



October 14, 2005

VIA EMAIL TO: [FR0526@ustr.gov](mailto:FR0526@ustr.gov)

Ms. Sybia Harrison  
Special Assistant to the Section 301 Committee  
Office of the United States Trade Representative  
1724 F Street, NW  
Washington, DC 20508

Re: Special 301 Out-of-Cycle Review: Ukraine and Saudi Arabia; Identification of Countries Under Section 182 of the Trade Act of 1974: Request for Public Comment to “identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons who rely on intellectual property protection” in Saudi Arabia, 70 Fed. Reg. 54436 (September 14, 2005)

Dear Ms. Harrison:

The International Intellectual Property Alliance (IIPA) appreciates this opportunity to comment on the Out-of-Cycle Review (OCR) of Saudi Arabia’s status under Special 301.

The IIPA is a private-sector coalition formed in 1984 to represent the U.S. copyright-based industries in bilateral and multilateral efforts to improve international protection of copyrighted materials. The IIPA is comprised of seven member associations: the Association of American Publishers (AAP), the Business Software Alliance (BSA), the Entertainment Software Association (ESA), Independent Television and Film Alliance (IFTA), the Motion Picture Association of America (MPAA), the National Music Publishers Association (NMPA), and the Recording Industry Association of America (RIAA). These associations represent over 1,900 U.S. companies producing and distributing materials protected by copyright laws throughout the world – all types of computer software including business applications software and entertainment software (such as videogame CDs and cartridges, personal computer CD-ROMs and multimedia products); theatrical films, television programs, home videos and digital representations of audiovisual works; music, records, CDs, and audiocassettes; and textbooks, tradebooks, reference and professional publications and journals (in both electronic and print media). IIPA has been actively engaged in efforts to improve copyright protection and enforcement in Saudi Arabia for many years.



When Ambassador Portman announced, on April 29, 2005, that it would place Saudi Arabia on the Watch List and conduct an OCR on Saudi Arabia, he noted:

Saudi Arabia still needs to resolve a number of IPR issues. For example, Saudi Arabia's newly amended copyright law offers greater protection for IPR through strengthened penalties, but still lacks some basic minimum standards that are required by the WIPO Internet Treaties and TRIPS, including providing for destruction of seized goods, materials, and machinery, and failure to provide for recovery of litigation costs. Implementing regulations also need to be finalized for the copyright law. The United States urges Saudi Arabia to continue improving its enforcement efforts, and commends Saudi Arabia for its recent accomplishment of conducting a large-scale raid in Riyadh in March 2005 that led to the seizure of 1.2 million audio-visual materials and the arrests of more than 250 individuals. Despite improvements made by Saudi Arabia on IPR legislation, the U.S. copyright industry reports that piracy rates remain high due to the absence of deterrent penalties and the lack of transparency in Saudi Arabia's enforcement system. We urge Saudi Arabia to improve its enforcement efforts by continuing to conduct raids, introducing a robust customs enforcement program, allow rights holders to send experts to cooperate with customs authorities, provide reports to rights holders, impose deterrent sentences, continue to enforce the software usage directive, continue sustained raids to prevent unauthorized redistribution of pay television services, and work with universities to use legal textbooks and stop illegal copying of books.

*See* 2005 Special 301 Report, U.S. Trade Representative, 12-13 available at [http://ustr.gov/Document\\_Library/Reports\\_Publications/2005/2005\\_Special\\_301/Section\\_Index.html](http://ustr.gov/Document_Library/Reports_Publications/2005/2005_Special_301/Section_Index.html).

IIPA recognizes that the government of Saudi Arabia has made progress through the passage of copyright law implementing regulations and has continued to run raids. However, the failure of these actions to effectively deter piracy, resulting from lack of transparency in the raids and subsequent enforcement processes (e.g., lack of knowledge about final disposition of infringing goods and implements, no decisions of courts in writing), as well as the failure to impose meaningful deterrent remedies, makes it absolutely essential that Saudi Arabia remain on the Special 301 list. To take Saudi Arabia off the list at this juncture would subject copyright owners to many more years of excessive piracy in Saudi Arabia. Because of the magnitude of the continuing problems, which only appear to be getting worse, we would recommend that Saudi Arabia be elevated to the **Priority Watch List** and at a minimum be maintained on the **Watch List** as a result of this out-of-cycle review, pending further review of whether the government of Saudi Arabia adequately addresses these problems by the next annual Special 301 review.



## **Piracy Issues Remain Chief Impediments to Legitimate Copyright Owners' Businesses in the Kingdom**

Piracy in Saudi Arabia causes substantial financial harm to legitimate right holders, and remains a serious impediment to legitimate commerce in the country. For the motion picture and entertainment software industries, piracy rates are at their highest since the late 1990s. Optical disc piracy continues in the streets and compounds, being imported into the Kingdom, being home-“burned” onto recordable discs, and being produced in local factories. Book piracy continues to be a significant problem, and piracy of university textbooks continues at universities where adoption practices have not yet been made adequately transparent to promote legitimacy. In addition, piracy of English language teaching materials at all levels is on the rise, especially in private sector schools and most notably in provincial cities. Optical disc and signal piracy on walled residential compounds remain very serious problems in Saudi Arabia.<sup>1</sup> Illegal redistribution of pay television services without authorization continues to occur in compounds. IIPA has recently learned of two previously unknown optical disc production plants in the Riyadh area, and a third plant in Damman. That increases the total number of known plants in Saudi Arabia to at least four. In addition, much came to light in 2004 about trade in pirate optical discs between Karachi (Pakistan) and Riyadh.

Piracy is increasingly linked with organized crime in Saudi Arabia. Earlier this year, His Royal Highness Prince Salman ordered a series of raids in the Al Batha area of Riyadh against hard core criminal activities. The police unearthed many criminal operations that were involved with prostitution and narcotics. The police also encountered and seized millions of pirate DVDs. Piracy is providing easy funds to sustain other hard core criminal operations.

## **Enforcement in Saudi Arabia Remains Non-Transparent and Non-Deterrent**

The enforcement system in Saudi Arabia remains one of the least transparent in the world. Raids taken have not had a deterrent effect on piracy in the Kingdom. Right holders receive some information about raids, but are not being asked to assist in identifying and cataloguing (for inventory purposes) the seized product, and have no ability to verify final disposition of seized items. Final decisions on specific cases from the “Breach Committee” (codified in the Copyright Law as essentially the court of first instance) are not issued in writing and are publicized only in lists of results, and fines imposed are low and non-deterrent. This non-transparent practice prevents right holders from effectively taking “Breach Committee” cases to the “Board of

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<sup>1</sup> The compounds regularly have thousands of homes under one management. Pay TV channels are usually centrally controlled and operated by the management of the compounds. Most of the compounds illegally redistribute pay TV channels without authorization. The compounds are using smart cards, installing them in their centralized head ends and then redistributing the Pay TV channels to thousands of homes. Despite continuous dialogue with the commercial leadership and numerous raids, awareness campaigns and letters from the MOI, we have yet to witness a significant improvement in the compounds. Part of the reason for this is that the owners of the compounds are very influential. Heightened security when entering compounds has also made successful raids difficult as by the time the raiding team finally gets to the head end, there is no pirate activity evident. Lately, the MOI has also been demanding that evidence be presented that the compounds are redistributing the signals, creating additional barriers to raids and enforcement. It is essential that the compounds comply with the copyright law and that enforcement against optical disc and signal piracy on the compounds is aggressively pursued.



Grievances” which is the right holders’ first stop for seeking redress judicially. The Ministry of Interior (police) is not systematically involved with the fight against enforcement. They should become actively involved, including on an *ex officio* basis, against copyright offenses. Without the active involvement of the police, the entire chain of pirate distribution, including duplication, distribution and storage sites, remains untouched. Only the police have the jurisdiction, expertise and authority to effectively combat piracy against all sources. To our knowledge, not one infringer has been sentenced under the criminal provisions of the copyright law, and no one has ever served jail time for copyright piracy.<sup>2</sup>

The result of these enforcement deficiencies is that deterrence against piracy is practically non-existent. As recently as two weeks ago, a significant raid was conducted in Dammam (almost 2.3 million pirate units were seized in the raid), but no actions have yet been taken against the pirate, and the shop associated with the raided warehouse was open for business the next day. Since March 14, 2004 there have been dozens of piracy actions warranting criminal prosecutions and the application of deterrent penalties, either on account of large seizures or because they involved repeat offenders.<sup>3</sup> As is typical in the Kingdom of Saudi Arabia, the rights holders have yet to learn about the status of these cases or of any prison sentences imposed on the pirate infringers concerned.

### **There is a Need for Greater Law Enforcement Including Police Involvement**

As has been noted in previous IIPA Special 301 reports regarding Saudi Arabia, IIPA continues to believe that without greater police involvement in copyright enforcement, serious headway into endemic piracy will be more difficult to achieve.

- **Focus on Stopping Pirate Imports, Raiding Warehouses, and Investigating Distribution Channels:** Only the police have the expertise to conduct interviews with street vendors, follow their patterns, arrest associated parties, operate undercover to gather intelligence, and receive the authority to conduct raids on homes and warehouses that are suspected of containing pirate material. The Ministry of Information, while helpful in raiding, is not capable or empowered to investigate the complete piracy operation and to conduct subsequent raids against the piracy chain.
- **Need for 24/7 Surveillance:** Only the Police have scheduled 24 hour patrols throughout all of Saudi Arabia (while MOI has stated that it is available at all hours of the day and night, it

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<sup>2</sup> There have been a number of cases that have warranted deterrent penalties including two raids in which an excess of 175,000 pirate CDs (across different media, e.g., games, movies, music) were seized from a single defendant. There is no information on where procedurally this case sits as the system continues to operate with a lack of transparency. Some retailers, e.g., the Sulaiman Games Center, have been raided five times without any repercussions.

<sup>3</sup> For example, as noted, one raid on a warehouse in September 2005 resulted in the seizure of 2,286,900 pirate discs; the pirate shop remained open for business the day after the raid. Another raid at an apartment complex resulted in the seizure of 100,000 pirate discs. Raids against a series of electronics shops resulted in the seizure of 800,000 pirate discs. Another raid in March 2004 resulted in the seizure of 353,000 pirate PlayStation games. Several other raids from March 2004 to present resulted in seizure at each location of well over 100,000 discs ranging from motion picture product to entertainment software.



lacks the resources to dedicate to constant patrol of the streets to eradicate street vendor piracy). The police should be charged with this responsibility, empowered to arrest street vendors, and charged with pursuing investigations up the chain of distribution.

- **Police Involvement Will Increase Deterrence:** IIPA's experience in the region is that without police responsibility in the fight against piracy, pirates are willing to assume greater risk in continuing their activities. In neighboring countries (e.g., the United Arab Emirates), the police routinely arrest and criminally charge pirates; not coincidentally, UAE significantly lowered its piracy levels for copyright sectors.<sup>4</sup>

### **Amended Implementing Regulations to the Copyright Law Issued, Remedying Several Deficiencies**

As USTR noted in April, Saudi Arabia passed copyright legislation, which went into effect on March 14, 2004. In June 2005, the Minister of Culture and Information issued amended "Implementing Regulations of Copyright Law."<sup>5</sup> IIPA is pleased that the government of Saudi Arabia has taken this important legislative step in the right direction, and is grateful to the U.S. government for its hard efforts in seeking these positive changes. As a result of the amended Implementing Regulations, many TRIPS deficiencies in the Copyright Law (noted in the 2005 IIPA Special 301 report on Saudi Arabia for which a link is provided above) have been addressed successfully. Specifically:

**Retroactivity:** The provision added to the Amended IRs on retroactivity is excellent and resolves the TRIPS-deficiency. Since it also does not refer to the work having expired in the country in which protection is claimed, any work that had a short term in Saudi Arabia (e.g., sound recordings, software) will be protected for full terms.<sup>6</sup>

**Sound Recordings:** The Amended IRs now ensure that "works" now clearly refers to sound recordings and there is an express point of attachment.<sup>7</sup>

**Parallel Imports:** While not expressly in the Amended IRs, the Saudi government has confirmed protection (for "works" including sound recordings) against importation without authorization under Article 9(4) of the Copyright Law, including parallel imports.

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<sup>4</sup> The issue of piracy and the need for police involvement was raised with the Director General of the Dubai Police in the late 1990s. The Commander of the Dubai Police then sent a directive to every police station to address the issue, resulting in one police station alone making over 780 arrests in a three month period. The involvement of the police also resulted in dozens of raids against homes and warehouses that each contained 200,000 discs. Although street vendor piracy still exists in the UAE, the system in UAE is now structured to address the issue.

<sup>5</sup> Minister of Culture and Information under Ministerial Decision No. 1688/1 of 10.4.1425H (29 May 2004), amended by His Excellency's decision no. (1640) dated 15/05/1426H (22 June 2005) ("Amended IRs").

<sup>6</sup> See Article 31, second, of the Amended IRs

<sup>7</sup> See Article 7 of the Amended IRs which refers to sound recordings as "works." Also see the new provision added to the end of Article 32 which reads: "(3) The scope of protection as stated in Article 18 of the Law related to international agreements of copyrights is extended to related rights stated in this article."



**Seizure of Infringing Goods and Materials and Implements Used in Infringement and Forfeiture/Destruction at Least in Criminal Cases (TRIPS Articles 46 and 61):** Article 19(2) of the Amended IRs includes the ability of authorities to seize infringing goods and materials/implements used in infringement, but contains nothing on final disposition of such materials, and nothing on forfeiture/destruction in criminal cases as required by TRIPS. IIPA continues to suspect that infringing products find their way back into commerce. Thus, it is of crucial importance to ensure that products seized are finally destroyed or disposed of outside the channels of commerce and in a way that does not conflict with right holders' normal exploitation of the works (sound recordings). The Saudis have apparently made assurances that seized goods, materials and implements are being destroyed, but greater transparency on this issue is warranted.

**Court Costs and Right to Counsel (TRIPS Article 45):** There remain no express provisions for the award of costs or attorney fees in civil cases.

### **Actions to be Taken**

For the remainder of 2005 and into 2006, IIPA urges the U.S. government to closely monitor developments in Saudi to ensure that the following actions occur:

#### **Transparency**

- At least, inform right holders of all enforcement activities being carried out or planned.
- Give right holders an opportunity to identify, inspect, inventory by format, catalog, and analyze pirate copyright product that has been seized in a raid/action, if they choose.
- Provide specific, on-time raid reports and investigation reports to right holders, including data on seized materials (case-by-case reporting rather than aggregate).
- Improve overall transparency in the enforcement, prosecutorial, and judicial processes, including informing right holders of judicial processes, allowing them to make representations before the adjudicators, and providing accurate information or announcements regarding copyright infringement actions, and outcomes for each specific case, including verification of the final disposition of seized items.
- Allow rights holders to plead their cases directly before the MOI Adjudication ("Breach") Committee and to be informed of all proceedings.
- Publicize results of raids, and subsequent prosecutions/cases.

#### **Deterrent Enforcement**

- Have the Breach Committee issue verdicts in piracy cases, routinely resulting in deterrent fines and imprisonment, and leading to a significant reduction in piracy rates.
- Ensure systematic involvement of the police in copyright enforcement, initiated through a request from the Ministry of Information (MOI), or through a specific "decree" from the MOI to the Ministry of Interior.
- Continue sustained inspections and raids on retail establishments, storage areas, distribution hubs, and duplication sites, and run enforcement "up the chain" toward the sources of production (i.e., importers, distributors, duplication sites).



- Engage in a complete clean-up of street vendor piracy.
- Raid compounds engaging in unauthorized sale of pirate DVDs and redistribution of pay television services, and report results from raids, including imposition of penalties and cessation of illegal activities.
- Intercept pirate imports at the borders through a more robust customs enforcement program.
- Order destruction of pirated goods, and permit experts or right holder representatives to witness destruction or final disposition of goods seized.
- Impose deterrent sentences on pirates under the new law's stricter penalty provisions, and provide specific reports on status of cases against individuals or companies, including results of cases, jail sentences, fines imposed, and compensatory damages awarded.

#### **Ensuring Legal Use of Copyrighted Materials**

- Order universities and schools to regulate procurement practices to ensure purchases of authorized copies of books (and other copyrighted materials), following up where necessary to ensure that those universities and schools comply with the law.
- Continue to follow up on enforcement of the software usage directive.

#### **Structural Changes (to Law and Law Enforcement)**

- Establish an anti-piracy "task force" consisting of Customs, MOI, municipalities, Ministry of Interior (Police), Ministry of Commerce, etc., with a centralized plan providing for responsibilities, objectives and time frames. The task force should routinely meet with right holders.
- Speed up establishment by the Ministry of Information of an anti-piracy association involving right holders.
- Prepare and pass optical disc regulations to ensure new 'on-line' optical disc production facilities engage in only legitimate licensed production.

#### **Conclusion**

IIPA believes that the lack of overall enforcement of copyright in Saudi Arabia under the new copyright law, along with total lack of transparency, warrants Saudi Arabia's elevation to the Priority Watch List in the Special 301 out-of-cycle review.

IIPA stands ready to offer any further information or assistance that USTR may require in making the Out-Of-Cycle Review decision.

Respectfully submitted,

Michael Schlesinger  
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