

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2003 SPECIAL 301 REPORT

KUWAIT

EXECUTIVE SUMMARY¹

Kuwait should be elevated to the Priority Watch List. Some enforcement activity occurred toward the end of 2002; yet, Kuwait remains one of the worst countries in the Gulf region when it comes to retail copyright piracy, and will not take the steps necessary to improve the situation unless it is elevated.

Kuwait was placed on the Priority Watch List in 1998, and kept there in 1999, for its failure to enact copyright legislation, leading to total market domination by pirates. With the passage of copyright legislation before TRIPS went into force (in December 1999), Kuwait was lowered to the Watch List, and has remained there since.

Copyright enforcement in Kuwait waxed and waned in 2002. After some positive reporting and promises made by the Kuwaiti government's recently-formed Interministerial Task Force, enforcement nearly ceased until the end of 2002, when raiding activity picked up again. The raids, however, were only against small targets, and in several cases the pirate product was returned to the pirates. The leadership of Sheikha Rasha Naif Al-Sabbah (Copyright Office in the Ministry of Information) demonstrates the will of the government, but results have been less than impressive (the government's own report from early 2002 indicated that of 79 piracy cases commenced, only 15 had been resolved, including four acquittals and four non-deterrent fines).

Required Action for the Kuwaiti government in 2003:

- Make public declarations at the highest level of the Kuwaiti government that piracy will not be tolerated in Kuwait.
- Run and support 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, and including raids against corporate end-user piracy of business software).
- 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.
- Amend the copyright law to bring it into line with the TRIPS Agreement, establish an adequate legal framework for electronic commerce by protecting copyright in the digital environment, and join the WIPO "Internet" treaties.

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

KUWAIT
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1998 – 2002²

INDUSTRY	2002		2001		2000		1999		1998	
	Loss	Level								
Motion Pictures	10.0	95%	9.0	85%	8.0	85%	8.0	85%	7.5	85%
Records & Music ³	3.4	64%	NA	70%	3.0	70%	1.0	65%	3.0	50%
Business Software Applications ⁴	NA	NA	4.5	76%	6.6	80%	10.5	81%	5.3	88%
Entertainment Software	NA	NA	NA	85%	NA	NA	3.1	82%	3.7	85%
Books	2.5	NA								
TOTALS⁵	15.9		16.0		20.1		25.1		22.0	

COPYRIGHT PIRACY IN KUWAIT

Kuwait Remains a Pirate Market

Piracy continues to dominate the domestic market in Kuwait. Because of such little progress in the fight against piracy, piracy levels have crept upward in 2002, for example, to an alarmingly high 95% for audiovisual materials. Pirate optical discs (DVDs, VCDs, CDs, CD-ROMs) have become the dominant carrier of pirate content in the Kuwaiti market and are openly sold on the streets.

An informal breakdown of piracy in the Kuwaiti market looks like this:

- **Optical Disc Piracy Wipes Out the Legitimate Domestic Market:** Optical disc piracy (CD, VCD, DVD, CD-ROM and “burned” CD-R) of all kinds of copyrighted materials (movies, music, business software, entertainment software, multimedia publications) has decimated

² The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2003 Special 301 submission, and is available on the IIPA website (www.iipa.com/pdf/2003spec301methodology.pdf).

³ The piracy level figures from 1999-2002 are for “international” repertoire. The overall piracy level for the same period remained roughly 50%, while the piracy level for Indian repertoire only remained extremely high in 2001, at over 90%.

⁴ BSA’s estimated piracy losses for 2002 are not available, and the estimated piracy level for 2002 is preliminary; both will be finalized in mid-2003. In IIPA’s February 2002 Special 301 filing, BSA’s 2001 estimated losses were not available, but were finalized in mid-2002, and those figures are reflected above. BSA’s trade loss estimates reported in the chart represent losses due to piracy which affect only U.S. computer software publishers in this country, and differ from BSA’s trade loss numbers released separately in its annual global piracy study, which reflects losses to (a) all software publishers in this country (including U.S. publishers) and (b) losses to local distributors and retailers in this country.

⁵ In IIPA’s 2002 Special 301 report, IIPA estimated that total losses to the U.S. copyright-based industries in Kuwait in 2001 were \$11.5 million. Because of the addition of BSA’s final 2001 loss statistics (see footnote 4), estimated total losses to the U.S. copyright-based industries in Kuwait due to piracy in 2001 increase to \$16 million.

the domestic market in Kuwait (with hundreds of thousands of units being distributed monthly). Large quantities of pirate VCDs and DVDs of imported movies from Asia, and home-produced “burned” CD-Rs, are becoming more widely available. Discs are brought by air directly into Kuwait. Retailers continue to maintain large stocks of pirate product, openly displaying and selling pirate discs which often include uncensored versions of motion pictures not yet released in the theaters or on video (so-called “pre-release” piracy). Pirate VCDs in particular have been entering the country from Asia in large quantities since 1998. Little progress has been made with the government, and as a result the piracy rate for audiovisual materials has climbed to over 95%. Audio CDs of international repertoire are sold by Kuwaiti wholesalers for as little as US\$1.20, and are mainly sourced from Pakistan (which now rivals Southeast Asia as a principal source for pirated CDs). Unauthorized compilation CD-ROMs, including copies of top-end engineering programs, entertainment software,⁶ and routine business software applications are available openly on the streets.

- **Corporate End-User Piracy of Business Software and “Hard-Disk Loading” Hurt Software Publishers:** Corporate end-user piracy (unlicensed use of software by a business) and the illegal loading of an *à la carte* menu of business software tailored to the customer's preferences 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).
- **Videocassette and Audiocassette Piracy:** Pirate videocassettes are still sold openly in Kuwait, although most piracy in the market is on optical disc. Video product found consists mainly of uncensored pirate copies of movies that haven't been released in the theaters (so-called “pre-release” piracy). Audiocassette piracy still exists, but is rapidly being replaced by audio CDs of international repertoire.
- **Book Piracy:** 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.
- **Cable Piracy:** Cable piracy, in which pirates transmit copyrighted material illegally within apartment blocks and residences without the authorization of rights holders, is also present. The Ministry of Information has now conducted four raids against blatant cable pirates, but we have no information on the penalties (if any) applied.

⁶ Console-based games are close to 99% pirate in Kuwait, while newer console-based games are approximately 65% pirate, and PC games are approximately 80% pirate. Many reportedly enter the market through Syria and the United Arab Emirates (Dubai), having been shipped from Asia.

COPYRIGHT ENFORCEMENT WANES IN KUWAIT

KUWAIT CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 2002

ACTIONS	MOTION PICTURES	ENTERTAINMENT SOFTWARE
Number of raids conducted	4	1
Number of cases commenced		
Number of defendants convicted (including guilty pleas)		
Acquittals and dismissals		
Number of cases pending	many	Many
Total number of cases resulting in jail time	0	0
Suspended prison terms	0	0
Maximum 6 months	0	0
Over 6 months	0	0
Over 1 year	0	0
Total suspended prison terms	0	0
Prison terms served (not suspended)	0	0
Maximum 6 months	0	0
Over 6 months	0	0
Over 1 year	0	0
Total prison terms served (not suspended)	0	0
Number of cases resulting in criminal fines		
Up to \$1,000	Unknown	Unknown
\$1,000 to \$5,000	Unknown	Unknown
Over \$5,000	Unknown	Unknown
Total amount of fines levied (in US\$)	Unknown	Unknown

Few Raids Run in 2002, Even Fewer Follow-Up Actions

The year 2002 was another disappointing one for copyright enforcement in Kuwait. Consistent with experiences over the last few years, raids have been sparse and are carried out by the government only after immense pressure is applied by the industries, the U.S. government, and local Kuwaiti companies.⁷ In a number of recent cases, acting on intelligence provided by the recording industry, several shipments of pirated optical discs were seized by Kuwaiti Customs. Most of these came by “air freight,” originating from countries such as Indonesia and Malaysia. In September 2002, in one of the largest seizures ever in Kuwait, Kuwaiti Customs officials seized a shipment of 52,000 pirated discs (a combination of audio, entertainment software, and movies) coming from Thailand, which were destined for delivery to a company in Kuwait. Nonetheless, pirates continue undeterred by such sporadic actions, since deterrent penalties or sentences are rarely ever handed down.⁸ Some actions in 2002 against cable pirates have resulted in the stopping of illegal distribution of cable (Pay TV) signals to over 500 homes.

⁷ For example, in January 2002, 7,200 pirate 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. The Business Software Alliance has also been successful in securing a number of raids during 2002.

⁸ For example, in 2002, the courts handed down exactly one conviction against a software pirate.

In 2002, the business software industry continued to work with the Ministry of Information, and the Business Software Alliance was successful in securing a number of raids. The business software industry remains hopeful that the head of the copyright office will be able to increase enforcement in the country in 2003. Problems still exist with enforcement, including political pressures and bureaucratic disagreements among Kuwaiti government agencies. For example, a decree was to be issued in October 2002 shifting agency enforcement functions, but that decree was never issued. Further, basic concerns, such as the difficulty in securing essential meetings with senior level officials to address piracy, make enforcement efforts more difficult. Finally, some individuals in the Kuwaiti government seem to be more interested in focusing on the types of investigative tools in use, rather than actually enforcing the law. Political endorsement of anti-piracy activities from the highest levels of government is necessary to move enforcement forward in Kuwait.

Customs Willing to Improve, But Political Will Lacking in Other Agencies

Enhanced cooperation with Kuwaiti Customs has proved productive over the last year and it is encouraging to note that they have stepped up their enforcement activities in respect of piracy of optical discs. At the request of the Director General of Kuwaiti Customs, an international record industry team conducted several training sessions for Kuwaiti Customs officers in October 2002.⁹ In 2002, the business software industry continued to work with the Ministry of Information.¹⁰ However, political pressures from superiors and bureaucratic arguments with the Department of Intellectual Property have slowed efforts by the Copyright Office, and the industry has been unable to secure a meeting with senior level officials (including the Assistant Under Secretary for IPR & IT). Political commitment to enforce copyright must come from the highest levels of government.

End-User Piracy Test Case Is Important

There is great potential to achieve progress in the struggle against corporate end-user piracy of business software in Kuwait in 2003. One important case brought by the business software industry against a corporate end-user of unlicensed software remains pending. Through this case, the Kuwaiti government can demonstrate its ability to address the issue of end-user piracy of business software and can send an important political message to other end-users regarding the Kuwaiti government's views on this issue. Support from the Ministry of Information and Kuwaiti enforcement officials will be critical to seeing the successful end of this case.¹¹

⁹ Other training sessions conducted in 2001 have not led to successful enforcement results. The copyright industries conducted a major training program in October 2001, organized by the Ministry of Information, and attended by over 100 individuals. However, disappointingly, such training activities were followed by only sparse enforcement activity in 2002.

¹⁰ Several raids were run by the Ministry of Information in November 2002, but little information other than the occurrence of the raid has been provided by the Ministry.

¹¹ The case, which remains pending, involves a suit against one of the largest commercial groups in Kuwait. After agreeing to an audit and to legalize its software usage, Business Software Alliance members conducted the audit, which revealed widespread unlicensed software usage. However, after being presented with overwhelming evidence, gathered with the company's cooperation and consent, the company refused to legalize.

Inter-Ministerial Task Force Highly Disappointing

An Inter-Ministerial Task Force set up to deal with intellectual property concerns was announced with great fanfare and numerous commitments in late 2000.¹² However, little progress was made in 2002 through the Task Force with respect to any of the numerous promises made. By February 2002, MOI reported that it had sent 79 cases for prosecution (meeting its stated target of 45 copyright piracy cases for 2001), but the results from those cases were quite disappointing, with four acquittals, four non-deterrent fines, only seven cases in which materials were confiscated in addition to a fine, and a whopping 64 cases still being considered by the prosecutor or awaiting decision or sentencing.

Procedural and Market Access Barriers Remain

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

- **Prohibitively High Censorship Fees:** In the absence of genuine copyright enforcement, local licensees and distributors of audiovisual works have been forced to seek alternative means of protection. The Motion Picture Association has sought some limited “anti-piracy protection” from the Ministry of Information’s censorship department by asking that it verify copyright authorization before giving censorship approval for a title. MPA has provided certificates confirming the distribution arrangements of its member companies for the Ministry of Information’s use in this process. However, using this process as a main line of defense against piracy is costly, since the censorship fee of approximately US\$114 per title is a heavy burden distributors face in trying to market and protect their products; the process is also wholly inadequate to deter piracy. The costs involved are especially burdensome, considering the modest sales legitimate products can achieve in the face of widespread piracy (this is all the more true for older, catalogue titles). The censorship fee should be reduced and limited to new titles only.
- **Import Duty on Software:** There is a four percent (4%) customs duty on business software; this import duty should be eliminated.
- **Prohibitively High Import Fees on Satellite Equipment:** The government of Kuwait imposes a fee amounting to KD100 (US\$333) on each satellite receiver that is imported into Kuwait.

¹² The Task Force is made up of the Ministry of Information (Sheikha Rasha Naif Al-Sabbah, and Ms. Manal Baghdadi, Legal Affairs Controller), 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), 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 Duaj Al-Sabah.

COPYRIGHT LAW AND RELATED ISSUES

Kuwait's Law Should Be Amended to Comply with TRIPS, WIPO "Internet" Treaties

The Kuwaiti Law on Intellectual Property Rights (1999) ("Copyright Law") passed the National Assembly in December 1999 (effective February 9, 2000), and provides the basis for enforcement against rampant piracy in Kuwait. IIPA remains concerned that the Kuwaiti government has failed to introduce promised amendments to comply with TRIPS. Without amendments, Kuwait's law will remain in violation of TRIPS. The Kuwaiti government has also missed an opportunity to modernize its law with the latest international norms found in the WIPO "Internet" treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). 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 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" which points to the origin of the work (i.e., the author or right holder), not whether the work introduces anything innovative or new.
- **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 require 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 the way 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 that 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, 14.5, and 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, which requires 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 (US\$1,667) 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.
- **The Need to Criminalize Corporate End-User Piracy of Business Software:** 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 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 swiftly accede to and implement the WCT and WPPT. The WCT went into effect on March 6, 2002, and the WPPT went into effect on May 20, 2002. As Kuwait, like the rest of the GCC countries, looks to the future, 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 WIPO treaties is essential to establish 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 unauthorized uses. This legal framework, permitting content owners to provide for the security of their property online, is essential for successful electronic commerce.