

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE®



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Submitted to [www.regulations.gov](http://www.regulations.gov)

Jennifer Choe Groves  
Senior Director for  
Intellectual Property and Innovation  
Office of the U.S. Trade Representative  
600 17<sup>th</sup> Street NW  
Washington, D.C. 20508

Re: Docket: USTR-2009-0001  
**Saudi Arabia: Special 301 Out-Of-Cycle  
Review**  
IIPA Comments on the Status of Copyright  
Protection and Enforcement  
74 Fed. Reg. 51215 (October 5, 2009)

Dear Ms. Groves:

This submission by the International Intellectual Property Alliance ("IIPA") responds to USTR's request for comments concerning "acts, policies and practices regarding the adequacy and effectiveness of intellectual property protection and enforcement" in Saudi Arabia as part of the Out-of-Cycle ("OCR") review announced by USTR on April 30, 2009.

## **Recommendation**

While piracy rates in Saudi Arabia remain unacceptably high (in the motion picture, entertainment software, and music industry, for example, as high as 90%), IIPA has reviewed the progress to date that has been made in the Kingdom and acknowledges the very significant efforts and recent commitments made by MOCI Deputy Minister Al-Haazaa and IPR Working Group Chairman M. Al-Aiyash to reduce piracy and to achieve the OCR benchmarks identified by IIPA in its February 2009 Special 301 submission. In light of this progress and these commitments, IIPA recommends that Saudi Arabia be removed from the Watch List. However, if these commitments are not met and progress on the imposition of deterrent penalties, and providing transparency, enhanced enforcement actions against the production, distribution and sale of infringing materials, and government legalization of software use is not continuing, Saudi Arabia's placement on the Watch List will need to be re-examined in the next Special 301 cycle in 2010.

## **About the IIPA**

The International Intellectual Property Alliance (IIPA) is a private sector coalition, formed in 1984, of trade associations representing U.S. copyright-based industries in bilateral and multilateral efforts working to improve international protection and enforcement of copyrighted materials and open

up foreign markets closed by piracy and other market access barriers. IIPA is comprised of seven member associations (listed on this letterhead below), which in turn represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world. IIPA has participated in the Special 301 process since its inception 20 years ago.

### **IIPA's February 2009 Submission on Saudi Arabia**

IIPA prepared a country report on Saudi Arabia as part of our February 2009 submission to USTR in the annual Special 301 process. There we outlined a number of proposed actions that we believed the Saudi government must take to address the high levels of piracy in the Kingdom. IIPA also highlighted key priority actions that should be taken and should be subject to careful review as part of IIPA's recommendation that the Kingdom be subject to an Out-of-Cycle review.<sup>1</sup> These proposed actions dealt with the need for transparency, deterrent enforcement, including continuing raiding activity and in particular deterrent penalties, making significant progress in the legalization of software use in government ministries, and implementation of the two WIPO Internet treaties.

### **Update on Progress**

#### **Transparency:**

There has been significant improvement by MOCI in this area. Many new cases have been placed on the MOCI website, though the job is not yet fully completed. Translation into English has not yet occurred but H.E. Al-Hazzaa has ensured that steady progress has been made and has agreed to work with the private sector to complete the task. Cases in Jeddah or Dammam need to be posted as well.

Right holders have been able to participate in VRC proceedings upon request and the right to appeal results and penalties to the BOG has been confirmed and such an appeal is due to be submitted in the very near future.

The Ministry must continue to post at least all cases now pending (which would include a number of 2008 cases, we believe) and all cases decided in 2009 along with dates of hearing and fine. A contractor should be hired to do this, perhaps even a right holder with a strong interest in getting it done. The VRC has recently been awarding civil damages which is a major advance and the amount of damages should be on the website as well. By knowing the fines, and having a real census, right holders will be able to assess deterrence over time by the size of the fines and damage awards. The Ministry should be encouraged to outsource translating the site data into English.

#### **Deterrent Enforcement and Penalties:**

Under HE Al-Hazzaa's leadership, raids against street vendors and retail operations have continued at a high and steady rate. The police have been cooperating in many of these raids and on raids against the source of such pirate products. However, the very high piracy rates that continue to dominate the landscape in Saudi Arabia suggest that such raids must not only continue, but be significantly expanded, and greater attention paid to criminal enterprises involved in the production and large scale distribution of pirate goods, regardless of whether these relate to music, video, entertainment and business software or books.

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<sup>1</sup> See IIPA 2009 Special 301 report on Saudi Arabia at <http://www.iipa.com/countryreports.html>.

The government reported recently to the U.S. government that it has conducted 2,000 raids to date in 2009 and inspected 5,000 outlets. It has reported seizure of 3.83 million units of pirate product, all of which demonstrates a significant improvement. The commitment to set up VRC branches in Jeddah and Dammam has also been met. Moreover, the VRC has been clearing many more cases than in the past and administrative penalties have increased, including a few cases involving the maximum penalty of SR 100,000 (US\$26,665).<sup>2</sup> HE Al-Haazaa has been a critical part of these improvements and IIPA members are very grateful for his effective work and his commitment to fighting piracy in the Kingdom.

Obtaining deterrent penalties, both at the administrative level and from the Board of Grievances (“BOG”), has been the IIPA’s highest priority. In particular, it is critical that the BOG, for the first time, impose a term of imprisonment to send a message that piracy will not be tolerated. To achieve this result, IIPA, its members and local right holders have been following the five cases before the VRC involving Video Mesfir, consisting of a retail outlet and a warehouse. As a five time repeat offender, it was critical that Video Mesfir’s cases -- involving the total seizure of over 35,000 pirate copies and reproduction equipment -- be referred to the BOG with a recommendation of imprisonment. Recently the VRC imposed the maximum fine of SR100,000 in one of the recent cases (and fines have been imposed in all other cases, for a total fine for all cases of, it is reported, SR250,000 (US\$66,662). A few days ago, and within two or three weeks of the owner receiving the maximum fine, a sixth raid was run against this five time repeat offender and a few copies of pirate product were again seized -- demonstrating clearly that these penalties are not deterrent and that imprisonment must be imposed. The VRC and the Minister should refer this case to the BOG with a recommendation that imprisonment be imposed.

HE Al-Haazaa has committed to see that this most recent case is referred to the BOG (and we trust with an imprisonment recommendation) by the end of November. Right holders also intend to appeal the decision in the VRC case involving the largest seizure (and the SR100,000 fine) to the BOG within this period as well. This commitment by HE Al-Haazaa is one of the principle reasons why IIPA is recommending that the Kingdom be removed from the Watch List. Both IIPA and the USG have received assurances that the BOG will take the necessary action and impose imprisonment in cases such as this one.

In addition to the above actions, continuing efforts to deal with Pay-TV signal theft in the compounds and halting the importation of unauthorized of satellite decoder equipment must remain a priority. Some progress has been made but further aggressive action is necessary.

### **Internet Piracy:**

The CITC, which regulates the ISPs and telecom in general, continues to block foreign websites, when requested by right holders, but on the grounds that they violate Saudi censorship laws. Many of these cases involve both censorship violations as well as infringement. The MOCI also has authority to order a site taken down for copyright infringement.

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<sup>2</sup> The VRC has also started awarding civil damages in its administrative cases and has done so in 19 cases involving software piracy. The average of the fines and damages was around US\$3,000, which remains too low. The total of all fines and damages in 19 cases were SR148,000 or \$39,500.

MOCI must have a trained Internet piracy unit in the copyright department with resources and political will (e.g strong instructions from the Minister). We understand that this is being considered by the Ministry. We call upon HE Al-Haazaa to ensure that this happens in the near term. A cybercrime unit should also be set up by the police.

MOCI has asked for assistance in how to deal with Internet piracy. IIPA supports USG plans for a training seminar in this area.

**Government Legalization:**

This was one of the key benchmarks set out by IIPA as part of the OCR process. We understand that the Saudi government, through M. Al-Aiyash and HE Al-Haazaa, in a recent meeting with the USG intends to send a joint letter on behalf of both Ministries to the King calling upon him to ensure that his two year old decree is actually implemented at the Ministerial level. Moreover, the Commerce Ministry, following the commitment made at last year's IPR Working Group meeting, has hired an outside contractor to upgrade both hardware and software in the Ministry. It is expected that this process will commence shortly and be completed in the January-February time frame, including the purchase of legitimate software to replace illegal software. MOCI has now been added to this effort. Our recommendation to remove Saudi Arabia from the Watch List is based on a redeeming of these commitments before the next Special 301 cycle.

**WIPO Treaties:**

Some progress has been made. The government has engaged with WIPO and is preparing questions for WIPO response. This process needs to be speeded up and completed.

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For the reasons outlined above, IIPA believes that Saudi Arabia can be removed from the Special 301 Watch List in light of the significant progress made at the instance of HE Al-Haazaa and the near term commitments solemnly made by the Saudi government. We also express our hopes and expectation that the progress that has been initiated will be continued and expanded. Most copyright sectors continue to suffer from extremely high piracy rates. A mere five years ago, for example, it was commonplace for a major U.S. release of a sound recording to sell 100,000 or more copies. At present, it is unusual to sell 5,000 copies. And of course the numbers are much greater for Arabic repertoire. Sales of U.S. motion picture and entertainment software products have suffered similar declines.

Respectfully submitted,



Eric H. Smith  
International Intellectual Property Alliance (IIPA)