

UNITED ARAB EMIRATES

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2015 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that the United Arab Emirates be placed on the Watch List in 2015.¹

Executive Summary: With an emerging legitimate marketplace for creative content, including the launch of legitimate online/mobile music services and sold-out concerts for many major music acts, the government needs only to approve the established collecting society under the UAE Copyright Law² for music right holders to be fairly compensated for the commercial use of their music. These payments are critical for U.S. right holders and 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. In the absence of a legitimate marketplace, Internet and mobile piracy have flourished, while re-exportation of counterfeits by Customs has had an adverse effect on legitimate markets in other countries in the Gulf and the Middle East, Africa, and even Europe.³

PRIORITY ACTION REQUESTED IN 2015⁴

- Take immediate action to allow the establishment and operation of a collecting society so that right holders can finally begin collecting royalties under the UAE Copyright Law.

PIRACY AND ENFORCEMENT ISSUES IN UAE

Prior IIPA reports on UAE contain detailed discussions of piracy and enforcement issues, including with respect to some of the past priority actions. This report serves only as an update on the collective management issue and is not to be considered an exhaustive review of other priority issues.⁵

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.) constitute increasingly important uses of recorded music globally, and of course in the UAE. Revenue collected from such uses, estimated to be in the tens of millions of U.S. dollars if collection is allowed, is an essential element for the UAE to develop local artists and to become a hub for the production of music in the region. 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. Specifically, Article 18 of the Federal Law No. 7 of 2002 Concerning Copyrights and Neighboring Rights states that producers of phonograms enjoy rights to any

¹For 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/2015SPEEC301HISTORICALCHART.pdf>.

²Federal Law No. 7 of 2002 Concerning Copyrights and Neighboring Rights.

³According to a European Commission study, the UAE was fourth, after China, Hong Kong, and Turkey, in seizure/detention of suspect infringing IP goods in the EU in 2013 (2.49% 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 2013*, July 2014, available at http://ec.europa.eu/taxation_customs/resources/documents/customs/customs_controls/counterfeit_piracy/statistics/2014_ipr_statistics_en.pdf.

⁴Prior years' filings have also identified the following priority actions, which also largely have not changed:

- Have Ministry of Economy (MOE) take proactive enforcement against Internet piracy, including properly instructing the Telecommunications Regulatory Authority (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 products.

⁵See, e.g., IIPA, *United Arab Emirates*, 2014 Special 301 Report, February 7, 2014, available at <http://www.iipa.com/rbc/2014/2014SPEEC301UAE.PDF>.



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. 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 Law enables the creation of collecting societies and provides for the undertaking of collective rights administration. 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 Ministry of Economy (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.

Now more than a decade later, right holders still find themselves without the ability to license on a collective basis. The 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. This needed development cannot happen quickly enough, since every day the losses mount to performers, producers of phonograms, songwriters, composers, and music publishers, and we call upon the government to take action to finally resolve this longstanding issue.

Other Issues: In the absence of collective management, and due to the lack of a proactive approach of the MOE with respect to copyright concerns, Internet piracy has proliferated.⁶ In addition, re-exportation of counterfeit/pirated goods began to occur in 2013, representing a major setback to right holders.⁷ Some retail piracy also continues in the malls, especially outside major metropolitan areas in the Emirates. These problems should be addressed.

COPYRIGHT AND RELATED LAW UPDATES

Amendments to the UAE Copyright Law: IIPA understands the 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 technological protection measures (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

⁶According to the Telecommunications Regulatory Authority (TRA), as of October 2014, Internet broadband penetration in the UAE had increased to more than 1.1 million subscriptions (an almost 15% jump from the previous year), and nearly 13.1% of the population. The UAE also boasts nearly 17 million active mobile users, meaning roughly 88% of the population now uses the Internet. These numbers mean enormous opportunities for growth in legitimate copyright distribution services, as demonstrated by the Anghami app and the launch of *Digital Music Services* in the Emirates in 2013. Unfortunately, online and mobile device piracy in the UAE remains a problem, including websites that provide illegal access to pre-release music, movies, television content, games, reference books, online journals, and trade books of top publishers. Several notorious sites are among the top sites accessed in UAE, including *kickass.so* (the 36th most accessed site in the UAE) and *Torrentz.eu* (64th). 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, but in 2012, the MOE stopped issuing such directives, and enforcement ceased. Piracy and illegal circumvention activities online have increased since then, although the Cybercrime Department of the Dubai Police has stepped in during the lapse in enforcement.

⁷In 2013, 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 prevent wrongful re-exportation of illegal goods. The draft Anti-Commercial Fraud Law, which was approved by the Federal National Council on March 4, 2014, reportedly amends the prior draft by distinguishing between "fraudulent and corrupt commodities" which may be re-exported back to the country of origin, and counterfeit goods, which must be destroyed. However, there are questions as to whether pirated goods (e.g., that do not contain a false trademark) could be considered "fraudulent and corrupt" but not "counterfeit" which would be problematic. Reportedly, further amendments will seek to clarify that as long as a good is "counterfeit" it must be destroyed even if it also qualifies as "fraudulent and corrupt." The drafters should ensure that pirated materials also fall within the category of goods that must be destroyed, and never re-exported. Rob Deans and Harriet Balloch, *Key Amendments to Anti-Commercial Fraud Law*, June 2, 2014, International Law Office, available at <http://www.internationallawoffice.com/newsletters/Detail.aspx?g=2587c727-a8fd-4e98-81e2-269be61c8441>.

TPM that effectively controls access to copyright-protected materials,⁸ or the exercise of exclusive rights; and 2) the trafficking in devices, technologies, components, 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;⁹ 2) ensuring compulsory license provisions are in conformity with the Berne Convention Appendix;¹⁰ 3) ensuring TRIPS-compatible enforcement procedures are included, such as *ex parte* civil searches; 4) providing for statutory (pre-established) damages; 5) adding a presumption of subsistence of copyright; 6) 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 (or at least 70 years from publication); 7) confirming that costs and attorney fees are available to the prevailing party in infringement actions; 8) providing protection against unauthorized decryption of program-carrying signals, manufacture of decryption devices, and provision of decryption services; 9) raising minimum and maximum fines for copyright infringement (Article 37); and 10) adding provisions specifically related to Internet infringements, including notice and takedown, as well as effective measures to deal with repeat infringers and non-hosted infringements on services with business models based on providing access to copyright infringing material.

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.

⁸It 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).

⁹For example, Articles 11 (right of transferor 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.

¹⁰Article 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.