



## Responses to Questions to beIN Media Group, LLC and Miramax, LLC

Docket No. USTR-2022-0016

March 7, 2023

### 1. What type of difficulties do right holders face when attempting to convince Algerian public prosecutors to initiate cases?

beIN has not yet attempted to file a copyright infringement action (either civil or criminal) in Algeria. However, Algerian counsel has advised beIN that it would be extremely difficult for an audiovisual copyright holder to prevail in civil litigation against an infringer. According to Algerian counsel, it would be similarly difficult for an audiovisual copyright holder to convince an Algerian prosecutor to pursue criminal action.

Copyright holders face this unfavorable enforcement environment in Algeria due to the dearth of Algerian copyright jurisprudence—especially audiovisual copyright jurisprudence.<sup>1</sup> Given the absence of precedent, most Algerian judges and prosecutors lack adequate knowledge of and experience with copyright law.<sup>2</sup> As a result, Algerian judges rarely rule in favor of plaintiff rights holders, and prosecutors rarely pursue copyright infringement actions.

Empirical assessments of Algeria's intellectual property ("IP") rights landscape reflect its exceedingly weak copyright enforcement environment. For example, the Property Rights Alliance ranked Algeria 105th out of 129 countries (*i.e.*, in the bottom 20th percentile) for IP rights in 2022.<sup>3</sup> In fact, Algeria performs worse on copyright protection than on any other property rights-related dimension (including all IP-related dimensions) studied by the Property Rights Alliance.<sup>4</sup>

<sup>1</sup> Indeed, beIN's Algerian counsel could not locate a single Algerian court decision concerning audiovisual piracy.

<sup>2</sup> See Marius Schneider & Vanessa Ferguson, *Algeria*, in ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN AFRICA (Oxford University Press, 2020) ("Counterfeits for all types of goods are widely available in Algeria. These include over-the-counter medicines, branded clothing, household electrical goods, food products, cosmetics, hardware, spare parts, and contact lenses. The piracy rate, including computer and software piracy, is estimated by the Director of the National Copyright Office (ONDA) at around 60 per cent. Among the reasons for the blossoming black market trading in counterfeit goods around the country are *the lack of knowledge about counterfeiting, a lack of training in the Customs services and the judiciary*, and the difficulty Algerian authorities have to exert effective control over their border regions.") (emphasis added).

<sup>3</sup> See Dr. Sary Levy-Carciente, *International Property Rights Index 2022*, PROPERTY RIGHTS ALLIANCE 24-25 (May, 2022), <https://www.internationalpropertyrightsindex.org/full-report>.

<sup>4</sup> See PROPERTY RIGHTS ALLIANCE, 2022 INTERNATIONAL PROPERTY RIGHTS INDEX: ALGERIA, <https://www.internationalpropertyrightsindex.org/country/algeria> (last accessed March 3, 2023).

**2. For Iraq, you estimate that around 90% of the Iraqi population is watching pirated sports and media content and also note that piracy is the predominant means for watching sports content in Algeria. Please provide more information on how these estimates are formulated.**

beIN has developed these estimates through discussions with contacts and commercial partners on the ground in both countries. These estimates are also informed by beIN’s extensive, independent knowledge of piracy networks in Iraq and Algeria.

beIN’s estimates, while informed by internal intelligence and on-the-ground feedback, should not come as a surprise. Researchers studying media piracy describe the Middle East and North Africa (“MENA”) region as “a piracy hotspot.”<sup>5</sup> Market research reports noting low levels of payment-based TV and video market penetration across the MENA region further indicate that piracy remains a predominant means of media consumption in various MENA countries.<sup>6</sup> Indeed, a recent Dataxis report on Algeria emphasizes that:

The Algerian video and {over-the-top} market, comprising digital video ({transaction-based video-on-demand, electronic sell-through, and subscription-based video-on-demand}) remains exceedingly small in volume and value. Among the main obstacles to the development of the online video market are the lack of payment methods, *the prevalence of piracy* and the low level of broadband penetration, quality, and affordability.<sup>7</sup>

The Algerian Director of the National Copyright Office’s estimate in 2013 that “piracy rates are around 60 percent affecting a wide range of creative content, especially music and films” further supports beIN’s assessment of Algeria.<sup>8</sup>

<sup>5</sup> SYNAMEDIA & AMPERE ANALYSIS, PRICING PIRACY: THE VALUE OF ACTION 7 (2021), <https://www.synamedia.com/whitepapers-reports/pricing-piracy-the-value-of-action/>.

<sup>6</sup> See, e.g., Press Release, Dataxis, Is the acceleration of SVOD undermining the pay TV market’s value in MENA? (Dec. 1, 2021), <https://dataxis.com/wp-content/uploads/2021/11/is-the-acceleration-of-svod-undermining-the-pay-tv-markets-value-in-mena-1.pdf> (“Ultimately, the crucial element to consider is the small size of the pay market (traditional and emerging with OTT), which indicates that SVOD and pay TV actors have the same threat: pirate services . . . Herein lies the main challenge for existing TV players in the MENA region: to present appealing and well-priced offers to the local audience, in parallel with an extended collaboration to tackle piracy.”); see also Press Release, Digital TV Research, Middle East and North Africa Pay TV Market Forecasts Report 2022-2023 & 2028 - Legitimate Pay TV Penetration will Remain at Only 19% (Feb. 2, 2023), <https://www.globenewswire.com/news-release/2023/02/02/2600733/0/en/Middle-East-and-North-Africa-Pay-TV-Market-Forecasts-Report-2022-2023-2028-Legitimate-Pay-TV-Penetration-will-Remain-at-Only-19.html>.

<sup>7</sup> DATAXIS, ALGERIA MARKET REPORT: OTT AND VIDEO (2022), <https://dataxis.com/product/market-report/ott-and-video-algeria/> (emphasis added).

<sup>8</sup> See Mr. Ali Chabane, *Algeria’s anti-piracy campaign*, WIPO MAGAZINE (Feb. 2013), [https://www.wipo.int/wipo\\_magazine/en/2013/01/article\\_0007.html](https://www.wipo.int/wipo_magazine/en/2013/01/article_0007.html); see also Marius Schneider & Vanessa Ferguson, *Algeria*, in ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS IN AFRICA (Oxford University Press, 2020).

3. **Your submission notes that “the experience of rights owners has been that there is no effective means to take action against a Chinese company, within China, that is distributing pirate devices or otherwise enabling piracy in international markets.” Please detail the experience of rights owners with respect to China and provide some examples of specific experiences of rights owners attempting to take legal action.**

Laws firms in China have advised beIN that Chinese law enforcement will very rarely, if ever, prosecute copyright infringement cases unless the infringement harms a Chinese content creator or distributor. beIN also understands that Zhuhai Gotech Intelligent Technology Company Ltd. (“GoTech”) continues to manufacture receivers in China used for piracy, despite the fact that Nagravisio n obtained judgments against GoTech in both U.S. and Hong Kong courts.<sup>9</sup> In essence, Chinese law enforcement has refused to enforce these judgments in China.

4. **beIN states that there is a “lack of legal enforcement options in Iraq.” What legal enforcement options do exist with respect to addressing copyright piracy?**

beIN has received professional advice that due to the endemic political corruption in Iraq, legal actions against key infringers are unlikely to succeed. As discussed in beIN and Miramax’s 2023 Special 301 submission, beIN understands that the owners and operators of Earthlink, Chaloos, and iStar (three major Iraqi media pirates) have significant influence among Iraqi government officials, both at the federal and regional levels.<sup>10</sup> This helps explain the lack of criminal action to date in Iraq against any of these three pirates, despite their wide reach and notoriety. Regardless of any copyright laws on the books, Iraqi law enforcement officers and courts are unwilling and/or unable to enforce these laws against the many media pirates operating in Iraq.

5. **For Lebanon, you mention that beIN’s commercial relationship with Lebanese partner Sama was terminated in 2022. What was the reason for such termination?**

beIN terminated its contract with Sama because Sama defaulted on payment to beIN and thereby breached its contractual commitments.

<sup>9</sup> See Comment from beIN and Miramax, Request for Comments and Notice of a Public Hearing Regarding the 2023 Special 301 Review (January 30, 2023), p. 41-42 n. 30, <https://www.regulations.gov/comment/USTR-2022-0016-0037>; see also *Nagravisio n SA v. Zhuhai Gotech Intelligent Technology Co Ld. and Others*, [2018] H.K.C.F.I. 1330 (H.C.).

<sup>10</sup> See Comment from beIN and Miramax, Request for Comments and Notice of a Public Hearing Regarding the 2023 Special 301 Review (January 30, 2023), p. 21, <https://www.regulations.gov/comment/USTR-2022-0016-0037>.