

UNITED ARAB EMIRATES

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2016 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 2016.¹

Executive Summary: Yet another year has passed with no movement toward a regulatory structure that would allow music right holders to collect any compensation for the commercial use of their music in the UAE. As a major hub for tourism, and host to legitimate online and mobile music services and sold-out concerts for many major music acts, the UAE is in a position not only to follow through with payments that are critical for U.S. right holders but also to invest in local cultural production and the development of a robust local industry that can develop local talent. 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. Protracted content review, resulting in significant backlog in the availability of books in the market, is exacerbated by the lack of adequate personnel (book title monitors) at the National Media Counsel to conduct the reviews expeditiously. 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 region.³

PRIORITY ACTIONS REQUESTED IN 2016⁴

- 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.
- Create an expeditious content review procedure for clearing book titles for sale into the market, including by providing adequate resources and personnel to the National Media Council and by creating a central database of cleared titles to avoid repetition among the title monitors assigned to various book stores/retailers.
- Ensure enforcement in malls outside of the cities and Free Zones, which are currently rife with pirated and counterfeit products.

COPYRIGHT ENFORCEMENT ISSUES IN UAE

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 nothing is being collected today,

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/2016SPEC301HISTORICALCHART.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 IIPA reports on UAE have contained more detailed discussions of piracy and enforcement issues (see, e.g., IIPA, *United Arab Emirates*, 2014 Special 301 Report, February 7, 2014, available at <http://www.iipa.com/rbc/2014/2014SPEC301UAE.PDF>), and identified the following priority actions, which 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 WTO 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.



substantially 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 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 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).

More than a decade later, right holders still find themselves without the ability to license on a collective basis. There are however signs that the deadlock could be solved and UAE and international right holders could at long last start to benefit from the rights that were granted in 2002. Twofour54 — an Abu Dhabi Media Zone entity supported by a broad based right holder coalition — submitted in 2015 an application for an operating license for a music rights collective licensing organization to the MOE. The MOE should move swiftly to approve the application, which is made by a reputable local body and supported by the music industry across the board.

Expedite Content Review of Book Titles. The book publishing industry faces a protracted content review process in the UAE, particularly in Dubai. There appears to be no standard review process in the country. Instead, title monitors make determinations as to whether particular titles should or should not be sold in the UAE after what is often a lengthy process, whereby a monitor is assigned to a retail establishment, and is required to inspect each title and write a summary of it before making a determination—and this review does not apply to other retailers that may have ordered the very same title. Thus, it may be the case that while one retailer has been cleared to sell a title, the very same title may yet be unavailable at other retail shops (if review of the same title by another monitor at a different shop is still pending). The lack of a central database listing all titles reviewed and cleared for sale in the country contributes to the significant delay in bringing new titles to market. For instance, the reviews of many titles that were submitted in early 2015 still remain pending. While there is reportedly an effort to create a database of books authorized for sale in the market, it is unclear whether this has progressed at all. In addition to creating such a database (which would also alleviate duplicative reviews by different monitors), additional monitors should be trained and deployed to address the existing backlog.

Other Issues: Due to the lack of a proactive approach of the MOE with respect to copyright concerns, Internet piracy has proliferated.⁵ Customs enforcement in UAE has been ineffective, exacerbated by the requirement to file separate customs notices with each regional authority and the lack of coordination between these authorities. As a consequence, the UAE's out-of-city malls and free trade zone areas — such as the Dragon Mart (scheduled to significantly increase in capacity with the completion of Dragon Mart 2) and the China Mall — are rife with infringing product. Both of these are renowned forums for Chinese manufacturers and traders to showcase infringing products for trade throughout the Middle East and North Africa. While the Dubai Department of Economic Development enables right holders to seize infringing product through its open complaints mechanism, political will is required to

⁵According to the Telecommunications Regulatory Authority (TRA), as of October 2015, Internet broadband penetration in the UAE has increased to more than 1.16 million subscriptions, and more than 13% of the population. The UAE also boasts more than 17 million active mobile users (with well over 200 subscriptions per 100 inhabitants), meaning roughly 88% of the population now uses the Internet. These numbers mean enormous opportunities for growth in legitimate copyright distribution services. 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 *Torrentz.eu* (the 43rd most accessed site in the UAE) and *putlocker.is* (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 video games, 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.

tackle the magnitude of trade in counterfeit and pirated goods within these zones and enhance controls at the country's borders to prevent such goods from reaching them.

COPYRIGHT AND RELATED LAW UPDATES

Amendments to the UAE Copyright Law: The MOE has in recent years contemplated amendments to the UAE Copyright Law to make certain needed changes, following a study by the Abu Dhabi Technology Development Committee. The plans were reported to 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 TPM that effectively controls access to copyright-protected materials⁶ 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;⁷ 2) ensuring compulsory license provisions are in conformity with the Berne Convention Appendix;⁸ 3) ensuring WTO 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.

⁶It 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).

⁷For 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 by statute as they are here.

⁸Article 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, available 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.