

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2002 SPECIAL 301 REPORT

# SAUDI ARABIA

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

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IIPA recommends that Saudi Arabia remain on the Watch List.

Despite some signs of progress against piracy in 2001, lack of transparency (and deterrence) in enforcement actions carried out by the government, a TRIPS-incompatible copyright law, and procedural hurdles to judicial enforcement continue to characterize the situation in Saudi Arabia. Raids on retail establishments and on duplication sites and storage areas continued in 2001, and the Saudi government has taken some other positive measures to protect copyright, including largely cleaning up video piracy in Riyadh. The Ministry of Information has also actively carried out raids and implemented the License Certification Program (by which business are required to demonstrate that they use only legal software as a requirement to obtain or keep their business licenses) – a first in the Gulf region; the Ministry is to be commended for having taken such positive steps. Strong efforts have also been made to legalize software usage in the education sector. However, because much unfinished work remains to be done, and because high piracy levels continue to result in damage to U.S. copyright owners, Saudi Arabia should remain on the Watch List.

In 2002, the Saudi authorities should continue work in raiding retail establishments, storage areas and duplication sites replete with piracy, especially in the Eastern and Western Provinces, but must also do more to concentrate on larger points of distribution (including borders), and most importantly, points of production of piracy. While the issuance of regulations in 2000 on the legalization of software usage by companies was an extremely positive step, the Saudi government should take further steps to ensure that its own government entities, as well as the companies covered under the 2000 regulation, use legal software and have put into place adequate software management procedures. To address the transparency problem in Saudi Arabia, IIPA understands that the Saudi authorities are interested in training on data collection and reporting enforcement cases as they proceed. Our industries stand ready to work with the Saudi government to devise reporting and data-keeping strategies, which will be mutually beneficial in fighting piracy. Finally, the Saudi government is well aware of the need to revise its intellectual property laws to bring them into conformity with the TRIPS Agreement prior to WTO accession, and should also take steps to protect copyright in the digital age, by joining (and implementing) the two recent WIPO treaties, the WIPO Copyright Treaty (WCT), which will go into force on March 6, 2002, and the WIPO Performances and Phonograms Treaty (WPPT), which will go into force soon. The Saudi government is commencing a number of initiatives intended to enhance global electronic commerce;<sup>2</sup> accordingly, it is timely for the Saudi government to,

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

<sup>2</sup> Press reports indicate that the Kingdom is currently spending over US\$6 billion for the installation of digital lines and expansion of satellite networks, wireless local loop systems and long-haul fiber-optic connections. An additional 116,000 new

likewise, modernize its legal structures to ensure that protection is afforded to content over digital networks. The treaties provide an adequate legal basis for such protection.

U.S. trade losses in Saudi Arabia due to piracy amounted to over \$171.7 million in 2001.

**SAUDI ARABIA 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	30.0	45%	40.0	65%	40.0	65%	32.0	50%	32.0	50%	41.0	50%
Sound Recordings / Musical Compositions <sup>3</sup>	12.0	42%	8.0	55%	12.0	45%*	12.0	45%*	15.0	45%*	17.0	40%*
Business Software Applications <sup>4</sup>	NA	NA	17.7	62%	31.8	64%	30.9	73%	17.0	74%	28.0	74%
Entertainment Software	115.7	83%	28.0	NA	20.2	59%	21.4	68%	21.3	70%	20.0	64%
Books	14.0	NA	14.0	NA	14.0	NA	9.0	NA	9.0	NA	9.0	NA
<b>TOTALS</b>	<b>171.7</b>		<b>107.7</b>		<b>118.0<sup>5</sup></b>		<b>105.3</b>		<b>94.3</b>		<b>115.0</b>	

## COPYRIGHT PIRACY IN SAUDI ARABIA

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

- **Retail Piracy:** Retail piracy of optical media (including audio CDs, CD-ROMs and “home-burned” CD-Rs), audiocassettes, books and photocopied pirate copies, continues to exist at piracy levels that indicate some lack of deterrence and that close the market to legitimate

Internet users, growing at an exceptional rate of 8% per month, are stimulating the demand for the continued modernization and expansion of the Kingdom’s communications infrastructure and equipment. See Javid Hassan, *Efforts under way to develop Riyadh as a major IT center*, Arab News, February 3, 2002, at <http://www.arabnews.com/Article.asp?ID=12526>.

<sup>3</sup> The 2001 losses due to piracy of sound recordings are for U.S. repertoire only. The 2000 and 2001 levels of piracy referred to are that for international repertoire (and for overall level of piracy for 1996-1999, as indicated by \*). The overall piracy rate in 2000 was 40%.

<sup>4</sup> BSA loss numbers for 2001 were not available at the time of this report. In IIPA’s February 2001 Special 301 submission, BSA’s 2000 loss and level figures were reported as \$28.8 million and 62%. These numbers were finalized in mid-2001, and are reflected above.

<sup>5</sup> In IIPA’s 2001 Special 301 submission, IIPA estimated that total losses to the U.S. copyright-based industries in Saudi Arabia were \$118.8 million. Because of the adjustment to reflect BSA’s final 2000 statistics (see footnote 4), estimated total losses to the U.S. copyright-based industries in Saudi Arabia in 2000 are adjusted to \$107.7 million.

products. Copies of pirate (retail) optical media are available in Saudi markets, mainly imported from other parts of the Middle East, Pakistan, as well as Taiwan, Indonesia and Malaysia. Although the Saudi government 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.<sup>6</sup>

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, many burned inside Saudi Arabia, including in homes. 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) which the Ministry of Information does not have the authority to inspect (see discussion below). Audiocassette piracy also remains a major cause of economic harm to the copyright industries in Saudi Arabia, as pirate audiocassettes continue to account for almost all of pirate unit sales.

- **Book Piracy:** 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, as well as from India (of reprints intended solely for the India market, so-called “India only” reprints). Some commercial and (mainly) photocopy piracy of English language and teaching (ELT) materials continued in 2001 in universities. Some of the new higher education institutions (like the College of Petroleum and Minerals in Dahrhan) reportedly are encouraging the use of legitimate books. Journals are bought direct primarily on CD. There is a report that Jeddah University may buy centrally as of 2002.
- **Business Software Piracy:** IIPA noted the proliferation of pirate street vendors in 2000 and 2001, especially in major cities (the main computer-shopping road in Riyadh has tens of street vendors offering the latest software programs at less than 2% of the retail price), hurting business software companies in their ability to do legitimate business in the consumer and small-business markets.
- **Unencrypted Pirated Broadcasts That 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

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<sup>6</sup> Saudi Arabia remains the worst pirate country for console-based videogames in the Gulf region. While the installed base of consoles runs at 80% of the games market, sales are roughly 40% of the market, meaning the other 40% of games supplying the installed base is pirated.

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 very slowly. As of December 2001, it is estimated that the Saudi Government still has approximately 80,000 personal computers set up, many of which run on pirated software. Despite the fact that the country's leadership repeatedly has instructed all government departments and agencies to legalize their use of software, government entities continued to use illegal copies of software with impunity.
- **Business End-User Piracy:** The unauthorized use of software in a business setting (so-called "end-user" piracy) continues in large, medium and small enterprises.
- **Cable Piracy:** Cable piracy remains a problem in the Kingdom, as pirates in housing compounds illegally distribute broadcasts (sometimes accessed through legitimate subscribers) to multiple villas without right holder authorization. The Ministry of Information has recently issued strongly worded letters to the compounds an effort to reduce the level of cable piracy. The Saudi authorities should now follow-up on these warning letters to make sure that they are being complied with and that the illegal rebroadcasting is stopped.

## **COPYRIGHT ENFORCEMENT IN SAUDI ARABIA**

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Notwithstanding some overall improvement in enforcement in Saudi Arabia in 2001, there are two abiding problems in enforcement that the government should address in order to make serious inroads into piracy in the Kingdom: lack of deterrent penalties under the current copyright law (since low fines are viewed by the pirates as no more than a cost of doing business), and lack of transparency in copyright cases (and the absence of right holder representatives in court proceedings).

### **Enforcement Actions Taken in 2001 Show Some Improvements**

In 2001, Saudi authorities continued to take raids, mainly against those establishments engaged in retail piracy, but also increasingly against piracy rings using private villas for production and warehouses filled with pirate videocassettes (and other pirate product). In 2002, the Ministry of Information and the police have orchestrated at least 24 raids against private homes and warehouses that served as duplication sites and storage areas for illegal product. These raids resulted in the seizure of over 300,000 illegal cassettes and CDs and hundreds of recording machines. The new focus on private villas and warehouses is very welcome and it is hoped that the authorities will continue their efforts outside Riyadh, and especially in Jeddah and Damman. Administrative remedies are also being meted out, including some shop closures, and there has been greater public attention and media coverage paid to such enforcement actions. These are all positive steps. The Saudi government also began devoting more resources to fight piracy, another positive step. Specifically, the government reportedly created 70 new jobs in the MOI copyright protection department. However, IIPA has heard that these new staff are dispersed across the country, and overall, MOI remains largely under-staffed.

Overall, raids in 2001 on end-user infringers (businesses engaged in the unauthorized use of software), retail establishments engaged in the sale of pirated books, CDs, VCDs, video game software, audiocassettes and videocassettes, computer shops engaged in the sale of pirate software, training centers and Internet cafes, and many video duplication sites (in conjunction with the police), have made inroads against day-to-day piratical operations, moving many of the pirate operations underground.<sup>7</sup> For example, major entertainment software companies are conducting raids on a weekly basis, seizing thousands of CDs containing mostly videogames in older formats. One raid in 2001 on the Rajehee Building in the Al Bathaa area hit 22 vendors at once, leading to the seizure of 49,000 pirated discs. There have also been some large seizures of illegal CDs through the points of entry into the Kingdom, but, for example, no known seizures of business software titles. During 2001, the Ministry of Information reportedly confiscated 2,618,230 pieces of CD media (including video game software, audio CDs and VCDs) and 579,667 other illegal works (including books, videocassettes and audiocassettes), but IIPA has received no specifics on these seizures in 2001. Such lack of transparency is not conducive to understanding the improvements in the Kingdom, and fails to deter.

For the motion picture industry, the strengthened efforts of law enforcement in 2001 have caused most visible piracy to disappear from retail shops in Riyadh. In addition, the Ministry of Information (MOI) in conjunction with the Ministry of Interior has greatly increased the frequency of raids against numerous private residences and warehouses once used as pirate duplication and storage areas. At least 24 such raids in 2001 netted the seizure of over 300,000 illegal cassettes, numerous pirate CDs, and recording machines. Piracy rates have actually been reduced in the markets where such actions have been taken (sometimes to as low as 25% for video piracy, mainly in Riyadh). The typical fine for a first-time offender is 10,000 riyals (approximately US\$2,667) with a second-time offender usually receiving a fine of 20,000 riyals (approximately US\$5,333). IIPA understands that 26 video stores and 5 audio stores visited by an MOI team of three enforcement officials were closed down during 2001. The recording industry also reports that some raiding has occurred in 2001, including the seizure of tens of thousands of CDs, and that the authorities have been responsive to tips provided about piracy (in one recent example, a tip led authorities to arrest a courier from Pakistan and seize 8,000 pirated CDs).

For the business software industry, the government continues to run raids against resellers (over 50 shops). However, no fines have been imposed against any of the raided targets in 2000 or 2001. The MOI Decisions Committee is a quasi First Instance Court, yet its processes are non-transparent and totally inaccessible.

The motion picture industry continues to rely in part on Saudi Arabia's successful publication

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<sup>7</sup> One press report indicates that, shortly before Ramadan began in 2001, the MOI had come down heavily on "video libraries" in the Eastern Province, closing down one store, imposing heavy fines, and forcing many pirated CD traders at various locations in Al Khobar to close down their shops. The Gulf Center in Al Khobar has now become a hub of illicit trade, although much of it has reportedly gone underground. The *modus operandi* is such now that there are no showrooms and no displays of CDs, but agents hovering around the parking lot of the Gulf Center look for prospective buyers. CDs are stored in the boots of the cars conveniently parked and once a price is settled on, the pirated CDs are handed over to the buyers. One such seller claimed that he earned about SR3,000 (approximately US\$800) in profits in the eight days of the recent Eid holiday. Saeed Haider, *Eid Holidays a Boon for Video Pirates*, Arab News, Dec. 25, at <http://www.arabnews.com/Article.asp?ID=11507>.

approval system to secure limited anti-piracy protection. The system works through the motion picture industry representative's submission of authorized licensee certificates to the Director General of Publications (DGOP), which works with the MOI to halt the distribution of unapproved titles. These certificates raise the presumption of copyright ownership and distribution authorization for authorized licensees, and heighten requirements for others attempting to obtain approval to distribute the titles involved.

## **Successful Ministry of Information Decree to Require Legitimate Software Usage by Businesses Should Be Expanded**

In 2000, the Ministry of Information issued a decree (establishing the License Certification Program) obliging all media companies and MOI contractors to prove that they use only legal software in order to renew their business licenses or win contracts with the Ministry. The Ministry also conducted a nation-wide campaign in 2000 and again in 2001, sending letters to end-users all over Saudi Arabia, announcing the decree and urging them to ensure that all software used is legal. MOI then proceeded to carry out inspections against several enterprises that did not respond positively to these letters. 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 now encourage the Saudi government to expand this excellent program to other industry sectors.

In addition, several conferences have addressed the topic of software piracy, including the participation of several government and private sector companies. In April 2001, the MOI issued warnings in the press regarding anyone selling illegal product at the COMDEX show in Jeddah. The MOI said they would have inspectors available at the show, that companies should be prepared to prove that all goods for sale are legal, and that there are no incidents involving the unauthorized loading of hard disks on computers. Several stalls were closed in 2001. Notwithstanding these positive efforts of the Ministry of Information in Saudi, it remains unlikely that the overall piracy situation will change until deterrent judgments are meted out regularly against pirates. Also, it should be noted that the police/Ministry of Interior did not take a single action against software piracy in 2001. This is a situation that desperately needs to be addressed in 2002.

## **Lack of Transparency in Enforcement and Court Cases**

The enforcement system in Saudi Arabia continues to suffer from a general lack of transparency regarding the running of raids, raid results, and the handling of court cases. The reporting system in Saudi Arabia used to provide right holders with only aggregate data on fines (but even that cursory report has not been forthcoming of late), but regular publicizing of sentences and fines does not occur. As a consequence, raids/fines lose their value as a deterrent, as pirate retailers have no fear that they will be singled out if caught.

After providing "intelligence" on raid targets, right holders still find it extremely difficult to get confirmation that an action has been taken. Such lack of transparency is counterproductive, since right holders are often in the best position to assist authorities in various aspects of the raid, for example,

identifying their members' product, and identifying indicia of illegality. Once raids have been taken, the industries do not generally learn about the results in individual raids. The MOI apparently considers the publication of specific violations and penalties as an additional sanction. To address the transparency problem in Saudi Arabia, IIPA understands that the Saudi authorities are interested in data collection and reporting mechanisms for enforcement cases as they proceed, from the raid. Our industries stand ready to work with the Saudi government to devise reporting and data-keeping strategies, which will be mutually beneficial in fighting piracy.

Most cases in which a raid has occurred never end up in the courts in Saudi Arabia, but are subject to an administrative proceeding at the MOI. In such proceedings, the MOI will generally serve notice to the raided shop of a violation of the copyright law, and a case is prepared before an MOI committee that acts as an administrative tribunal, the procedures and decisions of which are kept secret. Copyright owners sometimes learn that a store has been fined after the fact, but only the store itself knows the size of the fine. There is no case information given and no way to track the sentencing of a particular defendant. In addition, there is no representation of the right holder in that administrative proceeding. This creates a totally untenable situation for right holders: The only way to appeal a sentence or decision of the MOI Committee to the Board of Grievances (the appellate body) is to get a decision from the MOI Committee. However, the MOI Committee has not to IIPA's knowledge published any judgments in the past two years (or at least has not alerted the right holders), so right holders have been unable to use this judicial procedure.

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

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Saudi Arabia's copyright law (effective January 12, 1990) provides some basic protections for U.S. right holders (Saudi Arabia joined the Universal Copyright Convention (UCC) in 1994, extending protection to foreign (UCC members') works). In terms of enforcement, the law provides for the possibility of compensatory damages to be paid to right holders, criminal fines (albeit too low, even when doubled for recidivists), the possibility of seizure of infringing goods, and the closure of shops engaged in piracy (for up to 15 days; 90 days for recidivists). No jail terms are provided in the Saudi copyright law.

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. Saudi Arabia must amend its copyright law to make it TRIPS-compatible before being admitted to the World Trade Organization (WTO).<sup>8</sup>

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

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<sup>8</sup> Saudi Arabia began procedures to join the World Trade Organization (WTO) in May 1996. This process has been arduous and is incomplete. The Saudi Government is nonetheless currently working with the WTO to amend its laws in accordance with Berne Convention and TRIPS requirements.

- 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 international agreement or treaty would remove all legal doubt.
- 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 doubt.
- 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, and must be reexamined specifically with regard to computer programs or to other works in digital format. Under Berne, exceptions 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 number of personal use copies that can be made under the exception (i.e., one copy for personal and private use), which is clearly violative of Berne.
- 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 violates the Berne Convention and TRIPS violation, and should be deleted (or curtailed significantly through implementing regulations so that it comports with TRIPS/the Berne Convention).
- 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 US\$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 WCT will go into force on March 6, 2002, while the WPPT requires only two more deposits as of the date of this filing, deposits which are sure to come shortly. 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.