

SAUDI ARABIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Saudi Arabia be placed on the Watch List in 2014.¹

Executive Summary: The Kingdom of Saudi Arabia (KSA) stands as one of the largest potential markets for copyright owners in the Middle East. The market's consistent under-performance is attributable to piracy; to insufficient KSA Government resource allocation; and to market barriers (such as import restrictions on many copyright products and onerous and unduly complicated content review processes). KSA retains the highest piracy rates in the Gulf region, in the 90% range for movies and music, unacceptably high for entertainment software and publishing, and persistently high software piracy rates (51% in 2011, with little to no improvement over the last five years). High-quality counterfeits enter into the channels of commerce in Saudi Arabia from UAE (duty-free zone) and China. The KSA Government has made little progress in legalizing its software use, and street vendor and signal piracy continue to be major irritants. Positive developments include the Board of Grievances (BOG) issuance of its first deterrent penalty against a recidivist video pirate; the Violation Review Committee (VRC) consistently increasing penalties and improving the efficiency of handling cases; increased and sustained raiding; some successful enforcement against Internet piracy websites and services; and increased transparency with right holders. However, these developments are insufficient to make a permanent dent in piracy. The United States has a Trade and Investment Framework Agreement (TIFA) with the KSA Government, and will hold talks in February 2014. IIPA recommends that the U.S. Government use the TIFA process to obtain commitments from the KSA Government to take necessary steps to address the particular issues discussed below, in the near term, in order to make space for legitimate commerce in copyright works.

PRIORITY ACTIONS REQUESTED IN 2014

Enforcement

- Implement Ministry of Culture and Information (MOCI) plan to add 300 employees, including 150 inspectors, and put in place an appropriate and carefully managed reward and recognition program.
- Issue a mandate to legalize software usage within KSA Government ministries and grant authority to MOCI to audit and enforce legalization.
- Establish a special cybercrime unit within the Police and an Internet piracy unit at MOCI; work closely with the Communication and Information Technology Commission (CITC) to take more actions against Internet piracy.
- Ensure that cases involving major seizures or repeat offenders are systematically adjudicated through the VRC and the BOG, resulting in deterrent sentencing.
- Legalize pay TV usage throughout the KSA, especially on compounds.

Legislation

- Ensure penalties structure is adequate to deter piracy.
- 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 right holders against online and mobile piracy.
- Adopt changes to content review regulations and/or practices for music that currently limit the operations of legitimate platforms while having no impact on pirate services.

¹For more details on Saudi Arabia's Special 301 history, see previous years' reports at <http://www.iipa.com/countryreports.html>. For the history of Saudi Arabia's Special 301 placement, see <http://www.iipa.com/pdf/2014SPEC301HISTORICALCHART.pdf>. For a discussion of IIPA's 2014 Key Initiatives and Challenges, see IIPA, 2014 Special 301 Submission, at <http://www.iipa.com/pdf/2014SPEC301COVERLETTER.pdf>.



PIRACY AND ENFORCEMENT UPDATES IN SAUDI ARABIA

Prior IIPA reports on the Kingdom of Saudi Arabia contain detailed discussions of piracy and enforcement issues. This report serves only as an update to those and is not to be considered an exhaustive review of issues.²

Enterprise End-User Software Piracy Hinders Development of Software Industry: High levels of unauthorized use of software in enterprises cause mounting losses to the software industry in Saudi Arabia. The enterprise 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.³ In an effort to increase the frequency and effectiveness of inspections on enterprises to detect unauthorized use or under-licensing, MOCI has agreed with a plan to increase the number of employees by 300, adding 150 additional inspectors; now the plan must be implemented. This is critical, as is an appropriately tailored reward and recognition program, to ensure that such efforts are effective in reducing piracy throughout the Kingdom. The Minister of Culture & Information sent his request (and two reminders) to the King, but has not received the required support and approval yet. Implementation thus awaits the King's order to the Ministry of Finance (MOF) to provide the manpower and required budget. The current (and very low) number of MOCI inspectors (reported to be 12-15 overall) is inadequate to address the enormity of the enforcement challenges. Without the reward and recognition program, existing inspectors will have little incentive to do their job. We appreciate the support of MOCI Vice Minister Dr. Abdullah Al-Jasser in helping guarantee higher levels of support and resources. It should be noted that the 12-15 copyright inspectors pales by comparison with the 600-800 Inspectors at the Ministry of Commerce tasked with enforcing against trademark-related issues.

Where inspections are run and fines are meted out, the fines are usually so low that they do not even amount to the software license fee. Fines therefore provide no incentive for companies to legalize. In some cases, end-users have refused access to inspectors, emphasizing the need for Police cooperation with MOCI inspectors. Further, industry reports over 150 enforcement activities related to software piracy took place in 2013, including against resellers, maintenance workshops, and street vendors. However, such activities are minimal compared to the amount of piracy in the marketplace and compared to requests (rejected due to lack of capacity). One positive development involves case handling by the VRC. When cases are brought to the VRC, that body has improved its execution dramatically over the past year. They have very few outstanding cases, and there has been an improvement in the penalties issued and damages awarded. Unfortunately, the overall effect of this improvement has not led to greater deterrence. One reason for this is the bottleneck at the BOG. Cases handled by the VRC are invariably appealed to the BOG (the infringer has 60 days to appeal a judgment by the VRC), and cases appealed to the BOG can take years to complete.

Little Progress on Government Legalization: MOCI has committed to upgrade and legalize the KSA Government's software usage, undertaking an inventory and reporting out to industry. However, the inventory and reporting has not yet occurred.⁴ In 2013, MOCI's Department of Copyright conducted a summit for KSA Government agencies, and strong messages were sent by the Vice Minister for all KSA agencies to legalize. However, the reality is that very few accounts have actually legalized, and the bulk of Ministries still will not respond to requests to discuss the matter with industry. IIPA understands that a Decree from the King has previously been issued, directing all KSA Government entities to use legal software, but the refusal of the MOF to grant them adequate budgets has been raised as a reason for the lack of progress. The Saudi leadership should once again issue a mandate to KSA Government ministries, requiring them to procure and use only licensed software, and granting authority to MOCI to audit and enforce compliance. The Government should also issue decrees directed at the MOF to ensure proper budgeting for the same. The KSA Government should publicize quarterly reports detailing progress in this initiative.

²See, e.g., IIPA, *Saudi Arabia*, 2013 Special 301 Report, February 8, 2013, at <http://www.iipa.com/rbc/2013/2013SPEC301SAUDIARABIA.PDF>.

³Data on software piracy rates and commercial values are taken from the 2011 BSA Global Software Piracy Study at www.bsa.org/globalstudy. This study assesses piracy rates and the commercial value of unlicensed software installed on personal computers during 2011 in more than 100 markets. The study includes a detailed discussion of the methodology used. BSA plans to release an updated study in the second quarter of 2014.

⁴In 2009, industry reported sharp increases in high-quality counterfeit software being sold to KSA Government Ministries as part of hardware purchases. While the computers purchased were returned to the vendor, industry requested immediate enforcement action against such vendors, but although five years have passed, MOCI has not taken action.

BSA members have offered support for third-party software asset management to identify current deficiencies in government legalization and on-going mechanisms to ensure continued compliance.

Internet Piracy Proliferating Despite Good Enforcement by MOCI: By the end of 2012, there were a reported 1.9 million fixed broadband subscriptions, well over 100% mobile penetration (53 million mobile subscriptions for a population of just over 28 million), and over 15 million total Internet users in Saudi Arabia (representing 54% of the population), according to the International Telecommunications Union (ITU).⁵ With legitimate digital services such as iTunes, Deezer, and Nokia Music launching in Saudi Arabia, it is incumbent upon the KSA Government to ensure an adequate legal and enforcement framework exists to make space for legitimate e-commerce in copyright materials. Unfortunately, thus far, right holders have witnessed a proliferation of online and mobile piracy services that hinder the development of legitimate business models.⁶ While MOCI has cooperated well with industry on addressing some infringing websites and services brought to its attention, and is to be commended for these efforts, it is critical that MOCI take a new more proactive position. The next stage should involve establishing a special cybercrime unit within the Police Committees and an Internet piracy unit at MOCI that would work closely with the CITC to take further actions against Internet piracy. In addition, the computer cybercrime unit at the Ministry of Interior (MOI) should incorporate itself into this process. MOCI has sent a letter to CITC requesting that CITC send a directive to all ISPs to deal effectively with online infringements. This is a positive step.

Hard Disk Loading and Street Vendor Sales: Right holders continue to report harmful hard disk loading of software and hard goods street piracy by resellers in the eastern (Dammam, Khobar, and Dhahran), central (mostly Riyadh) and western (Jeddah, Makkah, and Madinah) parts of the Kingdom. The KSA Government ran a “zero tolerance” policy in the past toward street vendor piracy with positive effect. The Copyright Department executed some raids in 2013 against street vendors selling pirate goods and confiscated their vehicles, and the VRC issued the first judgment on a fine against a street vendor. This is a commendable step, and more should be done, including re-commencing the zero tolerance policy until street piracy becomes a *de minimis* problem. The Police Committees in Riyadh and in other major cities should be assigned to run street vendor investigations, raids, and prosecutions as appropriate against large producers and distributors of pirate product. Marketing (and content) restrictions greatly hinder legitimate right holders and should be eased, but in the absence of steps to do so, at least they should be imposed against pirate sellers who sell uncensored pirate materials without regard to the restrictions. In addition, as many products are coming into the Kingdom from the UAE free trade zone as well as from Asia (mainly China), Saudi Customs must reinvigorate its efforts, including on an *ex officio* basis, to seize and detain pirated and counterfeit products, and to impose deterrent fines on importers of seized product. Prosecutions should once again ensue, so that the first conviction achieved in the *Video Mesfir* case does not prove to be an isolated case. Cases involving major seizures or repeat offenders must systematically be adjudicated through the VRC and the BOG, resulting in deterrent sentencing.

Pay TV Piracy: Piracy of pay TV content in Saudi Arabia remains serious, notwithstanding that we are aware Saudi Customs has seized some decryption equipment.⁷ Premium channels and services are targeted, and the problem is particularly severe in the compounds. 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 authorization or payment to right holders. The management of these compounds are very influential and can clearly afford to pay for premium channels but choose not to do so. MOCI, the KSA Police, and right holders should cooperate to develop a plan to convert compounds to legitimacy, bringing pay TV piracy in the compounds to an end.

Enforcement Against Book Piracy Should Continue, and Should Commence Against Music Piracy: Publishers have received good cooperation from MOCI and raids have been run upon request. Raiding needs to be

⁵See International Telecommunications Union, *Statistics*, at <http://www.itu.int/en/ITU-D/Statistics/Pages/default.aspx>.

⁶Many notorious sites (i.e., those recommended to USTR by IIPA as “notorious markets” for piracy in October 2013) are among the top 100 sites accessed in KSA, and some websites, such as *3asq.com* (the 73rd most accessed site in KSA), and *myegy.com* (54th) have an apparent nexus to, and/or are peculiarly popular in the Kingdom, like *subscene.com* (28th).

⁷A major issue affecting pay TV stakeholders is the illegal importation, distribution and sale of decoder boxes that circumvent encryption technologies.

extended to the music and recording industry which suffers very high rates of piracy in the Saudi market, both physical and online. In 2013, the MOCI, in collaboration with the Ministry of Education, completed an awareness campaign directed at all universities about the importance of adhering to the copyright law and not using pirated textbooks or photocopies.

COPYRIGHT LAW AND RELATED ISSUES

Remaining Deficiencies in Saudi Law Related to Deterrence: Most of the deficiencies in the Saudi Copyright Law previously identified by IIPA in previous filings were remedied in the Copyright Law implementing regulations adopted in 2005. A few deficiencies remain, however. The law does not appear to mandate destruction of infringing goods, and does not include the award of costs and attorney's fees as provided for in the TRIPS Agreement. Furthermore, statutory prison sentences remain very low. It is very important to ensure that the penalties structure for the VRC and BOG remain high enough to deter piracy.

Amendments to Implement WCT and WPPT: The KSA Government is apparently consulting with stakeholders and the World Intellectual Property Organization (WIPO) about plans to develop an adequate legal infrastructure to deal with Internet infringements by fully implementing, and then joining, the WCT and WPPT. It is clear that the key to implementation will be protecting technological protection measures (TPMs) against unlawful circumvention. This should include: 1) covering TPMs that control access to, as well as the exercise of exclusive rights in, works, sound recordings, and other subject matter; 2) prohibiting trafficking in circumvention technologies, software, devices, components, and services; 3) ensuring exceptions are narrow enough to preserve the adequacy and effectiveness of protection; and 4) providing deterrent civil and criminal remedies against violations involving TPMs. In addition, the KSA Government should ensure that adequate rights are afforded as to communications to the public, including the interactive "making available" right as to works, sound recordings, and other subject matter, and that broadcasts or public performances of sound recordings provide adequate compensation to record companies and performers. Furthermore, the KSA Government should take steps to ensure that content review regulations and limitations on the operation of foreign invested enterprises do not create impediments to the efficient functioning of legitimate enterprises. While a number of well-known online music platforms are operational in KSA, they have limited catalog due to content review uncertainties (which of course are not followed by pirate sites).