

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE

2007 SPECIAL 301 REPORT

SAUDI ARABIA

Special 301 Recommendation: Saudi Arabia should be elevated to the Priority Watch List.

EXECUTIVE SUMMARY

In IIPA's February 2006 Special 301 submission to USTR, IIPA recommended that Saudi Arabia remain on the Special 301 Watch List.¹ This recommendation was based in part on the Saudi government's commitments to (a) make their enforcement system transparent; (b) begin imposing deterrent penalties on pirates (including enforcement against corporate end users of unlicensed software; and (c) legalize use of business software in government ministries. On April 28, 2006, USTR kept Saudi Arabia on the Watch List but stated, in announcing this decision and the out-of-cycle review:

To build on the positive cooperation established between Saudi Arabia and the U.S. copyright industry, the United States looks to Saudi Arabia to complete recent IPR actions that it has initiated. For example, the United States looks to Saudi Arabia to increase transparency of its IPR enforcement regime, continue sustained raids and inspections to combat piracy and counterfeiting, ensure transparency in the judicial system and imposition of deterrent sentences (including jail terms for serious offenses) against criminal IPR infringers, and improve border enforcement measures, among other IPR issues.

Since IIPA met with KSA officials in Riyadh in January 2006 and in Washington D.C. in September 2006, there has been almost no progress in remedying these three fundamental deficiencies identified by the copyright industry and by USTR in its April report and its October OCR submission.² Because of this lack of progress and despite continuing high levels of raiding activity, there has been little change in the marketplace for copyright products. For these reasons, IIPA, as it did in its October OCR submission, is recommending that the Kingdom be elevated to the Priority Watch List.

PRIORITY ACTIONS TO BE TAKEN IN 2007

Transparency

- Continue to press the IPR Committee and the MOCI to open up the MOCI enforcement process by having it provide full reports on the details of each case they commence following a raid to the relevant right holder(s) so that the right holder(s) (or their representatives) can follow up with appeals and related actions;

¹ See IIPA's Special 301 2006 report on Saudi Arabia, February 13, 2006, available online at <http://www.iipa.com/rbc/2006/2006SPEC301SAUDIAARABIA.pdf>.

² http://www.ustr.gov/assets/Document_Library/Reports_Publications/2006/2006_Special_301_Review/asset_upload_file473_9336.pdf;
<http://www.iipa.com/pdf/IIPA%20Saudi%20Arabia%20301%20OCR%20submission%20FINAL%20%20100206.pdf>

- Allow right holders to participate in the MOCI enforcement process through directly appearing at the Breach Committee, including seeking compensation as required by TRIPS;
- Fully implement the processes of the Board of Grievances to allow right holders to appeal, at their discretion, sentences that are inadequate.

Deterrent Enforcement

- Activate the new Special Committee on enforcement set up by the Governor of Riyadh, Prince Salman, in January 2006 to establish a new regime for imposing increased penalties including imprisonment and securing the creation of a special police task force to work with the Ministry of Culture and Information (MOCI). Deterrent penalties and transparency are TRIPS requirements;
- Work closely with the new IPR Committee, headed by M. Al-Aiyash, to secure increased penalties and a more transparent process at MOCI;
- Ensure that the Breach Committee in the MOCI issues significant fines up to the maximum allowable in the copyright law;
- Ensure that right holders are able, as TRIPS requires, to appeal any Breach Committee–imposed fine which is considered inadequate to the Board of Grievances, which must impose imprisonment in appropriate cases, and significantly increase fines;
- Ensure systematic involvement of the police in copyright enforcement against both street vendors and those up the supply chain (warehouses etc.), and against corporate end-users of unauthorized software, including those initiated through a request from the MOCI, or directly by right holders. It is essential that police-led raids also result in criminal charges against copyright violations;
- Continue sustained inspections and raids on retail establishments, storage areas, distribution hubs, and duplication sites, and run enforcement “up the chain” toward the sources of production (i.e., importers, distributors, duplication sites), including against corporate end-users of unauthorized software;
- Engage in a complete clean-up of street vendor piracy, and subject offenders to deterrent penalties, not just deportation, which has proven to be an ineffective deterrent;
- Ensure that all actions not involving retail establishments result in the application of criminal charges. Unfortunately, raids effected against street vendors, distribution centers and duplication sites are not resulting in criminal charges unless a retail outlet is clearly identified with that same establishment;
- Secure the commitment of Prince Salman and the Special Committee to inform the management in compounds that they must pay license fees for the redistribution of TV signals and raid the compounds if they fail to comply;
- Reform the customs system to establish an IPR Task Force and provide customs officers with *ex officio* authority to suspend the import of pirate product into the Kingdom.

Ensure Legal Use of Copyrighted Materials

- Secure and implement a mandate of the IPR Committee (and the Special Committee if activated) to ensure that government ministries fully legalize their software use, in accordance with the existing software decrees, to set an example for the private sector;
- Order universities to regulate procurement practices to ensure purchase of authorized copies of books (and other copyrighted materials), following up where necessary to ensure that those universities comply with the law;
- Take enforcement actions against enterprise end-users of unauthorized software.

Copyright Law Reform

- Complete internal “study” of the Treaties as soon as possible and take action to ratify and implement in the copyright law the obligations of the WIPO Internet Treaties;
- Increase maximum penalties in the Copyright Law to deter organized criminal activity that is rife throughout the Kingdom.

For more details on Saudi Arabia’s Special 301 history, see IIPA’s “History” Appendix to this filing.³ Please see also previous years’ reports.⁴

SAUDI ARABIA										
Estimated Trade Losses Due to Copyright Piracy										
(in millions of U.S. dollars)										
and Levels of Piracy: 2002-2006⁵										
INDUSTRY	2006		2005		2004		2003		2002	
	Loss	Level	Loss	Level	Loss	Level	Loss	Level	Loss	Level
Records & Music	20.0	50%	20.0	50%	15.0	35%	16.0	40%	16.0	42%
Business Software ⁶	112.0	51%	105.0	52%	73.0	52%	76.0	54%	13.3	50%
Motion Pictures ⁷	NA	NA	95.0	95%	20.0	40%	20.0	40%	20.0	35%
Entertainment Software ⁸	NA	NA	NA	95%	NA	68%	64.0	83%	NA	NA
Books	8.0	NA	10.0	NA	14.0	NA	14.0	NA	14.0	NA
TOTALS	140.0		135.0		122.0		190.0		63.3	

PIRACY AND ENFORCEMENT UPDATES IN SAUDI ARABIA

The piracy situation has steadily worsened in Saudi Arabia across many copyright sectors active in the Kingdom. Several forms of piracy are at an all time high due to lack of deterrent penalties actually meted out (despite the maximum penalties available under the new Copyright Law) and lack of transparency. Some copyright industry groups report that the legitimate market is actually contracting, with many retail stores closing down due to high piracy rates. Industry anti-piracy efforts in 2006 continued to be substantial. The organization representing most U.S. right holders in the Kingdom, the Arabian Anti-Piracy Alliance (AAA) conducted a “fear factor” survey, which showed that the deterrent impact of the current enforcement and penalty system was virtually non-existent and this resulted in increased

³ <http://www.iipa.com/pdf/2006SPECIAL301HISTORICALSUMMARY.pdf>.

⁴ <http://www.iipa.com/countryreports.html>.

⁵ The methodology used by IIPA member associations to calculate these estimated piracy levels and losses is described in IIPA’s 2007 Special 301 submission at www.iipa.com/pdf/2007spec301methodology.pdf. For information on the history of Saudi Arabia under Special 301 review, see Appendix D at (<http://www.iipa.com/pdf/2007SPEC301USTRHISTORY.pdf>) and Appendix E at (<http://www.iipa.com/pdf/2007SPEC301HISTORICALSUMMARY.pdf>) of this submission.

⁶ BSA’s 2006 statistics are preliminary. They represent the U.S. publishers’ share of software piracy losses in Saudi Arabia, and follow the methodology compiled in the Third Annual BSA/IDC Global Software Piracy Study (May 2006), available at <http://www.bsa.org/globalstudy/>. These figures cover, in addition to business applications software, computer applications such as operating systems, consumer applications such as PC gaming, personal finance, and reference software. BSA’s 2005 piracy statistics were preliminary at the time of IIPA’s February 13, 2006 Special 301 filing; the 2005 data was revised and posted on the IIPA website in September 2006 (see <http://www.iipa.com/statistics.html>), and the 2005 revisions (if any) are reflected above.

⁷ MPAA’s trade loss estimates and piracy levels for 2006 are not yet available. However, such numbers will become available later in the year and, as for 2005, will be based on a methodology that analyzes physical or “hard” goods and Internet piracy. For a description of the new methodology, please see Appendix B of this report. As the 2006 loss numbers and piracy levels become available, they will be posted on the IIPA website, <http://www.iipa.com>

⁸ ESA’s reported dollar figures reflect the value of pirate product present in the marketplace as distinguished from definitive industry “losses.” The methodology used by the ESA is further described in Appendix B of this report.

awareness of the problem of piracy in the markets. This survey clearly demonstrated that 75% of the movie retail market indicated that a pirate will never be imprisoned; 89% felt that the owner would never be imprisoned; 70% felt that the retail establishment would never be closed; and 85% felt that a pirate would never be deported. The industry also held many meetings and engaged in many consultations with the Saudi government, but due to the intransigent attitude of the MOCI and others, very little progress was made. The President of IIPA even visited Saudi Arabia in January 2006 to address the many issues, and while promises to provide greater transparency were made at the highest levels, we have yet to see the positive results of the trip and the promises made.

Optical Disc and Internet Piracy: Optical disc piracy remains the major hard goods piracy problem in the Kingdom. Both factory produced discs (some locally made, but most imported) and “burned” discs have flooded the markets. Street vendor piracy is rampant throughout the Kingdom. Pirates sell pirate optical discs, including locally produced CD-Rs and DVD-Rs and imported pirate DVDs (predominately imported from the Asia Pacific Region (Malaysia, China, etc.) in commercial hubs. Even with low percentage of Internet penetration, there are already many instances of Internet piracy in the Kingdom. The authorities have been completely ineffective in dealing with this new threat.

Organized Crime: Piracy in the Kingdom has also been linked with organized crime elements in Saudi Arabia. Early in 2005, for example, Prince Salman ordered a series of raids in the Al Batha area of Riyadh against hard core criminal activities, which unearthed many criminal operations that were involved with prostitution and narcotics. The police also encountered and seized millions of pirate DVDs, showing that piracy is providing easy funds to sustain other hard core criminal operations.

Signal Theft and Piracy in the Compounds: Signal piracy on compounds remains a very serious problem in Saudi Arabia. The compounds may have upwards of hundreds/thousands of homes under one management/premise/security wall. Pay TV channels are usually centrally controlled and operated by the management of a given compound. The compounds utilize a smart card, installing it in their centralized head end and then redistribute Pay TV channels to thousands of homes.

Despite a continuous dialogue from the pay-TV industry and a number of raids, awareness campaigns and letters from the MOI, we have yet to see a significant change in the compounds. Part of the reason is that the owners of the compounds are very influential. Due to heightened security in entering compounds, affecting successful raids is next to impossible, since by the time the raid team finally gets to the head end, following delays navigating the multiple security checks, the evidence of piracy has conveniently disappeared.

IIPA raised the rampant theft of pay-TV signals and of audiovisual programming in the Kingdom's compounds in January and again in September. While the MOCI indicated that it can be involved in raiding such compounds, MOCI officials explained that the raids must be done with the police and that police participation must be authorized by each city's Governor's office. In January, IIPA raised this issue with Prince Salman, the Governor of Riyadh. Unfortunately, industry has received no reports that raids have been conducted on these compounds since these January meetings.

Piracy of Business Software: But even raiding activity has proved difficult for the business software industry. In response to all the pressures to reform, BSA has reported on the increasing defensiveness of the Breach Committee. Instead of reforming, they are finding new

ways to blame the industry on the grounds that the complaints submitted are faulty (but without making clear precisely what is required in a transparent way). A large number of the BSA complaints filed in 2006 have been rejected by the MOCI on these purely formalistic grounds (power of attorney, signatures, etc.). The industry is constantly informed that any objections should be filed before the Breach Committee while no information, on the cases and structure, location or leadership of this Committee is given. It has become clear to the software industry that certain individuals within MOCI are at the heart of the transparency problem and that the KSA government must recognize and take care of this personnel problem.

In contrast to the stonewalling of MOCI, BSA reports favorably of the enforcement activities of the Ministry of Commerce, responsible for trademark and commercial fraud offenses. While not used by the copyright industries for enforcement, its cooperative attitude must be starkly contrasted with the intransigence of the MOCI.

While over the years there have been only a few raids on enterprise end users of unlicensed business software, enforcement against such piracy, which causes the greatest losses to the software industry, is so rarely employed by the authorities that the piracy rate continues to be high (estimated at 51%, with dollar losses up from 2005 to \$112 million in 2006),⁹ as a primary result of such enterprise end user piracy. If the MOCI is to be truly effective in combating end user and other forms of piracy, it must invest in increasing the number of anti-piracy inspectors to well beyond the present 10 - 20 full-time employees and use these resources to conduct proactive, *ex officio* raids.

Book Piracy: Saudi Arabia's publishing market continues to experience some piracy, especially at certain universities in the Western Province. Industry continues to be hopeful that the 2005 changes in practice by the King Abdulaziz University in Jeddah will help to reduce piracy losses. Nevertheless, publishing companies maintain that the situation is in need of significant improvement. Pirate commercial offset prints as well as illegally photocopied books, especially textbooks and English language teaching (ELT) materials, continue to be available. There is evidence that pirate editions are being produced locally in Saudi Arabia (where there is a sizeable domestic printing industry). Some universities, especially in the Central and Eastern Provinces, have regulated purchase practices (i.e., they "buy centrally," which means that all the adoptions within a university are collated by its purchasing department, which runs an on-campus bookshop). IIPA hopes to see more universities legalizing their acquisition process by buying centrally and encourages the remaining universities in the Western Province to follow suit. Failing to do so invites an overrunning of the market by pirate copies, supplanting legal purchases.

Entertainment Software Piracy: Piracy of videogames is rampant in the Kingdom with recent hot-selling games being imported from countries like Malaysia and openly sold in stores and malls, whereas DVDs and music CDs tend to be made available through in-store catalogues with "runners" being dispatched off-site to obtain the selected product.

Saudi Government Promises: Following IIPA's visit to the Kingdom in January 2006, King Abdullah issued a "circular" which directed that transparency and deterrent penalties should be established in the Kingdom and that government ministries should legalize their

⁹ BSA reports that while 51% was the overall estimated piracy rate in the KSA in 2006, piracy in government and in small and medium enterprises and in the home consumer market is far higher. The lower piracy rate among larger companies, such as Aramco, SABIC and others, brings the overall national rate down. BSA also reports that the situation in 2006 is worsening with PC sales up an estimated 40% (as reported by IDC) with software revenue growth much slower, indicative of an increasing piracy rate.

software use. Despite this clear message from the King and promises to the IIPA delegation (and further USG and industry meetings in September 2006), we have yet to see any progress on these fundamental deficiencies. To date, transparency in the administrative enforcement process at the MOCI has not been established and the MOCI's Breach Committee, which is responsible for administrative adjudication of copyright piracy offenses and for imposing administrative penalties, has failed to issue deterrent fines. IIPA was particularly disappointed that the September meetings resulted in almost no progress on these critical commitments.

Lack of Transparency: IIPA members' local representatives report that the MOCI has yet to provide any right holder with information as to the results of the Breach Committee's administrative actions, including whether fines had been imposed and at what level, despite continuing requests for such information. At the September meetings, IIPA presented the delegation with a detailed list of issues that might be understood by MOCI to stand in the way of offering full transparency (e.g. a list of possible information that MOCI would demand from right holders as a condition to transparency). Despite indications that a response to this list would be given to the USG and IIPA before the delegation departed, the KSA government has STILL (four months later) not provided a response to these issues. It has been reported that the document purportedly containing such responses is being held up within the MOCI.

Under paragraph 266 of the WTO Working Party Report on Saudi Arabia's accession,¹⁰ the Saudi government stated that right holders would have the opportunity to appeal any imposition of a fine by the Breach Committee to the Board of Grievances if the right holder felt that the fine was too low to act as a deterrent, as required by TRIPS. Paragraph 266 is binding on the KSA and such appeal right must be afforded under TRIPS and the KSA's Accession commitment. Without the promised transparency in that process, however, and despite the promise made in January and the King's circular, right holders have not been provided any information about, and have therefore been unable to appeal, ANY fine decision.

As noted above, efforts to ascertain the MOCI's requirements for right holders to receive such transparency have so far been unavailing.¹¹

MOCI has regularly argued that right holders must at least file complaints as a condition for receiving transparency. Yet, for example, according to BSA, no raid has been run by the MOCI without BSA having filed a complaint, which they do on a regular basis¹² and no information on case results or fines have ever been provided. One of the problems that contributing to the ineffectiveness of the KSA government's enforcement system is that they rarely take proactive (*ex officio*) raid action but wait for right holders to complain, despite open and widespread piracy in the shops and in the markets, visible to all. As described above, the openness of pirate activity has even increased in 2006.

In addition to affording transparency to right holders, the Saudi authorities, if they are to be successful in reducing piracy levels, must also publicize their actions within the country and

¹⁰ Report of the Working Party on the Accession of the Kingdom of Saudi Arabia to the World Trade Organization, WT/ACC/SAU/61, January 11, 2005

¹¹ In most countries of course, such transparency is a matter of routine. The press routinely reports on decisions of administrative agencies and of courts and court decisions are publicly available or published.

¹² During the September meetings, an MOI official stated that right holders have not provided powers of attorney (POAs) and implied that this was at a minimum a necessary condition to receive the transparency promised. Later in the discussions, it became less clear whether POAs were needed at all, but, in any event, BSA (for its members active in Saudi Arabia) and the enforcement agency representing the Motion Picture Association (MPA), the Arabian Anti-Piracy Alliance (AAA), has provided POAs for all the MPA member studios to the MOI.

undertake a major public relations campaign about those actions and that piracy is not only illegal, but is a criminal act, in the Kingdom.

Lack of Deterrent Penalties: In its February 2006 Special 301 submission, IIPA reported that the average fine issued by the Breach Committee for an act of piracy was reportedly 10,000 riyals (US\$2,666) and the highest fine ever imposed, apparently in only one case, a mere 50,000 riyals (US\$13,332). The Saudi authorities themselves have acknowledged that no criminal case for piracy has ever proceeded or been concluded in the Kingdom. No pirate has ever served a jail term. Until this situation changes, and the KSA promised to change it in January, piracy levels will remain consistently high and the KSA will continue to fail to meet its TRIPS enforcement obligations. As of February 2007, nothing has changed!

IIPA also noted in February 2006 that the MOCI is to be commended for continued raiding activity. This must be tempered, however, as discussed earlier, with the reality that such raids are generally not self-initiated by the MOCI but only after a right holder complaint. Until the MOCI takes action *ex officio* and on a regular basis and employs adequate resources, piracy levels will continue to remain high.

In IIPA's OCR submission filed on October 2, 2006,¹³ we provided a detailed list of raids conducted against audiovisual, game and software piracy so far in 2006 and selected raids from earlier years. As is evident from the size of the seizures in these cases,¹⁴ the imposition of the usual paltry fines will never act as a deterrent to the levels of piracy that have become routine throughout the Kingdom. One of the largest seizures ever in the Kingdom was taken in September 2005 in Dammam and involved the seizure of over 2.2 million units of pirate product. The Breach Committee has yet even to levy a fine in this case, nor, as industry requested, refer the case to the Board of Grievances for criminal prosecution and, as would be necessary in this case, the imposition of the penalty of imprisonment.

Each of the raids and seizures represented on those lists deserve deterrent penalties far more severe than those being imposed by the Breach Committee. Most cases demand penalties that exceed the Breach Committee's jurisdictional limit/maximum fine of 100,000 riyals (US\$26,663) and need, therefore, to be referred by the Breach Committee to the Board of Grievances which has the authority to levy higher fines and to impose terms of imprisonment.¹⁵ IIPA has no report of any copyright piracy case that has ever been referred from the Breach Committee to the Board of Grievances. If right holders were afforded the transparency that the Kingdom is obligated to provide, they could petition the Breach Committee (or the Board of Grievances) to move such cases to the Board for the imposition of penalties necessary to deter the kind of piracy reflected in these lists.

Government Legalization of Software Use: The software industry has estimated that the piracy rate in 2005 in government ministries was 70%. IIPA and BSA have asked that government ministries specifically budget for the purchase of legitimate software and that ministries set up software asset management systems to monitor software use. These two proposals must now be implemented by the government as part of meeting the King's

¹³ <http://www.iipa.com/pdf/IIPA%20Saudi%20Arabia%20301%20OCR%20submission%20FINAL%20%20100206.pdf>

¹⁴ While the amount of seized product is known by right holders who accompany the authorities on the raid, no additional information is known about what happened in any of these cases, whether the infringer was declared to be an infringer, nor what penalty or other action (such as temporary shop closure) was taken.

¹⁵ Members of the Board of Grievances with whom IIPA met in January assured the IIPA delegation that if a case were brought to them, either directly by the Breach Committee or as the result of an appeal by a right holder, they would impose deterrent penalties.

prescriptions against unlicensed software use in government. This should include an additional circular with a specific deadline and a requirement for each ministry to report back to the King.

IIPA January 2006 Mission to Saudi Arabia Presages Major Changes in the Kingdom's Enforcement System Following WTO Accession: On December 11, 2005, Saudi Arabia was admitted to the WTO and undertook obligations under the TRIPS agreement and particularly its enforcement text. IIPA was invited to visit the Kingdom in January 2006 and the IIPA President, accompanied by local right holders, met with senior Saudi government officials in all relevant ministries and enforcement bodies. Detailed below is an update of the current piracy and enforcement situation. However, in meetings with IIPA, senior Saudi officials committed to making major changes in the system to achieve more transparency and deterrence, including, for the first time, using imprisonment as a remedy in accordance with their new TRIPS obligations. The Kingdom's failure to implement these promises caused IIPA to recommend an out-of-cycle review to assess the implementation of these commitments and removal of the deficiencies listed. In October 2006, given no progress from the Saudi government, IIPA asked USTR to elevate it to the Priority Watch List. The OCR remains outstanding and the recommendation remains the same. Indeed the reasons for that elevation are even more apparent today.

COPYRIGHT ENFORCEMENT UPDATE

ADMINISTRATIVE COPYRIGHT ENFORCEMENT STATISTICS FOR 2006: SAUDI ARABIA		
ACTIONS	MOTION PICTURES	ENTERTAINMENT SOFTWARE
NUMBER OF RAIDS/SEARCHES CONDUCTED	136	70
NUMBER OF ADMINISTRATIVE CASES BROUGHT BY AGENCY		
NUMBER OF DEFENDANTS FOUND LIABLE (INCLUDING ADMISSIONS/PLEAS OF GUILT)		
RATIO OF CONVICTIONS TO THE NUMBER OF RAIDS CONDUCTED		
RATIO OF CONVICTIONS TO THE NUMBER OF CASES BROUGHT		
NUMBER OF CASES RESULTING IN ADMINISTRATIVE FINES		
TOTAL AMOUNT OF FINES LEVIED		
US\$0-\$1,000		
\$1,001-\$5,000		
\$5,001-\$10,000		
\$10,000 AND ABOVE		
TOTAL AMOUNT OF RESTITUTION ORDERED IN HOW MANY CASES (E.G. \$XXX IN Y CASES)		

CRIMINAL COPYRIGHT ENFORCEMENT STATISTICS FOR 2006 SAUDI ARABIA		
ACTIONS	MOTION PICTURES	ENTERTAINMENT SOFTWARE
NUMBER OF RAIDS CONDUCTED	76	35
NUMBER OF VCDs SEIZED	12,960	
NUMBER OF DVDS SEIZED		
NUMBER OF CD-Rs SEIZED	76	
NUMBER OF INVESTIGATIONS	43	35
NUMBER OF VCD LAB/FACTORY RAIDS/DISTRIBUTION CENTERS	76	35
NUMBER OF CASES COMMENCED		
NUMBER OF INDICTMENTS		
NUMBER OF DEFENDANTS CONVICTED (INCLUDING GUILTY PLEAS)		
ACQUITTALS AND DISMISSALS		
NUMBER OF CASES PENDING		
NUMBER OF FACTORY CASES PENDING		
TOTAL NUMBER OF CASES RESULTING IN JAIL TIME		
SUSPENDED PRISON TERMS		
MAXIMUM 6 MONTHS		
OVER 6 MONTHS		
OVER 1 YEAR		
TOTAL SUSPENDED PRISON TERMS		
PRISON TERMS SERVED (NOT SUSPENDED)		
MAXIMUM 6 MONTHS		
OVER 6 MONTHS		
OVER 1 YEAR		
TOTAL PRISON TERMS SERVED (NOT SUSPENDED)		
NUMBER OF CASES RESULTING IN CRIMINAL FINES		
UP TO \$1,000		
\$1,000 TO \$5,000		
OVER \$5,000		
TOTAL AMOUNT OF FINES LEVIED (IN US\$)		

COPYRIGHT AND RELATED LAWS

Amendments to Adopt Key WIPO Internet Treaties' Requirements and to Allow Saudi Arabia to Join the WCT and WPPT: While virtually all the deficiencies in the Saudi Copyright Law have been remedied in the new implementing regulations adopted in 2005,¹⁶ IIPA impressed upon all relevant officials at its January and September 2006 meetings on the importance of developing the legal infrastructure for electronic commerce by ratifying and fully implementing the WCT and WPPT. The reception to this suggestion was gratifying and industry and the U.S. government should work closely with the responsible agencies (including MOCI) to assist with advice and training. During recent meetings in Washington, the Saudi government representatives indicated that they had commenced a review of the WIPO Internet Treaties issues and that the next step was to seek WIPO's advice on how best to proceed with

¹⁶ Two deficiencies appear to remain, however. The law appears not to mandate destruction of infringing goods and does not require the award of costs and attorney's fees as required by TRIPS. Furthermore, statutory prison sentences remain very low. MOCI Acting Minister Al-Akkas indicated a willingness to propose raising these terms in the near future.

implementing legislation. IIPA is encouraged that the government is moving forward with this very important exercise.

Optical Disc Legislation: Reports are that there is at least one, and likely as many as four, known OD plants in the Kingdom. The authorities should adopt optical disc regulations to ensure that new optical disc production facilities only engage in legitimate licensed production. Saudi Arabia should join its neighbors that have adopted or are in the process of adopting a regulation to control the production of optical discs, i.e., a legislative framework to meet the challenge of optical disc piracy. Essential provisions for an effective optical disc regulatory scheme include:

- The establishment of a competent licensing authority to grant licenses to optical disc production facilities as well as to deny, suspend, or revoke a license if that should become necessary. In addition, commercial CD-R/DVD-R “burning” (i.e., for the purpose of sale, distribution, or other commercial dealing) of copyrighted materials onto recordable optical discs undertaken by traditional optical disc manufacturing plants or outside of such plants (the latter which is fast becoming a major problem) should be subject to registration to ensure that unregistered commercial conduct is punishable.
- The requirement to use SID Codes to trace pirate discs to their source of production.
- The establishment of licensee record-keeping requirements in the application process and after a license is granted, to provide governments with the means to judge whether an applicant qualifies for a license, and to provide maximum transparency after a license is granted (e.g., exemplars will be provided from each plant for every disc produced, allowing for transparent accounting of licensed production and forensic evidence should such be needed). CD-R burning registration should also entail record-keeping of orders.
- The ability to inspect plants (in addition to traditional search and seizure) and burning facilities, including nighttime inspections, to ensure that plants/facilities are engaging in legal activities.
- Government record-keeping of all plants/facilities and all actions taken with respect to them (e.g., inspections, searches).
- The establishment of adequate penalties for violations of a license (or burning without registering) including criminal penalties and possibility of plant/burning facility closure.
- To put into place controls to track the export of discs, and export and import of equipment and raw materials, including the masters or stampers which are the key components for producing pre-recorded content (an automatic license is one common approach).

MARKET ACCESS

Ban on Cinemas: All public exhibition of films is prohibited by law in Saudi Arabia. Despite the fact that in October 2005, the government allowed a trial of one cinema to screen cartoons to women and children only, there appears to be no further removal of prohibition of a theatrical market in Saudi Arabia. This total ban is not only unfair and market-closing, it also opens the door wide to pirate operators who simply do not follow the law and bring in movies

which the Saudi government has never had an opportunity to review for content or had any say in its distribution.

Video Outlet License Requirements: Video outlets must be licensed by the Ministry of Culture and Information. That Ministry has, however, demonstrated great reluctance in allowing general retail stores, such as supermarkets and toy stores, to obtain licenses. Such licensing requirements limit the ability of video distributors to reach important market segments.

Restrictions on Home Video Distribution: Foreign companies are prohibited from importing or distributing home video product in Saudi Arabia. Only Saudi nationals or Saudi-owned companies have this right. Such restrictions should be removed to encourage growth of the video market.