

# INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

## 2006 SPECIAL 301 REPORT

### SAUDI ARABIA

#### EXECUTIVE SUMMARY

**Special 301 Recommendation:** Saudi Arabia should remain on the Watch List with an out-of-cycle review to monitor implementation of new enforcement and transparency commitments made to IIPA in a recent visit and following the Kingdom's recent and welcome WTO accession.

#### **Actions to be Taken in 2006:**

##### **Deterrent Enforcement**

- Use the new Special Committee on enforcement set up by the Governor of Riyadh, Prince Salman, to establish a new regime for imposing increased penalties including imprisonment and securing the creation of a special police task force to work with the Ministry of Culture and Information (MOCI). Deterrent penalties and transparency are TRIPS requirements;
- Work closely with the new IPR Committee, headed by M. Al-Aiyash, to secure increased penalties and a more transparent process at MOCI;
- Ensure that the Breach Committee in the MOCI issues significant fines up to the maximum allowable in the copyright law;
- Ensure that right holders are able, as TRIPS requires, to appeal any Breach Committee-imposed fine which is considered inadequate to the Board of Grievances, which must impose imprisonment in appropriate cases, and significantly increase fines;
- Ensure systematic involvement of the police in copyright enforcement against both street vendors and those up the supply chain (warehouses etc.), and against corporate end-users of unauthorized software, including those initiated through a request from the Ministry of Culture and Information (MOCI), or directly by right holders;
- 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), including against corporate end-users of unauthorized software;
- Engage in a complete clean-up of street vendor piracy, and subject offenders to deterrent penalties, not just deportation, which has proven to be an ineffective deterrent;
- Secure the commitment of Prince Salman and the Special Committee to inform the management in compounds that they must pay license fees for the redistribution of TV signals and raid the compounds if they fail to comply;
- Reform the customs system to establish an IPR Task Force and provide customs officers with *ex officio* authority to suspend the import of pirate product into the Kingdom.

##### **Transparency**

- Press the Special Committee and the IPR Committee to open up the MOCI enforcement process by having the Ministry provide full reports on the details of each case they commence following a raid to the relevant right holder(s) so that the right holder(s) (or their representatives) can follow up with appeals and related actions;

- Allow right holders to participate in the MOCI enforcement process through directly appearing at the Breach Committee, including seeking compensation as required by TRIPS;
- Fully implement the processes of the Board of Grievances to allow right holders to appeal, at their discretion, sentences that are inadequate.

### Ensuring Legal Use of Copyrighted Materials

- Secure and implement a mandate of the Special Committee and the IPR Committee to ensure that government ministries fully legalize their software use, in accordance with the existing software decrees, to set an example for the private sector;
- Order universities to regulate procurement practices to ensure purchase of authorized copies of books (and other copyrighted materials), following up where necessary to ensure that those universities comply with the law;
- Take enforcement actions against enterprise end-users of unauthorized software.

### Copyright Law Reform

- Take action to ratify and implement in the copyright law the obligations of the WIPO “Internet” treaties;
- Increase maximum penalties in the Copyright Law to deter organized criminal activity that is rife throughout the Kingdom.

For more details on Saudi Arabia’s Special 301 history, see IIPA’s “History” Appendix to this filing.<sup>1</sup> Please also see previous years’ reports.<sup>2</sup>

SAUDI ARABIA Estimated Trade Losses Due to Copyright Piracy (in millions of U.S. dollars) and Levels of Piracy: 2001-2005 <sup>3</sup>										
INDUSTRY	2005		2004		2003		2002		2001	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music	20.0	50%	15.0	35%	16.0	40%	16.0	42%	12.0	42%
Business Software <sup>4</sup>	80.1	52%	73.0	52%	76.0	54%	13.3	50%	16.4	52%
Motion Pictures <sup>5</sup>	NA	NA	20.0	40%	20.0	40%	20.0	35%	30.0	45%
Entertainment Software <sup>6</sup>	NA	95%	NA	68%	64.0	83%	NA	NA	115.7	83%
Books	10.0	NA	14.0	NA	14.0	NA	14.0	NA	14.0	NA
<b>TOTALS</b>	<b>110.1+</b>		<b>122.0</b>		<b>190.0</b>		<b>63.3</b>		<b>188.1</b>	

<sup>1</sup> <http://www.iipa.com/pdf/2006SPECIAL301HISTORICALSUMMARY.pdf>.

<sup>2</sup> <http://www.iipa.com/countryreports.html>.

<sup>3</sup> The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2006 Special 301 submission at [www.iipa.com/pdf/2006spec301methodology.pdf](http://www.iipa.com/pdf/2006spec301methodology.pdf).

<sup>4</sup> BSA’s 2005 statistics are preliminary. They represent the U.S. publishers’ share of software piracy losses in Saudi Arabia, and follow the methodology compiled in the Second Annual BSA/IDC Global Software Piracy Study (May 2005), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA’s 2004 piracy statistics were preliminary at the time of IIPA’s February 11, 2005 Special 301 filing; the 2004 data has been revised and is reflected above.

<sup>5</sup> MPAA’s trade losses and piracy levels for 2005 are available for a limited number of countries and are based on a methodology that analyzes physical or “hard” goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As loss numbers and piracy levels become available for additional countries at a later time, they will be posted on the IIPA website, <http://www.iipa.com>.

<sup>6</sup> ESA’s reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry “losses.” The methodology used by the ESA is further described in Appendix B of this report.

## **IIPA's JANUARY 2006 MISSION TO SAUDI ARABIA PRESAGES MAJOR CHANGES IN THE KINGDOM'S ENFORCEMENT SYSTEM FOLLOWING WTO ACCESSION**

On December 11, 2005, Saudi Arabia was admitted to the WTO and undertook obligations under the TRIPS agreement and particularly its enforcement text. IIPA was invited to visit the Kingdom in January 2006 and the IIPA President, accompanied by local right holders, met with senior Saudi government officials in all relevant ministries and enforcement bodies. Detailed below is an update of the current piracy and enforcement situation. However, in meetings with IIPA, senior Saudi officials committed to making major changes in the system to achieve more transparency and deterrence, including, for the first time, using imprisonment as a remedy in accordance with their new TRIPS obligations. Those and other developments are listed at the end of this report and, as a consequence, IIPA is seeking an out-of-cycle review to assess the implementation of these commitments and removal of the deficiencies listed.

USTR's 2005 decision retained Saudi Arabia on the Watch List with an out-of-cycle review. The results of this review have not yet been announced.

### **COPYRIGHT PIRACY UPDATE**

#### **Piracy remains rampant despite increased raiding by the Ministry of Culture and Information (MOCI)**

MOCI is to be commended for undertaking increased raiding activity and making larger seizures in 2005. Over the last year, seizures of pirated entertainment software, DVDs and business software have been as large as 2.28 million units (in Dammam), and there have been many raids involving seizures of from 600,000 units, down to 30,000 and 40,000 units.

However, this raiding activity alone has not had the desired deterrent effect. In the Damman raid, for example, the pirate raided was back in business the next day with new product. All these raids were done upon informal complaint by right holders and not *ex officio* by the Ministry. While the Ministry is to be commended for undertaking these successful raids, the complete lack of any deterrence in the market has meant that the availability of pirate product and piracy levels has not diminished.

#### **Retail Piracy Continues Unabated**

Optical discs (CDs, VCDs, DVDs, CD-ROMs, and "burned" CD-Rs, and DVD-Rs) of a cornucopia of copyrighted content (entertainment software, recorded music, movies, business software, and published materials) remain available for retail sale in Saudi Arabia, whether imported, "burned" on recordable discs domestically, or factory produced in Saudi Arabia. Pirated OD music and DVD products are reportedly still available, sourced from Pakistan, Indonesia, and other countries. Saudi Arabia ranks worst in the Gulf region in terms of piracy of console-based entertainment software of all kinds, regardless of content (over 90% of console-based and PC-based entertainment software games are pirated). Vendors openly admit that

pirated entertainment software for console games are imported from Malaysia (industry reports they are transshipped through Dubai and Bahrain). Pirate product has also reportedly been sourced in Pakistan and Lebanon.<sup>7</sup>

Pirated entertainment software is openly sold in souks and retail markets and pirated DVDs are sold openly or very often under the counter in massive volumes. Pirate copies of business software are either available from PC assemblers and resellers, which are then loaded on PCs and sold both to consumers and to small and medium-sized businesses, or are available from street vendors found in the regular computer store malls.

## Specific Sectors

- **Pay Television Piracy:** Illegal distribution of “Pay TV” (i.e., cable television and satellite) signals on compounds continues unabated. The Kingdom’s prohibition against cinemas makes the pay TV market particularly active, and most 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. While there are occasional raids, there is a great reluctance to go into compounds, most of which are owned by powerful Saudi citizens or members of the royal family.
- **Book Piracy:** Saudi Arabia’s publishing market continues to experience some piracy, especially at certain universities in the Western Province, but piracy levels have generally improved during 2005. Recent changes in practice by the King Abdulaziz University in Jeddah have helped to reduce piracy losses. Nevertheless, publishing companies maintain that the situation is in need of significant improvement. 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). IIPA is pleased to see more universities legalizing their acquisition process by buying centrally and encourages the remaining universities to follow suit. Failing to do so invites an overrunning of the market by pirate photocopies, supplanting legal purchases.
- **Government Use of Illegal Software and Corporate End-User Piracy of Software:** Both remain huge problems in the Kingdom. While some ministries have legalized their software, it is estimated that 90% of the software used in government overall is unauthorized (it is estimated that 30% of the PCs in use in the Kingdom are in government hands). In 2005, there were no raids by the Ministry against corporate end users of unauthorized software, which has kept piracy levels very high.
- **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 telecom infrastructure remains immature and the Internet is under strict control of the government, Internet piracy has not yet become a substantial problem. It is expected to become so, since

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<sup>7</sup> Almost all PlayStation2® consoles on the market have been modified to allow the play of pirate entertainment software.

building an improved IT infrastructure is one of the government's prime investment objectives.

## **COPYRIGHT ENFORCEMENT UPDATE**

### **Increased raids by MOCI in 2005 are commendable but there is still insufficient police involvement and deterrence is completely absent from the enforcement system**

MOCI, in a development welcomed by industry, increased its raiding activity in 2005, inspecting more retail outlets, and on occasion joined by local police, arrested and deported street vendors, and raided major warehouses and storage areas, seizing a reported 27 million units of pirate product over the year. However, the lack of deterrent penalties, the failure of the Ministry to act *ex officio* without a right holder complaint, the continued inability of right holders to obtain any information from MOCI on raid follow-up, the unwillingness of MOCI to publicize individual convictions and penalties to promote deterrence, and the continued unwillingness of the authorities to engage in corporate end-user or book piracy raids has meant that there has been virtually no change in the market, with raided stores reopening with new product and that product being replaced as soon as it is seized.

According to IIPA's most current information, the maximum fine that has ever been imposed upon pirates by MOCI has been 50,000 riyals (US\$13,332) and the average fine has been only around 10,000 riyals (US\$2,667). The maximum fine that MOCI is entitled to impose under the new Copyright Law is 100,000 riyals (US\$26,665) but, upon referral to the Board of Grievances, the fine can be raised to 250,000 riyals (US\$66,663) and the Board can impose imprisonment up to six months, with these penalties doubled for recidivists. Reportedly only six copyright cases were sent to the Board of Grievances in 2005 and reportedly none involved piracy of a U.S. work. Industry has reported at least 25 raids in 2005 involving seizures of more than 10,000 units of pirate product. As noted above, one raid in Dammam involved 2.28 million units of pirate DVDs, VCDs, DVD-Rs and VHS cassettes (1,025,400 VCDs, 956,000 DVDs, 295,500 VHS cassettes and 10,000 DVD-Rs (10,000 of these copies were of business software), involving an estimated value at retail of US\$37 million. It is clear that the penalties currently being imposed have no deterrent value, which accounts for the fact that increased raiding has had no effect in the marketplace.<sup>8</sup>

MOCI, despite the fact that it has full authority to enforce the copyright law against all infringers, continues to refuse to deal with street vendor piracy, leaving that to the attention of the police, which are notoriously reluctant to involve themselves in copyright crimes. Pirates other than the retail shops licensed by the Ministry are not handled by MOCI although if there is a nexus to a retail shop they will ask the police to join them in a raid. While the police, upon receiving the approval of the Governor of each city, will accompany the Ministry on raids, or will raid occasionally on their own, it is imperative that the police authorities create IPR units in each

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<sup>8</sup> The Arabian Anti-Piracy Alliance (AAA), which represents MPA, BSA, Sony Computer Entertainment Europe, and a number of pay-TV companies in anti-piracy activities in the Kingdom commissioned a study released the week of January 22, 2006. The study was a scientific survey of approximately 800 individuals and entities engaged in the pirate trade seeking their views on whether the penalties available against piracy in the Kingdom would deter their conduct. While the study went into great detail about each type of penalty, the overall conclusion of the study was very clear: pirates believe that the penalties will not be severe and therefore are merely the cost of doing business. In short, they have no deterrent value and fines are just routinely paid, with pirate business going on as usual.

city to engage in serious raiding activity. Without the deterrence that comes from police raiding, it will be more difficult to bring deterrence to the enforcement system as TRIPS requires.

Enforcement against street vendors is done by the police, but is spotty. This is a primary means by which pirate business software “packaged” product is sold in the Saudi market. Moreover, such vendors are rarely punished, the remedy being deportation, since most vendors are Asian immigrants. This is, however, of little deterrent value; there are hundreds of other such immigrants ready and willing to take the place of the deported pirate.

## **The lack of transparency at MOCI contributes to the absence of deterrence against piracy**

The MOCI enforcement system has been characterized for years by an almost total lack of transparency with respect to individual case outcomes following a raid. Right holders report that they are never told about the progress or outcome of cases and the only information they are privy to is a report issued annually listing the number of raids, the amounts seized and the total penalties imposed. Individual defendants are never revealed either to the right holder (unless already known to the right holder or its representative that made the original complaint) or in the press following a judgment, or in the aforesaid annual report. Under the copyright law and the new implementing regulations adopted to bring Saudi’s regime into compliance with TRIPS, right holders are entitled to damages and to appeal sentences they believe are too light to the Board of Grievances. Neither can occur without the right holder being informed and being given the right to participate in the administrative process. Failure to afford such transparency and the ability to participate places the Kingdom in violation of its new international obligations under TRIPS. IIPA made this point continually during its January 2006 meetings in the Kingdom and it appears the Ministry is now aware of this issue and will take corrective action. Moreover, the Board of Grievances evinced a willingness to entertain appeals from right holders, not now possible under the current system.

To implement these new obligations and the commitments made, the MOCI must:

- Take *ex officio* action, and if it does so, inform right holders of all those enforcement actions;
- 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;
- Provide right holders with early notice of the case, so that they may assert their right to compensation as required by TRIPS<sup>9</sup>, including the right to participate in making their case

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<sup>9</sup> 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.

for damages. This must be done regardless of whether the initial raid was *ex officio*, or upon oral or written complaint from the right holder.

- Inform the right holder and their representatives of the outcome of all cases decided at the Ministry by the Breach Committee including the names of the convicted person, the amount and type of product involved, and the fine imposed. This will permit the right holder to exercise its right to appeal the fine, if considered too low, to the Board of Grievances.
- Publicize the results of raids, and subsequent prosecutions/cases to the public at large to provide further deterrence.

## **MOCI still does not extend its enforcement to corporate end-users or to book piracy**

MOCI's historical unwillingness to enforce its law in these two areas must be remedied immediately and should be a specific recommendation of the Special Committee and of the IPR Committee.

## **COPYRIGHT ENFORCEMENT REFORM PROMISED**

In the course of IIPA's meetings with Saudi government officials from January 22-25, 2006, a number of advances were made that, if fully implemented, will go far to remedying many of the deficiencies in its enforcement system that have contributed to high piracy levels in Saudi Arabia and the atmosphere of lawlessness that accompanies such piracy. The following are the advances and commitments made during this mission; their early implementation should be subject to monitoring under an out-of cycle review process:

- His Royal Highness Prince Salman bin Abdulaziz al Saud, brother of the King of Saudi Arabia and Governor of Riyadh, has instructed that a Special Committee be immediately formed under his auspices to review the reforms needed and discussed above. The Committee will consist of a representative from the Ministry of Commerce and Industry (Mr. Mohammed Al-Aiyash, Chairman of the IPR Committee, was named as the Commerce Ministry's representative within minutes after the IIPA meeting with the Prince), a representative of the Ministry of Culture and Information, a representative of the Saudi Arabian General Investment Authority (SAGIA) and right holder representatives.<sup>10</sup> Through this Committee, it is hoped that these reforms can be effectuated immediately; that an IPR Task Force will be set up in the office of the Riyadh police (which is under the jurisdiction of the Prince); that such Task Forces will be extended to other cities; that an order will be given, followed by enforcement actions as necessary, to the compounds to legalize their redistribution of pay-TV signals; and that deterrent penalties will be imposed on all acts of piracy which the Prince called "illegal and immoral";

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However, right holders 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 have no way to seek adequate compensation for the injury suffered due to infringement except under that complaint. The current system does not permit this to happen, which renders the system incompatible with TRIPS.

<sup>10</sup> IIPA met with Governor Amr Abdullah M. A. Al Dabbagh, Chairman of SAGIA, who indicated great interest in resolving these problems as the *sine qua non* of copyright industry investment in the Kingdom, a goal strongly desired by the Governor.

- Legalization of the government's software use and the commencement of regular enforcement by MOCI against corporate end-user software and book piracy;
- Implementation of the MOCI's Acting Minister Al-Akkas' view that the Ministry is required under the TRIPS agreement to become fully transparent with respect to its enforcement actions and decisions by the Breach Committee and the Ministry's need to increase penalties to deterrent levels. This would include the right to seek compensation in these cases and the right to appeal fines considered too low to the Board of Grievances;
- Imposition of the penalty of imprisonment in appropriate cases by the Board of Grievances upon appeals by right holders, or on referral from the Breach Committee. Prison sentences in cases involving large seizures would go far to bringing real deterrence to the Saudi enforcement system;
- Implementing the commitment of the Saudi Customs to work more closely with right holders through the appointment of a high level Customs officials to act as liaison with right holder organizations.

**THE COPYRIGHT LAW SHOULD BE AMENDED TO IMPLEMENT THE WIPO "INTERNET" TREATIES AND RATIFICATION SHOULD OCCUR AT THE EARLIEST POSSIBLE DATE**

While virtually all the deficiencies in the Saudi Copyright law have been remedied in the new implementing regulations adopted in 2005,<sup>11</sup> IIPA impressed upon all relevant officials at its January 2006 meetings on the importance of developing the legal infrastructure for electronic commerce by ratifying and fully implementing the WCT and WPPT. The reception to this suggestion was gratifying and industry and the U.S. government should work closely with the responsible agencies (including MOCI) to assist with advice and training.

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<sup>11</sup> Two deficiencies appear to remain, however. The law appears not to mandate destruction of infringing goods and does not require the award of costs and attorney's fees as required by TRIPS. Furthermore, statutory prison sentences remain very low. MOCI Acting Minister Al-Akkas indicated a willingness to propose raising these terms in the near future.