

SAUDI ARABIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2013 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Saudi Arabia be elevated back to the Watch List.¹

Executive Summary: IIPA previously supported USTR's removal of Saudi Arabia from the Watch List, but noted that if continuing and comprehensive progress was not made to reduce high piracy rates through the systematic imposition of deterrent penalties, establishment of an effective regime against Internet piracy, and other actions, IIPA would recommend that Saudi Arabia be placed on the Watch List. Such progress has not been made, and IIPA recommends that Saudi Arabia be returned to the Watch List.

Saudi Arabia has the highest piracy rates in the Gulf region, in the 90% range for movies and music, unacceptably high for entertainment software and publishing, and higher than the global average for software. High-quality counterfeits enter into the channels of commerce in Saudi Arabia from UAE (duty-free zone) and China. The government has made little progress in legalizing its software use, and street vendor piracy continues to be a major and visible problem. The adverse effects of piracy in Saudi Arabia are evidenced by the closure of tech companies like Al-Dawalej, Sakhr, Al-Alamiah Technology Group, and Al-Arees. The multiplier effects of reducing piracy would add roughly US\$4 billion to the Saudi economy for the software industry alone.

The Board of Grievances (BOG) conviction on February 29, 2012 of the owner of *Video Mesfir* (a Saudi National) for copyright piracy including imposition of a prison sentence was a positive step, but systematic and routine judgments with deterrent penalties are needed in order to dramatically reduce piracy rates in Saudi Arabia. Unfortunately this has not occurred, nor has publicizing of Ministry of Culture and Information (MOCI) enforcement efforts or taking effective enforcement actions against Internet piracy. IIPA also believes it is critical to reinstate MOCI Deputy Minister Eid Al-Hoot (which was supposed to occur in July 2012), who can ensure the swift launch of the National Awareness Campaign for IPR, the addition of needed inspectors, the issuance by the Violations Review Committee (VRC) of deterrent outcomes,² and the bringing of more cases to the BOG. In October 2011, IIPA was asked to file its comments to the U.S. government concerning the development of the MENA Trade and Investment Partnership, and to develop mutually beneficial short- and long-term IP goals.³ This list of goals for Saudi Arabia is unfortunately quite long, but it is hoped that with some concerted and effective actions, the situation can improve for the better in 2013.

PRIORITY ACTIONS REQUESTED IN 2013

Enforcement

- Implement MOCI directive to add 7 inspectors and complete request of the King for approval for 100 additional inspectors and to approve a reward program for them, as previously requested by industry (and IIPA).⁴

¹For more details on Saudi Arabia's Special 301 history, see Additional Appendix available at <http://www.iipa.com/pdf/2013SPEC301HISTORICALSUMMARY.pdf>. Please also see previous years' reports at <http://www.iipa.com/countryreports.html>.

²IIPA understands that two major cases involving counterfeit Windows supplied to government entities resulted in the issuance of very weak judgments of less than US\$10,000 in fines and no other deterrent penalty.

³International Intellectual Property Alliance, *IIPA Written Comments in Response to: Request for Comments on The Trade and Investment Partnership for the Middle East and North Africa*, 76 Fed. Reg. 55456 (September 7, 2011) Docket: USTR_FRDOC_0001-0160, October 15, 2011, at http://www.iipa.com/pdf/2011_Oct15_IIPA_Comments_on_MENA.PDF.

⁴IIPA has long noted short-term goals (immediately adding 10-15 cooperating inspectors with rewards for anti-piracy activities), medium-term goals (within three months adding 10-15 full time employee inspectors on top of the cooperating inspectors, bringing the total number to 25-30), and long-term goals (within six to eighteen months, having 50 full time inspectors, with retention program and reward and incentives plan, similar to Customs plan of 50% of collected fines being used for rewards). This would not be an insignificant amount, since, for example, the five copyright inspectors in 2011 collected more than US\$800,000.



- Re-commence a zero-tolerance policy toward street vendor piracy in the major cities until it becomes a *de minimis* problem. Prevent law enforcement from releasing violators arrested without any penalty.
- Ensure that cases involving major seizures or repeat offenders are systematically adjudicated through the VRC and the BOG, resulting in deterrent sentencing. Conduct MOCI-directed workshop between VRC and BOG to speed up process and agree on a framework for execution of deterrent cases.
- Widely publicize all enforcement actions, including press statements by high government officials that piracy will no longer be tolerated and that deterrent sentencing will be applied against pirates.
- Fully populate the MOCI website with data on raids, hearing dates, judgments and penalties commencing at the beginning of 2008 through the present, in both Arabic and English.
- Create a framework for increasing deterrent penalties including a prosecutorial position within the VRC.
- Reactivate the Police Committee in Riyadh and duplicate committees in other major cities to assist with street vendor raids and to investigate and bring charges as appropriate against large producers and distributors of pirate product. Greater police involvement is critical and has yet to be ensured.
- Establish special cyber crime unit within the Police Committees and an Internet piracy unit at MOCI, and MOCI should work closely with the Communication and Information Technology Commission (CITC) to take actions against Internet piracy. CITC is currently blocking websites for pornographic content but not for copyright violations. CITC should act on its own to identify websites and coordinate with MOCI to block such websites.
- Enforcement of marketing conditions should occur, meaning raids and takedown actions against pirate products which are both freely available on the streets and advertised online.
- MOCI, the police, and rights holders should cooperate to develop a plan to convert compounds to legitimacy, bringing pay-TV piracy in the compounds to an end.
- The customs system must be reformed to establish an IPR Task Force and Saudi Customs must impose deterrent fines on importers of seized product.
- Make significant progress toward legalizing software use within the KSA government. Despite a decree from the King directing all Saudi government entities to ensure they use legal software, unlicensed software use within the Saudi government is significant. Budget unavailability and the refusal of the Ministry of Finance to grant budget have been raised as reasons for the lack of progress.

Legislation

- Amend Copyright Act to fully implement (and join) the WIPO Copyright Treaty (WCT) and WIPO Performances and Phonograms Treaty (WPPT), including ensuring that the law provides incentives for Internet Service Providers (ISPs) to cooperate with rights holders against online piracy.

PIRACY UPDATES IN SAUDI ARABIA

Enterprise End-User Software Piracy and Government Legalization of Software: The software piracy rate in Saudi Arabia was 51% in 2011, above the global average of 42%, and representing a commercial value of unlicensed software of \$449 million.⁵ Enterprise end-user piracy of software and insufficient government legalization continue to be major contributors to the software piracy problem in Saudi Arabia. Reductions in software piracy would result in positive gains for Saudi Arabia's economy. A study released in 2010 by IDC and BSA found that reducing the PC software piracy rate in Saudi Arabia by 10 percentage points over four years would generate \$786 million in

⁵BSA | The Software Alliance's 2012 Global Software Piracy Study, conducted with two leading independent research firms, IDC and Ipsos Public Affairs, measured the rate and commercial value of unlicensed PC software installed in 2011 in more than 100 markets. In 2011, the software piracy rate in Saudi Arabia was 51%, representing a commercial value of unlicensed software of US\$449 million. These statistics follow the methodology compiled in the Ninth Annual BSA and IDC Global Software Piracy Study (May 2012), <http://portal.bsa.org/globalpiracy2011/index.html>. The BSA study covers piracy of all software run on PCs, including desktops, laptops, and ultra-portables, including netbooks. It includes operating systems, systems software such as databases and security packages, business applications, and consumer applications such as games, personal finance, and reference software. It also takes into account free software, open source software, and software as a service if it is paid for. It does not cover software that runs on servers or mainframes and routine device drivers, free downloadable utilities such as screen savers, and software loaded onto tablets or smartphones. The methodology used to calculate this and other piracy numbers are described in IIPA's 2013 Special 301 submission at <http://www.iipa.com/pdf/2013spec301methodology.pdf>.

GDP, \$19 million in additional tax revenues and 1,420 new IT jobs. The benefits would be even greater if this reduction was achieved in two years, which would yield \$1 billion in GDP and \$25 million in additional tax revenues.⁶

Hard Disk Loading and Street Vendor Sales Also Harming Industries: The software industry also notes that hard disk loading by resellers and street vendor sales are harming the industry's capacity to sell legitimate product in Saudi Arabia. Major street piracy continues in the main three regions being Eastern (Dammam, Khobar, and Dhahran), Central (mostly Riyadh) and Western (Jeddah, Makkah, and Madinah). The continued prevalence and indeed growth of street vendor piracy sends the message that addressing the issue is not high on the country's agenda.

Internet Piracy Proliferating: With legitimate digital services launching in Saudi Arabia (along with phone offerings such as the iPhone5), it is incumbent upon the Saudi government to ensure an adequate legal and enforcement framework exists to deal with inevitable digital or online piracy.⁷ By 2012, there were a reported 13 million Internet users in Saudi Arabia (representing 49% of the population),⁸ and 1.6 million fixed broadband subscriptions.⁹ As a result, online piracy has grown to become a serious problem in Saudi Arabia in recent years.

Pay-TV Piracy (Especially on the Compounds): Piracy of content on premium services like Orbit, Showtime, and Abu Dhabi Media Company in the compounds continues to be a very serious problem in Saudi Arabia. Each compound has thousands of homes under central management controlling and operating cable services. The compounds utilize smart cards, installing them in their centralized "head end" and then redistributing pay-TV channels without the authorization of the content owners or distributors to thousands of homes. The management of these compounds are very influential and can clearly afford to pay for premium channels but choose not to do so.

ENFORCEMENT UPDATES IN SAUDI ARABIA

Deterrent Enforcement and Penalties Lacking Across the Board: A significant hurdle to dealing with the piracy problem in Saudi Arabia continues to be the lack of overall and sustained deterrence. IIPA acknowledges the important BOG conviction against the owner of *Video Mesfir* for copyright piracy. This case, along with sustained enforcement results in 2010 and some VRC administrative cases resulting in maximum fines, gave hope that a level of deterrence would be achieved.¹⁰ Unfortunately, these results were not sustained in subsequent years. The software industry reports that through 2012, there were only 130 cases, all resulting in non-deterrent fines. The lack of an adequate number of MOCI inspectors in the copyright departments (reportedly there are only three in Riyadh at this time and two in Jeddah) is a principle cause for a lack of significant raiding activity in Saudi Arabia. IIPA has recommended above a systematic plan to increase human resources in terms of MOCI inspectors, and also recommends the systematic involvement of the Ministry of Interior to spearhead investigations, raids and

⁶Business Software Alliance and IDC, *Piracy Impact Study: The Economic Benefits of Reducing Software Piracy: Saudi Arabia*, 2010, at http://portal.bsa.org/piracyimpact2010/cps/cp_saudi-arabia_english.pdf.

⁷Noelle Manalastas, *Apple Opens iTunes Store in Middle East, Unveils iPhone 5 Release Date*, Al Arabiya News, December 5, 2012, at <http://english.alarabiya.net/articles/2012/12/06/253621.html>.

⁸European Travel Commission, NewMedia TrendWatch, *Saudi Arabia*, December 19, 2012, at <http://www.newmediatrendwatch.com/markets-by-country/11-long-haul/58-saudi-arabia>.

⁹International Telecommunication Union, *Fixed Broadband Subscriptions 2000-2011*, at <http://www.itu.int/ITU-D/ict/statistics/material/excel/Fixed%20broadband%202000-2011.xls>, accessed on January 10, 2013.

¹⁰In 2010, under H.E. Al-Hazzaa's leadership, raids against street vendors and retail operations continued at a steady rate but apparently with some fall off. The MOCI IPR Standing Committee 2011 Special 301 submission indicated there were "225 eligible cases" of copyright infringement, with cumulative fines of more than SR3.2 million (US\$853,000), SR836,500 (US\$223,000) in compensation to right holders, more than 400,000 items seized, and 1,320 "closure days" for infringing shops. Kingdom of Saudi Arabia, Ministry of Commerce and Industry, Intellectual Property Rights Standing Committee, *KSA Report for the USTR 2011 Special 301*, March 2011 (on file with IIPA). IIPA reported in its 2010 Special 301 submission that the VRC had been clearing more cases than in the past and that administrative penalties had increased, including a few cases involving the maximum penalty of SR100,000 (US\$26,665). The VRC had also started awarding civil damages in its administrative cases and in 2008 had done so in 19 cases involving software piracy. The average of the fines and damages was around US\$3,000, which remains too low. The total of all fines and damages in 19 cases were SR148,000 or US\$39,466.

prosecutions against source piracy. Moreover, the Ministry should appoint a prosecutor to take charge of cases before the VRC as recommended.

Enforcement Against End-User Piracy and Reseller Piracy: Effectively reducing end-user piracy of software will require an increase in human resources and removal of other hurdles to effective and deterrent enforcement. The low number of MOCI inspectors (reported to be five overall) allowed at most 40 to 50 visits to end-users in 2012, for example. If the current trend were followed, given the more than 700,000 registered companies in Saudi Arabia, it would take more than 2,000 years to visit all the companies. The visits conducted are also not that effective, as the technical knowledge of the existing inspectors is limited. This creates issues in identifying the existing infringements and results in some of the visits detecting no infringements (this is particularly problematic in Eastern Saudi Arabia, such as Dammam, Khobar, and Dhahran). In Western Saudi Arabia (Jeddah, Makkah, and Madinah), enforcement efforts remain weak, with only four to five inspections in all of 2012. Where raids are effective and result in fines, the fines are so low that they do not even amount to the cost of doing business. Finally, MOCI faces hurdles in end-user raids involving end-users refusing access to run the raid; as a result, Police should accompany the MOCI inspectors. Otherwise, delays are incurred while MOCI awaits approval from the government which usually takes a month (or more).

In 2012, MOCI's Director of Copyright reportedly revealed new measures to target companies and individuals who continue to be involved in the trade and use of pirated software; it is yet to be seen whether these measures will have a sustained effect,¹¹ but industry reports that only 50 or so reseller raids were conducted in 2012. There is very little enforcement against street piracy in Riyadh (in fact, only one action in 2012 reported with seizure of 17 cars used for infringement), and virtually no enforcement in Eastern or Western Saudi Arabia.

Little Progress on Government Legalization: At the 2009 IPR Working Group meeting between the U.S. government and the Saudi Arabian government, commitments were made by MOCI to upgrade and legalize the government's software use. MOCI was to have also undertaken an inventory, but no results have been provided to industry. The prospect of imminent progress on this front was a key element of IIPA's recommendation several years ago to remove Saudi Arabia from the Watch List. In addition, industry has reported sharp increases in high-quality (and thus deceptive) counterfeit software being sold to Saudi government ministries as part of hardware purchases. This ominous development should have led to immediate enforcement action against such vendors. It was requested by industry, but MOCI has not taken action, well over three years after the initial discovery of these high-quality counterfeits, incidentally purchased by a public sector customer. The computers purchased with such software were merely returned to the vendor. MOCI should communicate with all government entities on such issues and lead an initiative to address piracy in the Saudi government, including tackling suppliers of pirated software such as in the instance noted.

Customs Choke Point Needed to Halt UAE and China Imports: Unfortunately, much of the physical hard goods piracy in Saudi Arabia is coming in from UAE duty-free zones and China. Customs has not been active, however, and should now be directed to strictly enforce against piratical imports, including taking *ex officio* actions.

Enforcement Against Internet Piracy Lacking: With growing Internet piracy, it is time for the Saudi Arabia government to become more active in effectively enforcing the Copyright Law against infringing websites and links. IIPA understands that VRC has obtained more than 50 judgments under the leadership of MOCI Deputy Minister Ahmed Al-Hoot to disable infringing websites. Also, we understand MOCI has sent a letter to CITC requesting that CITC send a directive to all ISPs to deal effectively with online infringements. CITC, which regulates ISPs and the telecom industry in general, has taken actions to disable access to foreign websites, but has done so on the grounds that they violate Saudi censorship laws. Meanwhile, efforts have been ongoing to convince MOCI to set up an

¹¹ Rodolfo Estimo Jr., *New Law Enacted to Stamp Out Piracy in Saudi Arabia*, June 5, 2012, at <http://arabnews.com/new-law-enacted-stamp-out-piracy-saudi-arabia>.

Internet piracy unit within the Copyright Department rather than have this enforcement undertaken strictly through CITC. It is imperative for both CITC and MOCI to develop comprehensive regulations on addressing copyright violations committed over the Internet. A cybercrime unit should also be set up within the police, as requested in recent years' submissions. Any solution must include both hosted as well as remotely accessible content and address infringements over peer-to-peer (P2P) networks.

Enforcement Against Pay-TV Signal Theft in the Compounds: Enforcement against pay-TV piracy is complicated because it is very difficult for the police to enter compounds quickly and easily; they are heavily guarded by private security firms and by the time the raid team finally gets to the head end often the evidence of piracy has conveniently disappeared. The Ministry and the police had indicated that they would begin taking action in this area. Some actions have indeed been taken, including letters written to the compounds by then Deputy Minister Al-Hazzaa. Complaints made to the VRC have simply not been acted upon. Another major issue affecting Pay TV stakeholders is the illegal importation, distribution and sale of decoder boxes that circumvent encryption technologies. The government is very cooperative in seizing these illegal products, but, as with other kinds of piracy in the Kingdom, penalties are small or nonexistent. Far heavier penalties, including referring these cases to the BOG, is critically needed.

Enforcement Against Book Piracy and Music Piracy: Publishers have within the last two years commenced an aggressive enforcement program. They have received good cooperation from MOCI and regular raids were being run upon request as of a couple years ago. Raiding needs to be extended to all sectors, including the music and recording industry which suffers very high rates of piracy in the Saudi market, both physical and online. Again, however, without deterrence in the form of significant penalties imposed by the VRC and BOG, merely conducting more raids will not result in significant change in the market.

Transparency and Public Awareness: From 2009 to 2011, there was some progress in posting new cases on the MOCI website, but now the website shows the sign "under development" and there seems to be little transparency. Unfortunately, the commitment to complete population of cases on the website (and to have them translated into English) by late 2010 has not been fulfilled. Right holders have been able to participate in VRC proceedings upon request and the right to appeal results and penalties to the BOG has been confirmed. MOCI has yet to put into place mechanisms enabling effective exchange of information and cooperation between Saudi enforcement authorities and foreign right holders whose anti-piracy operations, especially in the Internet sphere, are frequently run from outside Saudi Arabia. There should be clear information, available in English, on the organizational structure and responsibilities within MOCI as well as named contact persons for handling cooperation with foreign-based representatives of affected right holders. In addition to the above, any deterrent result will not have its intended effect in Saudi Arabia unless it is properly publicized. MOCI should help develop a PR plan to capitalize on enforcement actions now occurring and create the right level of coverage, and therefore the expected effect for deterrent enforcement actions.

COPYRIGHT LAW AND RELATED ISSUES

Remaining Deficiencies in Saudi Law Related to Deterrence: Virtually all the deficiencies in the Saudi Copyright Law previously identified by IIPA were remedied in the Copyright Law implementing regulations adopted in 2005. 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. It remains very important to ensure that the penalties structure for the VRC and BOG remain high enough to deter piracy, and we would request a review to ensure that penalties are indeed high enough to deter.

Amendments to Adopt (and Join) WCT and WPPT: IIPA has continually impressed upon Saudi officials the importance of developing the legal infrastructure to deal with Internet infringements by fully implementing, and

then joining, the WCT and WPPT. Nearly seven years have passed since Saudi government representatives indicated to their U.S. government counterparts that they had commenced a review of the WCT and WPPT issues and that the next step was to seek WIPO's advice on how best to proceed with implementing legislation. IIPA understood that in 2010, questions were being prepared for WIPO. It is clear that key to implementation will be protecting technological protection measures (TPMs) against unlawful circumvention, and ensuring 1) coverage of TPMs that control access to, as well as the exercise of exclusive rights in, works, sound recordings, and other subject matter; 2) cover trafficking in circumvention devices and technologies, as well as services to provide circumvention of TPMs; 3) ensure exceptions are narrow enough to preserve the adequacy and effectiveness of protection; and 4) ensure remedies against violations involving TPMs provide effective deterrence. In addition, the government must ensure that adequate rights are afforded as to communications to the public, including the interactive making available of works, sound recordings, and other subject matter. It is past time for the government of Saudi Arabia to act to provide an adequate legal framework for protection of copyright on the Internet.

TRAINING AND PUBLIC AWARENESS

IIPA members and member companies have provided some training in 2012 to enhance the protection of copyright. For example, BSA has worked with MOCI to train MOCI inspectors in how to investigate and address software piracy. One BSA member has supported training three to five Saudi nationals yearly in its "Academy Program," a full year program which includes software expertise and also teaches about the importance of IP rights. This member also supported a training program for Saudis called ITQAN where 100 Saudi nationals were trained for an average of three months to better ready them to work in the area of software development, resulting in immediate employment for 80% of them. BSA members are working with the Ministry of Labor to increase this program to train thousands of future software industry employees.