

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2001 SPECIAL 301 REPORT

# SAUDI ARABIA

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

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IIPA recommends that Saudi Arabia be elevated to the Priority Watch List.

Piracy, lack of transparency (and deterrence) in enforcement actions carried out by the government, lack of effective coordination between the Ministry of Information and the police in raiding sources of piracy other than retail outlets, and a TRIPS-incompatible copyright law, have characterized the situation in Saudi Arabia for years. The year 2000 witnessed some increased resources being devoted and some internal reorganization by the Ministry of Information, resulting in some increased raiding. Nonetheless, cases brought against pirates raided and the results in those cases remain shrouded in mystery in Saudi Arabia. Piracy rates remain too high, indicating a lack of effective deterrence. The result: one of the copyright industries' largest potential markets in the Middle East is largely closed off due to piracy.

The piracy situation in Saudi Arabia should not be this difficult to address. If the government has the willingness to work in cooperation with industry, there is no doubt that sustained, publicized raids and the regular meting out of deterrent penalties and fines and (where appropriate, and assuming a change in the current inadequate penalty provisions of the copyright law, or the application of a separate provision in the laws) imprisonment on commercial pirates (also publicized) will begin to carve away at high piracy rates and drive piracy underground or out of Saudi Arabia altogether.

Finally, Saudi Arabia must revise its intellectual property laws (at least) to bring them into conformity with the TRIPS Agreement prior to WTO accession.

Trade losses in Saudi Arabia are estimated at \$118.0 million for 2000.

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<sup>1</sup> For more details on Saudi Arabia'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	40.0	65%	40.0	65%	32.0	50%	32.0	50%	41.0	50%	41.0	60%
Sound Recordings / Musical Compositions <sup>2</sup>	8.0	40%	12.0	45%	12.0	45%	15.0	45%	17.0	40%	17.0	41%
Business Software Applications <sup>3</sup>	28.8	62%	31.8	64%	30.9	73%	17.0	74%	28.0	74%	19.3	77%
Entertainment Software <sup>4</sup>	28.0	NA	20.2	59%	21.4	68%	21.3	70%	20.0	64%	21.0	62%
Books	14.0	NA	14.0	NA	9.0	NA	9.0	NA	9.0	NA	9.0	NA
<b>TOTALS</b>	<b>118.0</b>		<b>118.0<sup>5</sup></b>		<b>105.3</b>		<b>94.3</b>		<b>115.0</b>		<b>107.3</b>	

## COPYRIGHT PIRACY AND ENFORCEMENT IN SAUDI ARABIA

### Piracy Phenomena

Saudi Arabia remains the largest potential market for all of the copyright industries in the Middle East; however, it also continues to be one of the markets hardest hit by copyright piracy. Piracy concerns include the following:

- **Retail Piracy.** Retail piracy of optical media (including audio CDs, VCDs, CD-ROMs and CD-Rs), audiocassettes and videocassettes, books and photocopied pirate copies, continues to exist at piracy levels that indicate a lack of deterrence and result in the closure of the market to legitimate products. For example:
  - Copies of pirate (retail) optical media are available in Saudi markets, mainly imported from other parts of the Middle East as well as parts of Asia, including Taiwan, Indonesia

<sup>2</sup> The 2000 losses due to piracy of sound recordings and musical compositions are for U.S. repertoire only. The 2000 level of piracy referred to is that for overall piracy. The piracy of international repertoire is 55%.

<sup>3</sup> BSA loss numbers for 2000 are preliminary. In IIPA's February 2000 Special 301 submission, BSA's 1999 loss and level figures were not yet available. These numbers were finalized in mid-2000, and are reflected above.

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

<sup>5</sup> In IIPA's 2000 Special 301 submission, IIPA estimated that total losses to the U.S. copyright-based industries in Saudi Arabia were \$86.2 million. Because of the adjustment to reflect BSA's final 1999 statistics (see footnote 3), estimated total losses to the U.S. copyright-based industries in Saudi Arabia in 1999 are raised to \$118.0 million.

and Malaysia. Although the Saudi government has seized over a million illegal CDs at the points of entry in 2000, pirated interactive games are still openly sold in the markets in mass quantities. A consumer can also readily purchase an illegal CD in most retail interactive game stores. Relatively small quantities of pirate music CDs are available in both the CD-Audio and CD-R configurations. In many stores such as the Jeddah Commercial Center illegal interactive games are openly displayed on the shelves. Furthermore, pirated interactive games that are not openly sold over the counter can quickly be retrieved by the sales staff upon request. The illegal CDs are often stored in nearby locations (private residences or warehouses) in which the Ministry of Information does not have the authority to inspect (see discussion below).

- Audiocassette and videocassette piracy remain major causes of economic harm to the copyright industries in Saudi Arabia. Given the Kingdom's size and prohibition against cinemas, the home video market has considerable potential, but piracy is a major impediment to the development of the legitimate market. The overall video piracy rate remains high (at 65%), with exceptionally high piracy rates for popular new titles (over 90%), often appearing in pirate versions months ahead of the legitimate release date. While most visible piracy has disappeared from video shop shelves on the "main" streets in Jeddah and Riyadh (the cleanest markets in Saudi Arabia), substantial counterfeiting and under-the-counter sales continue to exist. The situation is dire in many outlying neighborhoods, especially in regional cities like Medina, Mecca, Hofuf, Abha, and Dahran, and pirate duplication sites in private villas and warehouses remain untouched. Pirate audiocassettes continue to account for almost all of pirate unit sales. Another reason videocassette piracy continues unabated is due to the lack of effective and sustained cooperation between the Ministry of Information and the police against sources of piracy outside of the retail outlets. The pirates have continued to engage in the illegal duplication and distribution of pirated cassettes from private residences and empty storage areas near the retail outlets. The illegal cassettes are easily retrieved from the residences within minutes.
- Industry representatives have noted an increase in the amount of book piracy in Saudi Arabia in the past two years. University departments have even been known to encourage the piracy of textbooks when the books ordered do not arrive on time, and shops in and around the universities continue to thrive off the sale of illegally photocopied books. Pirate texts also continue to be imported from Lebanon, and some commercial piracy of English language and teaching (ELT) materials continued in 2000. Some of the new higher education institutions reportedly are encouraging the use of legitimate books.
- **Smart Card and CAM Piracy.** Saudi Arabia has not effectively addressed wide-scale smart card and CAM ("Conditional Access Module") piracy in which end-users buying the smart cards may watch popular satellite channels without a legal subscription. Pirates in Saudi Arabia openly sell illegally hacked smart cards and CAMs in the satellite stores at severely discounted prices, giving illegal access to premium channels for as little as 200 SR (around \$53). These pirates engage in sophisticated hacking techniques, using computers, smart mice, specialized computer programs, and select websites, in order to upload onto smart cards the circumvention keys necessary to provide illegal access to premium channels. The entire process takes as little as four minutes and customers literally line up in queues to

receive the illegal subscription. The pirates also openly sell hacked CAMs that allow consumers to view all of the premium movie channels without paying a subscription price. Revenues for the satellite broadcast platforms have fallen drastically, resulting in losses of millions of dollars. The problems of smart card and CAM piracy can be sent underground if the government of Saudi Arabia has the willingness to attack these brands of piracy. Also, it would be helpful if the Ministry of Information obtained jurisdiction over the licensing of satellite stores. The government should take care of this problem: the pirates are well known and are not hiding from the authorities; and the activities they engage in are clearly illegal.

- **Pirate Production of Videocassettes on Villas or Through Private Warehouses.** A significant amount of piracy occurs on private villas or through private warehouses, enforcement against which is governed by the Saudi Ministry of Interior. The lack of coordination between the police and the Ministry of Information remains a critical deficiency to effective enforcement by the Saudi government. There is currently no formalized medium or structure of sharing intelligence regarding piracy operations between the police and Ministry of Information. However, the large staff of professional investigators from the police could easily dovetail with the Ministry of Information against these known sources of piracy if a permanent and sustained mechanism was established.
- **Unencrypted Pirated Broadcasts Violate Territorial License.** Transmission by the Saudi government television station of programs via ARABSAT continues, reaching viewers outside Saudi Arabia, in violation of license grants as to the content of the broadcasts. The motion picture industry licenses its programming in Saudi Arabia to the state-owned TV broadcaster for terrestrial distribution in Saudi Arabia. The state-owned broadcaster then uplinks the programming to ARABSAT (most likely with the intent of bouncing the signals off the satellite to remote terrestrial broadcast towers in Saudi Arabia to ensure that the terrestrial signal can be received in remote areas of Saudi Arabia). However, the broadcaster fails to encrypt its broadcast signal before uplinking it to ARABSAT, so the programming, which has been licensed only for distribution in Saudi Arabia, becomes available free of charge throughout the entire region outside of Saudi Arabia, to places in Europe, the Middle East and parts of Africa. This problem needs to be resolved by Saudi authorities.
- **Unlicensed Use of Software by Government.** Government unlicensed usage of software continues within Saudi ministries. In 1999, certain government ministries legalized their software use. Unfortunately, legalization efforts on a government-wide basis continue to move at a snail's pace. As of December 2000, it is estimated that the Saudi Government had approximately 80,000 personal computers set up, many of which run on pirated software.

## Some Enforcement Actions Taken in 2000

The Ministry of Information engaged in some reorganization (improving resources available to fight piracy) and some raiding in 2000. Raids on end-user infringers (business engaged in the unauthorized use of software), retail establishments engaged in the sale of pirated books, CDs, VCDs, video game software, audiocassettes and videocassettes (248 shops raided, with seven of those being closed, and total fines of U.S.\$280,000) and computer shops engaged in the sale of pirate software (37 shops with total fines meted out of U.S.\$65,000), training centers and Internet cafes, and some video duplication sites (in conjunction with the Police), have made some inroads

against day-to-day piratical operations. There have also been some large seizures of illegal CDs through the points of entry into the Kingdom. During 2000, the Ministry of Information reportedly confiscated 3,725,707 pieces of CD media (including business software, video game software, audio CDs and VCDs), 56,824 other illegal works (including books, videocassettes and audiocassettes), and, in one raid, illicit smart cards and other pirate television paraphernalia. Generally, the seized goods are destroyed immediately, and some press reports in Saudi Arabia during 2000 publicized this fact. Raids against end-users included training centers (4 out of 28 found to be using unlicensed software), Internet cafes (21 out of 24 found to be using unlicensed software) and companies (60 out of 110 found to be using unlicensed software, no penalties meted out). No fines were imposed in any of the 85 cases where unlicensed software was found.

In other positive developments, the government created around 30 new jobs for the intellectual copyright protection department in the Ministry of Information during 2000. In addition, the Ministry of Information worked with the software industry on a public relations campaign expected to run during 2001. Finally, the government has remained receptive to participation in conferences with private sector representatives, including conferences under the sponsorship of international organizations.

Unfortunately, the failures in the system, such as the lack of transparency in copyright cases, outweigh incremental gains in 2000. For example, renewed initiative by the leadership within the Ministry of Information at all levels has led to sporadic raids throughout the Kingdom on stores and duplication sites (including private homes and villas with the cooperation of the police), but the actual outcomes of copyright cases remain shrouded in mystery. The Ministry of Information, upon a successful raid, will serve notice to the shop of violation of the copyright law and a case is prepared in which the alleged pirate is able to make its case and the inspector states the facts accordingly. The case is then forwarded for a decision to a court within the Ministry of Information. The exact constitution of the court and its appointed members and the outcome of each case are kept secret. Copyright owners sometimes learn that a store has been fined, but only the store itself knows the size of the fine (rumored to be in the range of no fine to a maximum of 10,000 SR (U.S.\$2,666) per violation, a totally non-deterrent amount). Copyright owners whose rights are trampled have no access to the courts to plead cases and also has no mechanism in practice for appealing any outcome. The government has taken countless raids, but the industries have no idea about the individual results in those raids (in only 25% of cases is it known that fines were meted out).

Another important side-effect from the lack of transparency in copyright cases (in addition to the resultant inability on the part of copyright owners to know about or appeal decisions made by the courts) is the lack of deterrent effect in the market. IIPA does note that some press regarding copyright enforcement in Saudi Arabia was forthcoming in 2000. For example, press reports have highlighted the fact that the Saudi government generated for its Exchequer a revenue stream of SR1.5 million (U.S. \$400,000) from fines paid by copyright infringers in 1999. The same press report indicated that 120 people were subjected to penalties in 1999 for piracy, including, as noted above, fines of up to SR10,000 (U.S.\$2,666), temporary closures of the concerned shops, and permanent closures of repeated violators' shops.

Another abiding problem is the lack of sufficient coordination and cooperation among the various enforcement Saudi authorities in attacking the substantial underground pirate industry that exists. Underground pirate operations often involve duplication sites located in such places as private residences and warehouses. These sites are outside the jurisdiction of the Ministry of

Information (which only has administrative authority over retail shops), and therefore must be dealt with by the Ministry of Interior (police) and others. In 2000, the Ministry of Information initiated cooperation with the police in raiding certain duplication sites in Jeddah, Dammam, and Al Khobar, in which thousands of pirated cassettes and a number of VCR machines have been confiscated from homes that were being used for a pirate industry. However, these actions have been limited and the Saudi government has yet to establish regular coordination between the Ministry of Information and police. There is no formalized sharing of information or an orchestrated task force approach between the ministries for an effective and systematic implementation of the copyright law. The result is bureaucratic gridlock. In order to obtain a raid, the Ministry of Information, upon discovering a duplication site outside a retail outlet, must formally write a request to the Governor for police assistance. The Governor then forwards the request to the police, but the operational arrangements for the raid against the known pirate do not happen for weeks or even months. The result: pirate storage areas (homes or warehouses) near the retail outlets thrive in Saudi Arabia. Without an inter-ministerial approach to enforcement, the pirates will not stop what they perceive to be a profitable, albeit illegal, business. There should be a formal task force established between the police and the Ministry of Information to cross-reference their piracy intelligence. The task force should be decentralized and have the ability to immediately conduct raids against all sources without being hampered by bureaucracy.

A separate problem already alluded to is that most enforcement actions are confined to Jeddah and occasionally Riyadh, but little has been accomplished in regional cities like Medina, Mecca, Hofuf, Abha, and Dahrhan, and as already noted, much of the pirate video duplication occurs in private homes and villas.

Because of the deficiencies in enforcement against copyright infringement, the audiovisual industry in particular must continue to rely on Saudi Arabia's successful publication approval system to secure limited anti-piracy protection. The motion picture industry representative submits authorized licensee certificates for copyright owners' product in Saudi Arabia to the Director General of Publications (DGOP), which enforces against unapproved titles under the Ministry of Information. These certificates raise a presumption of copyright ownership and distribution authorization for licensees of the copyright owner's titles and heighten requirements for others attempting to obtain approval to distribute those titles. This procedure has discouraged piracy and has made it easier for the Ministry of Information to detect unauthorized product. Enforcement actions by Ministry of Information and Ministry of Interior authorities over the last few years have forced many pirate activities "under-the-counter" in Jeddah and Riyadh.

## **Decree Issued to Require Legitimate Software Usage by Businesses**

One extremely positive step in 2000 is that the Ministry of Information issued a decree requiring media companies to submit their software licensing documentation in order to register to do business. The Ministry has also conducted a nation-wide campaign, sending letters to end-users all over Saudi Arabia, announcing the decree and urging them to ensure that all software used is legal. The campaign has attracted significant attention in the market, and has resulted in an immediate increase in the use of legal software. IIPA applauds the government of Saudi Arabia for this initiative. Saudi Arabia is the first government that we know of that has conditioned the renewal of a business license on the legal use of software. We would encourage the Saudi government to expand this excellent program to other industry sectors.

## SAUDI ARABIA'S LAWS REMAIN OUT OF SYNC WITH INTERNATIONAL STANDARDS

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IIPA understands that a new draft copyright law is being reviewed by the Council of Ministers in Saudi Arabia for final approval. IIPA has not seen the draft, and therefore cannot comment on whether it is an improvement over the 1990 copyright law. However, IIPA understands that organizations such as WIPO have seen the draft and provided detailed comments, so it is hoped that many of the TRIPS deficiencies and other problems with the 1990 law have been addressed. Needless to say, Saudi Arabia must amend its copyright law to make it TRIPS-compatible before being admitted to the World Trade Organization (WTO).

The copyright law of Saudi Arabia (effective January 12, 1990) protects foreign works (and, according to assertions made by Saudi government officials, foreign sound recordings) by virtue of Saudi Arabia's accession to the Universal Copyright Convention (UCC) on July 1, 1994.

Amendments needed for the Saudi copyright law to provide TRIPS-level protection include the following:

- Protection for foreign works needs to be clarified; at present, the Saudi government claims that the UCC is "self-executing" in the Kingdom; an amendment expressly including eligibility by treaty would remove all legal doubts.
- The duration provisions for protection of "sound . . . works" and "audiovisual . . . works" need to be brought up to TRIPS-level standards; the current law states that the author's rights in the case of "sound . . . works" are protected for 25 years, which is TRIPS-incompatible.
- Adequate retroactive protection in Saudi Arabia in line with international standards depends on proper application of the principle of national treatment, as well as the extension of Article 25 of the law (which states that the law shall apply to "works that exist at the time" of its entry into force) to all foreign works and sound recordings. The retroactivity provisions should be read, once the term in Saudi Arabia's law is amended to be TRIPS-compatible, so that sound recordings and audiovisual works relegated to the public domain in Saudi Arabia as a result of the short term of protection afforded under the current law (only 25 years) are recaptured into copyright for the remainder of the term required by TRIPS. The Ministry of Information has informed industry that it is applying the law now so as to provide, in effect, a full 50 years of protection for pre-existing works and sound recordings; while this is heartening, an amendment expressly providing for such protection would remove all doubts.
- The copyright law should be amended expressly to include all the Berne Article 11bis rights (broadcasting, rebroadcasting, retransmission by cable, communication of the work to the public) and all types of broadcasting via satellite.

- The very broad personal use exemption (Article 8a) must be replaced by a Berne- and TRIPS-compatible provision. Any personal use exception must be narrowly tailored in line with Article 9(2) of the Berne Convention, specifically with regard to computer programs or to other works in digital format. A personal use exception must be limited to special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. The current law of Saudi Arabia does not even limit the personal use exception to one copy for personal and private use.
- The compulsory license (Article 10) permitting the publication and reproduction of any work for educational, school, cultural or scientific purposes within a period of three years of the date of first publication under certain circumstances is a Berne/TRIPS violation, and should be deleted (or curtailed significantly so that it comports with the Berne Appendix).
- The copyright law should be amended to clarify that original compilations of unprotected facts and data are protected (TRIPS Article 10.2).
- The copyright law does not, as required by TRIPS, provide point of attachment or protection to performers (TRIPS Article 14.1).
- Penalties for copyright infringement are totally inadequate to deter piracy; copyright infringement is supposed to be subject to fines of up to 10,000 riyals (approximately U.S.\$2,666) and/or closure of the enterprise for up to 15 days, and in the case of subsequent offenses, a double fine and/or closure of the enterprise for up to 90 days. However, the law does not provide for imprisonment or any larger fines needed to deter piracy.

In addition to the above changes, which invoke the Berne Convention and TRIPS directly, Saudi Arabia should also join the Geneva Phonograms Convention.

Because the Gulf States look to Saudi Arabia for legal reform, changes to the copyright law to make it TRIPS-compatible should be made immediately. The amendments recommended above are straightforward and uncontroversial. In addition, Saudi Arabia, with a growing computer base and information technology industry, must now consider a spate of legislation to deal with issues involving commerce over digital networks. Saudi Arabia should not, in its current round of legislative changes, miss the opportunity to make the few necessary changes in its law to implement the latest WIPO treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The WIPO treaties require effective legal remedies against the circumvention of technical measures used by content owners to protect their property from theft and mutilation. This legal framework that permits content owners to provide for the security of their property online is essential for successful electronic commerce.