

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2002 SPECIAL 301 REPORT

QATAR

EXECUTIVE SUMMARY

IIPA recommends that Qatar be reported on the Watch List.

Qatar must take steps to address piracy of business software that is causing economic loss to the business software industry. Qatar, in contrast to other Gulf States where the business of piracy has become more difficult, is an attractive haven for software piracy in the region.

Qatar's law still 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 \$4.2 million in 2001.

QATAR: 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										
Motion Pictures	0.5	30%	0.5	25%	0.5	30%	1.0	50%	2.0	95%	2.0	99%
Sound Recordings / Musical Compositions ¹	NA	NA	0.2	25%	NA	NA	0.3	27%	0.5	55%	0.5	65%
Business Software Applications ²	3.5	84%	3.0	81%	3.5	80%	1.8	84%	2.1	87%	3.0	91%
Entertainment Software	NA	NA										
Books	0.2	NA	0.0	NA	NA	NA	NA	NA	NA	NA	NA	NA
TOTALS³	4.2		3.7		4.0		3.1		4.6		5.5	

¹ This percentage represents the overall piracy level for sound recording and music piracy in Qatar.

² BSA loss numbers and piracy levels for 2001 are preliminary. In IIPA's February 2001 Special 301 submission, BSA's 2000 loss and level figures were also reported as preliminary, at \$3.3 million in losses and 79% piracy levels in Qatar. These numbers were finalized in mid-2001, and are reflected above.

³ The loss number in 2001 does not take into account negligible losses to the recording industry, which are not available at this time. In IIPA's 2001 Special 301 submission, IIPA estimated that total losses to the U.S. copyright-based industries in Qatar were \$4.0 million. Because of the adjustment to reflect BSA's final 2000 statistics (see footnote 2), estimated total losses to the U.S. copyright-based industries in Qatar in 2000 are adjusted to \$3.7 million.

PIRACY IN QATAR

Business software piracy is extremely common in Qatar. End-user piracy by both private enterprises and Qatari government entities continues. The government of Qatar is well aware of the need for all its departments, ministries and agencies to purchase licenses for the software that they use. Despite this knowledge, the Qatari government has yet to legalize its software. It is also aware of the need to apply the copyright law against private enterprises that use unlicensed software but has not taken any action whatsoever against known end-user pirates.

Retail piracy of business software also exists on a large scale in Qatar, and the Copyright Bureau has done precious little to address the problem. Since 1998, only two raids have been conducted against business software piracy: one by the Copyright Bureau against a computer store that was illegally loading software on the hard disks of computers sold by the store (so-called "hard-disk loading" piracy) and one by the police against a reseller shop in Doha. Neither of these raids has resulted in any penalties being meted out. There has been no action of any kind against software piracy in 2001. In 2001, bowing to pressure from the industry, the Copyright Bureau agreed to take action against software piracy, whereupon the business software industry provided a list of known end-user and retail pirates in Qatar (similar to a list provided to the Copyright Bureau two years ago, which led to no results). However, no actions were taken against these infringers by the Qatari government and, to the best of our knowledge, no action was taken against any software pirates in Qatar in 2001. Qatar continues to be a safe haven for those dealing in illegal copies of software.

Qatari officials (including those in the Ministry of Commerce (MOC)) need to begin coordinating and conducting raids against retail shops selling pirated software. In addition, the authorities need to confront the problem of end users engaged in the illegal use of business software. Such steps are critical to the establishment of ongoing cooperation with representatives of companies that are selling 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. The business software industry has repeatedly expressed its willingness to help in this regard, but these offers have been rejected by the Copyright Bureau.

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

- Systematic surprise inspections at least every six months of shops that sell copyright-protected works, including 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 experiences from enforcement officials, who appear to work hard to avoid taking any kind of enforcement action against blatant piracy. The severity of the business software piracy situation in Qatar is well known to the authorities, and the Qatari government could take steps to substantially decrease the

extremely high rate of piracy. However, the government has demonstrated little public will to fight piracy.⁴

One substantial step 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. This process of legalization should be completed at an urgent pace if the Qatari government wishes to demonstrate its seriousness about raising the level of respect for intellectual property rights in Qatar. Such actions would also serve to create a ripe atmosphere for the promotion of the IT industry in Qatar.

The Qatari government must ensure that the Copyright Bureau 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

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 had begun in Qatar in 2000, and that certain international consultants are reviewing the draft for TRIPS deficiencies. IIPA is not aware of any developments on that front in 2001.

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.

⁴ For example, at a conference sponsored by the World Intellectual Property Organization (WIPO) in Cairo in 2000, the head of the Copyright Bureau opined that any enforcement action against end user software piracy would be a breach of Qatari sovereignty.

- 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.

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 and to fully modernize its copyright law, including taking into account new technologies. 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. The WCT will go into force on March 6, 2002, while the WPPT requires only two more deposits (as of the date of this filing), and is certain to go into force very soon.