Information Research, Vol. 6 No. 4, July 2001

Copyright protection in Israel: a reality of being 'pushed into the corner'

Debbie L. Rabina
Department of Information Science
Bar Ilan University
Ramat Gan, Israel.

Abstract

The copyright law in effect in Israel today is the 1911 law signed by King George V and absorbed into Israel's legal code with the termination of the British Mandate in 1948. Although some minor amendments and changes were made over the years, a total revision, that would be in accordance with the changes brought on by the digital age, as well as those necessitated as a result of international treaties, is long overdue. Yet, Israel has been slow in amending its copyright legislation, its enforcement of copyright has been inadequate, and the new copyright law has been in the making for years. This article describes and analysis intellectual ownership rights in Israel today, with a particular emphasis on the difficulties of implementing and enforcing a law that did not foresee digital information.

Introduction

Intellectual property laws are laws meant to assure that creators of written works, artistic works or inventions are compensated for the time, effort and money they have invested in their creation. Intellectual property laws also recognize that future creation in the arts and future developments in science and technology are dependent on creations and inventions eventually reaching the public domain. For this reason, Intellectual property laws strive to create a balance between the creator's or inventor's rights and those of the public. Intellectual property laws allow for certain uses of protected works within the public domain, recognizing the importance of this usage to cultivate future innovation.

Some creations, most notably written and artistic creations, are automatically copyrighted. In other words, once an artistic creation is created, it is assumed to be protected by copyright, even if no formal or legal steps have been taken by the creator to guarantee ownership. This is not true for other innovations, such as technological innovations that require formal registration to be protected by patent laws.

Legislation can only guarantee such protection within the jurisdiction where the laws are in effect. To protect an invention or creation in another country, mutual understandings must be reached between countries. These mutual understandings are expressed in international treaties and directives, which have the binding force of law on the signatory countries. The importance of international agreements grows in an environment of global digital economy since inadequate intellectual property protection could hinder the import and export of intellectual goods between countries.

For this reason, the current worldwide trend is toward harmonizing the national laws that award intellectual property protection (e.g., Hefter, 1995). International treaties and conventions replace international law and compel signatory nations to enforce minimum standards and intellectual property protection.

The protection of intellectual property also benefits workers in many industries that are not linked directly to the creation or invention but benefit from its protection. These include employees of sound recording companies, video recording companies, software producers, the book industry and others that are involved in the various production stages of protected works.

Intellectual property refers to the ownership of information, hence the laws that regulate intellectual property are first and foremost property laws. What distinguishes intellectual property from other property is that intellectual property is characterized by the lack of tangible form (e.g., Hefter, 1995). Because intellectual property is intangible, it needs to be defined in such a way that will allow it to be protected. Intellectual property laws are intended to encourage originality by preserving ownership rights and setting terms for the copying and duplicating of original works. Intellectual property laws apply to four types of intangible property: patents; trademarks; copyrights; and trade secrets.

Intellectual property laws in Israel

Intellectual property protection in Israel is undergoing many changes. These changes are primarily a result of legislative changes Israel has been compelled to effect to comply with the international treaties it has signed. Unfortunately, Israel had carried out its obligations in such a way that has been subject to much criticism from the international community.

The legal foundation of intellectual property protection

Intellectual property in general, and copyright protection in particular, have suffered from a piecemeal approach in Israeli legislation. This is a result of many separate laws, amended time and again over the years, which with each change are losing more of their ability to function as a comprehensive foundation for intellectual property protection in Israel. The table below describes the existing intellectual property laws in effect in Israel.

Law	First Passed	Last Amended
Copyright Law and Copyright Ordinance	1911	1999
Ha'midgamin Ordinance	1925	
Trademark Regulations	1940	
Copyright Order	1953	
Source Name Law	1965	
Patent Law	1967	1998
Trademark Ordinance	1972	
Performers' Law	1984	1996
Integrated Circuits Protection Law	1999	

Table 1: Intellectual property laws in Israel

The existing Copyright Law in Israel originated in the 1911 British Copyright Law. It was applied to the British Mandate in 1924 and has been amended twice since. The Copyright Ordinance, implemented during the British Mandate, has been amended six times. The Copyright Law had been under attack by both Israelis and by interest groups abroad, but both agree that while the law is outdated and inadequate, it is only part of the copyright problem in Israel today. The rest of the problem originates from the lack of action taken by the Israeli government to enforce copyright protection (IIPA, 1999).

A committee of experts chaired by Meir Gabai, formerly the general director of the Ministry of Justice, was appointed in 1988 to draft a new Copyright Law. After nearly ten years, the committee submitted a report to the ministry. Following the recommendations of the Gabai Committee, a new copyright bill has been drafted, but the bill in its entirety has not been published. Drafts for revised, amended or new copyright bills have been circulating for the past dozen years within the Ministry of Justice, but have failed to reach the Knesset until now. In the present bill, most notable in the context of databases is the proposed Article 4(a)(2) which states that copyright protection will be given to original works that are compilations of data only. Proposed Article 5(4) clarifies that copyright protection will not be given to individual facts of data, only to compilations. The bill also proposes that copyright violations will be considered a criminal offense and that violators will be subject, under certain circumstances, to severe punishment. Although these articles in the bill are intended to satisfy TRIPS (Trade Related aspects of Intellectual Property rights) requirements, some scholars argue against them. Koren, for example, says that imposing criminal law on copyright infringement might discourage individual users, which will have implications

both for the country's economic markets and for the Information divide (Koren, 1999). Koren further argues that information policy should take into account the implications that strengthening intellectual property rights might have on research and development and public access to information. The copyright bill does not reflect this concern. For example, lending software would constitute a copyright violation. Under American law lending for non commercial purposes under the fair use doctrine is recognized. The bill also would not allow reverse engineering, while the United States and the European Union Database Directive do (Koren, 1999).

Some problems are likely to rise from of the definitions included in the bill. For example, the law defines "musical creations" as artistic creations that warrant copyright protection but does not specifically mention "sound recordings." This could have implications when eventually lawsuits are brought against those engaged in pirating activities in the sound recording industry.

While the Copyright Law represents the greatest level of confusion in Israel's intellectual property protection, patent and trademark registration suffer from mismanagement and difficulties in enforcement. Until 1967 patent law in Israel was governed by the provisions of the Patent Ordinance of 1924, based on the English Patent Act of 1907. Minor amendments were made to the Israeli Patent Ordinance in 1951, 1952 and 1960, and a new law was passed in 1967.

Patents are granted for a period of twenty years from the day of first filing the request. Patent and trademark registration have been under a lot of scrutiny and were recently subject to an examination by the State Comptroller's Office, which recorded its findings in a report (State Comptroller, 1998). Patent and trademark registration, which under law should be handled by employees of the Ministry of Justice, are being handled by contractors employed by the ministry. This is in clear contradiction to procedures, which were meant to protect patent and trademark owners from conflict of interests and breeches in confidentiality. The duration between filing for a patent or trademark and having it approved is very long-often up to four years. This is due to the method of payment required of the filer, in which the majority of the processing fees are paid upfront and the rest upon completion of the process. This creates a situation whereby workers are eager to begin work on a file but lack motivation to complete it. The problem is even worse when a worker retires or leaves and other workers are reluctant to continue working on the files left behind. It is necessary to note that while under review, the invention receives less protection than when the patent is registered.

Patents are under the supervision of the Ministry of Justice. In the ministry there is a Patent Office, headed by a Registrar for Patents and Designs. The Patent Office oversees patent registration, design registration and trademark registration. Another responsibility is maintaining a database that will make this information available to the public. In an inspection conducted by the comptroller of thirty-seven patent files, the waiting period for a patent was three to forty-eight months, the average being one year. In an inspection regarding trademarks, of 300 files examined, 50 percent were canceled or abandoned by the requesters (State Comptroller, 1998).

The report also indicated that there is no ample protection given to confidentiality for files kept by the Patent Office. No records are kept of files leaving or entering the office. There have been cases where files were lost. As a result, patent requests are subject to loss of secrecy. The lack of record keeping documenting the various stages of a patent request and the absence of procedures to guarantee confidentiality undermine the purpose of patent protection.

Very little case law exists in Israel regarding copyright violation, and none at the Supreme Court level. In all of 1998, there was only one court case involving copyright, and the offender was fined NIS 2,500 (Aprox $625 Feb. 2001). Issues relating to intellectual property were presented to the Supreme Court only indirectly.

Recent amendments

In order to comply with its commitments under the TRIPS agreement, Israel was obliged to adopt changes to its copyright legislation by the end of 1999. On December 21, 1999, Israel passed several amendments to comply with TRIPS. TRIPS Articles 1-6 were passed in Knesset, as was the Integrated Circuits Protection Law.

Even after these recent amendments, the international community feels that Israel has not done enough to comply with the commitments it has under the TRIPS agreement. Although a number of TRIPS deficiencies in Israel's copyright regime have been corrected by the amendments, some do remain. Schelsinger (Schelsinger, 2000) indicated the following points:

a. An exception is made to the sound recording rental right if the sound recording is not the "principal object" of the rental. This is at least a technical violation of TRIPS Article 14.4.
b. There is a "rule of the shorter term" for sound recordings in violation of TRIPS.
c. Sound recordings are not expressly protected against both their "direct and indirect" reproduction.
d. Copies of software acquired prior to Jan 1, 2000, do not carry a rental right, in violation of TRIPS Article 11.
e. End-user software piracy is not on the face of it a criminal offense, in violation of Article 61 of TRIPS.
f. Bonding requirements in ex parte civil search cases are too high, in violation of TRIPS Articles 41.2 and 50.3.
g. Civil damages are too low to compensate the right-holder, and statutory damages are applied per title, not per copy, and are therefore too low, in violation of Articles 41 and 45 of TRIPS.
h. Effective action to deter infringements is not present in either civil or criminal cases, in violation of TRIPS Article 41.
i. Criminal penalties, as imposed, are too low, in violation of TRIPS Articles 41 and 61.

Of all the violations mentioned in the list, the violation that has been most scrutinized, both in the International Intellectual Property Alliance (IIPA) report and by Schelsinger, is violation (e), regarding lack of criminal actions against end-users. Schelsinger called this the most serious and damaging TRIPS violation, and called for Israel to explicitly criminalize end-user piracy. This requirement of TRIPS has raised fervent objections on the part of some Israeli scholars (Koren, 1999).

State copyright

Israel inherited the British tradition of Crown copyright, which it adjusted to State copyright, upon gaining independence in 1948. State copyright is awarded to all publications of the Israeli government under Article 18 of the 1911 Copyright Law. State copyright awards the government with ownership rights to its publications. Gellman describes the prohibition against government copyright as a "key element of national information policy, [one] whose importance has not always been recognized." (Gellman, 1995). Gellman says that the exclusion of government documents from copyright laws is growing increasingly important for several reasons. First, the volume of information produced by the government is constantly growing. It is information that holds both political and economic consequences. Second, government information that is published in electronic format is more readily accessible to the public, but their ability to use, share and disseminate the information is limited. The abolition of State copyright would not in itself guarantee access to government information, but would provide a statutory mechanism that would encourage public access to government publications. (Gellman, 1995).

In spite of numerous recommendations to cancel or at least restrict State copyright (Negin, 1997), State copyright still exists in Israel for both print and electronic formats. All Israeli government websites carry copyright warnings. A few such examples include State of Israel Government Gateway: http://www.israel.gov.il/eng/mainpage.htm; The Knesset: http://www.knesset.gov.il/knesset/hebframe.html Internet websites seem to fall under the definition of a database under the European Union Database Directive, and under the test of originality proposed by the World Intellectual Property Organization (WIPO). Under WIPO, an Internet site is a database collection of independent works that can be individually accessed by electronic or other means.

The new copyright bill recommends limiting State copyright so that it does not include anything published in the official Reshumot (including laws, regulation, official notices and treaties) and in the Knesset records (administrative guidelines and judicial decisions and official translations of these materials). Even if the committee's recommendations are accepted, a broad range of materials published by the government information such as publications of individual ministries and offices, will continue to enjoy copyright protection.

The issue of State copyright was also addressed in a report of the Subcommittee for Computerized Communication and Information, better known as the Eitan Report. Section 7(1) of the Eitan Report recommends establishing government databases for the dissemination of information, which will revoke State copyright (Israel, 1998).

Copyright protection for databases

Databases in Israel receive copyright protection, which has been recognized both in case law and legislation, but it is unclear whether this protection comes under "sweat of brow" or under "creativity" formula. Negin points out that this issue still remains unclear (Negin, 1997). In The State of Israel v. Achiman (C.A. 136/71 The State of Israel v. Yitzhack Achiman, P.D. 26(2) 259) the Supreme Court recognized the "sweat of brow" formula for the protection

of printed data tables. As for computerized databases, it is generally assumed that they are protected as "compilations", thus they qualify as "literary works" according to Article 35(1) of the Copyright Law of 1911 (Negin, 1997). Since Israel is party to the TRIPS agreement and to the WIPO Copyright Treaty, the "creativity" formula, which is preferred by both, will eventually gain the upper hand. Since there is no system of copyright registration in Israel and there is no empirical data about database copyright. While protection of privacy in databases has a longer and more established history, the problems related to copyright protection of databases are relatively uninvestigated. Thus, the Privacy Law is the primary reference for databases in Israel today.

In practice, Israel follows the example of Feist (Feist Publication v. Rural Telephone Service Co., 499 U.S. 340 (1991)) In *Feist* the US Supreme Court ruled that the "sweat of brow" alone did not qualify a database for copyright protection. Originality is a constitutional requirement for protection under copyright. This meant that producers of factual databases that are arranged in conventional ways, will no longer enjoy copyright protection. Under Feist the database format and the choice of data are protected under the Copyright Law, but the "facts" are only thinly protected. The data contained within the database is not protected. Thus, it may be removed, reorganized and republished by anyone. Negin cites as an example the publications of the Israeli Bureau of Statistics (ICBS). In ICBS publications, text and explanations meet the test of originality and are awarded copyright protection. ICBS products are provided to the public subject to copyright agreements that protect the integrity of the statistics and are limited in distribution to non commercial sources and at cost recovery. ICBS feel that licensing serves several purposes: it protects the integrity of the data, provides another layer of privacy protection and limits the liability of ICBS in case the use of ICBS data causes damage to others (Negin, 1997).

Piracy

In March 2000 a new type of piracy made its debut on the Israeli market: illegal copies of fiction books (Lev Ari, 2000). In the past, illegal production of books has been practiced only regarding textbooks. Unfortunately, this form of piracy joins a long list of pirated copyrighted properties to be produced, sold or bought in Israel.
Israel is earning a reputation as a hub of pirating activities for many protected works: entertainment software, business software, music recordings and sound recordings. The international community is willing to take harsh measures to protect against piracy, since piracy causes great financial loss to software companies and other providers of intellectual content. The widespread pirating activities in Israel have caused the International Intellectual Property Alliance to recommend a Special 301 status for Israel.

'Special 301' status allows the United States to impose trade barriers against particular countries for piracy violations. Being the recipient of this status involves sanctions such as higher taxes on hi-tech products and software. Section 301 is a provision of the U.S. Tariff Act of 1974, and it gives the United States the authority to negotiate to eliminate a large range of foreign trade practices. Action requires a finding that a foreign government had denied U.S. rights under a trade agreement or has engaged in an act, policy or practice that is unjustifiable, unreasonable or discriminatory, and that it burdens or restricts U.S. commerce (Hefter, 1995). Special 301 is aimed at enhancing the United States' ability to negotiate improvements in foreign intellectual property regimes through bilateral or multilateral initiatives. The statute requires annual identification of those countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. citizens relying on intellectual property protection. The most egregious cases among these are then identified and may be investigated. A Special 301 action involves a six-month investigation, with a possible ninety day extension, at the end of which trade sanctions can be imposed (Hefter, 1995). Only two countries, Israel and the Ukraine, are designated in the 1999 report as "priority foreign country". The IIPA report accuses Israel of being a major locus for political media piracy.

The Israeli government, and in particular, the Ministry of Trade, were aware of the dangers implicit in Israel's becoming a 301 priority nation. As early as 1997 the Ministry of Trade admitted to problems in the enforcement of copyright protection in Israel, but the ministry felt that no consequences would be suffered as long as Israel remained off the 301 list (Comptroller, 1998).

Israel escalated to the dubious honour of this position at an alarming pace. Israel was not a candidate for Special 301 status until 1999, but had been warned as early as 1996 by the USTR (United States Trade Representative) that extreme adjustments needed to be made to copyright protection and enforcement in Israel (USTR, 1999) The report says that "Israel has an inadequate copyright law which, combined with poor enforcement, has led to widespread cable and software piracy. The Administration seeks revision of the copyright law and improved enforcement and passage of a law governing licensing of satellite signals by cable operators. The Administration remains concerned

about the potential passage of troubling modifications to Israel's patent law." (USTR, 1999). Data gathered shows that while the use of illegal copies by businesses dropped from 48 percent to 44 percent in 1998, the financial damage increased by 15 percent, from $63 million to $72 million. In the music and videocassette industries, piracy increased by 5 percent and 10 percent respectively.

Although as of August 1999 no Special 301 investigation had been initiated against Israel, the possibility of this happening now seems very real. The IIPA first recommended that Israel be designated a priority foreign country in February 1998, but in April 1999, while the USTR was making its decisions, it chose to defer such a recommendation. It is presumed that the decision to defer designating Israel as a priority foreign country reflects a desire on behalf of the U.S. government not to add to the difficulties of the newly established government in Israel (Koren, 1999). Since 1998, when Israel was designated a priority watch list country, the USTR has held consultations with Israel. The purpose of these consultations has been to devise a plan that would give the Israeli government the tools to tackle piracy. Unfortunately, the consultations failed to produce the results hoped for by the USTR. The IIPA report named several measures that needed to be taken up immediately by the Israeli government: a campaign against optical media piracy, including control and supervision of CD plants; passage of a TRIPS-compatible copyright law; filing of criminal charges against end-user software piracy; action by the customs service to stop imports of pirate copyrighted products from entering the country; and increased raids by the police unit designated to fight piracy. The IIPA further claims that piracy is linked to organized crime, that the Israeli government has failed to legalize the use of its own software, and that the Internet serves as a platform for piracy in instances where community websites enable commercial pirates to take "special orders" for pirate CDs and CD-ROMs (IIPA, 1999). An example of the effect of lack of government intervention is SID codes (Source Identification Codes). SID codes identify where a disc was mastered and replicated. Out of five known compact disc production facilities in Israel, only two use SID codes. Government has failed to enforce manufacturing procedures that will guarantee the use of SID codes in the production of all discs (IIPA, 1999). To satisfy U.S. demands, Israel established a special police unit to combat piracy in 1998. The IIPA accuses the Israeli government of keeping the unit defunct by not allocating the required budget necessary for its operation. While Israeli officials admit that the special police unit is behind schedule in terms of organization, the reason for this is not lack of response or unwillingness to fight piracy, but rather circumstances that have caused technical delays that are soon expected to be addressed.

In its tone, IIPA report stands in contrast to the report published by the Business Software Alliance (BSA 1998). The BSA report did not single out Israel as a locus for extreme pirating activities. There is general agreement between the two reports regarding facts. The BSA study showed a decrease in overall worldwide software piracy for 1998, including in the Middle East. The decrease was attributed to the worldwide recession and to weaker buying powers. BSA speculated that in booming economies the piracy rate will again increase.

In a list showing the highest piracy rates for 1998, the BSA listed twenty-six countries, and Israel is not among them. Israel is noted as having a 48 percent piracy rate in 1998, which is much lower than the rate for the Middle East (69 percent), and closer to the world average of 38 percent. In comparison, the IIPA lists piracy of business application software in Israel at 41 percent, and entertainment software at 55 percent.

The IIPA report accuses the Israeli government of showing indifference to the situation. The local copyright industries, which in the past had been profitable, are left to combat piracy without enough help from the government. Piracy has evolved into an industry with international distributing channels for pirated products.

The IIPA has demanded repeatedly that the Israeli law enforcement agencies file lawsuits against end-users. While Koren feels that filing criminal charges against end-users victimizes innocent users and hinders scientific development (Koren 2000), the IIPA feels that failure to file lawsuits against end-users is the most damaging, of Israel's negative policies (Schelsinger 2000).

Israel and the international community

Israel, with its history of alienation from its neighboring counties, has always strived to become part of the international community and to be part of legal or geographical alliances. Israel has long been involved with international initiatives regarding intellectual property laws.

These efforts have resulted in a large number of international conventions and treaties Israel has signed in regard to

intellectual property. The table below represents Israel's efforts in the international arena.

Treaty	Year Amended
Paris Convention for the protection of Industrial Property (1883)	March 24, 1950
Berne Convention for the Protection of Literaty and Artistic Works (1886)	March 24, 1950
Madrid Agreement for the Repression of False or Deceptive Indications of Sources on Goods (1981)	March 24, 1950
WIPO Convention Establishing the World International Property Organization (1967)	April 26, 1970
TRIPS-Agreement of Trade Related Aspects of Intellectual Property Rights	1995
Patent Cooperation Treaty (PCT) (1970)	June 1, 1996

Table 2: International Treaties to Which Israel is Signatory

Efforts were made as early as 1981 to comply with international standards. For example, in 1981 Article 4a was added to the Copyright Ordinance, addressing the issue of moral rights, in accordance with article 6bis of the Berne Convention for the Protection of Literary and Artistic Works (Berne, 1971).

The most significant step that Israel took in recent years in an effort to stay in the ranks of the international community was to sign the TRIPS agreement in 1995. The TRIPS agreement is an integral part of the World Trade Organization Treaty, and its main purpose is to assist in solving problems related to intellectual property rights that may hinder international trade. The agreement promotes a balance between intellectual property protection and assuring that enforcement of these protections will not hinder international trade.

The IIPA claims that Israel's December 1999 Copyright Law amendments, while intended to bring Israel's law into compliance with TRIPS, do not fully satisfy TRIPS. Israel requested a four-year transition period, which is given to developing countries. This angered the IIPA, who challenged the request, saying that by all standards Israel cannot be considered a developing country.The report notes that Israel's gross domestic product per head of population is $17,500, comparable to or exceeding that of clearly developed countries like Portugal, $15,200; Spain, $16,400; or Ireland, $18,600 (IIPA, 1999).

Copyright law and its application in libraries

Public libraries in Israel received a serious blow, when, on November 30, 1999, a court decision was rendered that will seriously impair libraries' ability to provide services to readers (C.C. 1196/96 NMC and others v. Holon Public Library). Several recording companies sued the Holon Public Library on copyright violations, claiming that by lending audio compact discs the library was violating copyright. Justice Kling instructed the library to refrain from lending audiocassettes and CDs from the library's music division until March 1, 2000, and to provide by that date a full list of the audio materials that had been lent by the libraries as of March 1, 1996. The judge chose to interpret the Copyright Law in light of Basic Law: Human Dignity and Liberty, which states that a person's property should not be harmed (Basic Law: Human dignity and liberty). Justice Kling stated that copyright is a constitutional right, and that the city of Holon was violating this right by lending CDs, and that the creator was entitled to royalties. The judge further said that the fact that the city operates a library in accordance with the Public Library law-1975, does not mean it has the right to violate individual rights, when this can be avoided.

Another copyright issue relating to libraries is the royalty fee to authors for lending their books to the public. The Ministry of Education through the Department of Libraries devised a system to pay authors for circulation of their books in public libraries. The system is based on a representative sample of libraries that take part in a survey. Although it is agreed that there are many faults with the way the survey is conducted, to date no other system has been implemented. Each year more authors are added, and the budget allocated for this purpose decreases. Authors would like the new copyright law to include sections regulating the contractual relationship between publishers and authors. They also request that the income they derive from their books be recognized as income generated by property, and as such be exempt from various taxes. The Ministry of Education must increase payments for photocopying and resolve the issue of use in classroom. The existing Copyright Law allows for use of literary works in classrooms without paying copyright fees (Ben Ezer, 2000).

There is only one section in the new copyright bill that pertains particularly to libraries. Article 16 of the bill permits non-profit libraries or archives to make copies of literary or artistic works if the library's copy is lost, destroyed or becomes unusable, providing an original is unavailable for purchase. Article 24 of the bill presently contains two versions. The first version allows lending of literary or artistic works by non profit libraries. The second version distinguishes between literary works and audiovisual or computer application. Audiovisual works of computer software will be cleared for lending by non profit libraries only in return for fair compensation to the creator. In cases where the library and creator can't agree on fair compensation, the court will have to intervene.

Conclusions

Intellectual property is the information policy area that is most subject to legally binding international treaties. These have significantly contributed to promoting common standards of intellectual property protection that will benefit local industry.

Intellectual property laws exist first and foremost to protect creators and allow them to benefit from the fruit of their labor. But intellectual property laws are limited in the duration of the protection they offer because of the contribution that using intellectual property has on the advancement of the arts and sciences. Such developments are dependent on existing knowledge and on the premise that today's users are tomorrow's creators. The 1999 Copyright Bill, if passed as proposed, will have grave implications for library users; because libraries will need to obtain licenses and pay royalties for lending non-print materials, the number of libraries that can afford to do this will drop.

Intellectual property protection in Israel suffers from two acute flaws: the existence of State copyright and poor implementation of property rights. The first leads to limitation of access to government information and the second to a growing criminal sector involved in pirating activities. Several reasons are given for providing copyright protection to government information: limiting liability; protecting the commercial investment of creating a website; and protection of third-party works. All these reasons fail to recognize the inherent problem in State copyright as a tool that limits access to information and interferes with the democratic process. Sadly, a discussion of intellectual property protection in Israel is a discussion of the widespread pirating activities taking place in the country. Although this is a much more widely discussed area, it should not deflect our attention from the problems related to State copyright.

The concern that some have shown for the Israeli end-user is odd at best. It is unlikely that the majority of end-users are unaware of the illegalities involved in software and audiovisual piracy. In the 1980s, when personal computers were first becoming a household product, Israeli computer users referred to Israel as One Diskette Land to indicate that everyone was copying software from one original package. Filing criminal charges against end-users, as harsh a measure as it may seem to some, is essential in fighting software piracy, and in all likelihood would not stifle the creativity of the next generation of inventors.

Another issue is the need to understand why Israel, despite its being a law-abiding and democratic country, has consistently avoided dealing with the widespread pirating activities taking place there. This can most likely be explained by two factors: Israel has failed to recognize intangible property violations as a crime and Israel has probably believed that its close relationship with the United States would help defer the penalties involved. Israel's close relationship with the U.S. may not be able to serve much longer as a barrier against sanction, as it did regarding the USTR decision in 1999. The request for developing country status for purposes of implementing TRIPS is further evidence of stalling, and it seems to have angered Israel's allies in the U.S.

Israel's reluctance in the past to act against piracy was due to the government's failure to recognize piracy as theft, its feeling of safety from ever being put to task by the international community for failure to act against piracy, an outdated judicial system that does not recognize the serious commercial harm caused by piracy, underfunded enforcement authorities and prosecutors, and a failure to link intellectual property rights and copyright enforcement with trade or with new technological developments in Israel (e.g., the enormous growth of the information sector, the telecom sector, etc.). By ignoring the problem the Israeli government has hurt local industry, in particular artists, musicians and content producers.

References

- State of Israel. Statutes. Basic Law: Human Dignity and Liberty - Article 3 "There shall be no violation of the property of a person."
- Ben-Ezer, E. (2000) "The Smaller Letters Deserve More" *Ha'aretz*, February 14, B2. [in Hebrew].
- World Intellectual Property Organization. (1971) Berne Convention for the Protection of Literary and Artistic Works Paris Act of July 24, 1971, as amended on September 28, 1979. Geneva: World Intellectual Property Organization. http://www.wipo.int/clea/docs/en/wo/wo001en.htm (14 Feb. 2001)
- Business Software Alliance. (1999) "1998 Global Software Piracy Report" Washington, DC: Business Software Alliance http://www.bsa.org/usa/globallib/piracy/98ipr.pdf (14 Feb. 2001)
- Gellman, R.M. (1995) "Twin Evils: Government Copyright and Copyright-Like Controls Over Government Information," Syracuse Law Review 45, 999-1072.
- Hefter, L.R. & Litowitz, R. D. (1995) *Protecting Intellectual Property* . Washington DC: United States Information Agency. http://www.usinfo.org/trade/bg9515e.htm [Accessed 14.02.2001].
- International Intelectual Property Alliance, (1999) "Excerpt from the IIPA's 1999 Special 301 Recommendations regarding Israel," Washington DC: International Intellectual Property Alliance, 12. http://www.iipa.com/html/rbc_israel_301_99.html [Accessed 14.02.2001]
- State of Israel. The Knesset, Standing Committee for Economics,Sub Committee for Computerized Communication and Information,National Council for the Development of Computerized Communication and Information Infrastructure (1998) "Preparing Israel for the Information Age" [Jerusalem]: The Knesset, [219] unnumbered (in Hebrew)
- Koren, N.E. (1999) "Creators' Rights and Public Rights" Ha'aretz, August 12, B2. [in Hebrew].
- Negin, B.D. (1997) "Database Protection in Israel" State of Israel. Ministry of Finance. Government Internet Committee http://www.itpolicy.gov.il/vadat_inter_gov/articles/dataprot.htm [Accessed 14.02.2001] [in Hebrew]
- Lev-Ari, S. (2000) "Forged Copies of Tzuriah Shalev's Book were Confiscated" *Ha'aretz*, March 13, A11. [in Hebrew].
- Schelsinger, M. (2000). Written interview, March 9, 2000
- State of Israel. Comptroller, (1998) State Comptroller Report no. 48,Jerusalem.State Comptroller [in Hebrew].
- United States Trade Rrepresentative, "Special 301 on intellectual property rights" Washington DC: United States Trade Representative http://www.ustr.gov/reports/301report/factsheets.html [Accessed 14.02.2001]

How to cite this paper:

Rabina, Debbie L. (2001) "Information ownership is Israel: a reality of 'being pushed into the corner'," *Information Research*, **6**(4) [Available at http://InformationR.net/ir/6-4/paper110.html]

Check for citations, using Google Scholar

ß
