

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2003 SPECIAL 301 REPORT

SAUDI ARABIA

EXECUTIVE SUMMARY¹

Saudi Arabia should remain on the Watch List. The piracy situation in Saudi Arabia continued to improve for most sectors in 2002, with cooperation from the Ministry of Information,² and sustained raiding that has eaten into piracy rates for the motion picture and business software industries (although the piracy level for books remained level). With greater transparency in raids and follow-up enforcement, and a continuing resolve to rid the Saudi market of pirated goods, Saudi Arabia might be on the verge in 2003 of turning the corner on piracy for good.

Saudi Arabia was on the Priority Watch List from 1993 to 1995 for a weak law and non-deterrent enforcement. In 1996, Saudi Arabia was lowered to the Watch List in recognition of strong enforcement actions taken in 1995, and the Kingdom has remained on the Watch List ever since.

At least in part because Saudi Arabia remains the largest market in the Gulf, it was an obvious attraction point in the 1990s for pirate merchants, importers, distributors, broadcasters, and even producers. Saudi Arabia has been slower than others in the Gulf region to begin cleaning up the pirate market through sustained raiding and deterrent enforcement. Especially in the past two years, with the enormous cooperation of the Ministry of Information, sustained raiding has made a dramatic difference in the marketplace, evidenced by lowering piracy levels for some industry sectors. Yet, more needs to be done. Saudi Arabia's enforcement system is one of the least transparent in the world (although there were some improvements in terms of publicizing raids through the newspapers in 2002). Raids must continue to focus on larger targets, and the judicial process can still be made easier for right holders to use. Long-awaited copyright legislation was approved by the *Majliss Alchoura* (Shoura Council), but apparently this is just one step of several, and there are opportunities for further changes before the bill becomes law.

Required actions for 2003:

- Continue sustained inspections and raids (by and/or including the Ministries of Information and Interior officials) on retail establishments, storage areas, distribution hubs, and duplication sites.
- Improve transparency in the enforcement, prosecutorial, and judicial processes, including newspaper announcements regarding copyright infringements.
- Intercept pirate imports at the borders through a more robust customs enforcement program.
- Amend the copyright bill so that it complies with TRIPS, including deterrent penalties, and implement the requirements of the WIPO "Internet" treaties.
- Continue to follow up on enforcement of the software usage directive.

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

² MOI's Director General of Author Rights Department, Abdullah Al-Obeid Al-Abdullah, has said that while the piracy rate in Saudi Arabia dropped from 95 percent in 2001 to 52 percent, the local Saudi economy continues to suffer from this phenomenon. *Intellectual Piracy Causes \$20 Million Losses*, IPR Strategic Information Database, January 26, 2003.

SAUDI ARABIA
ESTIMATED TRADE LOSSES DUE TO PIRACY
(in millions of U.S. dollars)
and LEVELS OF PIRACY: 1998 - 2002³

INDUSTRY	2002		2001		2000		1999		1998	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	20.0	35%	30.0	45%	40.0	65%	40.0	65%	32.0	50%
Records & Music ⁴	16.0	42%	12.0	42%	8.0	40%	12.0	45%*	12.0	45%*
Business Software Applications ⁵	NA	47%	16.4	52%	17.7	52%	31.8	64%	30.9	73%
Entertainment Software	NA	NA	115.7	83%	28.0	NA	20.2	59%	21.4	68%
Books	14.0	NA	14.0	NA	14.0	NA	14.0	NA	9.0	NA
TOTALS	50.0		188.1		107.7		118.0		105.3	

COPYRIGHT PIRACY IN SAUDI ARABIA

Saudi Arabia remains the largest potential market for most of the copyright industry sectors in the Middle East.⁶ That market can be opened by dealing with the following piracy phenomena:

- **Optical Disc Piracy.** Optical discs (CDs, VCDs, DVDs, CD-ROMs) of a cornucopia of copyrighted content (music, movies, business software, entertainment software, reference materials) have emerged as the carrier of choice for pirates in Saudi Arabia. Copies of pirate (retail) optical discs are available in Saudi markets, mainly imported from other parts of the Middle East (e.g., transhipped through the UAE), Pakistan, as well as Taiwan, Indonesia, and Malaysia. Pirated interactive games are still openly sold in the public markets in mass quantities, as Saudi Arabia remains the worst pirate country for console-based videogames in the Gulf region. The situation worsened in 2002 – for example, such pirate products are now

³ 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).

⁴ The 2002 losses due to piracy of sound recordings and piracy levels are for U.S. repertoire only. The local music piracy level in 2002 was a whopping 62%. The 2000 and 2001 piracy levels are for international repertoire (and for overall level of piracy for 1996-1999, as indicated by *).

⁵ BSA's estimated piracy losses 2002 are not available, and estimated piracy levels are preliminary; both will be finalized in mid-2003. In IIPA's February 2002 Special 301 submission, BSA's 2001 loss and level figures were unavailable. These numbers were made available in mid-2002, and are reflected above. BSA's trade loss estimates reported here 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.

⁶ Mohammed Alkhereiji, *Music Hits A Low Pitch With Pirates Calling the Tune*, Arab News, Dec. 11, 2002 (explaining that music sales in the Middle East fell in 2001 by 23 percent in terms of units and 15 percent in value, according to the latest figures released by the International Federation of the Phonographic Industry (IFPI), and ascribing the chief cause of the decline to the thriving piracy market, which makes up a staggering 50 percent of the total music market in Saudi Arabia).

being sold with the game publisher's "trademark" falsely affixed to the product.⁷ A consumer can readily purchase an illegal CD-ROM in most retail interactive game stores, and such pirate wares are openly displayed on the shelves. Any games not openly sold over the counter can quickly be retrieved by the sales staff upon request. Illegal CDs are often stored in nearby locations (in private residences or warehouses). In many instances, street vendors will offer to produce pirate videogames on demand, accosting pedestrians in their zeal to sell their pirate products. In major cities, street vendors offer the latest business 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. It is commonplace for PC assemblers and resellers to load all types of software on PCs sold both to consumers and to small- and medium-sized businesses. Relatively small quantities of pirate music CDs are available for sale in the Kingdom.

- **Illegal Distribution of Pay TV Signals.** The illegal distribution of "Pay TV" (i.e., cable television) signals on compounds was the main piracy concern in Saudi Arabia for the audiovisual sector in 2002. The Kingdom's prohibition against cinemas makes the Pay TV market particularly lucrative. Almost all of the compounds in Saudi Arabia illegally distributed Pay TV signals in 2002 without the authorization of right holders. However, the Ministry of Information (MOI) appeared ready to tackle this issue in 2002, routinely raiding the compounds. The Pay TV industry was also encouraged by a recent meeting with the Undersecretary of MOI, in which His Excellency pledged to announce a stern warning against continued illegal redistribution of Pay TV signals. This announcement is expected to be publicized in the press by March 2003. Although most compounds are still illegally redistributing Pay TV services without authority from the rights holder, the industry is hopeful and confident that the MOI will address this issue in 2003.
- **Book Piracy.** Industry representatives note that Saudi Arabia remains one of the worst pirate markets in the region, with a steady amount of book piracy over the past three 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 continue to be imported from Lebanon, as well as from India (of reprints intended solely for the India market, so-called "India only" reprints), and there is increasing evidence that pirate editions are being produced locally in Saudi Arabia. Some commercial and (mainly) photocopy piracy of English language and teaching (ELT) materials continued in 2002 in universities, especially in the Western Province. Some of the new higher education institutions (like the College of Petroleum and Minerals in Dahrhan) reportedly are encouraging the use of legitimate books, which is a positive sign that times are changing in Saudi Arabia. Journals are bought directly from the publishers, primarily on CD. Most of the universities in the Central Province and the Eastern Province bought centrally as of 2002, a positive development, in that it enables publishers to keep track of their supply lines and ensure licensed usage. However, this process has not yet been adopted by the King Abdulaziz University of Jeddah and other universities in the Western Province, resulting in increased levels of piracy in that region (as the books are being used by the universities but comparable sales do not match the usage). The government of Saudi Arabia should encourage universities in the Western Province to 'buy centrally' and monitor copyright violations closely, so that enforcement may become more uniform throughout the country in 2003.

⁷ 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.

- **Business End-User Piracy.** The unlicensed use of software in a business setting (so-called “end-user” piracy) continued in large, medium and small enterprises in 2002.
- **Internet Piracy.** An emerging phenomenon in Saudi Arabia is download and peer-to-peer sharing of copyrighted materials over the Internet.⁸ With the announcement recently of an initiative to make Internet access free for all Saudi citizens, such piracy may only grow worse.⁹

COPYRIGHT ENFORCEMENT IN SAUDI ARABIA

In 2002, the government of the Kingdom of Saudi Arabia demonstrated its continuing commitment to fight piracy. The Ministry of Information (MOI) was particularly cooperative and interested in building partnerships with copyright industry representatives throughout 2002. Despite the progress against piracy in 2002, several structural hurdles remain to effective enforcement in Saudi Arabia. First is the lack of transparency in enforcement actions carried out by the government (although the MOI has done a better job in 2002 publicizing the outcomes of some raids in the newspapers). Second, the MOI remains understaffed. Third, deterrent penalties are largely not forthcoming from the administrative court (and court ineffectiveness is exacerbated by the lack of transparency in the enforcement system in Saudi Arabia).

Continued Cooperation of the Ministry of Information (MOI) and Renewed Efforts of the Ministry of Interior Result in Sustained Raiding

Overall, raids in 2002 were conducted against pirate retailers and distributors, with a focus also on warehouses and producers of pirated product, namely, the sources of piracy. Such efforts have made inroads against day-to-day piratical operations, moving many pirate operations underground. Raids are typically run by the Ministry of Information (MOI), which has control over commercial property issues. The year 2002 also marked the first time in many years that the Ministry of Interior conducted some raiding actions against copyright pirates.

Each industry has a slightly different tale to tell about enforcement in 2002, although all the industries were pleased with the commitment of Saudi authorities, evidenced by the sheer number of raids and the seizures netted. The business software industry was extremely pleased with efforts taken by the Ministry of Information in 2002. In 2002, the MOI, following on requests from industry, engaged in raiding retail establishments, storage areas and duplication sites replete with piracy. Per industry requests, authorities focused on the Eastern and Western Provinces (designated by industry as the most important points of pirate production), while continuing to monitor the Central Province. Also, it was the commendable efforts of the MOI in its extensive planning and running of a retail anti-piracy campaign that led to the arrest of 70 street pirates, disruption of six sources of supply for pirated goods, and seizure of 172,000 gold pirate CDs.¹⁰ Yet, to the Business Software

⁸ See Mohammed Alkhereiji, *Music Hits a Low Pitch with Pirates Calling the Tune*, Arab News, Dec. 11, 2002.

⁹ *Internet Service To Become Free In Kingdom Soon*, Jan. 12, 2003 (describing an impending agreement with the Kingdom’s 27 Internet service providers (ISPs) to provide Internet service for no charge in the Kingdom, and noting that Saudi Arabia now boasts more than one million Internet users).

¹⁰ See Mohammed Alkhereiji, *supra* note 8 (describing a raid in August 2002 of six centers for pirated computer programs run mainly by Asians, and in which 1.2 million CDs worth about SR70 million (US\$18.7 million) were seized; special teams comprising members of the Ministry of Information and the Passports Department, along with police officials from Riyadh

Alliance's knowledge, no fines have been imposed against any of the raided targets in 2000, 2001, or 2002, resulting in lack of deterrence in the market. The Ministry of Interior, for the first time in several years, also got involved in enforcement, raiding channel targets and pirate end-users, resulting in more than 155 shops that custom-build computers for their customers being raided, of which 92 were incriminated for illegally loading pirate software onto the hard drives of computers prior to their sale (so-called "hard-disk loading" piracy).

For the motion picture industry, the Saudi government continued to clean up the video piracy market in cities in Saudi Arabia. Importantly, the MOI as well as the Ministry of Interior made commendable progress in combating the *sources* of video piracy, i.e., private residences and warehouses used as pirate duplication and storage areas. Numerous raids in 2002 resulted in the seizure of millions of pirate VCDs and DVDs, and of illegal recording equipment.¹¹ Over a million optical discs were seized in just two raids by the MOI in Riyadh alone, and recently another 1.2 million were seized in raids in Jeddah during a single night. These measures orchestrated by the MOI sent a strong message to the market about the resolve of the Saudi government to enforce legitimate business rights. The actions by the MOI and the Ministry of Interior in combating piracy at source resulted in a major reduction of audiovisual piracy rates to less than 20% in the markets where such measures have been taken.

The music industry similarly reports significant raiding, yielding major seizures of pirate music as well as other industry sector's product.¹² Saudi Ministry of Interior raids have also yielded significant numbers of pirated entertainment software titles on CD-ROMs.¹³ One raid in September 2002 yielded US\$13.9 million worth of pirated sound recordings, entertainment software, and movies, picking up enormous press coverage. The raid was so large that it was accompanied later in the day by a Ministry of Information press conference (in which impending passage of a new copyright law by the Shoura Council was also announced).¹⁴

province, conducted the raids and arrested 50 Asian workers.

¹¹ The Motion Picture Association reports many raids throughout the year, including: a raid on a videocassette duplication lab (and store) in June 2002, yielding 1,816 videocassettes and 7 VCRs, and resulting in three arrests; and a raid in April 2002, yielding seizures of 23,000 pirate videocassettes.

¹² Aggregate reports from the Ministry of Information indicated that more than 600,000 discs were seized between January and March 2002 (all of which were destroyed). In addition, the recording industry reported that Customs officers at King Khaled International Airport in Riyadh, in close cooperation with inspectors from MOI, seized more than 200,000 pirated optical discs – a vast majority from Indonesia – through April 2002; apparently, more than 75% of the pirated discs had been hand-couriered, 25% were pirate audio CDs, and 25% were pirate VCDs. Those discs were also destroyed in April 2002, a scene witnessed on Saudi TV and by the Saudi News Agency. On May 14, 2002, another event took place in which 400,000 pirated optical discs (40% pirate music CDs of mixed repertoire) were destroyed.

¹³ On January 6, 2003, Saudi police (Ministry of Interior) raided three warehouses and seized over one million pirated entertainment software discs, containing PlayStation games. This massive raid followed a raid in February of 2002, of a major importer of pirate interactive games, in which seven shipping containers containing over 625,000 discs, 5 million sleeves, and 1 million jewel cases were seized. That raid was a cooperative effort among private industry, the local police, and the Ministry of Information. The raid resulted in two arrests. Other raids have indicated the source of pirated discs as Pakistan, being transshipped through the United Arab Emirates (UAE) (the market value of one raid was US\$2 million).

¹⁴ In a raid in September 2002, eight truckloads containing 172,000 pirated audio CDs, console-based videogames (mainly PlayStation®), videocassettes, VCDs of movies, posters and fake paintings were confiscated in a series of raids conducted in Batha, Shumaisy and Oleya Districts of Riyadh. The seizure had a value of SR51 million (US\$13.6 million). See Javid Hassan, *8 Truckloads of Pirated Goods Confiscated in Riyadh Raids*, Arab News, Sept. 2, 2002, at <http://www.arabnews.com/SArticle.asp?ID=18276&sct=Pirated>. In a highly unusual move, Assistant Deputy Minister of

“License Certification Program” and Enforcement Against Corporate End-User Piracy of Business Software

The software industry has seen a great deal of assistance from the Saudi government over the last few years in combating corporate end-user piracy of business software (the unlicensed use of software in a business setting), implementing a number of unique and effective anti-piracy programs. For example, beginning in 2001 and continuing in 2002, the Ministry of Information implemented a decree issued in 2000 establishing a “License Certification Program” for companies licensed by the MOI. Under the program, businesses were required to demonstrate that they used only legal software as a requirement to obtain or keep their business licenses. 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. IIPA encourages the MOI to more widely implement the program to all businesses.

The MOI has followed up consistently over the last two years, visiting 2,500 companies in 2002, and continuing its practice of sending warning letters. Once warning letters were sent, the MOI sent government employees to audit end-users throughout Saudi Arabia. The next phase of the project in 2003 will involve repeat visits to see if the 2,500 companies have actually followed through and legalized their software usage. IIPA knows little about any remedies as a result of these visits (in part due to lack of transparency), except that in September 2002, Obaidullah M. Al-Obaidullah, Director of the Copyright Department at the Ministry of Information, indicated that in 2001, twelve business licenses were revoked by the MOI as a result of the program.

In addition to the implementation of the License Certificate Program, the MOI also conducted several major actions and raids on small- and medium-sized organizations in an effort to specifically tackle corporate end-user piracy of business software. Unfortunately, IIPA is unaware of results arising from those actions. IIPA hopes that the Ministry of Information will continue linking business license renewal to legal software usage. Also, in a major announcement in September 2002, the MOI announced that inspectors would soon be visiting 6,000 local and international companies operating in the Kingdom to create awareness of the need to abide by the copyright law and to use legal software, and that use of pirated software could lead the Saudi government to take punitive measures against companies in non-compliance.¹⁵ IIPA looks forward to learning the results of these visits.

Information for Internal Affairs Misfer Sa'ad Al-Misfer held a press conference announcing the raids, including the fact that as a result of one night of raids, 75 arrests were made. Those arrested are mainly immigrant workers, and the article indicates that those responsible would be jailed and deported. The Assistant Deputy Minister also indicated inspections were being conducted at gas stations and warehouses located on Riyadh-Makkah, Riyadh-Qassim and Riyadh-Madinah highways as part of a full-scale campaign to nab dealers in counterfeit and pirated products. See *a/so* http://www.menafn.com/qn_news_story_s.asp?StoryId=2656#top (explaining that the seized items would be destroyed, along with around five million other items seized from April to July 2002, including CDs, videocassettes, and CD-ROMs containing entertainment software).

¹⁵ *Id.*

Lack of Transparency, Adequate Staffing, and Deterrence in Enforcement and ‘Court’ Proceedings Are Among Remaining Hurdles

Notwithstanding existing enforcement improvements in Saudi Arabia in 2002, there are several abiding problems in enforcement that the government should address in order to make serious inroads into piracy in the Kingdom. First, 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. After providing “intelligence” on raid targets, right holders 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 were taken, the industries had not generally learned about results in individual raids, although in 2002, the MOI did a much better job of publicizing major raid results through major media outlets, and the MOI even held a press conference announcing the results of one particularly large set of raids in September 2002. 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, and we understand that some industries worked with the government in 2002 to assist in building such a system and have even engaged outside resources specifically for this task.¹⁶ IIPA members are eager to have such a system up and running to create more transparency in the enforcement system in Saudi Arabia.

Second, while the Saudi government began devoting more resources to the fight against piracy, by creating 70 new jobs in the Ministry of Information copyright protection department in 2001, IIPA understands that these new staff are not well coordinated, being dispersed across the Kingdom, and that overall, the copyright enforcement group within the Ministry of Information remains largely understaffed. We understand that the MOI intends to increase yet again the number of staff, and IIPA members look forward to being able to employ these greater resources to bear in the fight against piracy in Saudi Arabia.

Third, without transparency regarding results of cases, little in the way of deterrence against further infringements can result. The MOI closely guards information on the penalties it issues in cases and rarely announces the amounts of fines and penalties applied for copyright law violations in specific cases (even though the MOI has improved in terms of publicizing raid results including seizures in 2002, but without any mention of specific information concerning the pirates). The MOI Decisions Committee acts as a quasi first-instance (administrative) court (since copyright cases do not usually proceed to the courts in Saudi Arabia), and its processes are non-transparent and inaccessible. 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 the court system. 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. Because there is no

¹⁶ Until 2002, the reporting system in Saudi Arabia used to provide right holders with only aggregate data on fines, but regular publicizing of sentences and fines did not occur. As a consequence, raids/fines lost their value as a public deterrent, as other pirate retailers had no fear that they would be singled out if caught. As noted, the Ministry of Information did a better job generally of publicizing some of the many raids it conducted in 2002.

representation of the right holder in the MOI administrative proceeding, 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 written decision from the MOI Committee. However, the MOI Committee has not, to IIPA's knowledge, published any judgments in the past three years (or at least has not alerted the right holders of such), so right holders have been unable to use this judicial procedure. IIPA hopes that the data tracking system mentioned above can help address these issues.

Government Legalization of Software Usage

In addition to steps taken by the government of the Kingdom of Saudi Arabia to inform and legalize usage of software by businesses, the government took steps in 2002 to legalize use of software by Saudi government bodies. Governments are important role models for the private sector in legitimate usage of software. If a government does not use and manage digital technologies properly, nor will the business community. As of December 2001, it was estimated that the Saudi government had approximately 80,000 personal computers set up, many of which ran on pirated software. Despite the fact that the country's leadership repeatedly instructed all government departments and agencies to legalize their use of software, government entities continued to use illegal copies of software with impunity. Part of the reason for this is the complexity of still-existing procurement procedures that limit the ability of IT divisions of government entities to buy software as needed. Inadequate allocation of resources for software acquisition and low prioritization for software purchases also make legalization difficult. Despite all the challenges, public tenders seem to indicate a movement in the right direction. IIPA will continue to look for improvement in 2003.

COPYRIGHT LAW AND RELATED ISSUES IN SAUDI ARABIA

New Copyright Law Approved by Shoura Council in November 2002

Several reliable reports indicate that Saudi Arabia's Shoura Council approved new copyright legislation on November 3, 2002, and it has now been sent to the Custodian of the Two Holy Mosques King Fahd for endorsement, whereupon it will enter into force.¹⁷ IIPA was never given an opportunity to review the legislation, but understands that there may still be opportunity for further changes prior to the law coming into force. Passage of a TRIPS-compatible law is a prerequisite for Saudi Arabia to be admitted to the World Trade Organization (WTO), but may also be the best opportunity for a long time for Saudi Arabia to modernize its law. Certainly those governments with whom Saudi Arabia is negotiating WTO entry should be given every opportunity to weigh in on the bill before it is finalized, lest it be passed with avoidable TRIPS deficiencies. IIPA would hope also to be given an opportunity to review the draft for TRIPS issues, but in addition, to suggest ways to modernize the bill so that it meets the standards of the WIPO "Internet" treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), which went into force in 2002. Especially with Internet-related developments in Saudi Arabia, both good (that the Internet apparently will be available for no cost to users in the Kingdom soon), and bad (that Internet piracy including downloads and peer-to-peer piracy have increased dramatically in 2002), it is imperative that Saudi Arabia not waste this legislative opportunity to take the necessary steps to implement and then accede to the WIPO treaties.

¹⁷ See *Copyright Bill Cleared*, Arab News, Nov. 3, 2002, at <http://www.arabnews.com/print.asp?id=20104&ArY=2002&ArM=11&ArD=6>.

Regarding the legislation, the press reports Assistant Deputy Minister of Information for Internal Affairs, Misfer Saad Al-Misfer, as saying it includes increased penalties from the current law (which provides for fines of SR10,000 (US\$2,666) for a first offense, SR20,000 (US\$5,334) for subsequent offenses, business license cancellations, and permanent closures of the pirate retail establishment for repeated violations). IIPA has learned from industry sources that the proposed legislation includes imprisonment of up to six months, and penalties that are increased to up to SR250,000 (US\$66,670), in addition to cancellation and shop closure. Such strengthening measures would be welcomed.

Saudi Arabia's Current Law Does Not Meet TRIPS Standards

Saudi Arabia's current copyright law (effective January 12, 1990) provides some basic protections for U.S. right holders. 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. The law, however, remains TRIPS-deficient in many ways.¹⁸

¹⁸ The following is a non-exhaustive list of problems in the 1990 law:

- Protection for foreign works is unclear; the Saudi government has long claimed that the UCC is “self-executing” in the Kingdom.
- The duration provisions for protection of “sound . . . works” and “audiovisual . . . works” are below TRIPS-level standards; the current law states that the author’s rights in the case of “sound . . . works” are protected for 25 years.
- 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 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 so as to provide, in effect, a full 50 years of protection for pre-existing works and sound recordings.
- The copyright law should be amended expressly to include all the Berne Article 11*bis* 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) is Berne- and TRIPS-incompatible. 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 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 a violation of Berne/TRIPS.
- 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 would constitute a TRIPS violation.
- Original compilations of unprotected facts and data are not protected, which would be a violation of 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 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.