

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2003 SPECIAL 301 REPORT

# QATAR

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

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Qatar should remain on the Watch List. Qatar should be commended for amending its copyright law to bring it closer to compliance with international standards. However, software piracy remains at serious levels due to Qatar's failure to enforce its copyright law.

Qatar was placed on the Watch List in 1998. In 2001, with the impending WTO Doha Ministerial and with good prospects for passage of a copyright law, Qatar was taken off all lists. In 2002, Qatar was once again returned to the Watch List, with USTR noting that "high levels of end-user piracy of unauthorized computer software continues."

IIPA is pleased about passage of the new copyright law. However, while right owners in Qatar had sufficient legal basis to take enforcement actions against copyright piracy even before passage of the copyright law amendments, not a single enforcement action was initiated by the Qatari government in 2002. It remains to be seen whether passage of the new law will lead to improvements in the enforcement situation. Given the persistently high piracy rate in Qatar and the absence of any serious government action to address it, Qatar has clearly failed to meet its international obligation under TRIPS to provide "effective" enforcement that constitutes "a deterrent to further infringement." In addition, Qatar should be encouraged to accede to and implement the WIPO "Internet" treaties.

#### Required Action for 2003:

- Develop and execute an Action Plan that includes specified numbers of raids and targeted actions against retailers and corporate end-users. Specifically, any action plan should include:
  - Systematic surprise inspections at least every six months of shops that sell copyright materials, including resellers and "hard-disk loaders" (those who load software onto a hard drive of a computer without a license to do so).
  - Sustained actions against corporate end-users using unlicensed software.
  - Imposition of deterrent fines and penalties.
  - Publication of actions taken in the Qatari-based and international media.
- Instruct enforcement and copyright officials to actively address piracy in order to lower piracy rates.
- Ensure that the new enforcement office and the Copyright Bureau have adequate resources and the authority to initiate enforcement actions, and that the judicial system reinforces raids by meting out deterrent sentencing.
- Legalize software usage within the Qatari government, including public issuance of an executive decree requiring all government agencies to review and legalize their software assets.

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

## **COPYRIGHT PIRACY IN QATAR**

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Qatar had the second highest piracy rate of all Middle East and Africa countries surveyed for retail and corporate end-user piracy of software in 2002. Corporate end-user piracy (in which a company purchases or obtains one copy of business software and proceeds to use it on many computers or exceeds its license) remains widespread in Qatar. Further, the Qatari government has not taken adequate steps to legalize its usage of software. Simply put, Qatar remains a safe haven for those dealing in illegal copies of software.

## **COPYRIGHT ENFORCEMENT IN QATAR**

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The central challenges for Qatar in the area of software piracy lie in parlaying the improvements written into its new copyright law into effective action against its endemic piracy problem. This involves three key challenges: Qatari government leadership, effective action against end-user piracy, and effective action against retail piracy.<sup>2</sup>

### **The Qatari Government Should Lead on Software Legalization**

Some of the greatest software success stories worldwide involve governments leading public and corporate efforts to legitimize software usage. For example, when governments issue executive orders instructing government agencies to conduct audits, assess software needs, budget for those needs, and purchase properly licensed software and support services, industry tends to follow suit. This role of government as a leader in proper use of software is critical to demonstrate leadership in a host of other information technology areas. Appropriate use of software by governments demonstrates an overall commitment to growing a local information technology industry and an information technology literate population. Managed use of software requires new thinking and understanding of the value of digital technologies. Legitimate use of software by a government also indicates a sincere commitment to implement WTO obligations.

To date, the Qatari government has failed to demonstrate strong leadership in this area. For example, the government has not even issued a decree requiring all government agencies to use only legal software. IIPA strongly encourages the Qatari government to do so. The government indicated that several years ago agencies were advised to use licensed software, and subsequently, a committee was formed to evaluate all IT usage in the government. Unfortunately, that committee seems to have become a barrier to acquisition of licensed product. Discussions are progressing with some software companies and IIPA is hopeful that arrangements to ensure legal use of software in the Qatari government will be concluded speedily. However, there are no concrete results to report to date.

### **Corporate End-User Piracy of Business Software Must Be Curtailed in 2003**

Business software piracy is widespread in Qatar. Over the years, the Business Software Alliance and others have undertaken educational efforts to promote awareness among

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<sup>2</sup> The Business Software Alliance supplied the Copyright Bureau with a list of potential raid targets in 2001. This list demonstrates the widespread retail piracy problem in Qatar. Of the 45 stores listed for investigative purposes that year, every store offered to load pirate software onto a hard drive as an incentive for purchasing a computer. The products being offered for “free” included a wide range of BSA member company products.

corporate end-users to use legal software. Despite such efforts, end-users continue to use unlicensed software at alarming rates in Qatar. This is due in part to the government's refusal to endorse enforcement actions against end-user piracy.<sup>3</sup> By refusing to support right holder efforts to enforce their rights against piracy in the corporate context, Qatari copyright officials have effectively fostered the perception that corporations can use and copy pirate software with impunity. There is no risk to their business of using unlicensed software because the government will not enforce the law.

## **Retail Piracy Problem Went Unaddressed in Qatar in 2002**

Retail piracy of business software exists on a large scale in Qatar, and the government did nothing to address the problem in 2002. The last raid conducted by Qatari government agencies was well over two years ago, in May 2000. No action has been taken since that date. In fact, over the last five years combined, only two raids have been conducted against business software piracy,<sup>4</sup> one by the Copyright Bureau against a computer store that was illegally pre-loading software on the hard disks of computers sold by the store ("hard-disk loading" piracy), and one by the police against a computer reseller shop in Doha. In both cases, no penalty was imposed on the infringer. Addressing the lack of interest and unwillingness of enforcement officials to conduct enforcement actions is critical to lowering the rate of retail software piracy.

## **COPYRIGHT LAW AND RELATED ISSUES**

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Qatar passed a new copyright law in 2002, which went into effect on October 3, 2002. This long-awaited law provides a series of important changes to Qatar's legal framework, addressing many of the deficiencies raised in previous years' filings and moving the country towards TRIPS compliance (although some concerns remain, some of which are addressed below). The law also requires that an "Office for the Protection of Copyright and Neighboring Rights" be established under the Ministry of Economy and Trade, and IIPA hopes that this office is established swiftly, with the necessary will and resources to effectively enforce copyright.<sup>5</sup>

We herein make several non-exhaustive remarks, mainly with respect to some remaining concerns regarding the protection of computer programs. First and foremost, the law fails to explicitly criminalize end-user piracy, as required by Article 61 of TRIPS (requires countries to criminalize "piracy on a commercial scale"). The law provides for criminal penalties, but fails to criminalize the unlicensed use of software in a business setting (so-called "end-user" piracy of business software).<sup>6</sup> The government must clarify that unlicensed use of software in a

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<sup>3</sup> One Qatari government official has in the past made statements opposing enforcement against corporate end-user piracy of business software. The same official is ultimately responsible for the dearth of enforcement against retail piracy and has discouraged industry from taking actions on its own against retail piracy. However, it should also be noted that correspondence in 2001 from another government official has recognized the unethical nature of piracy and has vowed to fight it. Still, little or no progress has taken place to address piracy.

<sup>4</sup> In 2001, the Copyright Bureau indicated that it was prepared to take action against software piracy. To support this effort, the business software industry provided the Copyright Bureau with a list of known end-user and retail pirates in Qatar. Not a single action was taken by the Qatari government against any business or person on the list. This result is unfortunately part of a longstanding pattern. In 1999, the Copyright Bureau announced a similar effort, BSA provided the Bureau with a similar list, and not a single enforcement action resulted.

<sup>5</sup> The Business Software Alliance (BSA) has offered on many occasions to assist the Qatari government in implementing an enforcement program; BSA maintains this offer of assistance.

<sup>6</sup> Two competing translations IIPA has seen of the text of Article 48 conflict with respect to what acts are criminalized,

business setting (corporate end-user piracy) is a criminal offence in order to comply with TRIPS. Second, Qatar must ensure that exceptions provided in the law meet the Berne “tripartite” test as incorporated into TRIPS Article 13. That test requires exceptions to be available only in “special cases,” that do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the author. At least with respect to computer programs, the exception provided in Article 20 appears to be appropriately narrow (i.e., it appears to provide an exception to back up a computer program, but not to allow any other unauthorized activity with respect to that program).<sup>7</sup> The exception in Article 18(1) of the new law may be overly broad, since it appears to make no distinction between digital and non-digital reproductions.<sup>8</sup> The exception is specifically narrowed by the Berne “tripartite test” verbiage, but should be limited to a single analog copy for private, personal use. To the extent that any of the enumerated exceptions contemplate allowing digital uses, those must be carefully examined so that they do not run afoul of the well-established tripartite test. Third, particular to the software industry, the law contains no definition of computer program. In order to confirm compliance with TRIPS Article 10,<sup>9</sup> the category of protected works provided in Article 2(10) should be revised to provide more specificity, for example, as follows:

Computer programs, which shall be protected as literary works. Such protection shall apply to any mode or form of expression of a computer program.

Fourth, the law does not contain a presumption of copyright ownership. Such a presumption makes the prosecution of copyright pirates more efficient by reducing evidentiary burden on prosecutors and copyright owners. Without proper presumptions, defendants can abuse the court system by raising unnecessary objections with respect to basic questions of fact in the case, potentially causing lengthy delays and increasing the costs to right holders to uphold their rights. Qatar’s law should be amended to provide a presumption of ownership of copyright to the person whose name appears on the work, that shall be rebuttable only by proof to the contrary. Finally, it is unclear whether the law provides TRIPS-compatible protection for “unpublished” works.<sup>10</sup>

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one version indicating that “publication” without authorization is criminalized, which would appear to exclude exercise of many exclusive rights, and the other version indicating that to “publish or exploit” without authorization is criminalized, which appears to provide much broader coverage. Either way, unlicensed use of software in a business setting must be explicitly criminalized in order for Qatar’s law to comply with TRIPS.

<sup>7</sup> The word “adaptation” appears in one translation IIPA has seen, which would raise serious concerns if it is interpreted to allow the adaptation of a computer program without authorization of the right holder. Such an interpretation would be totally incompatible with TRIPS and the Berne Convention. IIPA seeks clarification as to the meaning of that term “adaptation” (which appears in another translation as “quotation,” which does not appear to make sense).

<sup>8</sup> One translation IIPA has reviewed uses the term “photocopying” instead of “reproduction” which would seem to exclude digital. It also appears that the exception in Article 18(1) tracks, if imperfectly, some of the language in Berne Convention Article 10*bis*.

<sup>9</sup> Although protection for computer software is specifically provided for under Article 2 (10) of the new Qatar Copyright Law, that provision does not clearly establish that software is protected “as a literary work,” nor does it clarify that the protection applies whether the program is “in source code or object code” as required by Article 10(1) of TRIPS. This is a basic and important point that ought to be spelled out in the law. “Source code” is the human-readable code used to write software. “Object code” is the set of machine readable binary instructions that a computer uses to run the program. All software is written in source code, and most business software is distributed in object code. To be meaningful, copyright protection must apply equally to source and object code.

<sup>10</sup> Article 3 of the Berne Convention, incorporated by reference into TRIPS, requires protection of both published and unpublished works.

## **Qatar Should Implement and Join the WIPO “Internet” Treaties**

IIPA recognizes the Qatari government for its efforts to bring its law into line with international treaty obligations, and recognizes steps taken to address rights in the digital age. Specifically, we note inclusion in the 2002 law certain provisions which attempt to respond to requirements in the two WIPO “Internet” treaties, the WCT and WPPT. The WCT went into force on March 6, 2002, and the WPPT went into effect on May 20, 2002.

The law addresses rights needed by right holders in the digital environment. For example, the law confirms that certain temporary reproductions are protected as such under the exclusive right of reproduction.<sup>11</sup> The law also provides a treaties-compatible “communication to the public” right for works, but, disappointingly, not for neighboring rights, including sound recording producers.<sup>12</sup> The law even attempts, but with some deficiencies, to implement a key requirement of the WIPO treaties, namely, that countries prohibit the circumvention of technological protection measures used by right holders to protect their works.<sup>13</sup>

Implementation of the WIPO treaty provisions is necessary to ensure that Qatari officials have the tools to address the important and growing problem of copyright piracy on the Internet, but are also vital to open up the vast opportunities made possible by a growing universe of electronic commerce. While the provisions in the new law do not address adequately all aspects of the treaties, IIPA encourages Qatar to begin consideration of accession legislation so that it can lead the Gulf in joining the treaties, and so that it can join the growing list of countries that now adhere to these treaties (as of February 2003, there were 39 members of both the WCT and WPPT).

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<sup>11</sup> The Article 1 definition of reproduction includes “permanent or temporary electronic storage.” The agreed-upon statement to Article 1(4) of the WCT, and corresponding provisions in the WPPT, confirm that the concept of reproduction, under Article 9(1) of the Berne Convention, extends to reproduction “in any manner or form;” therefore, a reproduction may not be excluded from the concept of reproduction just because it is in digital form, through storage in electronic memory, nor may it be excluded from the concept of reproduction just because it is of a temporary nature. While the definition in the Qatari law may in fact be too narrow (since it is not technology-neutral), it is nonetheless helpful to the extent that it illustrates the notion that in Qatar, reproductions shall be protected regardless of their duration.

<sup>12</sup> The law (in Article 41(3)) also provides a WIPO treaties-compatible distribution right for producers of sound recordings.

<sup>13</sup> The provisions contained in Article 51 make a valiant attempt to protect technological protection measures (TPMs) as well as rights management information (RMI), as provided in the WIPO Copyright Treaty, Articles 11 and 12, and corresponding articles in the WIPO Performances and Phonograms Treaty (WPPT). Unfortunately, the attempt fails with respect to TPMs in several respects. First, the act of circumvention does not appear to be covered. Second, while the provision appears to cover a fairly broad range of access controls, so-called “copy” controls appear unduly limited to TPMs that “would forbid or put a limit for reproducing a work [or other subject matter] or reduce the quality of the work.” In order for the provision to be effective as required by the treaties, it should be made applicable to all TPMs that protect against the unauthorized exercise of all exclusive rights under copyright, not limited, as in this case, to the reproduction right. Third, it is unclear that devices are covered down to the component level. Fourth, it is unclear whether indirect proof (such as how a device is marketed) or other objective tests (such as whether a device has significant financial uses other than to circumvent) can be employed to prove an illegal purpose. Under the current provision, a circumvention device seems to be prohibited if it “was designed or made especially” for circumventing a TPM. This may not be enough to provide effective relief against circumvention.