

# UNITED ARAB EMIRATES

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2014 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that the United Arab Emirates be placed back on the Watch List in 2014.<sup>1</sup>

**Executive Summary:** After many years off the Special 301 lists, the situation in the United Arab Emirates is serious enough to warrant its placement back on the Watch List. For years, IIPA members experienced exemplary enforcement efforts on the part of the Dubai Police, the Telecommunications Regulatory Authority (TRA), the Ministry of Information and Culture (MOIC), the Departments of Economic Development of various Emirates, and until two years ago, the Ministry of Economy (MOE). With an emerging online and mobile marketplace, including legitimate online/mobile music services launching in the region, and sold-out concerts for many major music acts, it is critical that the Government implement the UAE Copyright Law (“Federal Law No. 7 of 2002 Concerning Copyrights and Neighboring Rights”) so that music right holders can be compensated through their established collecting society. Compensation for the commercial use of music is critical not only for U.S. companies but also as a source of revenue for investment in local cultural production and the development of a robust local industry that can develop local talent. Internet and mobile piracy has become severe, requiring a much more coordinated enforcement response. The software piracy rate in enterprises is higher than it should be for this economically developed marketplace, and other problems like hard disk loading and Customs’ re-exportation of counterfeits is now having an adverse effect on piracy in other countries in the Gulf and throughout the Middle East, Africa, and Europe.<sup>2</sup> The Economic Policy Dialogue (EPD) is addressing these issues, but concerns remain that the UAE Government will stall on collective management and that other problems will not be addressed with priority.

## PRIORITY ACTIONS REQUESTED IN 2014

- Allow collecting societies to begin collecting royalties under the Copyright Law.
- Have the MOE take proactive enforcement against Internet piracy, including properly instructing the TRA with respect to Internet sites involved in the distribution of infringing copyright materials and circumvention tools.
- Cease the practice of re-exporting seized counterfeit goods, potentially in violation of TRIPS.
- Modernize the Copyright Law to ensure adequate protection against circumvention of technological protection measures (TPMs) and trafficking in circumvention technologies, devices, components, or services.
- Ensure enforcement in malls outside of the cities and Free Zones, which are currently rife with pirated and counterfeit product.

## PIRACY AND ENFORCEMENT ISSUES IN UAE

Prior IIPA reports on UAE contain detailed discussion 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.<sup>3</sup>

**Allow Legitimate Collection of Royalties for Uses of Phonograms:** Broadcasting and public performance (such as in hotels, restaurants, shops, discos, bars, dance schools, airlines, etc.) are increasingly

<sup>1</sup>For more details on United Arab Emirates’ Special 301 history, see previous years’ reports at <http://www.iipa.com/countryreports.html>. For the history of UAE’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>.

<sup>2</sup>According to a European Commission study, the UAE was second after China in seizure/detention of suspect infringing goods in the EU (8.37% of all infringing goods seized in the EU were sourced from the UAE). See European Commission, *Report on EU Customs Enforcement of Intellectual Property Rights Results at the EU border 2012*, August 2013, at [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/customs\\_controls/counterfeit\\_piracy/statistics/2013\\_ipr\\_statistics\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2013_ipr_statistics_en.pdf).

<sup>3</sup>See, e.g., IIPA, *United Arab Emirates*, 2013 Special 301 Report, February 8, 2013, at <http://www.iipa.com/rbc/2013/2013SPEC301UAE.PDF>.



important uses of recorded music, and are an essential element for the UAE's ability to develop local artists and to become a hub for the production of Arabic music. Licensing the use of recordings for these purposes has become an increasingly important part of the overall revenue stream for performers, producers of phonograms, songwriters, composers, and music publishers throughout the world. In the UAE, a conservative estimate of these revenues would be at least US\$15 million per year. Yet virtually nothing is being collected today, completely undermining the capacity of companies in the UAE to invest in promoting local artists and building artists' careers. The UAE Copyright Law provides the relevant rights.<sup>4</sup> Article 37 of the Law provides that anyone who engages in such exploitation without permission from the right holder infringes copyright and is made subject to criminal penalties and civil remedies. In addition, Section 16 of the Copyright Law enables the creation of collecting societies and provides for the undertaking of collective rights administration, and Ministerial Decision No. 133 of 2004 concerning the Collective Management of Copyrights and Neighbouring Rights established the basis on which licenses permitting collective management activities would be granted by the MOE. Based on the Law and Ministerial Decision, in 2004, the recording industry took steps to establish Emirates Music Rights Society ("EMRS") in the UAE to serve as a collecting society.

A decade later, things are at a standstill. MOE has not yet promulgated regulations that would permit the approval of a collecting society. Without such approval, there is no practical way for right holders to enforce their rights. Disappointingly, the latest reports indicate that the UAE is not planning to approve a national collecting society at all, instead waiting for the Gulf Cooperation Council to establish region-wide collective management. This is a major policy mistake, since such a trans-national society could not be established for several years, if ever. Meanwhile, the toll of uncollected royalties continues to mount. IIPA urges the U.S. Government to engage the UAE Government, through the EPD or otherwise, to address this long-festering problem by approving a collecting society as quickly as possible.

**Internet Piracy and Lack of Responsiveness from MOE:** According to the International Telecommunications Union (ITU), Internet broadband penetration in the UAE has skyrocketed, to almost 952,000 and nearly 10.3% of the population. ITU also indicates that 7.8 million people in the UAE (85%) now use the Internet, and this may be accounted for by mobile users (the mobile penetration rate far exceeds 100% at nearly 13.8 million), with well over half of those mobile users having access to the Internet through their phones or mobile devices (e.g., tablets). These numbers mean enormous opportunities for growth in legitimate copyright distribution models, as demonstrated by the launch of Digital Music Services in the Emirates.<sup>5</sup> Also, since TRA effectively owns large stakes in the key mobile operators, it would seem that a legitimate market could indeed flourish. Unfortunately, online and mobile device piracy in the UAE has also proliferated, harming all the content industries. Hundreds of websites provide illegal access to pre-release music, movies, television content, software, games, reference books, online journals, and trade books of top publishers.<sup>6</sup>

The TRA took action with respect to over 100 websites several years ago, including online piracy sites as well as sites making available circumvention devices for console-based videogames. Six criminal cases were launched against the worst of these sites. In addition, there were over 100 server addresses engaged in signal theft piracy against which TRA took action based on an MOE directive. Unfortunately, in 2012, MOE stopped issuing such directives, and enforcement ceased. Piracy and illegal circumvention activities online have increased since then. TRA appears ready to act and awaits further MOE instructions, and industry has undertaken significant preparatory activities, including test purchases of circumvention devices. MOE should now issue clear directives to TRA to take steps as they did in the past. In addition, MOE needs to resume working with TRA with respect to the sale of pirate hard goods, as well as circumvention technologies, devices, and components, over the Internet. The industry has

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<sup>4</sup>Specifically, Article 18 of the Law states that producers of phonograms enjoy rights to any exploitation (including copying, renting, broadcasting, re-broadcasting, disseminating by wire, wireless, computer or other means, or making available to the public via computer or other media) of their phonograms.

<sup>5</sup>Noelle 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>.

<sup>6</sup>Several notorious sites (i.e., those recommended to USTR by IIPA as "notorious markets" for piracy in October 2013) are among the top sites accessed in UAE, and some websites, such as *myegy.com* (the 91st most accessed website in UAE) is targeted toward UAE users. The tagline for *myegy.com* is "Download the latest and the most beautiful films of Arab and foreign Sweeter games, programs and songs and more services." The registrant and server information are masked.

tried to fill the void with notifications to some of the sites to demand that they cease distributing pirated materials and counterfeits (and reports indicate that ISPs are more cooperative when it comes to removing listings for sale of counterfeits than they are for piracy notifications). IIPA understands MOE has sent its own notifications to ISPs to cease distributing copyrighted content without authorization. IIPA commends the Cybercrime Department of the Dubai Police for stepping in during the lapse in enforcement, conducting a raid against a website service offering for sale pirated products and making available circumvention devices for console-based videogames.

**Software Piracy in All Its Forms Harming Right Holders:** The software industry notes increasing problems, including unlicensed software usage by enterprises, hard disk loading, and, most recently, Customs' re-exportation of seized counterfeit goods. Unlicensed use of software in enterprises makes up nearly 40% of all software use, with a commercial value of over \$200 million.<sup>7</sup> The problem needs to be addressed by conducting effective enterprise end-user raids. While the courts in the UAE have usually been a bright spot for right holders, in recent years, both piracy and counterfeiting cases have resulted in insignificant fines, and courts of first instance have even been reversed by the court of appeal (in favor of infringers) with significant fine reductions. Courts have struggled with finding a sufficient number of experts to conduct raids frequently enough. Right holders also face difficulties in ensuring that court-appointed experts have the proper level of authority to carry out effective end-user raids.

**Customs' Re-Exportation of Counterfeit Goods:** A major setback to right holders took place in 2013 when UAE Customs apparently decided to start re-exporting seized counterfeit goods rather than destroying them. Exacerbating this problem is a lack of transparency on Customs actions. The re-exportation of counterfeits sets a bad example for other countries, puts other markets around the region at risk, and may be a violation of the UAE's TRIPS obligations. Authorities are encouraged to cease this policy immediately and to create public-private partnerships with right holders to ensure wrongful re-exportation of illegal goods does not occur.

**Enforcement in Malls Outside the Major Cities and in Free Zone Areas:** While enforcement authorities in Dubai have undertaken a number of fruitful efforts, including Customs initiatives and the "open complaints" initiative of the Dubai Department of Economic Development, many enforcement challenges remain in the UAE, particularly in malls outside the main cities and in Free Zone areas. In view of the high volume of goods imported to the UAE, as well as the territory being used as a regional hub for goods in transit, and given recent detections of high levels of pirates and counterfeit product in places like Dragon Mart (scheduled to significantly increase its capacity with the completion of Dragon Mart 2) and the China Mall, the UAE authorities must ramp up efforts to enforce against pirate and counterfeit traffickers in these locales (many from China seeking to infiltrate the markets in the Middle East and North Africa) with deterrent enforcement actions.

## **COPYRIGHT AND RELATED LAW UPDATES**

**Amendments to the UAE Copyright Law:** IIPA understands MOE plans to enact amendments to the UAE Copyright Law to make certain needed changes, following a study by the Abu Dhabi Technology Development Committee. The plans reportedly include tougher policing and the establishment of specialized intellectual piracy courts, but further changes are also needed.

The current Law contains only rudimentary protections against the unauthorized act of circumvention of TPMs and against the trafficking in devices, technologies, components, and services that facilitate the circumvention of TPMs. The following should be prohibited: 1) the act of circumvention of a TPM that effectively controls access to copyright materials,<sup>8</sup> or the exercise of exclusive rights; and 2) the trafficking in devices, technologies, components,

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<sup>7</sup>Data on software piracy rates and commercial values are taken from the 2011 BSA Global Software Piracy Study at [www.bsa.org/globalstudy](http://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.

<sup>8</sup>It should be confirmed that access control TPMs are covered (at present, Article 38(1) covers a TPM "for preservation of specific standard of quality of the copies," which does not seem to cover all access control TPMs).

and services that facilitate the circumvention of TPMs (independent of the existence of any infringement). It should be made clear that violations involving TPMs are subject to both civil and criminal remedies.

Other changes that should be made in any amendments going forward include: 1) removal of unreasonable restrictions on the ability to freely contract;<sup>9</sup> 2) ensuring compulsory license provisions are in conformity with the Berne Convention Appendix<sup>10</sup>; 3) addressing restrictions on the ability of joint authors to use joint works without permission of the other joint author (Article 25); 4) ensuring TRIPS-compatible enforcement procedures are included, such as *ex parte* civil searches; 5) providing for statutory (pre-established) damages; 6) adding a presumption of subsistence of copyright; 7) extending terms of protection to life plus 70 years for natural authors and 95 years for works of corporate authors and for producers/performers of sound recordings; 8) confirming that costs and attorney fees are available to the prevailing party in infringement actions; 9) providing protection against unauthorized decryption of program-carrying signals, manufacture of decryption devices, and provision of decryption services; 10) raising minimum and maximum fines for copyright infringement (Article 37); and 11) adding provisions specifically related to Internet infringements, including notice and takedown, as well as fair and effective measures to deal with repeat infringers and non-hosted infringements on services with business models based on providing access to copyright infringing material.

**Draft Commercial Fraud Law Might Allow Re-Exportation of Counterfeit Goods:** As noted above, IIPA is deeply concerned by the recent decision of UAE Customs to allow the re-exportation to the country of origin of seized counterfeit goods. The draft commercial fraud law currently under examination reportedly would authorize MOE to issue decisions allowing the re-exportation of counterfeit goods to the country of origin, thus codifying this new troubling practice. This provision should immediately be scrapped from the draft law.

**Cyber Crime Law Should Include IP:** The Cyber Crime Law was recently updated to include, among other things, a specific provision on ISP liability. However, the Law does not cover ISP liability in connection with IP infringement. It would be useful if the Law could be clarified in implementing regulations to apply in cases of IP infringement.

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<sup>9</sup>For example, Articles 11 (right of transfer or to return to court for reconsideration) and 15 (making invalid “any action” with respect to “more than five” of an author’s works) are unreasonable restrictions, and should be left in general to marketplace solutions rather than be restricted as they are here by statute.

<sup>10</sup>Article 21 of the law provides for the possibility of reproduction of translation compulsory licenses consistent with the Berne Convention Appendix. In 2004, when the UAE joined the Berne Convention, the government availed itself of the Berne Appendix. See Berne Convention Members, World Intellectual Property Organization, at <http://www.wipo.int/export/sites/www/treaties/en/documents/pdf/berne.pdf>. In implementing any such licenses, the Government of the UAE must ensure that the rules of the Appendix are strictly followed.