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# CONCEPT PAPER ON DEVELOPING A SUSTAINABLE IP JUDICIAL TRAINING PROGRAM

Final Report

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# **CONCEPT PAPER ON DEVELOPING A SUSTAINABLE IP JUDICIAL TRAINING PROGRAM**

FINAL REPORT

SUSTAINABLE ACHIEVEMENT OF BUSINESS EXPANSION AND  
QUALITY (SABEQ)

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## Section I

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### 1. BACKGROUND

#### *A. OVERVIEW OF THE INTELLECTUAL PROPERTY PROTECTION REGIME IN JORDAN*

The most important factor contributing towards the success of an Intellectual Property (IP) System in a country is establishing an understanding about the benefits of IP. Most countries of the Middle East region including Jordan have gone through almost revolutionary transformations in enhancing, amending and strengthening their intellectual property legislation. The main source for this unprecedented effort has been the World Trade Organization Agreement on Trade-Related Aspects of Intellectual Property Rights Agreement (TRIPS Agreement) as well as free trade agreement signed between the United States and Jordan in 2001.

IP laws provide an incentive to invest in technological innovation, information and cultural expression. Market based transactions in these areas thrive when governments encourage investment, and Courts safeguard contracts, and settle commercial disputes. Courts are therefore critical institutions for enforcing IP and contributing towards economic success.

However Jordan is still facing problems the most important being lack of knowledge and understanding of IP both in its utilization by the public and in its enforcement by the Jordanian courts. Nothing undermines the prospect of economic policy reforms more than laws that are on the books but go un-enforced. The immense legislative reform in the field of intellectual property will not reach the desired results if judicial capacity remains poor and may very well pose a hindrance to foreign investment and free trade. Judges applying intellectual property laws must maintain world-class knowledge regarding patent, trade secrets, copyright and trademark law policy. Thus the need for education and capacity building in Jordan is great by offering a sustainable long-term training program.

#### ■ Brief Situation Analysis of Jordan

Jordan has seen tremendous legislative changes over the past five years. More than eleven intellectual property related legislation (copyright, patents, trademarks, industrial designs, unfair competition, trade secrets, integrated circuits, geographical indications, and new plant varieties) were passed from 1999 to 2004, five of which were introduced for the first time. As a result, cases relating to intellectual Property infringements have raised dramatically over the last few years in Jordan. According to the National Library (Copyright Office), more than 1350 copyright infringement cases have been adjudicated by the courts of Jordan from 2000 to 2006.

Although courts are receiving an increasing number of copyright and trademark infringement cases, key government and private sector stakeholders interviewed admit that the existing level of copyright enforcement is still very weak. According to a report released on Copyright Enforcement in Jordan the retail loss as a result of IPR violation in Jordan was recently estimated at US\$15 million. The most widespread kind of copyright piracy in Jordan is related to DVD and CD infringement. Most copies are being made in Jordan nowadays, as opposed to imports from Syria and the Far East. Plus, DVD players are cheaper than VHS players, so the format is fast growing. Although an original DVD is being sold at a very low wholesale price (JD 1-1.5) compared with international standards (e.g., JD 10), there is still a huge gap between this amount and the price of the pirate product. Prices for a pirated CD begin at JD 0.33 (or three CDs for JD 1), while

originals range between JD 10 to 15 JD per CD.<sup>1</sup>

The reason behind weak enforcement of the Copyright Law does not lie in the law itself; the Copyright Law includes a comprehensive package of remedies. However it is the judicial implementation of the Copyright Law that is largely regarded as inadequate and ineffective. The Business Software Alliance (BSA) representative interviewed as part of the abovementioned report indicated that obtaining a ‘guilty’ verdict against a clear case of software copyright infringement has become a rare event in Jordan. In addition, there are numerous decisions where ‘not guilty’ sentences were given due to technicalities that demonstrate the lack of proper comprehension of the Copyright Law as it relates to software protection. Moreover, in the rare instances when a guilty verdict is issued, sentences often fall far below the minimum fines prescribed in the Copyright Law (and confirmed in the Memorandum of Understanding of the JUSFTA). In many cases judges have resorted to other laws to guide the decision on penalties and have issued sentences for as little as JD 50 for copyright infringement.<sup>2</sup>

Therefore the following conclusion is drawn: IP violations are largely attributed to lack of proper understanding and enforcement of IPR laws by the Jordanian Judiciary.

## ***B. SPECIFIC ISSUES TO BE ADDRESSED***

Based on the above, there are specific issues that need to be addressed. These are:

### **■ Judiciary’s lack of in-depth knowledge and skills in Adjudicating Intellectual Property Disputes**

Although the public is confident when it comes to judicial fairness and integrity, this confidence falls short when assessing judges’ technical capacity and ability to deal with novel laws and issues such as IPR. As mentioned above, judicial enforcement in IP cases remains poor and courts take years to settle conflicts and often provide remedies wholly-inadequate to the goal of deterrence of criminal acts. Judges are reluctant to pass significant penalties on infringement because they are not convinced that such infringements constitute serious crimes, most judges do not rule even on one sixth of the maximum fines for copyright infringement and many judges use the criminal law as opposed to the copyright law when sentencing defendant in order to override minimum penalties.<sup>3</sup>

### **■ No Institutionalized Training Program**

None of the parties working in the field of intellectual property in Jordan currently offer institutionalized specialized training programs and curricula to Judges on IP issues and judges do not have the opportunity to pursue continuous training in the field of IP. Therefore Judges struggle to grasp new legal and technological developments in this area.

### **■ Little exposure to experience in other jurisdictions**

Judges adjudicating IP disputes have little information on best practices and procedures of other jurisdictions. Judges find difficulty in accessing information. This is attributed to the fact that most judges are Arabic speakers and therefore cannot access the wealth of knowledge on IP that is available in English. Furthermore they do not know how to properly use information technology resources such as the web.

### **■ Lack of Training Material**

Due to the non existence of institutionalized training programs, customized training material and references

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<sup>1</sup> AMIR Report: Copyright Enforcement in Jordan and Compatibility of IPR Framework with JUSTFA, IBLAW, January 26, 2006 P. 7

<sup>2</sup> Copyright Enforcement in Jordan and Compatibility of IPR Framework with JUSTFA, IBLAW, January 26, 2006 p. 11

<sup>3</sup> Ibid p. 15

are hard to find. In addition, very few training material and references exist in the Arabic language.

#### ■ Negative Direct Investment Implication

There is a direct correlation between weak judicial capacities and reduced levels of direct foreign investment, trade, technology licensing and businesses. Thus, enhancing the skills of the judiciary will have a positive impact on foreign investment.

### *C. NEEDED INTERVENTION*

According to the above, an effective program to develop judicial capacity in effectively handling IP disputes is needed in Jordan. This initiative will initiate a long-term sustainable training program whereby approximately 20 judges will be enrolled in a one year, intensive, carefully designed intellectual property training program. The trained judges would form the nucleus for a specialized judiciary responsible for resolving intellectual property disputes, as well as becoming trainers for the second generation of specialized judges.

In addition this initiative will develop a training manual and a “Bench Book” on IP legislation to be used as a resource to support the development of the training program curriculum. As a result, judges will learn the necessary prerequisites for handling and adjudicating intellectual property disputes and a number of judges trained (at least 5 judges) will develop the capacity to train fellow judges. Cooperation with the Judicial Council is sought to ensure that trained judges will be assigned IPR cases throughout the training and upon completion of the program in order to improve the quality of court decisions and increase court efficiency.

A next step in institutionalizing the effective handling on IP disputes in court could lead to the establishment of a Jordanian specialized IP Court. The Copyright Enforcement report recommends this stating that “It is imperative that the Government of Jordan consider a specialized judiciary system that will enhance the competency of Judges in IP-related legal issues, and the resulting level of enforcement”<sup>4</sup> However, it is noted that some judicial experts believe that the creation of an IP court is unnecessary, it is better to focus on training a pool of qualified judges to handle IP cases.<sup>5</sup> Therefore if such an issue is to be raised, its recommended to begin by initiating a national dialogue in order to determine whether there is consensus to establish an IP court. Furthermore, studies can also be commissioned to study this issue before further recommendations are made.

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<sup>4</sup> Copyright Enforcement in Jordan and Compatibility of IPR Framework with JUSTFA, IBLAW, January 26, 2006 p. 15

<sup>5</sup> [http://www.wipo.int/edocs/mdocs/arab/ar/wipo\\_ip\\_ju\\_amm\\_2\\_04/wipo\\_ip\\_ju\\_amm\\_2\\_04\\_3.doc](http://www.wipo.int/edocs/mdocs/arab/ar/wipo_ip_ju_amm_2_04/wipo_ip_ju_amm_2_04_3.doc) : WIPO National Symposium for members of the Jordanian Judicial Institute, October 10-12, 2004 -

## Section II

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### CHALLENGES TO BE ADDRESSED

#### 1. SUSTAINABILITY & CAPACITY BUILDING

In order for this initiative to become sustainable beyond the life of the program, local implementation capacity must be built and strengthened so that the delivery of the training programs can also be sustained.

##### ■ Training & Capacity Building

Judges selected for this program will participate in an ongoing intensive training program that will last for approximately one year. Continuous evaluation of judges by trainers will take place. Judges that show promise and receive high evaluation marks will be requested to act as co-trainers. Certificates will be issued at the completion of the program.

##### ■ Judicial Training-of-Trainers

Judges selected to co-train, will be provided with TOT training in order develop the skills required to become trainers. TOT training of Judges will include 2 aspects:

1. Training on substantive IPR issues and the use of training manual.
2. Training on Effective Teaching Methods: in order to become effective trainers. This includes trainings on how to plan the course and employing a variety of teaching methods, including interactive teaching and the use of visual aides in the classroom to ensure that they are providing learners with an effective educational experience.

##### ■ Development of Training Manual

A Training manual will be developed including a compilation of landmark cases in foreign and Arab jurisdictions. This will serve as a guide for judges and trainers.

##### ■ Hands on Experience: Deciding IP cases in the Court

An important aspect of effective learning is to “learn by doing”. The training experience should include an opportunity for Judges to adjudicate IP cases in court. Moreover an agreement and understanding should be reached with the Judicial Council in order to guarantee that judges participating in and graduating from this program will have IP cases referred to them.

#### 2. DEFINING ROLES OF STAKEHOLDERS

The success of the program depends on full engagement and support by key stakeholders as well as an understanding of their roles and responsibilities. The proposed role of each stakeholder is outlined as follows:

**Judicial Institute:** The Judicial Institute will offer a specialized IP training program for the benefit of sitting judges and Public Prosecutors. The Institute would offer the venue for the training and pay the expenses for local experts (in accordance with their own fee structure), as well as catering and coffee breaks.

**Judicial Council:** The proposed role of the Judicial Council would be to select the first round of Judges participating in the training program and will obtain written commitments from those judges. The Judicial Council may take into account the following proposed methodology for the selection of those judges.

■ **Proposed Selection Methodology:**

- a) Issue announcement for program through court, judicial institute
- b) Encourage Female judges to apply
- c) Encourage Judges from the 3 levels of court (Magistrate, First Instance, Appeal) to apply since most IP cases are handled by those courts.
- d) Selection should include Judges from the Amman, Irbid, Zarqa, and Aqaba courts since many IP claims originate in those cities.
- e) Conduct a written exam prepared by JIJ and SABEQ.
- f) Make final selection

The Judicial Council must ensure that trained judges are tasked with overseeing intellectual property cases in their respective work and commit to training other judges for future sessions of this Program.

**Ministry of Justice:** Since the Minister of Justice is President of Board of Directors of the Judicial Institute and is responsible for nominating Judges and Public Prosecutors, The Ministry of Justice is a key partner in this program and must be involved in order to ensure the continuing success of the program.

**Ministry of Industry and Trade and the National Library:** Both entities deal with registering and implementing substantive areas of intellectual property and therefore their input and cooperation in the program is essential, particularly through providing practical expertise in dealing with IP matters.

**SABEQ:** The proposed role of SABEQ would be to conduct the following:

- Select appropriate local candidates to conduct the training for the judges,
- Oversee evaluation of potential TOT judges
- Assist in the creation of the training curriculum, training manual and Bench Book.

**Other Partners:** The program may also involve International Organizations and NGOs in the program, including: WIPO, JIPA, IDLO, BSA and others. These entities may provide in-kind support by providing expertise through the provision of experts in various fields of intellectual property.

## Section III

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### PROGRAM OBJECTIVES, ACTIVITIES AND RESULTS

#### *A. DESCRIPTION OF TRAINING PROGRAM*

##### **I. TRAINING MATERIAL AND CURRICULUM**

###### **A. Development of Training Manual**

Training manual should be developed as the main tool for providing world-class training for the selected judges. The manual would be compiled by experts in the field and use some existing material produced by WIPO and other international organizations. The Manual must incorporate innovative teaching methodology encompassing PowerPoint presentations, role plays, case review and comparative case studies.

It is estimated that the Development of the Training Manual would be completed by expending 80 LOEs.

###### **B. Curriculum**

The content of the Manual should include the following basic outline:

###### **Section 1: Introduction to IP**

- I. Historical Background
- II. Understanding Intellectual Property
- III. National Dimensions of IP: Domestic Laws and Legal Systems
- IV. Economic Importance of IPR Protection
- V. Areas of Intellectual Property
  1. Trademarks
  2. Patents
  3. Unfair Competition and Trade Secrets
  4. Copyrights and Neighboring Rights
  5. Geographical Indications
  6. Industrial Designs
  7. Integrated Circuits Designs
  8. New Plant Varieties

###### **Section 2: Trademarks**

- I. Definition
- II. Types of Marks
- III. Registrable Trademarks
- IV. Ownership and Rights Conferred
- V. Legal Protection
  1. Civil action
  2. Criminal action

3. Provisional protection
4. Remedies available

### **Section 3: Unfair Competition**

- I. General Definition
- II. Types of Unfair Acts
- III. Legal Protection
  1. Civil Protection
  2. Provisional Protection
  3. Available Remedies
  4. Case Studies

### **Section 4: Copyright**

- I. General
- II. Protected Works
- III. Unprotected Works
- IV. Ownership and Rights Conferred
- V. Legal protection
  1. Civil
  2. Criminal
  3. Available Remedies available

### **Section 5: Patents**

- I. Types of Patents
- II. Registration
- III. Ownership and Rights Conferred
- IV. Legal Protection
  4. Civil Protection (Civil Action)
  5. Criminal Action
  6. Interim Injunctions
  7. Available Remedies

## **Section 6: Trade Secrets**

- I. What is a Trade Secret
- II. Ownership and Rights Conferred
- III. Trade Secrets Infringement
- IV. Legal Protection
  - 8. Civil Protection
  - 9. Criminal Action
  - 10. Interim Injunction
  - 11. Provisional Protection
  - 12. Available Remedies

## **C. Training**

The Training would be conducted by carefully selected well-known experts in the field. Total number of local instructors would be 10 to 12. In addition, international organizations (such as WIPO) and industry representatives (e.g. Business Software Alliance) would be asked to also send expert speakers to address certain specialized topics. The relevant stakeholders shall appoint a coordinator to ensure that the program is run smoothly.

It is proposed that the training take place once a month over one full year. Sessions would last for six (6) hours per training day.

## **II. DESCRIPTION OF BENCH BOOK**

### **A. Overview**

A Bench Book provides a quick reference guide for sitting judges on how to respond to practical issues they encounter on the bench. Bench Books create uniformity in the judicial system since all judges can refer to and rely on the same information. The creation of a Bench Book on IPR issues will reinforce the importance of IPR and will provide Jordanian Judges with a comprehensive set of guidelines, developed in an international context to assist them in applying IP laws to real-life situations.

A Bench Book cannot serve as a substitute to laws and textbooks on IPR, rather it is intended as a guide to the key areas and issues the judge is likely to encounter.

### **B. Content**

The Content of the Bench Book would include:

- Procedural Checklist

- Applicable Law
- Table of Jordanian Laws
- Table of Cases decided in Jordanian Courts

It is estimated that the Bench Book would be completed by expending 50 LOEs.

### ***RESULTS AND SUSTAINABILITY INDICATORS***

The Objective of this program is to improve local judicial capacity to effectively and equitably handle IP disputes by strengthening judges' knowledge and skills in Intellectual Property. As a result this program will

- Implement a world-class institutionalized judicial intellectual property training program for the benefit of selected judges in Jordan.
- Establish a highly trained corps of judges in intellectual property laws capable of training of other members of the judiciary through "train-the-trainer" approach.

Indicators of a successful and sustainable program include:

- Trained core of specialized judiciary responsible for resolving intellectual property law disputes
- Development of training manual facilitating the training of judges
- Development of intellectual property Bench Book
- Reinforcement of an investment friendly environment through an increased trust in the quality of judicial decisions.
- Full Engagement of key stakeholders to ensure the continuation of this program for years to come.

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