

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2005 SPECIAL 301 REPORT

SAUDI ARABIA

EXECUTIVE SUMMARY

Special 301 Recommendation: Saudi Arabia should remain on the Watch List.

Overview of Key Achievements/Problems: The enforcement system in Saudi Arabia remains one of the least transparent in the world. Raids taken in recent years have not had a deterrent effect on piracy in the Kingdom. Right holders receive only spotty information about raids (usually in the form of aggregate statistics), are not identifying and cataloguing (for inventory purposes) the seized product (e.g., on an aggregate, by format basis), and have no ability to verify final disposition of seized items. Judicial results on specific cases have to date never been publicized, and fines imposed are low and non-deterrent. Right holders have yet to see a single pirate sentenced to imprisonment despite other neighboring countries routinely issuing such judgments. The Ministry of Interior must become systematically involved on an *ex officio* basis against copyright offenses. Without the active involvement of the police, the entire chain of pirate distribution, including duplication, distribution and storage sites, remains untouched. Only the police have the jurisdiction, expertise and authority to effectively combat piracy against all sources.

Piracy continues in the streets and compounds, being imported into the Kingdom, home-“burned” onto recordable discs, and produced in local factories. Illegal redistribution of pay television services without authorization continues to occur in compounds. Book piracy remains a significant problem in Saudi Arabia. IIPA has recently learned of two previously unknown optical disc production plants in the Riyadh area, and a third plant in Damman. That increases the total number of known plants in Saudi Arabia to at least four. In addition, much has come to light in 2004 about trade in pirate optical discs between Karachi (Pakistan) and Riyadh.

The Saudi copyright law (which went into force on March 14, 2004) strengthened penalties available in piracy cases, and gave right holders hope that the administrative and judicial system would be more transparent. Unfortunately, while the drafters made some positive changes, the law fails to meet some basic minimum standards of the TRIPS Agreement and the standards set by the two WIPO “digital” treaties (the WCT and WPPT). The law also fails to provide detailed provisions on the protection of sound recordings and omits protection for musical works entirely — egregious deficiencies — and while the Saudi government has indicated to the U.S. government that U.S. sound recordings are protected, implementing regulations that are TRIPS-compatible and WPPT-compatible are now nearly a year overdue and should be issued immediately to confirm that sound recordings are protected. Saudi Arabia would like to join the WTO, and the United States and Saudi Arabia signed a Trade and Investment Framework Agreement (TIFA) in July 2003.¹ Saudi Arabia must live up to its

¹ The TIFA sets the stage for continual talks on intellectual property rights. Recital 13 indicates that Saudi Arabia recognizes “the importance of providing adequate and effective protection and enforcement of intellectual property rights and the importance of adherence to international intellectual property rights standards.” Article 4 permits the parties to discuss what further “agreements relating to . . . intellectual property rights . . . would be desirable.” Finally, Article 5 contains a consultation mechanism by which intellectual property issues can be raised by the United States.

commitments and bring its copyright system up to adequate standards — both substantive and enforcement — before it should be rewarded with WTO accession and the favorable trade treatment that comes from such membership.

Actions to be Taken in 2005:

Transparency

- Give right holders an opportunity to identify pirate copyright product, if they choose.
- Improve overall transparency in the enforcement, prosecutorial, and judicial processes, including informing right holders of judicial processes, allowing them to make representations before the adjudicators, and providing accurate information or announcements regarding copyright infringement actions, and outcomes for each specific case, including verification of the final disposition of seized items.
- Allow rights holders to plead their cases directly before the MOI Adjudication (“Breach”) Committee and to be informed of all proceedings.

Deterrent Enforcement

- Have the Breach Committee issue verdicts in piracy cases, routinely resulting in deterrent fines and imprisonment, and leading to a significant reduction in piracy rates.
- Ensure systematic involvement of the police in copyright enforcement, initiated through a request from the Ministry of Information (MOI), or through a specific “decree” from the MOI to the Ministry of Interior.
- Continue sustained inspections and raids on retail establishments, storage areas, distribution hubs, and duplication sites, and run enforcement “up the chain” toward the sources of production (i.e., importers, distributors, duplication sites).
- Engage in a complete clean-up of street vendor piracy.
- Raid compounds engaging in unauthorized sale of pirate DVDs and redistribution of pay television services, and report results from raids, including imposition of penalties and cessation of illegal activities.
- Intercept pirate imports at the borders through a more robust customs enforcement program.

Ensuring Legal Use of Copyrighted Materials

- Order universities to regulate procurement practices to ensure purchases of authorized copies of books (and other copyrighted materials), following up where necessary to ensure that those universities comply with the law.
- Continue to follow up on enforcement of the software usage directive.

Structural Changes (to Law and Law Enforcement)

- Issue implementing regulations to the Saudi copyright law to provide for TRIPS-compatible (and WPPT-compatible) protection for sound recordings and musical works.
- Establish an anti-piracy “task force” consisting of Customs, MOI, municipalities, Ministry of Interior (Police), Ministry of Commerce, etc., with a centralized plan providing for responsibilities, objectives and time frames. The task force should routinely meet with right holders.
- Speed up establishment by the Ministry of Information of an anti-piracy association involving right holders.
- Consider passage of comprehensive optical disc regulations.

We would encourage the United States to continue to engage Saudi Arabia to address the problems and issues addressed in this report through the use of the TIFA mechanism.

For more details on Saudi Arabia's Special 301 history, see IIPA's "History" Appendix to this filing.² Please also see previous years' reports.³

SAUDI ARABIA										
Estimated Trade Losses Due to Copyright Piracy										
(in millions of U.S. dollars)										
and Levels of Piracy: 2000-2004⁴										
INDUSTRY	2004		2003		2002		2001		2000	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Motion Pictures	20.0	40%	20.0	40%	20.0	35%	30.0	45%	40.0	65%
Records & Music	15.0	35%	16.0	40%	16.0	42%	12.0	42%	8.0	40%
Business Software ⁵	85.0	56%	76.0	54%	13.3	50%	16.4	52%	17.7	52%
Entertainment Software ⁶	NA	68%	64.0	83%	NA	NA	115.7	83%	28.0	NA
Books	14.0	NA	14.0	NA	14.0	NA	14.0	NA	14.0	NA
TOTALS	134.0		190.0		63.3		188.1		107.7	

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Optical Disc Pirate Production in the Kingdom?

IIPA understands that two previously unknown CD plants may have been identified in Riyadh, as well as one new plant in Damman. Thus, Saudi Arabia now has a total of at least four plants with seven production lines, having an annual estimated capacity of 24.5 million discs. In addition to the increase in the number of optical disc production plants in Saudi Arabia, for several years, the Kingdom has experienced greater amounts of pirate "burning" of copyrighted content onto recordable optical discs such as CD-Rs and DVD-Rs.

Retail Piracy Continues to Harm U.S. Copyright

Optical discs (CDs, VCDs, DVDs, CD-ROMs, and "burned" CD-Rs, and DVD-Rs) of a cornucopia of copyrighted content (videogames and entertainment software, music, movies, business software, and published materials) remain available for retail sale in Saudi Arabia, whether imported (e.g., music and film piracy is being imported from Pakistan and Indonesia), "burned" on recordable discs domestically, or produced in optical disc production plants in Saudi Arabia. Saudi Arabia ranks worst in the Gulf region in terms of piracy of console-based videogames of all kinds, regardless of content (over 90% of console-based games are pirate, while games for personal computer are 75% pirate).⁷ Console-based videogames are imported

² <http://www.iipa.com/pdf/2005SPECIAL301HISTORICALSUMMARY.pdf>.

³ <http://www.iipa.com/countryreports.html>.

⁴ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA's 2005 Special 301 submission at www.iipa.com/pdf/2005spec301methodology.pdf.

⁵ BSA's final 2003 figures represent the U.S. software publisher's share of software piracy losses in Saudi Arabia, as compiled in October 2004 (based on a BSA/IDC July 2004 worldwide study, found at <http://www.bsa.org/globalstudy/>). In prior years, the "global" figures did not include certain computer applications such as operating systems, or consumer applications such as PC gaming, personal finance, and reference software. These software applications are now included in the estimated 2003 losses resulting in a significantly higher loss estimate (\$120 million) than was reported in prior years. The preliminary 2003 losses which had appeared in previously released IIPA charts were based on the older methodology, which is why they differ from the 2003 numbers in this report.

⁶ ESA's reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry "losses."

⁷ Ironically, games which the Saudi authorities would not permit to be sold in the market due to content concerns (i.e., they are censored) are sold openly by pirates in Saudi Arabia.

from Malaysia and transshipped through Dubai (UAE), while personal computer-based (PC) games apparently are coming from Russia, Syria, and Pakistan (sometimes transshipped through these latter two).⁸ Cartridge-based games continue to be imported from Taiwan and China. Pirated sound recordings are imported from Pakistan, Malaysia and elsewhere.

Such pirate products are sold openly in retail markets and increasingly in the street markets (*souqs*). It is also 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.

Specific Sectors

- **Optical Disc Piracy:** Street vendors openly sell pirate discs. Since the police are not systematically involved in copyright enforcement, the entire chain of pirate distribution, including duplication, distribution and storage sites remains immune from active enforcement.
- **Pay Television Piracy:** Illegal distribution of “Pay TV” (i.e., cable television) signals on compounds continued to be a concern for the audiovisual sector in 2004. The Kingdom’s prohibition against cinemas makes the pay TV market particularly lucrative, and many residential compounds in Saudi Arabia illegally redistribute pay TV signals without authorization — the compounds are able to obtain a smart card from the market that is intended for a Direct-to-Home (DTH) subscription and then to use this card to provide pay TV services to hundreds of homes in the compound through their own internal cabling system. Despite the numerous raids against the compounds, including four during 2004, almost all of the compounds are illegally redistributing Pay TV signals without proper authorization.
- **Book Piracy:** Saudi Arabia’s publishing market continues to experience significant piracy, especially in the Western Province. Pirate commercial offset prints as well as illegally photocopied books, especially textbooks and English language teaching (ELT) materials, continue to be available. There is evidence that pirate editions are being produced locally in Saudi Arabia (where there is a sizeable domestic printing industry). Some universities, especially in the Central and Eastern Provinces, have regulated purchase practices (i.e., they “buy centrally,” which means that all the adoptions within a university are collated by its purchasing department, which runs an on-campus bookshop), and recent changes in practice by the King Abdulaziz University in Jeddah have helped to reduce piracy losses for some U.S. companies. However, piracy losses increased for other companies, such that the industry estimates its overall losses to be the same for 2004. IIPA is pleased to see more universities legalizing their adoption processes by buying centrally and encourages the remaining universities to follow suit. Failing to do so invites an overrunning of the market by pirate photocopies, completely supplanting legal purchases.
- **End-User Piracy of Software and Government Illegal Use of Software:** The unlicensed use of software in a business setting (so-called “end-user” piracy) continues to be a problem in large, medium-sized and small enterprises in Saudi Arabia.
- **Internet Piracy:** Internet piracy, namely, download and peer-to-peer sharing of copyrighted materials over the Internet, is slowly increasing in Saudi Arabia, but since the Internet is

⁸ Almost all PlayStation2[®] consoles on the market have been modified to allow the play of pirate entertainment software.

under strict control of the government, Internet piracy has not yet become a substantial problem.

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Some Raids Run by MOI and Customs in 2004; No Police Involvement

IIPA notes some enforcement actions in 2004, mainly carried out by the Ministry of Information (MOI),⁹ but these actions are usually not seen through to the imposition of deterrent penalties, or if so, right holders do not know the specific outcomes. MOI continues to be understaffed and under-funded. Some raids were also carried out with the cooperation of Customs against pirate imports of optical discs from Pakistan.¹⁰

Working with the Business Software Alliance, the MOI carried out some copyright awareness efforts in 2004. Hundreds of letters were sent directly to suspected end-user pirates by MOI. Also, the MOI continued to carry out inspection visits against end user targets identified by the BSA, with the purpose of encouraging software self-auditing. Also, educational letters from MOI were sent to hundreds of system builders about the new copyright law.

A chief problem in Saudi Arabia is that the police have yet to become involved with copyright enforcement against street vendors or with investigations against sources of piracy. Also, most raids are initiated by right holders, i.e., there are no investigations being conducted by the authorities on an *ex officio* basis against the entire chain of pirate distribution, including duplication, distribution and storage sites. The increased presence of locally produced and/or burned pirate discs reinforces the need for the police to become immediately involved, and to act on an *ex officio* basis. Police involvement could be initiated through a request from MOI, or through a specific “decree” from MOI to the Ministry of Interior. Police involvement is crucial because of the need for investigations into the entire supply and distribution chain of pirates,¹¹

⁹ The MOI's actions included:

- A raid successfully carried out against a major distribution center of counterfeit CDs in Saudi Arabia. The Ministry of Information undertook the raid against six warehouses (apartments) of street vendors based on leads provided by and in cooperation with the Business Software Alliance. In total, 135,920 CDs of illegal software products were seized. Five persons were arrested inside some of the apartments.
- Hundreds of raids were conducted by Ministry officials against reseller pirates identified by the Business Software Alliance in several cities throughout the Kingdom.

¹⁰ Industry has become aware of shipments from Karachi to Riyadh, and in 2004, shipments seized by Customs at the airport in Riyadh included a shipment early 2004 of 22,000 pirated CDs and DVDs (including audio, movies, and games) including inlay cards, as well as a shipment early 2004 of about 41,000 pirated CDs and DVDs. Other examples of raids include the following:

- On October 17, 2004, a major sting operation was initiated by industry against street vendors. Three Yemeni and two Saudi nationals were arrested and more than 15,000 pirate DVDs were seized in a three-day sweep against street vendors in and around Souk Al Kayal. The operation was the largest ever conducted against pirate street vendors in Saudi Arabia.
- In the end of March 2004, right after the copyright law went into force, a series of raids, initiated by right holders, were conducted in Jeddah (Western Province) against apartments used as storage centers by street vendors, resulting in the seizure of around 90,000 pirate discs and the arrest of nine individuals.

The recording industry reports that from January to November 2004, Saudi Customs seized 210,162 music cassettes, 26,969 CDs, 3,457 VCDs, and 75 CD-R burners or cassette duplication equipment.

¹¹ The police are well equipped to lead anti-piracy operations and weed out the supporting distribution network. For example, where CDs are being illegally smuggled into Saudi Arabia, centrally stored in warehouses and then distributed to smaller caches that are used to replenish street vendors, the MOI is not the best equipped (or even empowered) to investigate the complete piracy chain leading to subsequent raids, arrests, etc. against the up or down chain. The police, on the other hand, have the expertise to conduct interviews with street vendors, investigate,

their availability 24 hours a day, 7 days a week,¹² and the stronger message that such involvement sends to the pirates (involvement of the police has also proven to be successful in other countries).¹³

Lack of Transparency = No Deterrence

Unfortunately, raids run in recent years, even against larger warehouses, have accomplished little due to the absence of deterrent penalties and the lack of transparency in the Saudi enforcement system. IIPA understands that some raids are being publicized in the press, without any mention of specific information concerning the pirates. Right holder representatives are sometimes brought in for the raid, but are rarely informed about cases after the raid. The piracy problem simply will not be solved without solving the fundamental transparency problem, and recognizing that right holder cooperation is one key ingredient in the fight to eradicate piracy in the Kingdom. The Saudi government needs to ensure the application of deterrent penalties and to urgently implement some reforms to address the difficulties arising due to lack of transparency, including the following:

- At least, inform right holders of all enforcement activities being carried out or planned.
- Give right holders an opportunity to identify, inspect, inventory by format, catalog, and analyze pirate copyright product that has been seized in a raid/action, if they choose.
- Provide specific, on-time raid reports and investigation reports to right holders, including data on seized materials (case-by-case reporting rather than aggregate).
- Order destruction of pirated goods, and permit experts or right holder representatives to witness destruction or final disposition of goods seized.
- Impose deterrent sentences on pirates under the new law's stricter penalty provisions, and provide specific reports on status of cases against individuals or companies, including results of cases, jail sentences, fines imposed, and compensatory damages awarded.
- Publicize results of raids, and subsequent prosecutions/cases.

The “Breach Committee” and “Board of Grievances” Must be More Transparent and Mete Out More Severe Penalties for Piracy

A major shortcoming in the Saudi enforcement system has been the secretive way in which copyright cases are handled and kept close after a raid is conducted. The Ministry of Information has closely guarded any data on administrative penalties it issues and rarely announces the amounts of fines and penalties applied for copyright law violations in specific cases. The new copyright law, discussed below, establishes a “Breach Review Committee”

obtain intelligence, arrest other affiliated parties, operate undercover, and only the police have the authority to conduct raids in homes and warehouses that are suspected of containing illegally copyrighted material.

¹² In IIPA's members' experience, only the police have scheduled 24-hour patrols throughout all of Saudi Arabia. The MOI does not have the resources (even if they have the authority) to dedicate to constant street patrols in all parts of the Kingdom.

¹³ In IIPA's experience, police involvement in battling piracy immediately sends a strong deterrent message to pirates. The United Arab Emirates is a good example of a country in which police involvement directly created a deterrent in the market, driving piracy out and bringing piracy rates down to some of the lowest in the Middle East.

(BRC) under the Ministry of Information, “staffed by up to three members, two of whom must be a legal advisor and Sharia advisor” [Article 25(1)], and deems that serious crimes shall be referred to a “Board of Grievances” (BG) which shall also apparently have appellate jurisdiction over the decisions of the BRC. The BRC has substantial authority to determine infringement, mete out warnings, criminal penalties, suspensions of business licenses, fines of up to SR100,000 (US\$26,665), etc. Only cases in which the BRC recommends that the offender be punished by a jail sentence or a fine exceeding SR100,000 or revocation of a business license must be referred to the BG by the Minister of Information.

IIPA had hopes for this BRC and the BG, namely, hoping that reporting mechanisms regarding ongoing proceedings and results in specific cases would be regularized and made transparent. Unfortunately, IIPA understands that the litigation process in Saudi Arabia remains shrouded in mystery, with no right holder representation.¹⁴ It is imperative that copyright owners be called upon to assist the BRC in the development of cases (through forensic and other analysis of evidence), and that greater transparency lead to right holders being compensated, as the new law provides, for damage they have suffered as a result of infringements. Such changes are needed to bring Saudi Arabia’s system closer to compliance with TRIPS requirements in the area of enforcement. It is also crucial that the BRC use its authority under the new copyright law to mete out substantial penalties and damage awards in order to deter further infringements and compensate right holders for losses due to piracy (also international requirements).

IIPA members have reported to the Ministry of Information many cases that warrant criminal action/civil relief in the form of adequate compensation.¹⁵ It is highly arguable that the failure to include right holders in these court processes, particularly as they pertain to civil damages under the new law, may be TRIPS-incompatible.¹⁶ The lack of transparency in court proceedings, to the extent it is denying right holders the civil and administrative remedies promised under TRIPS, must be addressed before Saudi Arabia should be considered for entry into the WTO. IIPA members have heard that MOI is considering increasing the staffing of the BRC, and MOI has assured industry representatives recently that the processes of the BRC will

¹⁴ IIPA further understands that right holders can seek representation in the Grievance Committee, should penalties be high enough to seek review there; however, to our knowledge, no copyright cases have made it to the grievance committee.

¹⁵ One industry group representative, the Arab Anti-Piracy Alliance (AAA), has reported 15 actions taken by MOI in 2004 as ripe for criminal prosecution/compensation either on account that the raided targets were repeat offenders or yielded large seizures. Examples of repeat included video shops in Jeddah and Riyadh that had been raided three times each. Examples of large seizures included a video outlet in Jeddah where 40,000 units were seized in one raid, a residential apartment in Al Beled, Jeddah where 100,000 CDs were seized in one raid, and a video outlet in Riyadh where 14,216 units were seized. In each of these cases, follow-up letters were sent to MOI. However, due to lack of transparency (or we fear, lack of action), no case information has been provided and there is no way to track cases brought, including sentencing. In the rare cases in which industry was able to learn about the results of cases, fines imposed were non-deterrent, and there were no sentences of imprisonment to IIPA’s knowledge meted out in 2004. While Article 10 of the new law provides for the availability of “compensation” to the right holder for damage arising out of infringement, since right holders have no opportunity to present their claims in a court, and since there is no transparency, in fact there is no effective civil remedy.

¹⁶ Article 22(4) of the law provides,

The Committee may award damages to a copyright owner who has filed a complaint to report an instance of alleged copyright infringement. The damages shall be proportionate to the extent of damage deriving from the infringement against his/ her copyright.

However, right holders, in fact, have no way other than an initial complaint to MOI, to seek redress, either through injunctive relief, provisional measures, including *ex parte* civil searches, and seemingly have no way to seek adequate compensation for the injury suffered due to infringement except under that complaint. Such blatant lack of transparency in the court process, and the fact that in practice, right holders are not being adequately compensated, indicates that Saudi Arabia’s current system is TRIPS-incompatible.

be reformed, allowing for more transparency. IIPA hopes these promises will be put into action in 2005.

COPYRIGHT LAW AND RELATED ISSUES

The Copyright Law Strengthens Penalties, But Remains TRIPS-Incompatible and Leaves Unclear Protection of Sound Recordings

The past year has seen two major developments in Saudi Arabia's substantive copyright landscape. First, Saudi Arabia's new copyright law went into effect on March 14, 2004. Second, Saudi Arabia joined the Berne Convention, effective March 11, 2004.¹⁷ The new copyright law resulted in some improvements over the 1990 law, many of which were intended to bring the law closer to compliance with the TRIPS Agreement. These improvements include the following:

- **Increase in Criminal Penalties:** Maximum criminal penalties are increased. Fines are up to SR250,000 (US\$66,662) and prison terms are up to six months, which can be doubled for recidivists.
- **Enumerated Exclusive Rights:** The law contains a more complete list of the exclusive rights of copyright owners at least as to works (including TRIPS-compatible rights like a rental right [Art. 9(1)(4)].
- **Catch-All Infringement Provision:** Infringing activities (Art. 21) are set forth with more specificity than in the 1990 law [including a "catch-all" in Article 21(11)].
- **Greater Enforcement Authority Expressed:** Certain enforcement provisions appear to grant greater authority to the Saudi government to enforce against businesses/premises engaged in piracy, e.g., they allow temporary closure of an establishment or suspension of a business' "privilege to participate in functions, occasions, exhibitions" [Articles 22(1)(3) and 22(6)].

Nonetheless, several TRIPS deficiencies remain. Most disappointing is the Saudi law's failure to deal adequately with protection for sound recordings. We understand that the Saudis were reluctant to acknowledge protection of "musical works" for religious reasons, and this is why the term "musical work" has never appeared in the Saudi law. The term "audio work" was added in the 2003 law, and a broad reading might suggest that sound recordings are protected as works, as "audio works" and/or as "works ... prepared for broadcast." Moreover, the 1990 law and the 2003 law are both ambiguous as to point of attachment for sound recordings. The Saudi government may indicate that protection of foreign sound recordings as works continues due to Saudi Arabia's continued adherence to the UCC, which it joined in 1994.¹⁸ It must be confirmed,

¹⁷ On December 11, 2003, the Government of Saudi Arabia deposited its instrument of accession to the Berne Convention for the Protection of Literary and Artistic Works, 1971 (Paris) text. In its accession, the Saudi government attempted to add a reservation for "works that are contrary to Islamic law." However, WIPO's "Notification of Accession" does not include the reservation, as WIPO has made an official determination that such a reservation is not permissible under the Convention. We understand that WIPO has informed the Saudi Permanent Mission of this. A reservation of this sort is impermissible under the Berne Convention, since nothing in the Berne Convention allows the complete non-recognition of rights or would permit Saudi Arabia to deny protection for entire classes of works that must be protected under Berne. Such a denial of protection would also be TRIPS-incompatible.

¹⁸ It was not until July 1, 1994 (when Saudi Arabia acceded to the Universal Copyright Convention [UCC]) that foreign works, including U.S. works, were first protected in Saudi Arabia. The U.S. and the IIPA had been pressing Saudi

probably in implementing regulations (but preferably through a simple amendment to the law) that all sound recordings remain protected in Saudi Arabia under the new law as works and that the producer (the natural or legal person who takes the initiative to make the original audio work and bears the cost and responsibility for it) is deemed the owner of the economic rights. Other TRIPS deficiencies include:

- **Retroactivity:** IIPA takes the position that the 1990 law and Saudi's adherence to the UCC in 1994 did not afford retroactive protection by law. Thus, Article 20 of the new law is TRIPS-incompatible because it does not by its terms provide a full term of life plus 50 years or 50 years of protection retroactively for existing works/sound recordings as required by TRIPS.
- **Non-Deterrent Remedies/Penalties:** While the maximum penalties were increased, the minimum penalty under the new law can be a mere warning—which is totally non-deterrent (TRIPS Article 61); not even a minimum fine is mandated.
- **No *Ex Parte* Civil Searches:** There is no express provision for *ex parte* civil search orders (TRIPS Article 50). As noted above, this is a problem in practice, since right holders have no forum to seek such measures.
- **Seizure Provisions (Goods, Tools and Implements) TRIPS-Incompatible:** The provisions on seizure of infringing goods were weakened compared with the previous law, and fail to meet the TRIPS standard (TRIPS Articles 46 and 61).
- **No Costs or Attorneys Fees:** There is no express provision for the award of costs or attorney fees in civil cases (TRIPS Article 45).
- **No Border Enforcement in Copyright Law:** There are also no provisions regarding border enforcement, namely, the ability of authorities to suspend the release of suspected infringing goods into the channels of commerce, and to order the destruction or disposal of infringing goods (TRIPS Articles 51, 59); the Saudi government should provide other statutes that may address this deficiency.

In addition, it is highly unfortunate that the government of Saudi Arabia has failed to take the opportunity, within the context of this law revision, to enact standards of protection needed to provide healthy electronic commerce in Saudi Arabia, and to provide proper levels of protection for copyrighted materials in the digital environment. In particular, the law fails to fully meet the standards set by the two WIPO “digital” treaties, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT). While the law adds certain provisions which appear intended to take into account the WCT and WPPT, other provisions are either left out or appear to be incomplete. For example:

- **Communication to the Public Right:** The communication to the public right has been expanded to include digital communications (“information service”) but does not

Arabia to amend its law and join the Berne Convention, but because it did not wish to make the required amendments, Saudi Arabia chose the UCC as the point of attachment for the protection of foreign works. The Saudi government has also stated unequivocally that its law extends protection to sound recordings as “works” under the UCC. To clarify any ambiguity, Saudi should join the Geneva Phonograms Convention; if it then joins the WTO that agreement itself expressly required protection for sound recordings from UCC member countries as well, retroactive for a full TRIPS-compatible term of protection.

expressly include the right of “making available” which is key to encompass the “upload” of a work to the Internet, for example (and coverage of sound recordings remains unclear).

- **Protection of Temporary Reproductions:** The law also fails to confirm that the reproduction right includes coverage of temporary reproductions, and to provide an express distribution right.
- **Prohibition Against Circumvention of Technological Protection Measures:** The provisions prohibiting the circumvention of technological protection measures appear fairly broad, although unlawful circumvention is deemed to be an “infringement of the rights protected by this Law” instead of as a separate violation, which raises the concern over whether copyright exceptions are applicable to the offense of circumventing a TPM (exceptions that would eviscerate the rule).

Notwithstanding that there is some more work to be done to fully implement the WCT and WPPT, Saudi Arabia should take the important next step, as the UAE and Jordan did in 2004, of joining these treaties which are the latest international standards for copyright protection.