

UNITED ARAB EMIRATES

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA) 2017 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 2017.¹

Executive Summary: Trafficking in hybrid set-top-boxes (STBs), which enable unauthorized access to both legitimate and pirated movie and TV channels, and other forms of television piracy are increasing, both within UAE and in transshipment to other markets. It has been 15 years since the UAE passed federal legislation providing for the possibility of collective rights administration. However, the Federal Council of the UAE has failed to issue an operating license to any such entity, or to right holders themselves, leaving music right holders without the possibility of exercising their rights under local copyright law and collecting compensation for the commercial use of their music. 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 and good jobs in the media sector. The government needs only to issue an operating license to a collecting society to enable music right holders to start licensing and collecting royalties. 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 Council to conduct reviews expeditiously. As broadband penetration has increased, Internet and mobile piracy have flourished, discouraging legitimate services in the market. UAE's copyright enforcement structure needs to be updated to counter this threat.

PRIORITY ACTIONS REQUESTED IN 2017

- Take immediate action to approve a collecting society so that right holders can finally begin collecting royalties under the UAE Copyright Law.
- Expedite the 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.
- Proactively enforce against Internet piracy, including by properly instructing the Telecommunication Regulatory Authority (TRA) to disable access to illegal websites and IP addresses.
- Modernize the Copyright Law to ensure adequate protection against circumvention of technological protection measures (TPMs) and trafficking in circumvention technologies, devices, components, or services, and to harmonize the copyright term with the emergent international norm.

COPYRIGHT PIRACY IN UAE

Roughly 92% of the UAE population now uses the Internet.² Mobile penetration is widespread, with well over 200 mobile subscriptions per 100 inhabitants. These numbers, and the affluence of the population, 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.

¹For more details on United Arab Emirates' Special 301 history, see previous years' reports at <http://www.iipawebsite.com/countryreports.html>. For the history of UAE's Special 301 placement, see <http://www.iipawebsite.com/pdf/2017SPEC301HISTORICALCHART.PDF>.

²See <http://www.internetlivestats.com/internet-users-by-country/>.



Online Piracy

Several notorious online piracy sites are among the top websites accessed in the UAE, including *123movies.is*, a streaming website that embeds popular movie and series content from third-party cyberlockers, and is the 29th most accessed site in the UAE. 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 Ministry of Economy (MOE) stopped issuing such directives, and enforcement ceased. Piracy and illegal circumvention activities online have increased since then, even though the Cybercrime Department of the Dubai Police has stepped in during the lapse in enforcement. Online piracy of books continues to increase, with file-sharing and User Generated Content (UGC) sites the primary online source of such unauthorized digitized (scanned) copies.

Television Piracy

With fast Internet bandwidth increasingly available in the UAE, media content is increasingly delivered through digital means rather than by satellite or terrestrial broadcast. Legitimate UAE platforms Etisalat, Du, and OSN Play offer satellite and streaming pay-TV to the UAE market. However, several different forms of piracy threaten the legitimate market for this content. Using the Internet as a low-cost form of delivery, pirates rip content feeds, upload the feeds on servers, and stream them through set-top-boxes that can decrypt the data feeds to be viewed on TV sets.

Hybrid Set-Top-Boxes: Hybrid STBs, which can receive both legal Free-To-Air channels and pirated TV channels if certain applications are installed in the device, have been entering the UAE market in large volume. These hybrid STBs operate over Internet protocol and are programmed to receive and decrypt specific digital feeds. They are illegally marketed, promoted, and sold to consumers through various sales channels including door to door, small retailers, and Internet sales. While the equipment and hardware for hybrid STBs are seemingly legitimate, the pre-loaded software allows access to pirated content. It is thus difficult to distinguish between legitimate STBs and illegal hybrid STBs preloaded with illicit software. Some of the common hybrid STBs in the UAE market are ones used for UKTV Abroad, UKTV Arabia, ip888tv.com and "Expat TV," which is gaining popularity amongst western expatriates in the UAE.

Circumvention of Territorial Restrictions: A number of pay-TV operators in Asia take advantage of the overspill of the satellites used to actively broadcast in their territories to promote, market, distribute and sell their services outside their licensed territories. These services are not authorized by their suppliers to sell in the UAE market, nor are they licensed by local regulators to operate and offer regulated services to the UAE public. The most blatant illustration of such illicit overspill services is India's Dish TV's operations in the UAE. Circumvention services, such as VPNs, DNS masks or Tor networks, which are widely available in the UAE, are also used to access and stream content from Internet-based TV and Video-On-Demand services that legitimately operate in different territories, but which have not been licensed for the UAE. This poses a direct threat to legitimate platforms which are currently offering the same content in the UAE.

Pirate Free-To-Air Channels: Pirate Free-To-Air channels in the region also harm the media industry. Free-To-Air channels are clear unencrypted channels which can be received and viewed without requiring a subscription. They are uplinked from many different locations across the region to satellites that have region-wide reach. It is difficult to apply consistent regulatory control to these satellites, which are not located in and do not have the rights to distribute the content to the UAE. There are an increasing number of these pirate Free-To-Air channels, and the multiple locations of satellites and lack of regulatory control for these channels makes it very difficult to control them or apply remedial measures for copyright infringement. Even when right holders are successful in closing down pirate Free-To-Air channels, the lack of regulatory control allows for these companies to reappear under a different channel or name. Two of the worst offenders are Majestic Cinema and Top Movies.

Impact on Legitimate Markets and Other Countries: Piracy of pay-TV and other media streaming channels not only affects right holders, but also harms cinemas, publishers, legitimate pay-TV service providers, and legitimate Free-To-Air channels which invest significant sums to license content and develop legitimate business models. These contribute to the economic development of the country, fund production of local content, create jobs and generate revenues for advertising and auxiliary industries. Outside markets such as India, Iraq, Iran, and the Gulf Cooperation Countries are also affected by piracy in the UAE. Dubai is a commercial hub for the region, and may affect legitimate markets in those countries by exporting copycat products and digital piracy equipment, such as hybrid STBs.

Hard Goods Piracy

While hard goods piracy remains a serious concern in the UAE, it is less prevalent for the music and film industries than digital piracy. Book publishers, particularly educational publishers, report that print book piracy remains a problem. Schools continue to use pirated copies of books, and educational institutions unfortunately continue to purchase pirated books from distributors. There appears to be an entire infrastructure supporting the distribution of pirated copies of books—beginning with printing presses producing and distributing pirated copies to distributors, who in turn peddle the infringing copies to educational institutions and to bookshops that sell the pirated copies.

COPYRIGHT ENFORCEMENT ISSUES IN UAE

Civil and Criminal Enforcement: While enforcement authorities in Dubai have undertaken a number of fruitful efforts, including the “open complaints” initiative of the Dubai Department of Economic Development (DED), 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 counterfeit product in places like Dragon Mart 1, Dragon Mart 2, and the China Mall, UAE authorities must ramp up efforts to enforce against pirate and counterfeit traffickers in these locales with deterrent enforcement actions and enhanced controls with the customs authorities.

Industry sectors report that enforcement has somewhat improved in the past year. The DEDs in Dubai, Sharjah, and Ajman have been conducting intensive inspection raids of local retailers to ensure that their markets are free from counterfeit copyright products. The Criminal Investigation Department (CID) has been working closely with right holders or licensees to stop sales of hybrid STBs. This has reduced somewhat the use of unauthorized direct to home TV broadcasting services. CID established a special lab to investigate IP TV piracy for the economic crimes unit and has been coordinating with different authorities in order to collect evidence efficiently. However, in general, collecting information on instances of infringement remains difficult. Such operations require arrangements between different departments within CID, which slows down investigations. For example, the electronic crime unit is not allowed to correspond with organizations outside of the UAE, such as social media service providers, without a court order. Correspondence between the TRA and CID is also relatively slow, which impedes the collection of information and evidence in piracy investigations.

Publishers active in the market report that while hard goods piracy of books persists, UAE authorities have been responsive to publisher complaints against entities involved in book piracy. Unfortunately, action is predicated on a right holder filing a complaint, as the authorities do not initiate enforcement actions on their own initiative. In February 2016, the TRA disabled access to six websites facilitating access to unauthorized copies of books and journal articles, following an application made by publishers to the MOE. Additional sites have been submitted to the MOE, which is currently reviewing whether the content on the sites is in fact infringing. With respect to educational institutions, the DED and Abu Dhabi Educational Council (ADEC) have been willing to take measures to address piracy occurring in schools. For instance, certain UAE schools were inspected due to reports that these institutions were using pirated books. The educational authorities were agreeable to sending awareness-raising letters to

schools to inform administrators and students of the importance of using legitimate materials, and to discourage the use of pirated materials in schools.

The judicial system has also shown some signs of improvement. Prosecutors have been analyzing facts of IPR cases and referring cases to the courts on the grounds of violations of IP or cybercrimes related laws. However, use of VPNs, DNS masks, and Tor networks for piracy is increasing, and there is no serious enforcement of the Cyber Crimes Law against these actions. The government has proposed the establishment of special IP courts in some emirates. This would be a welcome addition, as currently criminal actions can take up to twelve months.

Sentences under the Cyber Crimes Law are deterrent, and include deportation for foreign expat violators in addition to imprisonment and fines of up to 1 million dirham (US\$272,000). Civil judicial remedies under the Copyright Law, on the other hand, are not very effective, as the practice is to impose a fine of only a few thousand dirham.

Collection of Royalties for Uses of Phonograms: Broadcasting and public performance (such as in hotels, restaurants, shops, discos, bars, dance schools, airlines, etc.) are important uses of recorded music in the UAE. Revenue collected from such uses, estimated to be in the tens of millions of U.S. dollars if collection were allowed, is an essential element in supporting the development of local artists and in the UAE becoming a hub for the production of music in the region. Yet, due to government inaction and refusal to issue an operating license for collections, nothing is being collected today, substantially undermining the capacity of companies in the UAE to invest in promoting local artists and building artists' careers. It also means that U.S. music exported to the UAE cannot be monetized, and that various UAE businesses are not required to pay for music despite the protection recognized in UAE law.

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 MOE.

Twelve years later, no license for a collective licensing organization has been granted, and right holders still find themselves without the ability to exercise their rights, whether on a collective basis or individually. In 2015, it began to look as if a resolution were in sight. 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. However, no response was received from the MOE and the matter was allegedly considered at the federal level. The MOE should move swiftly to approve the application, which is supported by the music industry across the board.

Content Review of Book Titles. The book publishing industry faces a protracted content review process, particularly in Dubai. There appears to be no standard review process; instead, title monitors make determinations as to whether particular titles should or should not be sold in the country after what is often a lengthy process. A monitor is assigned to each retail establishment, and is required to inspect each title and write a summary of it before making a determination. 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. 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.

Challenges with Internet Service Providers (ISPs): The copyright industries report limited cooperation from the main UAE ISPs to combat online piracy. While the ISPs are open to hearing about the challenges right holders face, when infringement occurs they generally require that right holders bring an enforcement action through TRA, the government body that monitors ISPs, to achieve takedown. This process is much too slow, and takedown of infringing material generally takes months following notification to the TRA. Moreover, it is difficult to obtain an order for effective temporary measures to prevent further copyright infringement or to preserve related evidence. Telecommunication operators, ISPs and other relevant authorities in the UAE do not provide identification and contact data of identified IP addresses of their customers allegedly involved in Internet piracy activities, which hinders proper legal proceedings. Nor do they maintain any registry of repeat offenders or block their access. TRA should encourage ISPs to assist in disrupting the ecosystem for online infringement including by disabling access to illegal online services.

Training Programs: U.S. Immigration and Customs Enforcement (ICE) and Homeland Security Investigations (HSI), through the National IPR Coordination Center (IPR Center), and in conjunction with INTERPOL, conducted an enforcement training program in Dubai for the third time in November 2016. Further, U.S. Customs and Border Protection (CBP) provided IPR training sessions to Dubai Customs officials. OSN, a local company for pay-TV services, participated in a workshop related to copyright infringement and IP TV piracy. The workshop was organized by the Emirate Intellectual Property Association and INTERPOL.

COPYRIGHT AND RELATED LAW UPDATES

Amendments to the UAE Copyright Law: The MOE has in recent years contemplated amendments to the UAE Copyright Law³ 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 Copyright 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-protected materials⁴ 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;⁵ 2) ensuring compulsory license provisions are in conformity with the Berne Convention Appendix;⁶ 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)

³Federal Law No. 7 of 2002 Concerning Copyrights and Neighboring Rights.

⁴It 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).

⁵For 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.

⁶Article 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.

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, it does not expressly classify unauthorized content or pirated content, specifically copyright or trademark infringements, as illegal. Moreover, it does not include ISP liability for IP infringement carried out on the ISP. Implementing regulations should be issued clarifying that the Cyber Crime Law applies in cases of IP infringement.

Enhanced Remedies: A law should also be passed to set expeditious procedures for disabling access to pirate websites or illegal streams, and removal of unauthorized content if hosted locally.

COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES

The main trade agreement that UAE and the United States have in common is the WTO. Many of the shortcomings in the UAE copyright law identified above may constitute violations of UAE's obligations under the WTO TRIPS Agreement. UAE has also acceded to the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty, and some of the shortfalls in its copyright law (e.g., with respect to the circumvention of technological protection measures) also raise issues of compliance with its obligations under those treaties.