

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2002 SPECIAL 301 REPORT

KUWAIT

EXECUTIVE SUMMARY¹

IIPA recommends that Kuwait be elevated to the Priority Watch List.

Kuwait remains the worst country in the Gulf region when it comes to copyright piracy. Retail piracy in Kuwait, particularly of the latest copyrighted works in digital formats, continues largely unabated. Also, street vendors openly sell pirated videocassettes and other copyrighted goods with absolute impunity, and the government's failure to properly deal with this issue has eroded local licensees' ability to sustain their operations. Furthermore, potential international investment is deterred from doing business in Kuwait, as investors choose other markets where legitimate rights are more vigilantly protected. The government has taken a handful of enforcement actions in 2000 and 2001, and the courts even handed down one conviction recently against software pirate. Nonetheless, pirates' work destroying legitimate markets for copyright owners continues with impunity, undeterred by such sporadic and inadequate enforcement. The serious, rampant piracy, and the continued failure to open up this once-promising market, fully justify and support Kuwait's elevation to the Priority Watch List this year.

IIPA hopes that a Priority Watch List designation will result in an invigorated government will among the new leadership in the Copyright Office in the MOI, including by Sheikha Rasha Naif Al-Sabbah, who appears interested in taking steps to solve the piracy problem in Kuwait. The appointment of Sheikha Al-Sabbah indicates a positive change in Kuwait, but the results in cutting down piracy must be forthcoming in 2002 in order for the copyright industries to recognize progress. Several raids occurred in 2001, but these raids have not to date resulted in lowering piracy levels. In 2002, the copyright industries look to the Kuwaiti government to:

- make public declarations of policy that piracy will not be tolerated;
- run concerted and sustained raids against piracy of all copyrighted goods (including, in conjunction with police, against residences and warehouses being used as sources of piracy);
- publicize raids in order to achieve a deterrent effect;
- mete out administrative fines, and prosecute greater numbers of commercial infringers (including distributors, resellers, end-users, dealers in smart-cards, anyone producing piracy, etc.), resulting in jail times (actually served) and severe fines; and
- amend the copyright law to bring it into line with the TRIPS Agreement, and to establish an adequate legal framework for electronic commerce by protecting copyright in the digital environment.

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

Kuwait, a WTO member, must take steps to ensure that its law fully complies (in substance) with the TRIPS Agreement, but also that enforcement is adequate and effective at deterring piracy, something that sadly cannot be said at present.

Industry estimates that trade losses to the U.S. copyright-based industries due to copyright piracy were more than \$11.5 million in 2001.²

KUWAIT: ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1996 - 2001

INDUSTRY	2001		2000		1999		1998		1997		1996	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	9.0	85%	8.0	85%	8.0	85%	7.5	85%	7.0	70%	7.0	70%
Sound Recordings / Musical Compositions ³	NA	50%	3.0	50%	1.0	45%	3.0	50%	3.0	50%	2.5	46%
Business Software Applications ⁴	NA	NA	6.6	80%	10.5	81%	5.3	88%	5.9	88%	10.1	90%
Entertainment Software ⁵	NA	85%	NA	NA	3.1	82%	3.7	85%	3.5	85%	3.5	85%
Books	2.5	NA	2.5	NA	2.5	NA	2.5	NA	2.5	NA	2.5	NA
TOTALS⁶	11.5		20.1		25.1		22.0		21.9		25.6	

COPYRIGHT PIRACY IN KUWAIT

Kuwait Remains a Pirate Market

Indicia of rampant piracy include the following:

- Tens of thousands of pirate videocassettes are sold openly in the streets and in retail shops by the month. Retailers maintain large stocks of pirate products, and run off so-called

² The total estimate losses to the U.S. copyright industries in Kuwait could not be determined, since loss statistics were not available at the time of filing this report for the sound recording, business software and entertainment software industries.

³ The loss figures reported for music and sound recordings are unavailable at this time. The piracy level figure for 2001 is for "overall" repertoire (including Arabic, Indian and international repertoire), while the "international" repertoire piracy level was 70%. The "international" level of piracy was used in 2000-2001, while the figures for 1996-1998 represent the overall level of piracy. The "international" piracy level was 70% in 2000, up from 65% in 1999. The piracy level for Indian repertoire only remained extremely high in 2001, at over 90%.

⁴ BSA loss numbers for 2001 are not available. In IIPA's February 2001 Special 301 submission, BSA's 2000 loss figure of \$9.7 million was also reported as preliminary, while the piracy level estimate was 79%. These numbers were finalized in mid-2001, and are reflected above.

⁵ IDSA loss estimates for 2001 are not available.

⁶ Loss statistics this In IIPA's 2001 Special 301 submission, IIPA estimated that total losses to the U.S. copyright-based industries in Kuwait were \$23.2 million. Because of the adjustment to reflect BSA's final 2000 loss statistics (see footnote 3), estimated total losses to the U.S. copyright-based industries in Kuwait in 2000 are adjusted to \$20.1 million.

“back-to-back” videocassette copies “while you wait.” Most products are unauthorized pirate copies (i.e., they have not been cleared for content/rating with the government) of movies that haven’t been released in the theaters (so-called “pre-release”).

- Optical disc piracy (CD, VCD, DVD, and CD-R), including large quantities of pirate VCDs of imported movies from Asia, and home-produced CD-Rs are becoming more widely available. Discs are brought by air directly into Kuwait.
- Cable piracy is also rapidly proliferating and is not effectively being addressed by the authorities. Pirates distribute copyrighted material illegally within apartment blocks and residences without the authorization of rights holders. The Ministry of Information has yet to take any effective action against this brand of piracy.
- Audio CDs are still offered to Kuwaiti wholesalers at low prices from sources in Southeast Asia, flooding Kuwaiti markets.
- Book piracy in Kuwait is dominated by unauthorized copies originally intended for the Indian market (i.e., legitimate for sale only in India), and some pirate photocopying in universities takes place, mainly if books do not arrive on time.
- Pirate retail shops selling the following under the counter or on demand from stocks sold door to door still operate with impunity:
 - all types of unauthorized compilation CD-ROMs, including copies of top-end engineering programs, entertainment software and videogames (including older console-based games, of which close to 99% are pirated, newer console-based games, of which approximately 65% are pirated; and PC games, of which approximately 80% are pirated, many reportedly coming from Syria), and routine business software applications available openly on the streets;
 - an *a la carte* menu of free preloaded software suiting the customer's preferences, with purchase of a new computer; and
 - pirate sound recordings of international repertoire (95% on audiocassette, reproduced locally), including pirate CDs (being offered to Kuwaiti wholesalers for as little as US\$1.20) from CD-Rs locally replicated or imported, mainly from Pakistan (which now rivals Southeast Asia as a principal source for pirated CDs).
- Business software end-user piracy (unauthorized use of software in a business) and the illegal loading of software onto a hard disk prior to sale (so-called “hard-disk loading” piracy) still appear in Kuwait, making the legitimate market size only a fraction of that of neighboring markets of a similar size (e.g., UAE).⁷

⁷ Kuwait has an estimated installed base of more than 162,000 personal computers. A paltry 2,000 legal operating systems were sold for the 35,000 computers sold in Kuwait between September 1999 and September 2000.

COMMENCEMENT OF COPYRIGHT ENFORCEMENT IN KUWAIT

Raiding Not Sustained, Infringers Let Off Without Fines or Other Penalties

The end of 2001 and 2002 will be a telltale period for the government of Kuwait to demonstrate its commitment to enforce against copyright piracy. Generally, raids have been sparse and are carried out by the government, and then, only after immense pressure by the industries, the U.S. government, and local Kuwaiti companies. Several raids were conducted in 2000 by the Ministry of Information on behalf of the motion picture industry, which netted seizures of several VCR machines and illegal videocassettes. In 2001, a local anti-piracy group in Kuwait started to work more directly with the Ministry of the Interior (police), and several raids occurred. One was a large-scale raid against a major duplication site in Kuwaiti City in January 2001 that led to the seizure of 24,000 pirate videocassettes (and 22,000 audiocassettes), as well as 35 VCRs and 8 TVs being used in the pirate enterprise. A second raid occurred in August 2001, and resulted in the seizure of almost 20,000 pirate VCDs (allegedly produced in Pakistan). Another raid occurred in November 2001, and resulted in the seizure of seven VCRs and at least 3,000 videocassettes. Finally, in January 2002, thousands of CD-Rs and four CD-R "burners" were seized in a raid on video store and duplication lab, out of which two men were arrested and charged with copyright violations.⁸ In all cases, arrests were made under the copyright law, but no fines and sentences have been meted out.

In June, October and November 2001, the business software industry experienced some very positive raids by the Ministry of Information, yielding seizures of many computers containing unauthorized copies of software. On October 30, 2001, the Criminal Court of First Instance in Kuwait City issued a judgment against two of the pirate resellers raided, and in each case, the court imposed the top fine of 500 Kuwaiti Dinars (US\$1,630) and ordered the confiscation of all infringing copies of software found on the premises of the resellers during the raids. One case has been transferred to the civil courts for assessment of compensatory damages. This raiding and the conviction of the pirate software reseller in November 2001 indicate some cause for hope, particularly for the software industry. However, objectively, these results simply cannot have a deterrent effect on the market, particularly when pirates make such enormous profits with little risk of being caught and no risk of being punished with fines commensurate to the commercial harm they cause.

Inter-Ministerial Task Force Largely Ineffective

A Task Force made up of the Ministry of Information (Sheikha Rasha Naif Al-Sabbah, and Ms. Manal Baghdadi, Legal Affairs Controller), the Ministry of Interior (under Lieutenant Colonel Mahmoud Al Tabakh), Ministry of Commerce (under Abdullah Al Kalaf), Public Prosecutors' Office (under Usama Al Babteen), and Customs (under Mohamed Al Sulaiti), was established in late 2000 under the auspices of His Excellency Sheikh Ahmad Al-Fahd Al-Sabah, Minister of Information, and under the direction of Assistant Under Secretary, Sheikh Mubarak Duaij Al-Sabah, specifically to deal with the serious problems of piracy in Kuwait.

⁸ The video store had been under surveillance for months as investigators attempted to determine the location of the supporting duplication and storage facility, and although the store did not have any pirate videos or "burned" CD-Rs in plain view, customers could request pirate content on CD-R, at which time the staff would call up to a third floor apartment above the store and place the order. The raid netted 7,200 CD-Rs and four burners.

The Task Force announced in 2001 that it will present 45 copyright piracy cases to the Commercial Prosecutor in Kuwait, and that it will be conducting continuous inspections against illegal copyright activities. The task force will also be responsible for raising the public's awareness about the importance of copyright protection to the country's economy and will conduct continuous advertising campaigns on radio, television and the print press to deter the public from using illegal copyrighted works.

While Kuwait is to be commended for having set this force up, the task force has engaged in little enforcement activity to date. It is imperative that it demonstrate some results in the coming months. Specific problems the task force must avoid include bureaucratic designation of responsibilities that would only slow down the effectiveness of enforcement (for example, the Ministry of Information has informed industry that it can only verify the legitimacy of product seized in a raid, but actual raiding comes under the Ministry of Interior). The police must carry out enforcement actions against duplication sites and storage areas used to source illegal pirate activity. Also, the task force must begin to address the true sources of piracy in Kuwait, which increasingly are outside Kuwaiti borders. Kuwaiti Customs must carry out enforcement against such piracy coming in at the borders.

The copyright industries have rightly been encouraged by the development of an inter-ministerial approach to copyright in Kuwait, and in order to assist in this endeavor, the industries offered a major training program in October 2001. The program was organized by the Ministry of Information (under the direction of Sheikha Rasha), and over 100 people participated, including enforcement trainers from the motion picture, entertainment software, business software, and recording industries, and a representative from the satellite television industry. The key focus was on pirate product recognition, and included government participation from the Kuwaiti Ministry of the Interior. In addition to this most recent training, training seminars were held for the Ministry of Information, the Ministry of the Interior (police) and the Public Prosecutors' Office on February 12, 2001, and Customs on February 13. Over 100 Kuwaiti officials were trained in 2001 on the means of effectively enforcing copyright.

Other key elements agreed to by the Kuwaiti Enforcement Task Force upon its formation in late 1999 (and progress made to date on these initiatives) include:

- training for judges and lawyers on the importance of copyright protection and deterrent penalties (this training has not yet been arranged);
- active government press statements warning pirates of its intent to enforce the copyright laws, highlighting the consequences to be faced for continuing to violate the copyright law (including a TV ad campaign) (the Ministry of Information released an ad in the papers at its own expense on August 2, 2000, warning against illegal copying of copyrighted works, but has not allowed industry to re-release the ad, even at industry's own expense);
- the initiation of at least three key and comprehensive raids against major pirates, including retail outlets and supporting duplication sites (as noted above, several enforcement actions were commenced in 2000 and 2001, including two against storage areas, but the pirates involved have not included major retail outlets or duplication sites);

- systematic inspections of all shops that sell copyright materials, including video and audio shops, computer shops and game retailers, booksellers, and organizations that may engage in the unauthorized use of copyrighted materials (including business software); these inspections should be carried out at least once every six months or earlier in specific cases if necessary, at any time, day or night, to introduce the element of surprise in conducting such unannounced inspections;
- publication of the raid results, including who was raided, what was seized, and the possible penalties to be levied, including in the Kuwait-based and international media; and
- imposition of deterrent fines and penalties, including imprisonment and heavy fines, in accordance with Section 42 of Kuwait's copyright law (we are pleased to note the single conviction of a pirate reseller of software, but the fines imposed in that case were non-deterrent).

Procedural and Market Access Barriers Remain

There remain some procedural barriers and market access restrictions that have made operating in Kuwait burdensome. For example:

- Before the passage of the copyright law, the motion picture industry has over the years resorted to antipiracy protection from the Ministry of Information's "Censorship Department" by asking that it verify copyright authorization before giving censorship approval for a title. Unfortunately, the censorship fee of KD20 (US\$65.75) per title is a burden that distributors face in trying to market and protect their products. The censorship fee should be reduced and limited to new titles only.
- An unfair import duty has been imposed on business software; these import duties should be done away with immediately.

COPYRIGHT LAW AND RELATED ISSUES

Kuwait's Law Violates TRIPS

While IIPA commends the Kuwaiti government, including the Amir himself and the National Assembly, for taking the badly needed step of passing the Kuwaiti Law on Intellectual Property Rights (1999) ("Copyright Law") in December 1999 (effective February 9, 2000), IIPA remains concerned that the Kuwaiti government has failed to introduce promised amendments in the 2000 Assembly sessions to fix TRIPS deficiencies and other ambiguities, including those noted below. Without amendments, Kuwait's law will remain in violation of TRIPS. In particular, IIPA notes the following non-exhaustive list of deficiencies or ambiguities in need of explicit clarification or amendment by the Kuwaiti government. (Note: IIPA does not address in this non-exhaustive list "in-practice" enforcement deficiencies, as those are addressed, albeit non-exhaustively, in the previous sections of this report.)

Substantive Deficiencies

- **Innovativeness Requirement for Works?** Article 1 of the Copyright Law provides protection to authors of “innovative” works; such an “innovativeness” requirement is inconsistent with TRIPS Article 9.1. It is our understanding that the word used in Article 1 of the Kuwaiti Copyright Law means something akin to “innovative” or “new.” Berne Convention Article 2 does not limit the works to be protected to those that are “innovative” or “new,” and, for example, provides that the expression “literary and artistic works” include “every production in the literary, scientific and artistic domain. . . .” The term “innovative” in the Copyright Law should simply be replaced by the word “original.”
- **Exclusive Rights Limited to Financial Exploitation?** Under the Copyright Law, the right holder is given the exclusive right “to exploit his writing financially,” in express violation of TRIPS Article 9.1, which requires that the exclusive rights be granted to an author regardless of whether the exploitation is financial in nature or not. The Berne Convention, as incorporated by reference into TRIPS, does not limit the exercise of exclusive rights to exploitations carried out for financial gain. By adding the word “financially” to Article 4 of the Copyright Law, Kuwait appears to limit the ability of an author to authorize or prohibit the unauthorized use of works when there is no financial gain, in violation of the TRIPS Agreement. The word “financially” should be deleted from Article 4.
- **Unclear Retroactive Protection.** Article 44 of the Copyright Law makes the law applicable to works (for which there is point of attachment under Article 43) that “exist on the date on which [the Copyright Law] shall enter into force,” making it unclear whether the law provides full retroactive protection for works (including sound recordings), performances and broadcasts, consistent with TRIPS Article 9.1 (incorporating Berne Convention Article 18 into it) and 14.6. Kuwait must clarify that works (including sound recordings), performances and broadcasts are protected retroactively with their full TRIPS-compatible terms of protection (TRIPS articles 9.1 and 14.6).
- **Protection for Sound Recordings.** IIPA understands that protection for sound recordings has been effectuated by protecting “audio-visual broadcasting works” in Article 2(6) of the Copyright Law (also translated as “work[s] prepared for radio . . .” in the Kuwaiti National Assembly’s “Explanatory Memorandum to the Draft Law on Intellectual Property Rights”) as the functional equivalent of what is understood in the TRIPS Agreement as a sound recording or phonogram. Protection of sound recordings/phonograms (which are not specifically mentioned by those names in the law) as audiovisual broadcasting “works” or as radio “works” under the Berne Convention means that Kuwait would comply with its TRIPS Article 14 obligations. IIPA seeks confirmation that the foregoing is a correct interpretation of the Copyright Law of Kuwait.
- **Unclear Panoply of Exclusive Rights for Sound Recordings.** IIPA seeks confirmation that Article 25 of the Copyright Law was not meant to apply to sound recordings/phonograms. Article 25 provides that the producer of a “work prepared for the radio . . . shall be considered as a publisher and shall be entitled to all the publisher rights.” Unless “publisher rights” refers to all the exploitation rights of Article 4 of the Kuwaiti Copyright Law, including those specifically enumerated in Article 5, this would be inconsistent with TRIPS Articles 14.2 and 14.4, which requires member countries to provide producers of

phonograms with at least the rights to authorize or prohibit “the direct or indirect reproduction of their phonograms” and “the commercial rental to the public of originals or copies of their [phonograms].”

- **Unclear Panoply of Exclusive Rights for Producers of Audiovisual Works.** The panoply of exclusive rights for producers of audiovisual works in Article 25 of the Copyright Law is unclear. The Article provides that the producer “shall be considered as a publisher and shall be entitled to all the publisher rights,” and that

[t]he producer shall act – during the agreed term of exploitation – on behalf of the authors of the work and their respective successors. He shall negotiate – on their behalf – the agreements on presenting and exploiting the work, without prejudice to the rights of the literal and musical works authors, unless if it shall be otherwise agreed upon in writing.

Kuwait should reverse this presumption, such that the producer of audiovisual works shall be presumed to have the exploitation rights unless otherwise agreed upon in writing. Vesting all economic rights in an audiovisual work in the producer significantly enhances the ability to commercialize works in all release windows and improves the economic viability of an industry, which benefits all groups that contribute to the success of an audiovisual work.

- **Unclear National Treatment for WTO-Member Works and Sound Recordings.** Kuwait must confirm that Article 43 of the Copyright Law binds Kuwait to protect works (including sound recordings) of “international conventions implemented in the State of Kuwait,” including works of WTO member states, and that such protection is provided as required under the TRIPS Agreement, namely, in line with the principle of national treatment. IIPA understands, but seeks confirmation, that by the first clause of Article 43, which states, “[w]ithout prejudice to the provisions of the international conventions implemented in the State of Kuwait,” Kuwait considers the TRIPS Agreement to be self-executing in Kuwait. The explanatory memorandum contains a statement with regard to Article 43 which does not appear in the law proper, namely, “[t]he writings of foreign authors, nationals of countries which deal similarly with the writings of Kuwaiti authors” shall be protected under the law. This appears to propose a reciprocity provision, which would place Kuwait in violation of its obligation under the WTO to protect works and sound recordings under the principle of national treatment. The fifth excerpt regarding Article 43 in the explanatory memorandum is irrelevant to the question of how WTO member works are to be treated in Kuwait, but might be relevant to how Kuwait protects works of non-WTO, non-WIPO members. To ensure that the law is not ambiguous on this point, references to this fifth clause of Article 43 in the explanatory memorandum should be deleted.
- **Failure to Provide Express Point of Attachment for Performers/Broadcasters, Etc.** Article 43 of the Kuwaiti Copyright Law fails explicitly to provide point of attachment for: 1) Kuwaiti or WTO members’ performers or broadcasters; 2) foreign unpublished works (performances or broadcasts); and 3) works of WTO members who are not members of WIPO. While, as noted above, IIPA seeks confirmation that Kuwait considers the TRIPS Agreement as self-executing, which would mean Kuwait does protect WTO member performers and broadcasters, it would be highly preferable to expressly provide such point

of attachment in the law, to avoid possible confusion among jurists. If TRIPS is not self-executing in Kuwait, then Kuwait is in violation of its TRIPS obligations, specifically, Articles 9.1, 14.1, 14.3, and 14.5-14.6.

- **Inadequate Term of Protection for Computer Programs.** The Kuwaiti Copyright Law fails to provide computer programs with at least a TRIPS-compatible term of protection. By doing so, the law also fails to comply with TRIPS Article 10.1, which provides that computer programs must be protected “as literary works” as that term is understood in the Berne Convention (1971). Article 7(1) of the Berne Convention, incorporated by reference into TRIPS through Article 9.1, deals with “Term of Protection,” and subsection (1) of that Article, subtitled “Generally” (and understood to apply to “literary” works), requires protection for the “life of the author” plus fifty years after his death. Article 17(2)(3) of the Kuwaiti Copyright Law is incompatible with TRIPS in this regard.
- **Inadequate Term of Protection for Compilations of Data.** Article 17(2)(3) of the Kuwaiti Copyright Law provides for a term of protection of “fifty years as from the end of the calendar year during which the work was published” for “database works,” making the provision incompatible with TRIPS Article 9.1, which requires that the term of protection for works for which there is an author be at least “the life of the author and fifty years after his death” and TRIPS Article 10.2, which provides that “[c]ompilations of data or other material . . . which by reason of the selection or arrangement of their contents constitute intellectual creations shall be protected as such.”
- **Berne-Incompatible Compulsory License.** Article 14 of the copyright law amounts to an unacceptable compulsory license in violation of the Berne Convention (and TRIPS Article 9.1).
- **Moral Rights Provision Overly Broad, Possibly Impinging on Exclusive Adaptation Right.** The moral rights provisions exceed what is provided for in Article 6*bis* of the Berne Convention, and arguably nullify the exclusive right of adaptation, which would be a violation of TRIPS Article 9.1.
- **Overly Broad Exceptions.** Several exceptions, including a “personal use” exception, arguably violate TRIPS Article 13, by failing to meet the well-established “tripartite” test of the Berne Convention. At least, Kuwait must reexamine this exception to ensure that the exception is limited to a single analog copy, and would not permit the use of digital copies in a way that would conflict with a normal exploitation of the work or unreasonably prejudice the legitimate interests of the right holder.
- **Lack of Express Rental Right for Sound Recordings and Computer Programs.** There is no express rental right for sound recordings and computer programs; IIPA seeks clarification from the Kuwaiti government that Article 4, clause 2, does in fact include a TRIPS-compatible rental right.

Enforcement Deficiencies (on Their Face)

- **Lack of Express Provision for *Ex Parte* Civil Searches.** The Kuwaiti Copyright Law does not expressly provide for civil *ex parte* search orders. TRIPS Article 50 requires that Kuwaiti

judicial authorities have the authority “to adopt provisional measure *inaudita altera partes*” (outside the hearing of the defendant).

- **Insufficient Remedy as to “Materials and Implements,” in Violation of TRIPS Article 61.** Article 42 of the Kuwaiti Copyright Law authorizes the Court “to confiscate all tools used for the illegal publication – if they are suitable exclusively for such publication . . . ,” making it incompatible with TRIPS Article 61, requiring criminal remedies to include “the seizure, forfeiture and destruction of . . . any materials and implements the predominant use of which has been in the commission of the offense.”
- **Inadequate Criminal Remedies.** The criminal provisions in the Kuwaiti Copyright Law providing for a maximum fine of 500 Kuwaiti Dinars (approximately U.S.\$1,600) or up to one year of imprisonment, or both penalties (to be raised by “not [more] than [half]” for recidivists), may be incompatible with TRIPS Article 61, which requires remedies “sufficient to provide a deterrent,” unless such maximums are regularly meted out.
- **Need to Penalize End-User Pirates.** In October 2000, the Ministry of Information, in association with the District Attorney’s office, conducted a criminal search of an end user; the company was unable to produce licenses for the software used. The evidence gathered was used to file a criminal complaint; unfortunately, the case is still pending because the Ministry of Information has not delivered the necessary report to the office of the Public Prosecutor. IIPA looks forward to the speedy resolution of this case, and to the imposition for the first time of criminal penalties on an end user, which would demonstrate, in practice, that Kuwait criminalizes the intentional unauthorized use or copying of computer programs in a business setting, as required by TRIPS.
- **Non-Transparent Border Measures.** The Kuwaiti Copyright Law does not explicitly provide, for example, that competent authorities, administrative or judicial, are given the authority to order the “suspension by the customs authorities of the release into free circulation” of infringing goods, a TRIPS requirement. Kuwait must confirm that its laws (either the Copyright Law or separate laws) are compatible with TRIPS articles 51-59 regarding special requirements related to border measures.

WIPO Treaties

In addition to addressing the deficiencies laid out above, Kuwait should take the opportunity presented by amendments to implement the WIPO “Internet” treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). The WCT will go into effect on March 6, 2002, and the WPPT, which only requires two more deposits, will go into force soon thereafter. As Kuwait, like the rest of the GCC countries, looks to the future post-oil economy, its new crop of leaders must surely recognize that the development of Kuwait’s information economy will be key to its sustained economic development, and implementation of the treaties is essential to the establishment of the proper legal framework for a sound digital economy. 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, permitting content owners to provide for the security of their property online, is essential for successful electronic commerce.