⁸². Pfizer submitted a petition for reconsideration before Northern Cairo Court of First Instance which was also denied without pronouncements on the facts⁸³. Pfizer submitted a further appeal to the Appellate Court on 2005. By May 2005, however, the Zagazig Court had issued its above-mentioned decision on the EIPICO dispute, so the chances of success for the case against Memphis and Delta were low. For the same reason Pfizer lost confidence in the IPRs system in Egypt and missed a number of scheduled hearings before Northern Cairo Appellate Court, prompting the Court to close the appeal without rendering a decision.

⁷⁹ Zagazig Court. 2003. Preliminary Ruling of the Zagazig Court of First Instance, case no. 1855/2002, Pfizer vs Egyptian International Pharmaceutical Industries Company (EIPICO), issued 29 October 2003.

⁸⁰ Zagazig Court. 2005. Decision of the Zagazig Court of First Instance, case no. 1855/2002, Pfizer vs Egyptian International Pharmaceutical Industries Company (EIPICO), issued 30 April 2005.

⁸¹ Pfizer. 2004. Submission by the legal representative of Pfizer Inc. to the Northern Cairo Court of First Instance, case no. 1015/2004, Pfizer vs Memphis Pharmaceutical and Chemicals (MPCI) and Delta Pharma Pharmaceutical Company (DPPC), submitted 13 May 2004.

⁸² Decision of Cairo Court of First Instance, case no. 43/2004, Pfizer vs Memphis Pharmaceutical and Chemicals (MPCI) and Delta Pharma Pharmaceutical Company (DPPC), issued 19 May 2004.

⁸³ Decision of Cairo Court of First Instance, Economic Circuit (19), case no. 1015/2004, Pfizer vs Memphis Pharmaceutical and Chemicals (MPCI) and Delta Pharma Pharmaceutical Company (DPPC), issued 28 November 2004.

It follows from the above mentioned cases that the domestic enforcement in Egypt is not compatible with Egypt's international obligations. To put it clear, first we will illustrate Egypt's international obligations within the context of the said cases then the domestic application will follow.

I. Egypt's International Obligations

1. It is universally conceded in monist countries that treaties are directly applicable and shall be self-executing; thereby the executive organs including ministries shall have the power to issue implementing regulations which national courts must protect.

The Egyptian Constitution explicitly state in Article 151 that "The President of the Republic shall conclude treaties and communicate them to the People's Assembly, ratified with suitable clarifications. They shall have the force of law"

Accordingly, Egypt has a duty to bring domestic laws into conformity with its international obligations and to adopt all the necessary measures for achieving the objectives of such international obligations. When the Egyptian IPRs law disables compliance with international obligation this means that the law is inconsistent with a higher law and therefore has to be amended. States obligations under international law cannot be excused because domestic law is deficient.⁸⁴

2. Data exclusivity is an international obligation. Member States shall grant exclusive marketing rights to products whose patent applications are pending under the mailbox. These exclusive marketing rights must remain in place for a period of five years or until the application is granted or rejected, whichever period is shorter⁸⁵.
3. Article 28 1.b of the TRIPS states that a patent shall confer on its owner the following exclusive rights: "where the subject matter of a patent is a process, to prevent third parties not having the owner's consent from the act of using the process, and from the acts of using, offering for sale, selling, or importing for these purposes at least the product obtained directly by that process."

⁸⁴ This proposition is established in Vienna Convention on the Law of Treaties, Art. 27. See also Oppenheim's International Law 84-85 (Robert Y. Jennings and Arthur Watts eds., 9th ed. 1992), and <http://www2.ohchr.org/english/issues/minorities/docs/11/Al-Kalema-3A.pdf>

⁸⁵ WTO Article 70(9)).1994. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). Annex 1C, Marrakesh Agreement Establishing the World Trade Organization. 15 April 1994.

4. Article 39 of the TRIPS obliges States and regulatory authorities to protect undisclosed information, to prevent unfair competition, unfair commercial use, and to prevent information from being disclosed in a manner contrary to honest commercial practices⁸⁶.
5. Article 34 of the TRIPS obliges Members to provide that any identical product when produced without the consent of the patent owner shall, in the absence of proof to the contrary, be deemed to have been obtained by the patented process and that the judicial authorities shall order the defendant to prove that the process used to obtain an identical product is different from the patented process.
6. By virtue of the International human rights law the Egyptian government is under a duty to guarantee efficiency of medicines⁸⁷. In 1967, Egypt had signed the International Covenant on Economic, Social, and Cultural Rights (ICECSR), as part of the International Bill of Human Rights, and ratified it in 1982. Article 12 of the Covenant, as interpreted in 2000 by the UN Committee on Economic Social and Cultural Rights in the General Comment No. 14, stipulates that Member States have obligations to make medicines available and affordable for all individuals within their jurisdiction.
7. Article 50 of the TRIPS Agreement requires WTO Members to authorize judicial authorities to grant provisional measures that prevent the infringement of any intellectual property right from occurring, and to preserve relevant evidence with regard to the alleged infringement.
8. Article 41 requires Courts to issue injunctive relief to stop infringement and order the payment of damages for parties whose rights have been infringed. Also, obliges Member States to ensure that enforcement procedures including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements are available under their laws. These procedures shall be applied in

⁸⁶ WHO (World Health Organization). 2006. Briefng Note on Access to Medicines: Data Exclusivity and Other .“TRIPS-Plus.” Provisions. March 2006.

⁸⁷ CESCR 2000 para. 12 (b) (UN Committee on Economic, Social and Cultural Rights). 2000. 11 August 2000. General Comment No. 14: The Right to the Highest Attainable Standard of Health. Committee on Economic, Social and Cultural Rights. 22nd Session of the Economic and Social Council. E/C.12/2000/4. 11 August 2000. The General Comment is an authoritative legal opinion interpreting Article 12 of the Covenant. [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument).

such a manner as to avoid the creation of barriers to legitimate trade and procedures shall not be unnecessarily complicated or entail delays.

9. WTO obliges Member states to maintain domestic laws and regulations that can deal effectively with infringements of IPRs.

Had the Egyptian legislator watched out the above mentioned obligations?

II. Domestic Enforcement

- A. The Egyptian Constitution considers any International Law or Treaty ratified by the Egyptian government to have the force of law. Article 151 stipulates that "The President of the Republic shall conclude treaties and communicate them to the People's Assembly, ratified with suitable clarifications. They shall have the force of law"⁸⁸

Nevertheless, in Eli Li lawsuit the Supreme Administrative Court nullified the Prime Ministerial decree which allowed for temporary protection for El Li's drug claiming that the decree was issued without Parliamentary approval.

The application in the Egyptian national law has to be in the sense that nationals of TRIPS Member States could claim to their rights before national courts which have duty to preserve such rights. In addition, national courts shall be under obligation to enforce implementing regulations issued by executive organs. Permitting national deficiencies to preclude international obligations undermines the very foundation of treaties.

- B. Article 34 of the Egyptian IPRs law violates article 34 of the TRIPS which places the burden of proof over the **defendant** to prove that the process used to obtain an identical product is different from the patented process.

In contrast article 34 of the Egyptian IPRs law states that:

"The conformable product shall be considered as having been obtained according to the method covered by the patent **if the claimant proves** in his civil action that:

⁸⁸ <http://www2.ohchr.org/english/issues/minorities/docs/11/Al-Kalema-3A.pdf>

1. The conformable product has been obtained through direct use of the method covered by the patent”.

In the above lawsuits the Egyptian legislator and the courts violated Article 34 of the TRIPS because the burden of proof according to the Egyptian IPRs law is placed over the claimant while it should be the burden of the defendant to prove that the process used to obtain the generic is different from the patented processes.

- C. In the mentioned lawsuits, the national courts ruled that the patent applicants had no exclusive marketing rights and that the government was not liable for any compensation. The national IP law does not establish periods for data exclusivity, thereby undermining the international obligation of data protection under the WTO and WHO. Patent applicants had data exclusivity rights to their undisclosed information which is protected by the TRIPS Agreement and the Paris Convention of 1967. Drug regulatory authorities had to grant exclusive rights to the patent applicants and should have required generic producers to repeat the same clinical trials and regenerate the same data when attempting to register generic versions of the protected drugs⁸⁹.

Data protection is not safeguarded in the Egyptian system because the drug authorities do not require generic producers of a drug to independently reproduce the clinical trials to demonstrate the drug’s safety and effectiveness. In contrast, the drug authorities merely require generic producers to submit data on the chemical bioequivalence of the generic to the one already registered, in contrast to the systems in the US and Europe. Requiring generic producers to regenerate test data as a prerequisite for registering their products is essential to guarantee that the drug meets the safety and efficacy standards. Such requirement safeguards public health and therefore should not be waived otherwise health of patients will be in endangered.

⁸⁹ Pfizer. 2003. Submission by the legal representative of Pfizer Inc. and Pfizer Egypt to the Sixth Civil Circuit of the Zagazig Court of First Instance, case no. 1855/2003, Pfizer vs Egyptian International Pharmaceutical Industries Company (EIPICO), submitted 18 June 2003.

Although the Egyptian IPRs law prevent disclosing information submitted by the patent holders to the authorities, however, that did not prevent the Ministry of Health from releasing information related to pharmaceutical patents and approving generic versions for those medicines.

As long as generic producers are not able to repeat the same clinical trials and to regenerate test data while attempting to register their generic versions, then this clearly means that such generic producers must have illegally gained access to data submitted by original patent holders to regulatory authorities, and that regulatory authorities breached the obligation to protect data from “disclosure” and from “unfair commercial use” in violation of Article 39(3) of the TRIPS.

The mere assumption that generic producers could reach the generic versions without reliance on undisclosed data can not prove that the generics has been reached without reliance on undisclosed data. The sole acceptable evidence is that the generic applicants should repeat the same clinical trials and regenerate the same data when attempting to register the generics.

- D. Moreover, the patent applicants were denied court injunction and temporary order to suspend marketing of the generics, and also were denied any compensation, in violation of articles 41 and 50 of the TRIPS. Article 33 of the 2002 IP law states that the holder of a patent or a utility model may request conservatory measures against products or goods that are claimed to imitate a patented product. Article 62 of the law extends the application of Article 33 to the section on undisclosed data.
- E. The long duration of the lawsuits inside courts violates article 41 which states that procedures shall not be unnecessarily complicated or entail delays. In Pfizer v. EPICO the case stayed in courts five years from 2002-2007.
- F. The Egyptian IPRs law does not compensate patent owners for regulatory delays in being unable to exploit the patent. Eli Lilly filled a patent application in 1996. While TRIPS entered into force in Egypt in 1995, Egypt’s mailbox was only established in 2000, by virtue of Decree No. 547/2000. The Egyptian Patent Office did not grant the patent until September 2006. On 2006 the Egyptian Patent Office granted Eli Lilly a patent until 2016; however Eli Li was unable to exploit the patent, because of such regulatory delays, until September 2006, and therefore the term of protection for Eli Lilly patent shall not end before September 2026.

The above mentioned disputes signals that established practices in Egypt run contrary to Egypt's international obligations, while the Egyptian IPRs law is there and looks to be in line with international commitments.

III. Medicine Accessibility

Reallocating public expenditure, monitoring and tracking public expenses, maintaining quality public healthcare and insurance coverage and improving subsidized healthcare system with State insurance policies are key factors to safeguard access to medicines which forms an indispensable part of the right to health⁹⁰.

IP infringements and facilitating generic approvals are not the solution for medicine accessibility. The state has an obligation to make medicines available⁹¹ and affordable for citizens⁹², however not through risking the health of the citizens and approving medicines without clinical trials.

Further, a more transparent system for medicines pricing must be developed; e.g. through the Drug Pricing Committee. Regular coordination is missing between the Ministries of Trade, Health, Foreign Affairs and Scientific Research to make access to safe and efficient medicines a central element of public policy.

In Egypt, only 4.9% of public expenditure is allocated to the MOH which is the major financier of healthcare. The State's Health Insurance Organization (HIO) collects compulsory

⁹⁰Grover, Anand. 2009 para. 10. "Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development.." UN Special Rapporteur on the Right to Health, Anand Grover. 11th Session of Human Rights Council. A/HRC/11/12. 31 March 2009. http://www2.ohchr.org/english/bodies/hrcouncil/docs/11session/A.HRC.11.12_en.pdf.

⁹¹ CESCR (Committee on Economic, Social and Cultural Rights). 2000. 11 August 2000. General Comment No. 14: The Right to the Highest Attainable Standard of Health. Committee on Economic, Social and Cultural Rights. 22nd Session of the Economic and Social Council. E/C.12/2000/4. 11 August 2000. [http://www.unhcr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument).

⁹² Hunt, Paul. 2009. Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health. United Nations Human Rights Committee. April 2009.

contributions from all employees and employers in the formal sector. Although the stated goal of this program was to cover all Egyptian citizens, insurance coverage in Egypt remains fragmented; HIO public coverage is currently limited to approximately 50% of the population. Because of the lack of quality public healthcare and insurance coverage in Egypt, and the consequent reliance on private pharmacies, the Egyptian population has a higher than average household spending on healthcare⁹³.

Although Egypt's production of medicines, specifically generics, covers more than 90% of its domestic consumption, nevertheless these medicines are neither up to date nor effective drugs⁹⁴. Average spending on research and development (R&D) is limited to 1.3% of total spending for public sector companies and 3% for private ones⁹⁵ which reflects low quality generics that threatens the nation's right to obtain the highest possible standard of physical and mental healthcare.

Meanwhile, Egypt's IPRs law allows for the creation of a fund for the subsidization of medicines (Article 18 of Law 82/2002) to ensure the stability of the price of medicines so that they remain accessible to the poor, however, the fund has not been put into operation⁹⁶.

By virtue of the International human rights law the Egyptian government is under a duty to protect and promote the right to health⁹⁷.

⁹³ WHO. 2009. Country Profiles: Egypt, Health Expenditure Indicators. <http://www.emro.who.int/emrinfo/index.asp?Ctry=egy#HealthExpenditure> (last accessed August 31, 2009).

⁹⁴ Fayyad, Samir. 2002. Al-Siha fi Misr: al wad.' al haali wa sinariohat al mustaqbal hatta .'am 2020 (Health in Egypt: Current Status and Future Scenarios till the Year 2020).

⁹⁵ The Illusive Trade-Off: Intellectual Property Rights, Innovation Systems, and Egypt.'s Pharmaceutical Industry. Toronto: University of Toronto Press.

⁹⁶ AmCham (American Chamber of Commerce in Egypt). 2006. Pharmaceutical Sector Developments in Egypt. AmCham Egypt Business Studies and Analysis Center.

⁹⁷ CESCR (Committee on Economic, Social and Cultural Rights). 2000. 11 August 2000. General Comment No. 14: The Right to the Highest Attainable Standard of Health. Committee on Economic, Social and Cultural Rights. 22nd Session of the Economic and Social Council. E/C.12/2000/4. 11 August 2000. [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/E.C.12.2000.4.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/E.C.12.2000.4.En?OpenDocument). para. 1

Moreover, the 2006 report to the UN General Assembly states the responsibilities of states to ensure that “medicines are available, accessible ... and of good quality.”⁹⁸ Based on international human rights commitments priority should be given to access to safe medicines rather than providing citizens with generics with insufficient or non-existent active ingredient. Such goal could only be reached when Egypt perfectly fulfill data exclusivity by requiring generic producers to independently reproduce the clinical trials demonstrating the drugs’ safety and effectiveness.

The counter argument against data exclusivity claims that it would lead to delays in the registration and marketing of generics, would raise the retail price of generic drugs, due to the cost of reconducting clinical trials, and that it would violate medical ethics because it means repeating clinical trials involving humans without any public health value.

Such argument is based on fragmented grounds because allowing generics to be consumed by patients without accurate examination violates the principals of ethics because inefficient generics jeopardize public health and lead to diffusion of illness and viruses. Even if clinical trials led to raising the retail price of generic drugs, such issue has to be resolved through governmental strategies which should work on providing efficient medicines to patients at affordable prices in line with the human rights obligations. Further, repeating clinical trials on humans is an international common norm to preserve the drug’s safety and effectiveness. Therefore, data exclusivity is required for pure public health considerations.

Approving generics without conducting all the necessary clinical trials just to reduce the retail price of generics is not for the benefit of the consumers and it remains the responsibility of the government to reform its policies, for example by reallocating its resources and giving the MOH larger percentage of public expenditure so that the MOH could buy good quality medicines and then dispense such safe medicines in the internal pharmacies of MOH facilities; Egypt only allocates 4.9% of public expenditure to the MOH⁹⁹. In the same year

⁹⁸ Hunt, Paul. 2006. Report of the Special Rapporteur on the Right of Everyone to the Enjoyment of the Highest Attainable Standard of Physical and Mental Health. 61st Session of the General Assembly. A/61/338. 13 September 2006. <http://www2.ohchr.org/english/issues/health/right/annual.htm> (last accessed August 12, 2009).

⁹⁹ World Bank, Public Health Expenditures % GDP, 2007

Jordan was recorded 8.4%, Tunisia 6.2%, and Morocco 5.2%. In addition, research and development (R&D) expenditure in 2006 was limited to 0.26% of GDP. For the same year in Morocco R&D expenditure was 0.64 %, for Tunisia was 1.06%¹⁰⁰.

Additional fund could be obtained from amending and restructuring the subsidized healthcare and the state insurance policies in a way that direct funds for the poor and reduce or eliminate subsidization for the “better-off households” who benefit from generalized subsidies “at the expense” of the poor. The savings could also be invested in research and development¹⁰¹. Jordan is considering this policy.

IV. Copyright Infringements

1. Weak Enforcement Pulls Government Revenues Down

The Egyptian IPRs law is not in line with the Country’s obligations under the TRIPS Agreement. TRIPS charges Member States to provide deterrent penalties. Penalties prescribed under the Egyptian IPRs law are non-deterrent. The Egyptian IPRs law (Art. 181) states that copyright violations are subject to monetary penalties and imprisonment. Fines range between LE 5,000 (equivalent to \$900) to LE 10,000 (equivalent to \$1800) per infringement and/or prison terms of at least one month¹⁰². Low fines facilitate bribery paid to drop cases¹⁰³. Raising the ceiling for fines will have the effect of raising bribes too and ultimately decreasing the repetition of such crimes as the gross profit of offenders will be cut

¹⁰⁰ World Bank, R&D expenditures % GDP, 2006.

¹⁰¹ The International Monetary Fund, August, 2012. See also, *The Illusive Trade-Off: Intellectual Property Rights, Innovation Systems, and Egypt’s Pharmaceutical Industry*. Toronto: University of Toronto Press, and El-Zanaty and Associates. 2002. *Egypt Household Health Services Utilization and Expenditure Survey*. MOH Health Sector Reform Program, Cairo. Essam El-Din, Gallal. 2000. *The Wrong Prescription*. Al Ahram Weekly Online, 27 April-3 May, Issue no. 479. <http://weekly.ahram.org.eg/2000/478/ec2.htm>. AND AmCham (American Chamber of Commerce in Egypt). 2006. *Pharmaceutical Sector Developments in Egypt*. AmCham Egypt Business Studies and Analysis Center. <http://www.amcham.org.eg/BSAC/StudiesSeries/Report49.asp>.

¹⁰² Law 82/2002. Intellectual Property Law. Available at <http://www.wipo.int/clea/en/details.jsp?id=1301>.

¹⁰³ *Access to Knowledge in Egypt: New Research on Intellectual Property, Innovation and Development* Lea B. Shaver available at: <http://ssrn.com/abstract=1729370>

by large bribes and fines. In addition, criminalizing the illegal copy and criminalizing file sharing will effect significantly¹⁰⁴.

While the copyright law is there, its enforcement in Egypt is weak. Egypt's Ministry of Culture has not been active enough in stopping copyright infringement. Copyright infringements are obvious in Egypt's daily life. Illegally copied tapes and CDs are often seen in kiosks on the sidewalks of Cairo, sometimes at the heart of downtown, through organized network of shops, street vendors, and replication plants which control the illegal business. Black market sales of CDs have long been a reality; people share and download commercial music irrespective of the existing law. Lawsuits take forever in Egypt. Unauthorized access to satellite channels is a common practice. Illegal downloads represent 97% of all digital distribution of music in the Country and takes place through well known website without any action from the Egyptian authorities. Moreover, the Egyptian government has no jurisdiction to shut down websites that are hosted on servers located outside Egypt¹⁰⁵.

Amazingly, musicians are not giving attention for profit losses because they are losing hope to accurately get their portion of revenues from producers in the light of weak institutional structures in the collection chain, lack of proper accounting mechanisms, and inaccurate reporting on the part of vendors.. Musicians who sign to percentage of sales rarely receive their due share via the collection chain. What reaches musicians at the end of the collection chain is negligible¹⁰⁶.

Moreover, copyright is not a factor in the consumer's decision-making due to lack of awareness, falsely considering that copyright infringement is a victimless crime and harmless deed which hurts no one. The layman in Egypt has no idea that counterfeits pulls government revenues down.

¹⁰⁴ Issues in the Music Industry in my Country. Creative Economy. http://www.creativeeconomy.org.uk/iymey/finalist_1.asp. See also The Recording Industry Piracy Report 2006. IFPI. <http://www.ifpi.org/content/library/piracyreport2006.pdf>

¹⁰⁵ IIPA (International Intellectual Property Alliance). 2009. Egypt Country Report 2009. IIPA. <http://www.iipa.com/countryreports.html> (last accessed April 19, 2009).

¹⁰⁶ AmCham (American Chamber of Commerce in Egypt). 2005. Buen and Loot. Business Monthly. July. <http://www.amcham.org.eg/publications/BusinessMonthly/july%2005/coverstory.asp>

Based on the above, sales have declined and investments in the music industry have been discouraged. According to estimations of the International Intellectual Property Alliance (IIPA), which is a coalition of associations representing US copyright-based industries, Egypt's losses from illegal music copying were more than \$15 million in 2007.

2. Alternative Markets Lift Government Revenues Up

One cannot study law enforcement in the music industry, or in any other industry in isolation from economic realities. In Egypt, 97.5% of the population lives on below \$10 a day. Egypt's population cannot afford an original tape, which is already much cheaper than a CD therefore, the choice is between an illegal copy and none at all¹⁰⁷.

Applying "The Noncommercial Use Levy (NUL)" is a legal and affordable alternative which generates value for the consumers with low income on one side, and each of the government and right holders on the other side who are deprived from any revenues in light of the illegal copying. Under the NUL compensation or fair return reaches IP right holders under the foresight of the government. Peer to peer file sharing is allowed in return for imposing a levy on peer to peer related services and products. IP right holders get compensated out of the NUL based on the frequency of downloads as digitally tracked. The amount of the NUL would be determined by the copyright office through applying a fair return standard.

Another alternative reward system operates via taxation that should be administered by the government¹⁰⁸. Within this model, IP right holders make their song or film available free to the public and would register it with the copyright office under a unique file name which allows for digital tracking of downloads, as a base of artists' compensation by the

¹⁰⁷ World Bank 2007

¹⁰⁸ Fisher, William. 2004. Promises to Keep: Technology, Law, and the Future of Entertainment. Stanford University Press Online. <http://www.tfisher.org/PTK.Htm>. See also Lemos, Ronaldo. 2007. From Legal Commons to Social Commons: Brazil and the Cultural Industry in the 21st Century. Working Paper CBS 80-07, University of Oxford Centre for Brazilian Studies. http://dlc.dlib.indiana.edu/archive/00002304/01/1181179041_r.lemos80.pdf (last accessed August 12, 2009). Lessig, Lawrence. 2008. Remix. Bloomsbury Academic Publishers. <http://www.bloomsburyacademic.com/remix.htm>

government agency out of the tax revenue fund which will be lifted upon reforming the IPRs environment in Egypt¹⁰⁹.

Worth noting here that while alternatives could be used to improve enforcement there is still need from the enforcement authorities to be more active in initiating raids against kiosks which operate “at the heart of the town” and in the light of the day without paying any care even to hide¹¹⁰.

¹⁰⁹ Carlos Correa (2007), Intellectual property and competition law: exploring some issues of relevance to developing countries. See also Lange, Ryan. 2009. Is Digitized Music Becoming a Quasi-Public Good? Paper presented at the annual meeting of the International Communication Association, Sheraton New York, New York City, New York, April 2009. http://www.allacademic.com/meta/p13846_index.html (last accessed April 19, 2009). And also Samuelson, Paul. 1954. The Pure Theory of Public Expenditure. *Review of Economics and Statistics*, vol. 36, no. 4 (Nov.), pp. 387-389.

¹¹⁰ Shaver B., Lea, Access to Knowledge in Egypt: New Research on Intellectual Property, Innovation and Development, Access to Medicines in Egypt: A Human Rights Approach to IP, Trade and Health, p.

Part Three

D. Stepped-Up Obligations Prevent Macroeconomic Crisis in Egypt

Domestic enforcement in Egypt, as explained above, signals that only by adopting the common international stepped-up measures Egypt can provide an efficient level of IPRs protection. Stepped-up rules secure a level of IP predictability; an unpredictable business environment pushes investors to avoid the Egyptian market entirely. Common international standards on IPRs enforcement increases investment and government's revenues, and fixes Egypt's fiscal deficit and gross public debt to prevent macroeconomic crisis in Egypt.

I. Stepped-Up Measures Serve TRIPS' Objectives

Egypt's obligations under the TRIPS are not only to enact IPRs law but also to ensure that enforcement achieves TRIPS objectives. By virtue of the TRIPS the government is under a duty to set up all the necessary measures to provide an efficient level of IPRs protection.

Egypt resisted stepped-up IP obligations in stark contrast with similar Arab and developing countries while negotiating FTAs and the bilateral Euro- Mediterranean Association Agreements (AA) with the EU¹¹¹. Egypt's resistance for such common international standards create effects that are comparable to non-tariff barriers because IP right holders increase the costs and expenses incurred to make their assets difficult to imitate¹¹². International harmonization of IPR regimes diminishes the transaction costs of operating in different regulatory environments.

The current domestic implementation in the Egyptian system obstructs the effective implementation of Egypt's international obligations. Moreover, incorporating stepped-up standards in the Egyptian IPRs law is obligated by the TRIPS because TRIPS obliges States to safeguard TRIPS proper implementation.

¹¹¹ <http://ec.europa.eu>.

¹¹² Fink, Carsten and Patrick Reichenmiller. 2005. Tightening TRIPS: The Intellectual Property Provisions of Recent US Free Trade Agreements. World Bank Group, International Trade Department. <http://siteresources.worldbank.org/INTRANETTRADE/Resources/Pubs/TradeNote20.pdf>.

Stepped-up enforcement has proliferated in the international level in developed and developing countries as well. In contrast, Egyptian negotiators have avoided stepped-up provisions in bilateral trade Agreements¹¹³. While the bilateral Euro- Mediterranean Association Agreements require the signing countries to provide suitable and effective protection of intellectual property rights, in line with the highest international standards of IP protection and (EU-Tunisia AA and, EU-Morocco AA, Article 39.1) to implement new international IP standards EU-Egypt AA, Article 37 makes reference only to prevailing international standards and not highest international standards of IP protection¹¹⁴.

In the European Neighborhood Policy (ENP) Action Plans concluded with Lebanon and Morocco both countries committed themselves to ensure a level of protection of intellectual property rights similar to that of the EU (EU-Morocco Action Plan¹¹⁵, 2.3.5). In the ENP concluded with Tunisia, Tunisia committed itself to ensure a level of protection compatible with the highest international standards (EU-Tunisia Action Plan, 2.3.5(36)). On the other hand, the EU-Egypt Action Plan contains neither of these obligations (EU-Egypt Action Plan, 2.2.4(c))¹¹⁶.

Further, in the European Free Trade Association (EFTA) Agreements concluded with Tunisia, Morocco, Jordan, and Lebanon, which are similar developing countries, the agreements stipulate the following:

- The concluding country will do its utmost to accede to the international conventions concerning IPRs to which EFTA states are Parties. (EFTA-Tunisia 2004, Annex 5, Article 2.3)¹¹⁷.

¹¹³ Enforcing Intellectual Property Rights: an economic Perspective. By Carsten Fink, Group d'Economie Mondiale, Sciences Po Paris

¹¹⁴ EU-Egypt Association Agreement. Signature 25 June 2001, entered into force 1 June 2004. http://ec.europa.eu/external_relations/egypt/aa/06_aaa_en.pdf.

¹¹⁵ http://ec.europa.eu/world/enp/pdf/action_plans/morocco_enp_ap_final_en.pdf.

¹¹⁶ The Push for Stronger Enforcement Rules: Implications for Developing Countries. By Carlos M. Correa.

¹¹⁷ EFTA-Tunisia. 2004. Free Trade Agreement between the States of the European

- Articles on additional substantive standards which requires States Parties to ensure patent protections on a level similar to that prevailing in the European Patent Convention (EFTA-Morocco 1997, Annex V, Article 3.1, EFTA-Jordan 2001, Annex VI, Article 3, EFTA-Tunisia 2004, Annex V, Article 3)¹¹⁸.
- Obligations related to data exclusivity (EFTA-Lebanon 2004, Annex 5, Article 4, EFTA-Tunisia 2004, Annex V, Article 4). EFTA-Lebanese FTA states that applicants are prevented from relying on or referring to undisclosed test or other data submitted by prior applicants to the competent approval authorities for a period of at least six years from the date of approval unless the first applicant is adequately compensated. (EFTA Lebanon 2004, Annex V, Article 4)¹¹⁹.
- Another stepped-up provision which safeguards the objectives of the TRIPS requires the drug regulatory authority to ensure that the medicines it approves for marketing do not violate any patents. Such requirement holds the same meaning of Article 27 of the TRIPS which set forth patentability requirement that patents shall be available for any inventions provided that they are new and involve an inventive step.
- EFTA agreements with Morocco and Jordan (EFTA-Morocco 1997, Annex V, Article 3(1), EFTA Jordan 2001, Annex VI, Article 3) specify that compulsory licenses must be issued only in order to satisfy the domestic market according to reasonable commercial terms, accordingly parallel import is prevented.

In contrast, EFTA Agreement with Egypt contains none of such commitments. In contrast, the EFTA signed with Egypt contain commitments in general terms. For instance, the EFTA signed with Egypt (Articles 41 to 61) states that the Parties shall provide for enforcement provisions under their national laws of the same level as that provided in the TRIPS

Free Trade Association and the Republic of Tunisia. Signature 17 December 2004, entered into force 2005/2006. <http://www.efta.int/content/legal-texts/thirdcountry-relations/tunisia/TN-FTA-Agreement.pdf>.

¹¹⁸ EFTA-Jordan. 2001. Agreement between the EFTA States and the Hashemite Kingdom of Jordan. Signature 21 June 2001, entered into force 1 September 2002. <http://www.efta.int/content/free-trade/fta-countries/jordan>.

¹¹⁹ EFTA-Lebanon. 2004. Free Trade Agreement between the EFTA States and the Republic of Lebanon. Signature 24 June 2004, entered into force 1 January 2007. <http://www.efta.int/content/free-trade/fta-countries/lebanon>.

Agreement. This attitude was to avoid any new commitments in IP protection based on the false belief that IP protection hinder affordable products accessibility to consumers and that it will not lead to economic or tangible benefits for the Country which is a false belief as demonstrated in Part One and Two.

In addition, enforcement obligations in regional FTAs force state partners to reallocate resources for IPRs effective enforcement. FTAs state that the choices that countries make in distributing resources shall not be an excuse for failure to comply with IPRs obligations¹²⁰.

The IP provisions in the FTAs concluded with Morocco, Bahrain, Jordan, comprises the following provisions¹²¹:

- Confines the use of compulsory licenses to specified cases, namely, for remedying an anti-competitive practice, use in public non-commercial contexts, national emergencies and other cases of extreme urgency, and the failure to meet working requirements.
- Enforcement of data and market exclusivity, mandating a five-year period starting from the date marketing approval was granted to the patent holder and linking market approval to patent status.
- Narrowed the grounds of exclusion from patentability and omitted the grounds of exclusion in Article 27.3(b) of TRIPS.
- Jordan also created a Joint Committee headed by the USTR and Jordan's Minister for Trade to supervise the proper implementation of the Agreement, the Committee adopts rules for proper implementation.
- Provide for an extension of patent term to compensate patent owners for regulatory delays in being unable to exploit the patent.
- Provide longer protection terms for copyright.
- The Jordan FTA obliges Jordan to ratify the WIPO "internet treaties" protecting software,

¹²⁰ Commission on Intellectual Property Rights, Study Paper 8, Developing Countries and International Intellectual Property Standard-setting by Peter Drahos

¹²¹ The Push for Stronger Enforcement Rules: Implications for Developing Countries. By Carlos M. Correa. See also See Frederick M. Abbott (2006) Intellectual Property Provisions of Bilateral and Regional Trade Agreements in Light of U.S. Federal Law , Issue Paper No. 12, Geneva.

film and sound-recording.

- Ex officio border measures are applied.
- New modalities for calculating damages; on the basis of the retail price of the infringed product.
- Obligations to criminalize intentional infringements of any kind of IPRs on a commercial scale which is a stronger deterrent than civil remedies.
- Destruction of infringing goods.
- Obligations to make available enforcement statistics, publication of judicial decisions and to publicize efforts to enforce IPRs¹²².

II. Counter Claim Against Stepped-Up Enforcement

The counter claim against stepped-up enforcement allege that such provisions need financial resources for their implementation¹²³, however, as explained, benefits of IP protection outweigh its cost, therefore, Egyptian government should devote additional resources to fight IPRs violations. In the Action Plan of Morocco, Morocco committed itself to increase resources dedicated to enforcement, in particular for the customs authorities and the judicial system¹²⁴.

Moreover, transparency, accountable governance, tracking and monitoring public expenses saves the wasted sources needed for IP reform and economic reform. At present, secrecy on economic affairs is most prevailing in Egypt within the army, which maintains a business empire that accounts for between 15 to 40 percent of GDP. The army divisions manufacture everything from television sets and off-road vehicles to bottled water and fertilizer, while providing the Egyptian government with no less than 12 billion Egyptian pounds (\$2 billion),

¹²² Musungu, Sisule and Graham Dutfield. 2003. Multilateral Agreements and a TRIPS-plus World. TRIPS Issues Papers 3. Quno/Geneva and QUIAP/Ottawa.
<http://www.quno.org/geneva/pdf/economic/Issues/Multilateral-Agreementsin-TRIPS-plus-English.pdf>.

¹²³ Carlos M. Correa, The Push for Stronger Enforcement Rules: Implications for Developing Countries.

¹²⁴ See http://ec.europa.eu/world/enp/pdf/action_plans/morocco_enp_ap_final_en.pdf

including a \$1 billion loan to the Central Bank to prop up foreign reserves. The budget of the army is separated away from the control of civil government¹²⁵.

Another potential funding source is programs funded by Millennium Challenge Corporation (MCC) which could assist Egypt in meeting the cost of adaptation and reformation. MCC sets market reform as condition for its funding. Improving IPRs enforcement in Egypt will enhance the Egyptian market reform and thereby meet the criteria of MCC¹²⁶.

Furthermore, reforming the IP environment will open new development opportunities, will expand markets for exports and will allow access to financial and technical resources.

For generating funds government could charge a special levy upon registration and renewal of IP titles. The size of the levy could depend on the sales revenues of firms in the Country, so that levies do not discriminate against small enterprises that face comparatively fewer infringements of their IPRs. Returns of such levies are to be used to raise the budget allocated for financing combating piracy. In the case of copyright, the levy approach may not be feasible because copyright protection does not necessitate the registration of copy righted works, however, copyright piracy is concentrated in a relatively small number of industries and it should be possible to impose “lump-sum” enforcement taxes on companies benefiting from stronger enforcement actions¹²⁷.

¹²⁵ Egypt's Looming Economic Shock Doctrine by Sharif Abdel Kouddous Published on Tuesday, April 3, 2012 and EGYPT: BASIC MACROECONOMIC INDICATORS, 2002-2010SE Network E-brief..case-research.eu, Egypt: Political Transition vs. Economic Challenges? By Marek Dabrowski

¹²⁶ Access to Knowledge in Egypt: New Research on Intellectual Property, Innovation and Development Lea B. Shaver available at: <http://ssrn.com/abstract=1729370>

¹²⁷ Alan, Study on Intellectual Property Rights, the Internet, and Copyright, Commission on Intellectual Property Rights, Study Paper 5, p. 8-14.

III. Stepped-Up Provisions Incorporated in the Egyptian IPRs law

The Egyptian legislation has already adopted some stepped-up provisions in the IPRs law, for instance the provisions on technological protection measures (TPMs) for the enforcement of copyright. The TRIPS did not contain provisions on TPMs. (Article 181 of Law 82, 2002, paragraph 5) The Egyptian IPRs law includes sanctions against the manufacturing, assembling or importing for the purpose of sale or rent of any device, tool or implement especially designed or made to circumvent a technical protection measure, such as encryption or the like, used by the author or the owner of the related right. This article reflects provisions contained in the 1996 WIPO Internet Treaties, although Egypt is not a party to them.

Another stepped-up provision in the Egyptian IPRs law is related to copyright and the protection of databases. (Article 141 of Law 82) The law extends copyright protection to both original databases, as required by TRIPS, and also to non-original ones whose selection is by mere virtue of “any other personal effort deserving protection..”. Egypt should continue adopting stepped-up commitments that could have positive impact on development and economic growth.

IV. US-Egypt Free Trade Agreement

After years of hectic debate and negotiations with Egypt no free trade agreement has been resulted¹²⁸. The issue of patent protection of pharmaceuticals was one of the main reasons that contributed to a stalemate after six rounds of negotiations between 1998 and 2004¹²⁹. Egyptian negotiators falsely claimed that stepped-up standards would negatively impact access to medicine, a claim which has no basis as explained above because access to medicine is reached through other channels. More amazingly, an Egyptian diplomat who was

¹²⁸ Sharp, Jeremy M. 2007. Egypt: Background and US Relations. Washington, DC: Congressional Research Service. Updated 12 December 2007. <http://fpc.state.gov/documents/organization/99530.pdf>.

¹²⁹ USTR (United States Trade Representative). 2003. Office of the United States Trade Representative. MEFTA Fact Sheet. June 23, 2003. http://www.ustr.gov/Document_Library/Fact_Sheets/2003/Middle_East_Free_Trade_Initiative.html. Vivas-Eugui, David. 2003. Regional and Bilateral Agreements and a TRIPS-plus World: the Free Trade Area of the Americas. TRIPS Issues Papers. QUNO/QIAP/ICTSD. Geneva. Switzerland. <http://www.quno.org/geneva/pdf/economic/Issues/FTAs-TRIPS-plus-English.pdf>.

involved in FTA discussions with the United States said that some ministers and senior officials advocated the simplistic formula of 'quantification' which means taking cash in advance in return for excessive IP provisions in an FTA. How could the public interest concern be exchanged for cash in advance?!

Part Four

E. Recommendations

I. On the International Level

1. Call for TRIPS Modification

The TRIPS leaves wide policy space of enforcement for Member States' national laws¹³⁰ (article 1 of the TRIPS Agreement) with the consequent result of different IP regimes in different countries along with fragmented and random enforcement. With this in mind, an urge for renewal discussions in the TRIPS Council to set a higher benchmark for enforcement is a must. TRIPS leaves enforcement gaps and maneuver room for interpretations at the national level, therefore enforcement rules needs to be modified and unified to hinder the significant rise in levels of counterfeiting and piracy which jeopardize the world economy at large.

a) Resources Distribution

Article 41.5 of the TRIPS states that: "Nothing in this Part creates an obligation with respect to the distribution of resources" Such provision led to placing IPRs issues at the end of public priorities and led to non-enforcement of IPRs in many countries. The choices that countries make in distributing resources shall not be an excuse for failure to comply with IPRs obligations¹³¹.

b) Exclusive Rights and Undisclosed Information

Articles 28 and 29 of the TRIPS obliges Members to protect data submitted as part of the process of getting regulatory approval for the marketing of pharmaceutical or agricultural products involving "new chemical entities", but leaves open the question of what is meant by a new chemical entity. Moreover, the TRIPS does not specify term for protection of exclusive rights and new chemical entity. Regulatory authorities are under an obligation to protect data

¹³⁰ The World Trade Organization. Law, Practice, and Policy. Mitsuo Matsushita Thomas J. Schoenbaum and Petros C. Mavroidis

¹³¹ Fink, Carsten and Patrick Reichenmiller. 2005. Tightening TRIPS: The Intellectual Property Provisions of Recent US Free Trade Agreements. World Bank Group, International Trade Department. <http://siteresources.worldbank.org/INTRANETTRADE/Resources/Pubs/TradeNote20.pdf>.

submitted to them from “disclosure” and from “unfair commercial use”, but TRIPS left space for governments to fulfill such obligation.

c) Compulsory License

Article 31 of the TRIPS Agreement does not limit compulsory licenses to the domestic market. The WTO General Council Decision of 30 August 2003 modified TRIPS to allow the import up to 100% of the generic medicine that has been produced under compulsory license in a different state. In practice compulsory licensing is being misused to permit parallel importation¹³². Also, conditions for granting compulsory licensing should be tightened by defining explicitly what constitutes a national emergency and estimation of adequate remuneration should also be assured¹³³.

d) Enforcement of Intellectual Property Rights

The TRIPS illustrated the details of the minimum substantives standards for protecting different categories of IPRs. In the same sense enforcement standards and procedures have to be incorporated in details in the TRIPS provisions to block all maneuver chances. Due to the existing flexibility in enforcement procedures, legal systems vary from country to another to the extent that legal certainty is distorted and in some instances non-existed. Evidence proved that when enforcement procedures are left for the countries’ discretion trade liberalization is not smooth as it should be. Therefore, it is recommended that the TRIPS prescribe in details the enforcement procedures in a sense that create specific obligations upon Member States that ultimately lead to unification for laws and practices to eliminate the high degree of discrepancy and variations among different legal system.

e) Patent Term and Regulatory Delays

Article 33 states that the term of protection available shall not end before the expiration of a period of twenty years counted from the filing date. To compensate patent holders for the periods

¹³² WTO (World Trade Organization). 2003. Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health. WTO General Council. WT/L/540 and Corr.1, 30 August 2003. http://www.wto.org/english/tratop_E/TRIPS_e/implem_para6_e.htm.

¹³³ Correa, Carlos Maria. 2009. The Push for Stronger Enforcement Rules: Implications for Developing Countries. The Global Debate on the Enforcement of Intellectual Property Rights and Developing Countries.

when they were unable to exploit the patent, this article must be amended to state that the term of protection shall not end before the expiration period of twenty years counted from the date patent approval was granted to the patent applicant.

f) Border Measures

- TRIPS does not charge Members to provide for corresponding procedures for infringing goods destined for exportation and in transit, instead TRIPS used the language “Members may...”¹³⁴.
- Article 51 does not apply neither to trademarks that may be found confusing with other protected trademarks nor to plagiarism where verbal passages of a work are copied without acknowledgment.
- There is no obligation under Article 51 that requires customs authorities to adopt provisional measures ex officio to detain suspected goods.
- The commented TRIPS provision does not apply to other types of IPRs, such as patents with the rationale that it is extremely difficult to determine whether an infringement of a product or a process patent has taken place¹³⁵.

g) Criminal Procedures

TRIPS have to be amended to widen the scope of the criminalization which is restricted under Article 61 to include only criminalization for utilizing a confusing trademark on the same or similar goods. Using a well-known trademark on a commercial scale has to be criminalized too even if it is not registered. Severe criminal penalties is needed specially because groups profiting from IPRs-infringing operations are also involved in other criminal activities such as heroin trafficking, prostitution, extortion, alien smuggling, violent crimes, and the financing of extremist or paramilitary groups, therefore, reducing IP crimes will lead to a reduction of other crimes. Counterfeiting is a threat not only to the world economy, but also to the international safety and security, consequently IP violations have to criminalize with harsh penalties under the TRIPS to place countries under that obligation¹³⁶.

¹³⁴ Carlos M. Correa -The Push for Stronger Enforcement Rules: Implications for Developing Countries

¹³⁵ Vrins, O. and Schneider, M. (editors) (2006), Enforcement of IPRs through border measures. Law and practice in the EU, Oxford: Oxford University Press.

¹³⁶ Hassan, Emmanuel and Yaqub, Ohid, and Diepeveen, Stephanie, Intellectual Property and Developing Countries A review of the literature, Rand Corporation.

Other changes needed in the TRIPS are that clear definition has to be given to the terms ‘counterfeit trademark goods’ and ‘pirated copyright goods’ because in the absence of such definition there is considerable flexibility and uncertainty for WTO Members to define what their meaning is¹³⁷. Moreover, TRIPS has to be changed to include related rights, namely; Performers, Producers of Phonograms (Sound Recordings), and Broadcasting Organizations¹³⁸.

2. Egypt Trade Openness

Egypt has reached a stalemate in the US FTA discussions, namely, in the area of pharmaceutical policy in Egypt. Egyptian negotiators were assuming that the United States’ demands in FTA discussions would have negative impact on access to medicines.

Egypt is not using its bilateral economic relationship with the US to its full potential. Bilateral trade is relatively small (\$8.4 billion in 2008), and US direct investment in Egypt, valued at \$8.8 billion¹³⁹.

FTA is a critical component for deeper U.S. commercial ties with Egypt because it facilitates greater market penetration and economic alliances between the U.S. and the Egyptian private sectors. An FTA creates jobs and improves working conditions.

Also, FTA foster economic growth, expands markets for exports, and allows access to financial and technical resources that will improve our economic infrastructure, especially at the present time when our Country is enduring extraordinary hardship to stabilize the nation’s economy after the revolution.

A US-Egypt FTA would increase Egypt’s real GDP by between 1.8 and 2.8 percent, raising the return to labor in Egypt by between 2 and 3 percent.

¹³⁷ Enforcing Intellectual Property Rights: an economic Perspective. Carsten Fink, Group d’Economie Mondiale, Sciences Po Paris

¹³⁸ Peter Drahos, Developing Countries and International Intellectual Property Standard-setting

¹³⁹ Reengaging Egypt: Options for US-Egypt Economic Relations, Barbara Kotschwar and Jeffrey J. Schott • January 2010

Based on the above, it is recommended to resume the bilateral free trade agreement with the US and push for the completion of the Anti-Counterfeiting Trade Agreement (ACTA) which is a considerable improvement in international trade norms, and for seeking to join the WIPO Internet Treaties which will significantly decrease the massive internet violations which is prevailing in Egypt.

II. On the National Level

1. Needed Legislative Changes

a) Constitutional Amendments

1. There is no mentioning for intellectual property rights in the Egyptian Constitution in contrast with constitutions in other countries like U.S. Article I, Section 8, Clause 8 of the U.S. Constitution grants to Congress the power to “Promote the Progress of Science and useful Arts by securing .. to Authors and Inventors the exclusive Right to their respective Writings and Discoveries¹⁴⁰.” Adding intellectual property articles to the Constitution will raise IP principles and bring IP concerns to the Public consensus.
2. New article must be added to the Constitution to charge the Parliament and executive organs with the responsibility to pass necessary legislations to strengthen IPRs enforcement.
3. Another article should be added to mention that “Intellectual property rights are national economic value. Egyptian citizens and government officials are under national duty to safeguard intellectual property rights.”
4. Supremacy of treaties over domestic laws needs to be emphasized in the Egyptian constitution to ensure commitment with international obligations. Although article 151 of the Egyptian constitution stipulates that "The President of the Republic shall conclude treaties and communicate them to the People's Assembly ... They shall have the force of law after their conclusion ... "¹⁴¹, nevertheless, in Egypt, such issue

¹⁴⁰ Intellectual Property and the U.S. Economy: Industries in Focus Prepared by the Economics and Statistics Administration and the United States Patent and Trademark Office U.S. Department of Commerce, March 2012

¹⁴¹ <http://www2.ohchr.org/english/issues/minorities/docs/11/Al-Kalema-3A.pdf>

raised conflict in the Egyptian national courts e.g. Eli Lilly lawsuit (No. 282/56) before the Court of Administrative Justice (CAJ) and rendered a judgment contrary to the WTO and TRIPS' principles, as explained above.

Article XXIV:12 of the TRIPS requires contracting parties to take “reasonable measures” to ensure observance by local and regional governments. Stipulating in the Constitution in an explicit language that: “Treaties and executive agreements together with the Constitution shall be the Supreme Law. Treaties shall be self-executing and having direct effect as part of the Country’s domestic law¹⁴². Executive organs including ministries shall have the power to issue implementing regulations having direct effect which national courts must protect. Using such explicit language will bring commitment to international obligations in the public consensus as the case in Japan, France, and Netherlands¹⁴³.

b) Other Amendments

1. Cancel Article 34 of the Egyptian IPRs law and replace it with a new Article to place the burden of proof over the defendant as required by the TRIPS Agreement which states that the judicial authorities shall order the **defendant** to prove that the process used to obtain an identical product is different from the patented process.

The new article must state that:

“The conformable product shall be considered as having been obtained according to the method covered by the patent **if the defendant failed to prove** that the conformable product has been obtained through a process different from the patented processes.”

2. Provide for an extension of patent term to compensate patent owners for regulatory delays in being unable to exploit the patent by stating that the term of

¹⁴² European Union law, Cases Edited by Professor DR. Frank Emmert, LL.M.

The World Trade Organization. Law, Practice, and Policy. Mitsuo Matsushita Thomas J. Schoenbaum and Petros C. Mavroidis

¹⁴³ The World Trade Organization. Law, Practice, and Policy, Mitsuo Matsusshita

protection shall not end before the expiration of a period of twenty years counted from the date patent approval was granted to the patent applicant.

3. Add an article to enable establishing functional committees comprised solely of industry representatives within ministries charged with IP issues to engage private-sectors stakeholders in promoting trade and economic development¹⁴⁴.
4. Add article to apply “The Noncommercial Use Levy (NUL)” and to give the copyright office the competence to track online downloads, peer to peer file sharing, related services and products, to impose a levy based on the frequency of downloads, and to assign fair return for IP right holders.
5. Modifying the IPRs law to allow right holders to register their products within the copyright office under a unique file name which allows digital tracking of downloads to operate reward system via taxation that should be administered by the government. Right holders will make their products available to the public in exchange for compensation by the government agency out of the tax revenue fund. Egyptian tax law has to be accommodated for that purpose¹⁴⁵.
6. Modify the Egyptian IPRs law to charge a special levy upon registration and renewal of IP titles. The size of the levy shall depend on the sales revenues of firms in the Country, so that levies do not discriminate against small enterprises. For copyrights where protection does not necessitate the registration of copy righted works, amend the law to impose “lump-sum” enforcement taxes on companies benefiting from stronger enforcement actions. Return of such levies is to be used to raise the budget allocated for financing combating piracy¹⁴⁶.
7. State explicitly that landlords are liable when tenants sell infringing goods. Although such secondary liability is implicit in the law, but the amended language will have significant practical influence.
8. Establish strict regulations for licensing wholesalers to ensure maximum control of legitimate supply chains.

¹⁴⁴ Alan, Study on Intellectual Property Rights, the Internet, and Copyright, Commission on Intellectual Property Rights, Study Paper 5, p. 8-14.

¹⁴⁵ Fisher, William. 2004. Promises to Keep: Technology, Law, and the Future of Entertainment. Stanford University Press Online. <http://www.tfisher.org/PTK.htm>

¹⁴⁶ The Push for Stronger Enforcement Rules: Implications for Developing Countries. By Carlos M. Correa.

9. The Egyptian authorities should be granted jurisdiction to shut down or take any action against well known websites that are hosted on servers located outside Egypt and which distributes illegal downloads and deprives the economy millions of revenues. Illegal downloads represent 97% of all digital distribution of music in the Country¹⁴⁷.
10. Empower customs authorities to adopt provisional measures ex officio so that customs authority may suspend the release of the goods even before an application has been lodged by a right holder if such authorities have sufficient grounds for suspecting that goods infringe IPRs¹⁴⁸.
11. Increase the offense level for IP crimes and increasing penalties based on the defendant's criminal conduct. Impose enhanced penalty for offenses involving the conscious or reckless risk of death or serious bodily injury with regard to counterfeit pharmaceuticals or medical products, spare parts, electric appliances and increase the statutory maximum for sentences¹⁴⁹.
12. Establish legislation that the manufacture and distribution of counterfeit drugs are punishable as serious life-threatening crimes.
13. Provide enhanced penalties for offenses involving organized crime¹⁵⁰ and repeat offenders. Penalties should be concurrent with size of seizure.
14. Criminalize and penalize end-use consumers for purchasing and/or possessing counterfeit and pirated products.
15. Penalize exporters of infringing goods and pass legislation to empower customs authority to issue administrative penalties for infringing exports, such administrative penalties will deter infringing products exporters¹⁵¹.

¹⁴⁷ IIPA (International Intellectual Property Alliance). 2009. Egypt Country Report 2009.

¹⁴⁸ Article 4 of the the European Council Regulation(EC) No. 1383/2003

¹⁴⁹ Harms, Louis (2007), The Enforcement of Intellectual Property Rights by Means of Criminal Sanctions:an Assessment, prepared for the WIPO Advisory Committee on Enforcement, WIPO/ACE/4/3,September 7, Geneva.

¹⁵⁰ Transnational Organized Crime Strategy released on July 25, 2011. Information is publicly.

¹⁵¹ Report to the President and Congress on Coordination of Intellectual Property Enforcement and Protection. January 2008

16. Amend the IPRs law to keep up with technology and the criminal conduct which becomes more sophisticated. Criminalize each of illegal physical and streaming distribution as a felony. Also criminalizing the illegal copy and criminalizing file sharing will effect significantly.
17. Strengthen civil remedies and provide more adequate compensation for right holders through appropriate methods for calculating of damages based on the retail price and quantities of seized merchandise to deprive counterfeiters and pirates of illicit profits.

Low fines facilitate bribery paid to drop cases¹⁵². Raising the ceiling for fines will have the effect of raising bribes too and ultimately decreasing the repetition of such crimes as the gross profit of offenders will be cut by large bribes and fines.

Provide for strong civil enforcement with respect to matters such as damages, provisional measures, recovery of costs and attorneys' fees, and destruction of infringing goods.

18. Drug regulatory authorities should issue a decree to mandate that the applicant for a generic version must repeat the same clinical trials and regenerate the same data when attempting to register a generic version of a drug. Such decree is essential to guarantee that the drug meets the safety and efficacy standards. The decree should replace the decree which merely requires generic producers to submit to regulatory authorities data on the bioequivalence of the generic.
19. Add article to the Egyptian IPRs law to state that patent applicants must be granted exclusive marketing rights for a period of at least five years or until the application is granted or rejected. The period of data exclusivity lasts for five years in the US and 10 years in the EU.

All the above recommended legislative changes are in line with Article 41.1 of the TRIPS which obliges Members to ensure that enforcement procedures are available under their laws so as to permit remedies which constitute a deterrent to further infringements.

¹⁵²Am Cham..Buenand Loot. BusinessMonthly. 2005

2. Securing the Supply Chains

a. Government Procurement

Ensure that the government itself does not purchase and use counterfeit goods. Convene an interagency working group comprised of experts from all governmental agencies to ensure that Egyptian government agencies at all levels use only legitimate products, e.g. promote the use of only legal software. Also, the government should promote IP protection at domestic and international trade fairs¹⁵³.

b. Track-and-Trace System

Adopt effective track-and-trace system which makes it more difficult to bring pirated products into the markets, make it easier to identify, investigate and prosecute offenders and facilitate the recall of unsafe products by more quickly identifying where products are located to remove them from the supply chain. Establish an automated system to monitor the circulation of products¹⁵⁴.

c. Creating Notorious Markets List

The government should release Notorious Markets List after reviewing online and physical markets that deal in infringing products. The list should be available on a public website. Markets which stop the infringing activities are to be removed from the Notorious Markets List whereas others which continue to offer infringing products shall remain on the Notorious Markets List. Following publication of the Notorious Markets List, local officials could take actions to curtail distribution of pirated and counterfeit goods¹⁵⁵.

d. Customs

i. Customs Modernization

In Egypt, customs need to be upgraded with new techniques and programs to facilitate and speed up goods inspection. An example of these is the distribution chain management program which enables customs to authenticate an entire shipment prior to or immediately upon arrival even without examining the goods. In this program each shipment is accompanied by a unique identifier that is transmitted to the customs prior to arrival. This program enables customs to increase the number of shipments segmented into a low risk

¹⁵³ U.S. – Egypt Business Council Annual Report for 2004 Progress and Recommendations

¹⁵⁴ U.S. Intellectual Property Enforcement Coordination Joint Strategic Plan, June 2011.

¹⁵⁵ The National Intellectual Property Law Enforcement Coordination Council, Report 2008

category for expedited release. The program also allows customs to focus inspection resources on high risk shipments. Customs need to be equipped with portable scanners to enable officers to make on-the-spot determinations on whether products are real or fake. Procedures among import agencies could become more efficient if electronic notification mechanism and electronic certification exchange are used. Also, developing one single window that could be among different agency is to save time and effort required. A “surveillance division” with trained officer to use X-ray fluorescence technology to screen and test samples of products results in huge seizures. Tracking systems have significance in securing the supply chain as they all officers to record information related to smuggled shipments of imported products when found in the markets. An online IP e-Recordation (IPRR) and also a link from the trademark office, patent office and copyright office to the Customs Authorities to make it easier for right owners to provide information on their IP rights are needed. These systems accelerate the work and makes IP information such as images of trademarks and copyrights, contact information, countries of production, and licensees available to the customs officials. Create online infringement allegation forms for rights holders on the customs website to streamline headquarters’ review and response process. Arrange for training guides and sessions for customs officers to foster their ability to detect counterfeit and pirated goods¹⁵⁶.

ii. International Cooperation

China is the number one source of infringing products seized at the Egyptian borders and deserves increased attention. Work with the Chinese government to tackle the huge amount of fake products from being imported into Egypt through joint plans between customs in China and Egypt to press China to do much more to combat IP exportation to Egypt; e.g. Sign a Memorandum of Understanding with China’s General Administration of Customs (GACC) to enhance enforcement cooperation, to enhance investigation techniques, and to increase information sharing. Host a China IPRs free of charge seminar series on each type of IPRs infringements and ways to take preventative measures against Chinese bad-faith.

¹⁵⁶ World Customs Organization: Risk Management a critical customs tool. June 2010, N0.62. Right holders at US ports of entry had delivered 5,600 hours of training to 2,161 customs’ employees

Strengthen international cooperation and formalize information-sharing agreements with key international partners to share the best practices used to secure the supply chains of products before they are imported to the Country. Improve information sharing, share risk assessment data and identify contact points to expedite the exchange of information. Coordinate joint investigations and prosecutions techniques with international partners.

Initiate electronic transfer of notices from other countries into an automated import control system to enable tracking the entry of shipments destined to Egypt and to provide tighter security.

Join the International Trade Data System (ITDS) to share import information data. And use the Automated Commercial Environment (ACE) portal to target shipments and to support enforcement actions at ports of-entry. Join the “Interpol Intellectual Property Crime Database” which allows countries around the world to share information on counterfeiting and piracy to track IP crime.

3. Cooperation With Private Sector

Undertaken activities by business groups or private sector complement actions taken by government agencies, especially IP right holders is a major stakeholder essential for public-private partnerships which is instrumental for the government’s strategy.

Establishing advisory boards in the area of IP exclusively composed of representatives from the private sector within Ministries and IP offices and administrations will help to identify IP business concerns. For instance, in the U.S. ITAC-15 the USTR advisory Board in the area of IP is exclusively composed of representatives from the private sector. Moreover, the amended US Trade Act allows the US President to establish functional committees comprised solely of industry representatives. ITAC-15, in particular, provided advice during FTA negotiations, and identifies business concerns regarding IP¹⁵⁷.

¹⁵⁷ Intellectual Property Enforcement Coordinator Annual Report on Intellectual Property Enforcement. Report 2010

Private sector could play meaningful role in creating safety assurance programs, developing standards and a certification process to assure that retailers are buying from producers who have the certification whereby quality could be assured.

Also, the government could cooperate with private sector entities which make the internet function to eliminate online IP infringements. Such private entities include major credit card companies and payment processors, Internet Services Providers (ISP), major music labels, movie studios, and online advertisers to serve as “check points” for infringing activity and to reduce the distribution of infringing goods. Credit card companies and payment processors could reach an agreement to withdraw payment services for sites selling counterfeit and pirated goods. Besides, agreement could be reached between ISPs and online advertisers to refuse to advertise fake products. ISPs could notify subscribers through a series of alerts when their internet service account appears to be misused for infringement on peer-to-peer networks, after the “sixth alert the ISP will take action”. Credit card companies and ISPs could jointly form non-profit group to combat online infringement and educate the public on copyright law and how to avoid violating the law¹⁵⁸. Moreover, an agreement could be concluded between internet advertisers, ad agencies, internet ad brokers, and ad exchanges to prevent sites distributing pirated or counterfeit goods from receiving advertising revenue from legitimate companies and “create the appearance of legality” by carrying advertisements from legitimate companies. All theof these methods have been applied in the U.S. and succeeded to reduce online IP violations.

For three years (April 2009- April 2012), the World Intellectual Property Organization (WIPO) piloted a concept of National IP Academy Project, which was aimed at assisting developing countries and Least Developed Countries (LDCs) to establish their own Intellectual Property (IP) Academies, and to build national institutional capacity in order to meet the increased demand for IP professionals. It

3. Non-Governmental Organizations (NGOs)

NGOs that comprise main stakeholders who share common interests to protect IP rights; e.g. right holders associations like music industry associations, must be more engaged in the IP policy process. NGOs worldwide have taken their seats on policy committees within IP

¹⁵⁸ U.S. Annual Report on Intellectual Property Enforcement March 2012.

offices and have achieved important changes. WIPO select the individuals who sit on various expert committees and who draft new IP standards from the communities of NGOs. It is vital that NGOs seek membership to IP committees both nationally and internationally as part of a long term engagement with the international standard-setting process.

Although NGOs have facilitated the emergence of a critical mass of well-informed stakeholders; e.g. decision makers. However, NGOs have neglected occupying seats in advisory committees that work on IP standards. NGOs' members must be granted seats on the policy committees of patent offices, copyright offices and trade mark offices and should be granted more trust to support the government. An example of the success of the civil society in Egypt is the commission of the Egyptian National Competitiveness Council (ENCC) which has succeeded to develop Egypt's competitiveness strategy and is an evidence of the trust granted to civil society in supporting governments¹⁵⁹.

4. Specialized IP Task Forces, Courts and Prosecutions

Developing specialized IP task forces and specialized international IP prosecutions will intensify criminal prosecutions of IP violations. Establishing special units in national administrations and special judicial courts to deal with IPRs infringement will have advantages in terms of the capacity to address complex IP matters. Create a task force to combat copyright infringement on university campuses, as happened in Taiwan¹⁶⁰.

In China, special divisions in high courts were introduced to deal with IP matters. Currently, more than fifty courts deal solely with IP issues in China. Dedicated IP enforcement courts have also been created in several developing countries, such as Chile, Malaysia, and the Philippines. Practice in these countries proved that such specialization had enhanced "the capacity to address complex IP matters"¹⁶¹. As for China, it deserves a pause. Despite these efforts done by China, the Country's IP reputation is negative because of the escalating

¹⁵⁹ Shaver, B. Lea : Access to Knowledge in Egypt: New Research on Intellectual Property, Innovation and Development.

¹⁶⁰ Louis, Harms, *The Enforcement of Intellectual Property Rights by Means of Criminal Sanctions: an Assessment*, prepared for the WIPO Advisory Committee on Enforcement, WIPO/ACE/4/3, September 7, Geneva., 2007.

¹⁶¹ Fink, Carsten, *The Global Debate on the Enforcement of Intellectual Property Rights and Developing Countries*, Issue Paper No. 22

“copyright infringement and theft of trade secrets”¹⁶². Recently in March 2012 China has witnessed its “largest” IP case ever. “U.S. green energy company AMSC has sued its former customer Sinovel Wind Group Co.” seeking US \$1.2 billion damages whereas China denies any right to the claimant. China announced that the damages are “completely false.” Mark Wu, an assistant professor at Harvard Law School and an expert on intellectual property in China pointed out that China’s recent IP improvements is working for the benefits of the Chinese whose numbers are increasing in the Chinese courts claiming their own IP rights. This clearly indicates that improving enforcement could be invested for the best interest of national stakeholders only when they are aware and well-informed of their interests. In Egypt special courts have been created to deal with economic matters at large including IP. Dedicated IP enforcement courts along with other needed changes, as explained, will improve enforcement environment in Egypt.

5. Training of “Foreign Law Enforcement”¹⁶³ on Intellectual Property Crime

Lack of expertise and knowledge of IP issues have led to unfair decisions in the Egyptian IP practices. The case (no. 1855/2002) filed by Pfizer against EPICO and heard by the Zagazig Court of First Instance was confronted by technical and legal issues. The Court decided that it was unable to reach a decision on the matter because it comprised complicated web of IP issues. A commission of three experts¹⁶⁴ was appointed and submitted a detailed report of 70 pages with a large volume of annexes and explained all the relevant provisions in both the TRIPS Agreement and Egyptian laws. The report concluded that there was no violation of any laws in the practice of EPICO. Simply, the Court endorsed the expert recommendation and found against Pfizer. While the judges in Egypt have gone through some training workshops, significant challenges still remain.

The curricula created to train the Egyptian judiciary should focus on human rights approach, e.g. the right to safe medicine instead of ineffective generics that leads to diffusion of illness and viruses. Transferring such human rights approach to judges would provide them with additional legal tools to utilize when adjudicating IP issues. Curricula to train Egyptian

¹⁶² Strickland, Eliza: A Test Case for Intellectual Property in China. Will Chinese Courts

¹⁶³ Report to the President and Congress on Coordination of Intellectual Enforcement and Protection, the National Intellectual Property Law Enforcement Coordination Council, 2008.

¹⁶⁴ The experts were specialized in chemical pharmacology and drug manufacture appointed by the National Research Center in Cairo, affiliated to the Ministry of Scientific Research.

judges should erase the false belief that stepped-up provisions violate the right to health and stress that stepped-up provisions serves TRIPS objectives. Should be mentioned here that IP curricula taught in law schools needs special attention from faculties, government, and stakeholders at large. To the best of my knowledge, curricula hardly cover the surface meaning of **only selected** articles of the Egyptian IPRs law rather than the law in full. The situation gets much worse when it comes to treaties, conventions, and international application where the number of articles selected for the curricula drops badly. In both situations practical applications, case studies, and problem solving do not exist. Unluckily, some doctors are pleased and exited by the fact that number of those who understand the IP materials in Egypt are very rare, so some of them are reluctant to share the information. Changing all of these deficiencies will reap generations of IP informed professionals.

Remains to suggest in this context sending our trademark, patent, and copyright officials, as well as judges, prosecutors, customs officers, and other government officials to the Global Intellectual Property Academy (GIPA) training programs in the United States to conduct extensive training programs on IP enforcement and best practices used in investigations world wide. Further the GIPA provides training programs for establishing an automated system to monitor the circulation of products.

Technical assistance and educational programs could be granted from the United States Agency for International Development (USAID) to improve the practical and legal IP environment protection for lawmakers, regulators, judges, lawyers, and educators. The USAID provides help upon request.

6. Inter-ministerial Coordination

Some efforts towards coordination have been made in Egypt in 2000. The Ministry of Trade established a Central Department for WTO affairs as well as a sub-committee on TRIPS-related matters comprises representatives of different government departments and agencies in charge of TRIPS-related issues. Despite such effort more needs to be done; inter-ministerial coordination is required in relation to public policies which have a cross-sectoral effect in different areas.

Establish Intellectual Property Coordination Council in Egypt to coordinate domestic and international IP enforcement and activities among national and foreign entities. The Council

shall bring together all government agencies, industry representatives, as well as trading partners and enhance coordination among them.

The Council should apply de-conflicting process within the judicial system and prosecutions to coordinate investigatory activities throughout the law enforcement community and to ensure law enforcement resources are not wasted because of a duplication of efforts by investigating agencies.

The Council should include members from the Ministries of Trade and Industry for TRIPS and trademarks, Higher Education and Scientific Research for patents, Culture for copyright and ICT for computer software, The Ministry of Justice, and the Ministry of Foreign Affairs in international negotiations. The Council should connect relevant Government agencies and makes them accountable to the President and Parliament.

The Council must be charged with monitoring the Government's IP enforcement and must be charged with submitting annual performance data report at the beginning of each year to the President and the Parliament to demonstrate the enforcement improvements reported by agencies on a fiscal year basis. Collected data from all agencies and departments must include seizures, number of investigations, number of arrested offenders, type of offenses, number of indictments, and number of convictions to evaluate and compare annually the percentage of increase in each type of offenses and to determine enforcement performance in each year. The performance data shall illustrate prosecutions, charges, sentences or prison terms. The annual report should assess agencies' effort whereby each agency issues a score card on its goals progress. Goals are to be marked "A" for "accomplished" or "P" for "progress ongoing." Such report has to be reviewed in the Parliament and has to be issued to the public¹⁶⁵.

7. Increase Resources to State and Local Law Enforcement Agencies

Devote resources to the Ministry of Justice to provide grants to state and local law enforcement agencies across Egypt governorates to educate the public through awareness programs about importance and cost of IP theft; "to prevent, deter, and identify IP criminal

¹⁶⁵The National Intellectual Property Law Enforcement Coordination Council, Report 2008.

violations; establish task forces to conduct investigations, forensic analyses of evidence, and prosecutions to detect IP crimes in their communities”¹⁶⁶.

Such amount of spending will be maximized as it will significantly increase seizures of infringing products. In the US this program was adopted by the Department of Just (DOJ) and has resulted in seizures valued \$195 million_which is 30 times the grants of \$6.5 million¹⁶⁷. Volunteers could file applications to the IP Enforcement Grant Program through public website. In the US applications have increased 170 percent from 2010 to 2011¹⁶⁸, which signals the success of these efforts. Eligible applicants comprise two categories; the first category is state, local, and law enforcement agencies, and the second category is nonprofit organization, commercial organization, or institution of higher learning that have experience in evidence based practices¹⁶⁹.

8. Publication of Enforcement Statistics

An online IPRs databases must be established to make available enforcement statistics, judicial decisions and IPRs enforcement efforts to foster informed decisions. Lack of statistics to measure counterfeiting and piracy and give reliable figures on the sales of IP infringing products and seizures is a tough obstacle that hinders researchers and decision makers from standing on facts and determining the required direction of reform. Make available on Patent and Trademark Office website publicly available databases to be collected from all government IP divisions.

Establish an Intellectual Property Prosecution and Investigation Network where all IP investigations and prosecutions should be published in details.

¹⁶⁶ The U.S. Department of Justice (DOJ), Bureau of Justice Assistance (BJA).

¹⁶⁷ U.S. Intellectual Property Enforcement Coordination Joint strategic Plan, June 2011.

¹⁶⁸ The U.S. Department of Justice (DOJ), Bureau of Justice Assistance (BJA).
See also https://www.bja.gov/ProgramDetails.aspx?Program_ID=64

¹⁶⁹ U.S. Department of Justice, Bureau of Justice Assistance, FY 10, edition, p. 22

9. Increasing Transparency

Opening access to government documents is a basic requirement for economic development and growth because it makes the government more accountable to its people¹⁷⁰.

Maintain an open door policy seeking input from a wide range of IP enforcement stakeholders, such as manufacturers, industry representatives, authors, song writers, movie studios, artists, book publishers, apparel companies, music labels, textile manufacturers, independent inventors, Internet service providers, online advertisers, credit card companies, payment processors, think tanks, consumer advocacy groups, labor unions, students, and academics. The Administration could receive input through more formal mechanisms, such as Public Register Notices. The government could also issue Register Notice requesting public comments regarding specific IP issues. All the responses received to these Register Notices should be publicly available.

To maintain transparency in IP policy making, the IP Council should also issue periodic reports in addition to its annual reports to highlight the recent steps taken to improve IP enforcement. Copies of such reports should be sent to the public through a free email subscription, and should be available on the IP Council website. The IP Council should create a reporting mechanism for the public to use to report IP theft via links on its website. The website should make available recent IP cases and judgments to help academic, law makers, policy makers, the public, and violators; for deterrence purposes, to stand on the latest infringements, investigations and judgments and to enable them to develop update solutions to arising problems. IP criminal investigations and prosecutions for each fiscal year should be described in depth.

Critical to improving transparency is also communicating with victims and share pertinent information with right holders to gain a better understanding of the issues that these persons face. Activate the ability to file concerns about IP infringements online at official website, or speaking with IP experts through official hotline.

¹⁷⁰ Transparency in Government. The Right to Tell: The Role of Mass Media in Economic Development. World Bank Publications, pp. 27-44.

Manage a hotline that helps businesses to protect their IPRs in Egypt and abroad through a staff of IP attorneys with expertise on how to secure patents, trademarks, and copyrights, and enforcement of these rights throughout the world and is available to answer callers' questions.

Moreover, the government should make the negotiations of IP and trade treaties more transparent and should encourage the participation of the civil society in the decision making processes both during international negotiations and during the formulation of other domestic policies. This is especially important in the area of Egypt's pharmaceutical industry and the drug pricing controls. Such complex considerations can only be guaranteed through public participation and transparency. An opaque and vague business environment pushes investors to avoid the Egyptian market entirely, a result that would not be in the best interest of the Country and its people.

10. Educating Consumers

Despite the existence of Egyptian IPRs law, IP is relatively absent from the public consensus. Since the ratification of the TRIPS to date the Egyptian media has not been used at all to inform the public that IP violation is a crime. The government did not ever celebrate the World Intellectual Property Day in April. Celebrating the World Intellectual Property Day by releasing public announcements, broadcasting intensive media programs and issuing publishers will influence consumer behavior and reduce the demand for pirated products.

The government should collaborate with industry partners to organize extensive IP road shows through out all streets and regions with a logo to be creatively designed for the IP Council clearly stating that "counterfeiting is not a victimless crime and that piracy is a theft". The notion that IPRs preserves access to good quality commodities must be raised. IP and consumer protection educational materials should be designed creatively in a simple plain language to stress that IP theft cuts government revenues and pulls down the economic growth¹⁷¹.

Further, the government must sign agreements with major movie studios to place the IP Council's logo on shows along with written notifications to state that both physical and

¹⁷¹ Report to the President and Congress on Coordination of Intellectual Property Enforcement and Protection. January 2008

digital IP theft are crimes. Counterfeit Alert Network must be created to educate the public and disseminate alert messages to urge the consumers and officials to fulfill their responsibilities towards identifying infringing products, reporting suspected ones, and excluding them from the Egyptian supply chain. A network of national organizations, consumer groups, and industry representatives must be developed to spread such information. IP campaign announcement, banners, posters, prints, television and radio ads must be extensively launched.

Resort to religious condemnation to discourage IPRs crimes and identify piracy as one of the worst forms of theft prohibited by Islam because it harms the national economy at large. The Egyptian public is religion oriented; enforcement of IPRs in Egypt is dependant on public recognition and acceptance to enhance enforcing the law and treaties. Qur'an calls for innovation at 46:04: "Show me what they have created of the earth." Consumers have to be informed and reminded through education, media, and religious speeches that the main principles and spirit of Islam and all religions in general is based on the protection of "faith, life, intellect, posterity and wealth"¹⁷² and also the public has to be reminded that religions call for profit making motivation¹⁷³ which will be undermined in the absence of IPRs enforcement because people are indirectly encouraged not to invent and lose any motivation to make effort since they easily accumulate money unrightfully thereby hindering innovation and economic development. Motivation for making profit is emphasized in the Qur'an at 30:23 "And among His Signs is the sleep that ye take by night and by day and the quest that ye (make for livelihood) out of His Bounty: verily in that are signs for those who hearken"

Religion prohibits profit without effort and condemns stealing others property (e.g. intellectual creativity) which has not been legitimately acquired by one's own efforts to reap

¹⁷² Beltrametti, Silvia. The Legality of Intellectual Property Rights under Islamic Law. In: The Prague Yearbook of Comparative Law 2009. Mach, T. et al. (Eds). Prague, 2010. pp. 55-94.

¹⁷³ A. Raslan, Heba - Shari'a and the Protection of Intellectual Property: The Example of Egypt , 47 IDEA: The Intellectual property Law Review 497, 2007 at 511.

gains through utilizing the time, money, and effort not of one's own. The Qur'an at 2:188 provides not to "knowingly devour a portion of the property of others wrongfully" 174.

Religion also emphasized the principle of the balance between the exerted effort and the gains so that "disproportionate profits are held not to be honest" 175 . The Qur'an says: "Woe to every defamer, slanderer, who amasses wealth and hoards it! He thinks that this wealth is going to make him live forever". Profits gathered by pirates who utilize minimal effort and money are condemned because they totally disproportionate with the time, effort, and funds spent by the IP holder.

Moreover, the Prophet whose family was working in trade and commerce also had highly praised ones who earn through their own efforts: "Nobody has ever eaten a better meal than that which one has earned by working with one's own hands" 176. Since the Prophet days trade was based on honest practices and fairness to preserve the public interest. Stealing the effort of others is unfair and contradicts the urge for motivation which is stressed for in Qur'an. Approaching the public from religion perspective will improve IPRs enforcement.

Also, Launch a public service campaign targeting Egypt's youth seeking to make invention and developing new ideas part of children's lives, and providing messages on IP education and enforcement. Produce TV and radio advertisements to keep people aware of the economic benefits of IP.

Launch IP education curriculum for students and make it available for teachers and parents to educate students on the importance of protecting IP and why it is illegal to commit piracy and warn them of the dangers of purchasing counterfeit goods.

Affecting public attitudes towards IP crimes will reduce the demand for such illegal products and will reduce profits that attract IP violators. Fostering a well-informed public will be conducive to greater respect for IPRs.

174 E. Vogel, Frank and L. Hayes, Samuel, III - Islamic Law and Finance: Religion, Risk and Return, The Hague: Kluwer Law International 1998, at 58-59 define "wrongful devouring of property" as usury, coercion and stealing.

¹⁷⁵ Beltrametti, Silvia. The Legality of Intellectual Property Rights under Islamic Law. In: The Prague Yearbook of Comparative Law 2009. Mach, T. et al. (Eds). Prague, 2010.

¹⁷⁶ Bukhari, Sahih, Sales and Trade , vol. 3, book 34, No. 286.

Conclusion

The prevailing deficiencies in the Egyptian legal system for enforcing IPRs create a safe harbor for counterfeiters and pirates. Despite the existence of the Egyptian IPRs law, the law is symbolic rather than real. Much needs to be done to improve Egypt's legal and business environment.

For enhancing IP enforcement a set of recommendations are introduced which requires action from the government on the international and national level. On the international level the Egyptian government must harmonize its IPRs law with the international stepped-up enforcement measures. International cooperation must be enhanced to share the best practices and to coordinate investigations and prosecutions techniques with trading partners. Resume the bilateral free trade agreement with the US, formalize the Anti-Counterfeiting Trade Agreement (ACT), and join the WIPO Internet Treaties. Special attention must be given to China which is the number one source of infringing products seized at the Egyptian borders. On the national level a collaborative action is needed by leaders in the public and private sector, academia, members of Egyptian civil society and the media. Constitutional amendments along with other needed legislative changes must be concluded. Government must place IPRs crimes in the category of serious crimes which threaten the national economy, make IP protection a top priority, and devote more of its budget to spend on combating IP violations. More resources have to be directed to the customs authorities and the judicial system. Securing the supply chain needs special consideration. Transparency makes the government more accountable to its people and saves the wasted resources that could be utilized for IP system reform. The government must apply new IP mechanisms to generate funds, as explained above, and use the returns to raise the budget allocated for financing IP violations. Public-private partnerships have to be developed, industry representatives must be engaged in committees within Ministries and IP offices. NGOs must play their role in IP policy process. Specialized IP task forces, courts and prosecutions have to be established. Send IP judges, prosecutors, and officers to the Global Intellectual Property Academy. Improve inter-ministerial coordination. Publicize enforcement statistics. Raising awareness and educating consumers is critical because although piracy threatens the growth domestic product and pose health and safety risk, few

consumers are aware of such disastrous consequences. Law makers on their part shall call to step up the legal and business environment in Egypt.

Enhancing IP protection encourages investors to enter the market assured that benefits of their investment are not unfairly accrued to other competitors. Especially at the present time, Egyptians are enduring extraordinary hardship to stabilize the nation's economy after the revolution. Egypt is in an urgent need to conclude economic reform to increase government's revenues, giving special care to IPRs system because the entire Egyptian economy relies on some form of IP. Reinforcing IP protection increases government tax revenues, opens new development opportunities, expands markets for exports and allows access to financial and technical resources which all contributes to improve the Country's economic status to reestablish the Country's place within the world market.

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