

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2001 SPECIAL 301 REPORT

OMAN

EXECUTIVE SUMMARY¹

IIPA recommends that Oman remain on the Watch List.

Once a market entirely dominated by piracy, Oman appears to have turned the corner, demonstrating the will and taking the enforcement actions necessary to deter commercial piracy. Not only has enforcement been sustained throughout 2000, including in the elusive area of the Buraimi Oasis, but Omani officials have taken all the steps needed to establish a strong legal framework for copyright protection. The issuance by decree of Omani Copyright Law No. 37/2000 on May 21, 2000 was one of the final pieces in Oman's WTO accession negotiations. With everything in place, Oman became the 139th WTO member in October (with obligations going into effect on November 9, 2000). Oman now qualifies for the benefits of participating as a full-fledged member of the global trading regime, and is bound to protect copyright in line with the obligations contained in the WTO TRIPS Agreement.

IIPA looks to the Omani authorities to keep the pressure on the pirates so that they will not devastate the Buraimi area and continue to threaten the Gulf region with pirate product. In addition, now is the time to start enforcing against business end-user piracy (the unauthorized use of copies of copyrighted works, including business software, in a business setting); raids against this brand of piracy have not been forthcoming. Finally, now that Oman has dealt with some of the requirements of the new WIPO "Internet" treaties, Oman's government should be encouraged to take the remaining necessary steps to join the WIPO treaties, thereby catapulting Oman into the lead in the Middle East on the protection of copyright over the Internet. On another positive note, Oman's government has begun taking steps to manage its software usage.

Estimated U.S. losses due to piracy were at least \$11.7 million in 2000.

¹ For more details on Oman's Special 301 history, see IIPA's "History" Appendix to filing.

ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1995 - 2000

INDUSTRY	2000		1999		1998		1997		1996		1995	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	2.0	50%	3.0	50%	4.0	99%	7.0	99%	7.0	99%	10.0	100%
Sound Recordings / Musical Compositions	0.1	25% ²	NA	NA	1.0	70% ³	1.0	80%	1.0	62%	NA	NA
Computer Programs: Business Applications ⁴	7.3	87%	7.8	88%	3.7	92%	4.3	93%	7.3	96%	7.3	96%
Entertainment Software	NA	NA	1.8	91%	2.0	90%	NA	NA	NA	NA	0.6	85%
Books	2.3	NA	2.3	NA	2.3	NA	2.3	NA	2.3	NA	2.0	NA
TOTALS	11.7		14.9⁵		13.0		14.6		17.6		19.9	

COPYRIGHT PIRACY AND ENFORCEMENT ISSUES IN OMAN

After years of frustration due to the failure of the government to enforce against blatant retail piracy, the Omani government (including the Ministry of National Heritage) has begun seriously to enforce its Copyright Law. Overt piracy has decreased dramatically and nationwide raids by the Omani government over the last couple of years have now resulted in the seizure of hundreds of thousands of pirated CDs, VCDs, DVDs, videocassettes, audiocassettes, the arrest of several serious commercial pirates, and the closure of several shops found to engage in the sale of pirated product.

Omani enforcement authorities have made some inroads in 2000 in fighting overt piracy in the historically difficult-to-enforce Buraimi Oasis (on the border between Oman and the United Arab Emirates). For example, in January 2000, Omani officials cracked down on pirate computer shops, seizing approximately U.S.\$500,000 in software, closing three shops selling new computers with illegal software (hard disk loading). In September 2000, another set of raids resulted in the seizure of over 50,000 pirated items, mostly software, accompanied by warnings to offenders not to repeat their offenses. Some level of deterrence has taken hold, as it is more difficult to find computer shops willing to sell new computers on which the hard disk is preloaded

² This number represents the overall piracy level for 2000.

³ This number represents the piracy level for international repertoire. The overall piracy level for all repertoires (Arabic, Indian and International) in 1998 was 45%.

⁴ BSA loss numbers for 2000 are preliminary. In IIPA's February 2000 Special 301 submission, BSA's 1999 loss and level figures of \$6.7 million were also reported as preliminary. These numbers were finalized in mid-2000, and are reflected above.

⁵ IIPA reported overall losses to the copyright industries at \$13.8 million in 1999. This number was adjusted upward to reflect the change in the BSA number in its mid-2000 adjustments, and the revised total of \$14.9 million is reflected above.

with illegal software. Omani government officials have also created greater awareness of the problem through publicizing raids and warnings given to shop owners, including through the press.

Two particularly noteworthy developments for the business software industry included the first-ever raids against pirate end-users (illegal users of software in a business) and the signing by the Omani government of a software legalization deal with a company in 2000. It is believed that the Omani authorities are prepared to carry out similar raids in the future.

Nonetheless, problems associated with piracy remain, and Omani officials must take opportunities presented to them over the next year to make further progress toward eliminating underground piracy. The Ministry of Heritage and Culture has begun conducting searches of companies suspected of using illegal software. However, to date, no criminal complaints have been filed and no deterrent fines or penalties have been imposed. The Omani government also continues (despite the positive progress noted above) to use some pirated software, and the business software industry looks forward to continuing to work with the government on legalization strategies.

The publishing industry reports that illegal imports continue of editions authorized for sale only in India. Anecdotally, one popular English-language teaching textbook in Oman was particularly prone to pirating – no reported legitimate copies were sold in Oman during 2000.

Another persistent problem remains under-the-counter sales of pirate audiocassettes and videocassettes in retail outlets, and notwithstanding the progress made, the Buraimi Oasis continues to supply pirate product to other parts of Oman and the UAE for downstream distribution. The motion picture and sound recording industries welcome the positive developments that have been seen in Oman over the last few years. Oman nonetheless still needs to improve its enforcement efforts (including outside the capital) and, in particular, take added measures with its police against video duplication sites in private residences. Copyright infringement cases should also carry criminal penalties.

COPYRIGHT LAW AND RELATED ISSUES

Oman's New Copyright Law

A new Omani copyright law came into force by the "Issuance of Protection of author's rights and related rights law" No. 37/2000, on the date of its publication, May 21, 2000. This law constitutes an improvement in the legal regime in Oman in many respects, and goes far to bring Oman's substantive law closer to TRIPS compliance. Included in the improvements made in this law are the following:

- a computer program is still protected in the same category as "writings" (and thus apparently complies with the TRIPS requirement that computer programs be protected as "literary works");
- audio works continue to be protected as works (and the legal person who coordinated the making of a collective work is deemed the holder of all the economic rights) (although, new provisions on neighboring rights with only TRIPS-minimum protections were also added);

- broad point of attachment is provided for any work published etc. in Oman or in “any foreign country”;
- duration of protection is brought into line with TRIPS (except that, while “audiovisual works” are protected as works, the law lists “motion pictures” as being protected for fifty years from the date of first publication; “motion pictures” must be given a TRIPS-compatible term like other audiovisual works, otherwise the law violates TRIPS);
- authors of works (including audio works) have an exclusive right to control the rental of their works;
- precautionary measures include the possibility of injunctions as well as seizures of infringing copies as well as materials and implements used in the infringement;
- criminal penalties (of up to two years imprisonment and a fine of up to RO2,000 (US\$5,222), or up to four years imprisonment and a fine of up to RO4,000 (US\$10,444) for repeat offenders) can be imposed for all infringements of rights under the law, including certain “special infringements” which include: an unauthorized communication to the public “through computers for commercial purpose”; the “export” with knowledge of an infringing copy; and the “elimination or deletion” of technological protection measures if the “aggressor is aware or [should] be aware” of the violation;
- the law provides for the possibility of “confiscation” of infringing copies as well as materials and implements used in the criminal violation;
- the law provides for the possibility of closure of premises where a criminal violation occurred.

Notwithstanding the improvements in the new law, some deficiencies as well as ambiguities remain, for example:

- while point of attachment is broad, reaching works (including audio works) published in Oman or “in any foreign country,” the provisions of the new Omani law do not explicitly provide point of attachment for unpublished works, nor do they provide explicit point of attachment for the owners of neighboring rights (which, if audio works are considered as works, and protected as collective works by the producer, may not need amending as to producers of sound recordings, but will not be adequate for performers or broadcasters); the point of attachment provision should be fixed to cover at least unpublished works and owners of all neighboring rights in countries that are members of international treaties to which Oman is a party, in order to comply with Oman’s international obligations;
- retroactive protection for pre-existing works (including audio works) or subject matter of neighboring rights remains unclear; the law provides that such subject matter shall be protected if it “existed by the time of enforcing this law . . . [t]he elapsed period of these works shall be included in the duration of protection from the date specified for the commencement of protection period until the date of applying this law,” but does not specify what that date of “commencement” of protection is, i.e., that it must be retroactive to at least the TRIPS-compatible term of protection;

- one of the moral rights provisions (Article 5(A)(2)) exceeds what is provided for in Article 6*bis* of the Berne Convention, and arguably nullifies the exclusive right of adaptation, which would be a violation of TRIPS Article 9.1;
- several of the exceptions to protection are overly broad and must be narrowed (e.g., by including in the chapeau to the exceptions paragraph that the exceptions apply to “special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder,” in order to comply with Berne/TRIPS standards); the “personal use” exception in Article 6(F) violates TRIPS and must be narrowed, perhaps by limiting it to “a single analog copy”;
- while it is assumed that collective works shall receive a TRIPS-compatible term of protection, the duration of protection for this class of works is not made explicit in the law;
- as mentioned above, while “audiovisual works” are protected as works with (apparently) TRIPS-compatible duration, the law lists “motion pictures” as being protected for fifty years from the date of first publication, which would violate TRIPS;
- the law does not contain express provisions for *ex parte* civil searches to be carried out, as required by Article 50 of TRIPS;
- Article 14(D) contains a provision that is totally incompatible with international standards and practice: namely, it permits the court to appoint a receiver to take possession of seized goods, sell them off and give the proceeds to the court for disposition; this provision amounts to a government-sanctioned sell-off of pirated products, and must be deleted;
- the law does not contain TRIPS-compatible border measures; Omani authorities should provide transparent access to indicate any and all other regulations related to the enforcement of copyright, including but not limited to border measures, *ex parte* civil searches, criminal procedures, court decrees, and the like.

In addition to the above changes that are needed to bring Oman’s law into full compliance with its international obligations (Oman has been subject to the Berne Convention (Paris text provisions) obligations since July 1999 and TRIPS obligations since November 2000), Oman should expressly clarify that the registration and deposit provisions of the 1998 Enforcement Regulations are voluntary as to foreign works and sound recordings, to ensure that Oman’s law is not inconsistent with Berne/TRIPS.

Oman Joins the World Trade Organization in 2000, the Berne Convention in 1999, Now Needs to Join Geneva (Phonograms) Convention

On October 10, 2000, the WTO General Council approved the accession of Oman to the WTO, effective November 9, 2000 (making Oman the 139th member of the WTO). Thus, Oman’s TRIPS obligations went into full effect on November 9, 2000. Oman became bound by the Berne Convention (Paris text provisions) on July 14, 1999. This means there is immediate and unambiguous “point of attachment” for U.S. works in Oman, and Oman must provide full retroactive protection for Berne-compatible terms for U.S. works. Oman must still join the

Geneva (Phonograms) Convention to shore up protection for U.S. sound recordings; Omani authorities should be encouraged to take this much-needed step as soon as possible.

Oman Should Accede to and Deposit the WIPO “Internet” Treaties

Oman is strongly encouraged to consider being the first country in the Middle East region to accede to the WIPO “Internet” treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), which bring copyright into the digital age. IIPA urges USTR to call upon the Omani Government to take a leadership position regarding ratification of the WCT and WPPT. Certain provisions in Oman’s new copyright law (No. 37/2000) go far to implementing some of the requirements of the WIPO treaties. While there are possibly some clarifications needed in order to fully comply with the treaties, needed amendments are relatively minor, and should not stand as an obstacle to Oman’s accession and deposit of the WIPO treaties (e.g.: 1) there is no express “distribution” right for authors and owners of neighboring rights, as required by the treaties, although there is a general “utilization” right that might be interpreted to include such a right; 2) there is no express communication to the public right, including a “making available” right, although unauthorized communication to the public “through computers for commercial purpose” of a work or subject matter of neighboring rights is deemed a “special infringement” and subject to criminal penalties, which might be interpreted to cover some of the communications contemplated under the new treaties’ right; and 3) the new law does not prohibit tampering with voluntary rights management information used by copyright owners to identify and mark their works in the online environment; etc.).

Generalized System of Preferences

Oman currently participates in the U.S. GSP Program offering duty-free imports of certain products into the U.S. from developing countries. In order to qualify for such unilaterally granted trade preferences, USTR must be satisfied that Oman meets certain discretionary criteria, including whether it provides “adequate and effective protection of intellectual property rights.” At the same time that Oman caused losses to the U.S. due to piracy, Oman imported (during the first eleven months of 2000) \$45.1 million of products into the United States without duty (23.5% of its total imports into the U.S.). Oman should not continue to expect such favorable treatment at this level if it cannot meet the discretionary criteria in this U.S. law.