

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2001 SPECIAL 301 REPORT

# QATAR

### EXECUTIVE SUMMARY<sup>1</sup>

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IIPA recommends that Qatar remain on the Watch List.

Qatar must take steps to address piracy of business software and some other copyrighted goods that are causing economic losses to the copyright industries. Otherwise, Qatar may become (and already has become, in the case of business software) an attractive haven for copyright pirates from other parts of the Gulf (where piracy is made more difficult due to enforcement efforts by the governments there).

Qatar's law violates TRIPS. The Qatari government must take urgent steps to amend the 1995 copyright law, including amendments to the enforcement provisions. Estimated total losses to the copyright industries in Qatar were over \$4.0 million in 2000.

#### 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	0.5	25%	0.5	30%	1.0	50%	2.0	95%	2.0	99%	6.0	100%
Sound Recordings / Musical Compositions	0.2	25% <sup>2</sup>	NA	NA	0.3	27%	0.5	55%	0.5	65%	NA	NA
Business Software Applications <sup>3</sup>	3.3	79%	3.5	80%	1.8	84%	2.1	87%	3.0	91%	2.0	91%
Entertainment Software <sup>4</sup>	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
Books	0.0 <sup>5</sup>	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
<b>TOTALS</b>	<b>4.0</b>		<b>4.0</b>		<b>3.1</b>		<b>4.6</b>		<b>5.5</b>		<b>8.0</b>	

<sup>1</sup> For more details on Qatar's Special 301 history, see IIPA's "History" Appendix to filing.

<sup>2</sup> This percentage represents the overall piracy level for sound recording and music piracy in Qatar.

<sup>3</sup> BSA loss numbers for 2000 are preliminary. In the 2000 report, BSA reported losses of \$3.2 million as preliminary. The preliminary loss numbers were revised in mid-2000, and are reflected in the chart above.

<sup>4</sup> IDSA estimates for 2000 are preliminary.

<sup>5</sup> U.S. publishers report negligible losses due to piracy in Qatar for 2000.

## PIRACY AND ENFORCEMENT IN QATAR

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Business software piracy is common in Qatar. End-user piracy by both private enterprises and Qatari government entities continues (reportedly, one large Qatari company uses illegal software on over 2,000 personal computers). Circumstances indicate that the government is well aware of the need of its agencies as well as the companies in question to purchase licenses for the software that they use; despite this knowledge, the Qatari government has yet to legalize its software, nor has it taken actions against the known end-user pirates.

Retail piracy exists in Qatar, and the Copyright Division of the Ministry of Finance & Commerce has done precious little to address the problem. Since 1998, only three raids (only one in 2000) have been conducted against business software piracy, including one by the Copyright Bureau against a computer store that was illegally loading software on the hard disks of computers sold by the store, one by the police against a reseller shop in Doha, and another against a reseller. None of these raids has resulted in any penalties being meted out. In the motion picture area, while the Copyright Division has successfully reduced piracy levels from almost 100% in 1996 to a mere 25% in 2000, back-to-back copying of pirate videocassettes and under-the-counter sales of those pirate videocassettes nonetheless continued in 2000, and pirate versions of new releases are available almost as soon as they are released anywhere in the world. The U.S. publishers report that while a small market, some editions intended for the India market only appear in Qatar. Photocopying of textbooks and teaching materials also occurs in Qatari universities.

Qatari officials (including those in the Ministry of Commerce) need to begin coordinating and conducting raids against retail shops selling pirated software, videocassettes, laser discs, VCDs and DVDs. In addition, the authorities need to confront the problem of end users engaged in the illegal use of business software. It is critical to establish ongoing cooperation with representatives of companies that are selling their IP-related products in Qatar. These representatives can provide both the copyright industries and the Qatari government with valuable intelligence on piracy operations and can provide considerable expertise gained in conducting similar operations in other parts of the world.

More specifically, the following is a partial list of the kinds of enforcement activities Qatari officials should commence immediately:

- systematic surprise (day or night) inspections at least every six months of all shops that sell pirated copies, including shops, resellers, hard-disk loaders and end-users;
- imposition of deterrent fines and penalties; and
- publication of actions taken in the Qatari-based and international media.

Most troubling in the situation in Qatar is the resistance the software industry gets from enforcement officials, who appear to work hard to avoid taking any kind of enforcement action against blatant piracy, and have made statements in public during 2000 indicating a lack of willingness to enforce copyright when it comes to business software (there have been some recent indications from the higher ranks within the Ministry of Finance & Commerce that it is interested in providing greater assistance to enforce copyright and in bringing its laws and enforcement system into compliance with TRIPS). The overall piracy situation in Qatar is not

severe (except for business software piracy), is well known to the authorities, and should not be particularly difficult to completely eradicate. With government commitment, Qatar could clean up its act in a very short time and alleviate the copyright industries' main frustration. One substantial step in this regard would be the issuance of a decree by the Qatari government stating that only legal software will be used within the government, and implementing a software management policy to ensure that all current and future use of software is properly licensed. Such a decree would serve as an admirable example to the highly pirate business community and send a clear signal that the Qatari government is committed to the protection of intellectual property.

The copyright industries remain unaware of any cases decided in favor of copyright owners against infringers of copyright. The Qatari government must ensure that the Copyright Division continues to have adequate resources and the authority to initiate enforcement, and that the judicial system then reinforces these actions with serious and consistent sentencing.

## **COPYRIGHT LAW AND RELATED ISSUES**

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Qatar's 1995 law (in force October 1996) remains TRIPS-incompatible in several respects. Qatar must pass and implement legislation to meet its TRIPS obligations urgently. IIPA understands that drafting has begun in Qatar, and that certain international consultants are reviewing the draft for TRIPS deficiencies. Problems with Qatar's copyright law include (but are not limited to) the following:

### **Substantive Deficiencies**

- The Qatari law contains inadequate "point of attachment" provisions (that provide for protection of foreign works [including "audio works"] only on the basis of reciprocity). Qatar's TRIPS obligations under Articles 3 and 4 of TRIPS require that Qatar protect works (and "audio works") on the basis of national treatment. Qatar should revise or interpret its law to clarify that works of countries that are members of international treaties to which Qatar is a party are protected in Qatar.
- The copyright law does not clearly protect works (including "audio works") retroactively, as required by Article 9.1 of TRIPS (which incorporates Article 18 of the Berne Convention). Qatar must protect pre-existing works (including "audio works") so that they enjoy full TRIPS-compatible terms of protection.
- The Qatari copyright law does not expressly allow a right holder to control the commercial rental of its computer programs and sound recordings, as required by Articles 11 and 14 of TRIPS, although the general right to "utilize" a work may be interpreted to include an exclusive rental right in line with TRIPS. Qatari authorities should clarify that the law is TRIPS-consistent in this regard, and preferably, amend the law to expressly include a TRIPS-compatible right of rental.
- Performers are not protected in the Qatari law, in violation of TRIPS Article 14.

- Several of the exceptions to protection, particularly the “personal use” exception in Article 17, are overly broad and must be narrowed to comply with TRIPS standards.
- The Qatari copyright law includes burdensome certification and licensing requirements (Article 7). If such requirements are carried out in such a way as to interfere with the copyright owner’s exercise of rights under the copyright law, they would violate Article 9.1 of TRIPS (which incorporates Article 5(2) of the Berne Convention), which requires that works be protected without formalities. The copyright law should be amended to clarify at least that certification and licensing requirements do not apply to foreign works.
- A definition of audiovisual works should be added to cover all cinematographic works, regardless of the medium of fixation.

### **Enforcement Deficiencies (On Their Face)**

- The law does not expressly provide for *ex parte* civil searches, as required by Article 50 of TRIPS.
- The law does not criminalize end-user piracy by a business, in violation of Article 61 of TRIPS.
- The law does not provide for the possibility of judicial order of disposition (TRIPS Article 46) or the seizure as well as destruction of materials and implements used in the infringement, as required by Article 61 of TRIPS.

## **Qatar Has Joined the Berne Convention**

On a positive note, Qatar deposited its instrument of accession to the Berne Convention (Paris [1971] text) on April 5, 2000, making Qatar bound by the provisions of the Berne Convention as of July 5, 2000.

## **WIPO Treaties**

In addition to the changes necessary to bring the Qatari copyright law into compliance with TRIPS, as outlined above, the goal of any amendment effort should be to modernize Qatar’s copyright system, taking into account the latest developments. As such, Qatar should take the present opportunity to amend its law to bring it into line with TRIPS as a call to fully modernize its copyright law, including new technologies taking into account. Therefore, Qatar should not wait to implement the provisions of the WIPO “Internet” Treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). At several seminars sponsored by WIPO over the past couple of years, Qatar has resolved to swiftly ratify and implement the WIPO treaties. IIPA stands ready to provide advice to Qatar should it wish to implement the WIPO treaties in the present draft.