SAUDI ARABIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)
2012 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Saudi Arabia be placed back on the Watch List.[1]

Executive Summary: In the 2010 Special 301 cycle, IIPA supported USTR's removal of Saudi Arabia from the Watch List, based on actions taken by the Saudi Government in 2009 and early 2010. However, IIPA noted that if continuing and comprehensive progress was not made to reduce high piracy rates through the systematic imposition of deterrent penalties, establishment of an effective regime against Internet piracy, and other actions, IIPA would recommend that the Kingdom be placed on the Watch List for the 2011 Special 301 cycle. Such progress was not made, and IIPA recommended in 2011, as we do this year, that Saudi Arabia be returned to the Watch List.

As we have noted for many years, piracy rates are higher in the Kingdom than in any other country in the Gulf region for the motion picture, music and recording industries (in the 90% range) and unacceptably high for the business software (an increase to 52% piracy in 2010, with the commercial value of unlicensed software attributable to U.S. vendors increasing to US$236 million), entertainment software, and publishing industries. Despite this, IIPA recommended that Saudi Arabia be removed from the Watch List and noted the excellent efforts which were then being made by Ministry of Culture and Information (MOCI) Deputy Minister Abdul Rahman Al-Hazzaa to take actions against piracy and achieve Out-of-Cycle Review benchmarks identified by IIPA in its 2009 Special 301 submission. IIPA was optimistic that the adjudication of the *Video Mesfir* cases (from the Violations Review Committee (VRC) to the Board of Grievances (BOG)), with a recommendation that the infringer be given a prison term, would "very soon" result in a judgment of imprisonment – the first such judgment ever, and a key to bringing a deterrent precedent to the market. That optimism was misplaced as the BOG has still refused to adjudicate this case. The latest setback was on January 28, 2012, following several similar delays over the last two years, when the BOG hearing in the *Video Mesfir* case failed to result in a successful outcome.

More importantly than this one case, systematic and routine judgments with deterrent penalties are needed in order to dramatically reduce piracy rates in Saudi Arabia. Other benchmarks were also very close to being achieved, but almost no progress has been made. Piracy rates remain unacceptably high as the government has made little progress in legalizing its software use, street vendor piracy continues to be a major and visible problem, MOCI enforcement efforts have not been publicized, enforcement against Internet piracy remains ineffective, and the there remains a dearth of other deterrent enforcement actions. In October 2011, IIPA was asked to file its comments to the U.S. Government concerning the development of the MENA Trade and Investment Partnership, and to develop mutually beneficial short- and long-term IP goals.[2] This list of goals for Saudi Arabia is unfortunately quite long, but it is hoped that with some concerted and effective actions, the situation can improve for the better in 2012.

PRIORITY ACTIONS REQUESTED IN 2012

Enforcement
- Re-commence a zero-tolerance policy toward street vendor piracy in the major cities until it becomes a *de minimis* problem. Prevent law enforcement from releasing violators arrested without any penalty.
- Complete the adjudication of the *Video Mesfir* case at the Board of Grievances (BOG) with a sentence of imprisonment; going forward, ensure that cases involving major seizures or repeat offenders are systematically

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[1]For more details on Saudi Arabia's Special 301 history, see Additional Appendix available at http://www.iipa.com/pdf/2012SPEC301HISTORICALSUMMARY.pdf. Please also see previous years' reports at http://www.iipa.com/countryreports.html.
[2]International Intellectual Property Alliance, *IIPA Written Comments in Response to: Request for Comments on The Trade and Investment Partnership for the Middle East and North Africa, 76 Fed. Reg. 55456 (September 7, 2011) Docket: USTR_FRDOC_0001-0160*, October 15, 2011, at http://www.iipa.com/pdf/2011_Oct15_IIPA_Comments_on_MENA.PDF.

adjudicated through the Violations Review Committee and the Board of Grievance, resulting in deterrent sentencing, signaling to citizens that piracy crimes will receive deterrent penalties and especially imprisonment in appropriate cases.

- Increase MOCI enforcement inspectors, to 15-20 in the short-term, increased to 25 or more by the first quarter of 2012, and develop a recognition and reward system within MOCI similar to Customs by mid-2012.
- Publicize widely, and on a regular basis, all these actions, including press statements by high government officials that piracy will no longer be tolerated, and that deterrent sentencing will be applied against pirates.
- Fully populate the MOCI website with data on raids, hearing dates, judgments and penalties commencing at the beginning of 2008 through the present, in both Arabic and English.
- Create a framework for increasing deterrent penalties, including by adding a prosecutorial position within the VRC.
- Administrative penalties imposed by the VRC should be increased to provide more deterrence, through the Board of Grievance with the support and guidance of the Minister of Information, Deputy Minister Eid Al-Hoot, and the Board of Grievances.
- The Police Committee in Riyadh should be reactivated and duplicated in other major cities to assist with street vendor raids and to investigate, and bring charges as appropriate against, large producers and distributors of pirate product. Greater police involvement is critical and has yet to be ensured.
- A special cyber crime unit within the Police Committees and an Internet piracy unit at MOCI should be established, and the MOCI should work closely with the Communication and Information Technology Commission (CITC) to take actions against Internet piracy. At present, nothing is being done by the government to address rampant online piracy over P2P networks and enforcement authorities do not take actions to curb copyright infringements committed in this way.
- Enforcement of marketing conditions should be enforced, meaning raids and takedown actions against pirate products which are both freely available on the streets and advertised online.
- CITC is currently blocking websites for pornographic content but not for copyright violations. CITC should act on its own to identify such websites and coordinate with MOCI to block such websites.
- The MOCI, the police and rights holders should cooperate to develop a plan to convert the compounds to legitimacy, bringing Pay-TV piracy in the compounds to an end.
- The customs system must be reformed to establish an IPR Task Force and Saudi Customs must impose deterrent fines on importers of seized product.

Legislation

- Make significant progress toward legalizing software use within the KSA Government. Despite a decree from the King directing all Saudi Government entities to ensure they use legal software, the software piracy rate within the Saudi Government is significant. Budget unavailability and the refusal of the Ministry of Finance to grant budget have been raised as reasons for the lack of progress.
- The Copyright Act must be amended to fully implement and ratify, the WIPO Internet Treaties, including ensuring the law provides incentives for ISPs to cooperate with rights holders against online piracy.

PIRACY AND ENFORCEMENT CHALLENGES IN SAUDI ARABIA

Deterrent Enforcement and Penalties: In 2010, under H.E. Al-Hazzaa's leadership, raids against street vendors and retail operations continued at a steady rate but apparently with some fall off. The MOCI IPR Standing Committee 2011 Special 301 submission[3] indicated there were "225 eligible cases" of copyright infringement, with cumulative fines of more than SR3.2 million (US$853,000), SR836,500 (US$223,000) in compensation to right

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[3]Kingdom of Saudi Arabia, Ministry of Commerce and Industry, Intellectual Property Rights Standing Committee, *KSA Report for the USTR 2011 Special 301*, March 2011 (on file with IIPA).

holders, more than 400,000 items seized, and 1,320 "closure days" for infringing shops.[4] IIPA reported in its 2010 Special 301 submission that the VRC had been clearing more cases than in the past and that administrative penalties had increased, including a few cases involving the maximum penalty of SR100,000 (US$26,665).[5] H.E. Al-Hazzaa, Deputy Ahmed Al-Hoot, and Rafeeq Al Okaily had been a critical part of these improvements. The MOCI IPR Standing Committee reported in March 2011 that the VRC "strengthened the penalties by increasing fines by 20 percent from what was previously applied before," and is preparing "large signs" to place on closed shops. We appreciate these efforts as well as the continued efforts by the head of the General Directorate of Copyright Department, Rafiek Al-Okaily. Obtaining deterrent penalties for all copyright sectors, both at the administrative level and more importantly deterrent sentencing, including imprisonment from the BOG, is the IIPA's highest priority. Unfortunately, the lack of an adequate number of MOCI inspectors in the copyright departments (reportedly there are only four in Riyadh at this time and two in Jeddah) is a principle cause for a lack of significant raiding activity in Saudi Arabia. IIPA recommends that the Saudi Government increase MOCI enforcement inspectors, to 15-20 in the short-term, increased to 25 or more full-time employees by the end of the first quarter 2012, and that it develop a recognition and reward system within MOCI similar to Customs by mid-2012. IIPA also recommends the systematic involvement of the Ministry of Interior to spearhead investigations, raids and prosecutions against source piracy. Moreover, the Ministry must appoint a prosecutor to take charge of cases before the VRC as recommended. Finally, raids need to be increased and extended to piracy of music and sound recordings.

IIPA's recommendation to remove Saudi Arabia from the Watch List in 2009 to 2010 was based primarily on the understanding, confirmed by an IIPA visit with the BOG in June 2010, that a judgment of imprisonment by the BOG in the *Video Mesfir* case was imminent. Video Mesfir is a seven-time raided pirate operation consisting of a retail outlet and a warehouse, which involved the total seizure of well over 100,000 pirate copies along with significant amounts of reproduction equipment. Two of these cases received their first hearing before the BOG on February 16, 2010 and one case received the necessary recommendation of Minister of Culture and Information that the BOG impose a sentence of imprisonment. Two years later, the BOG is still sitting on all the Video Mesfir cases. Without concluding the adjudication of these cases and imposing a sentence of imprisonment, and more importantly, starting a chain of systematic judgments involving deterrent sentencing against repeat offenders or large seizures, there is little hope that piracy rates in the Kingdom can be reduced.

As IIPA has highlighted in past submissions, studies have shown that there is little or no fear that any pirate would ever go to jail or that even a significant deterrent fine would be imposed.[6] In 2009, the VRC has succeeded in imposing the maximum fine that it has the authority to impose – SR100,000 (US$26,665) – in a few larger cases. This trend has not been sustained. With at least three piracy cases before the BOG including a Ministry-appealed case, there is no excuse for inaction. In June 2010, judges on the BOG reiterated to IIPA and the U.S. Government that when a case is brought before them, they will not hesitate to impose deterrent jail terms. That this has not occurred is without explanation or justification.

Government Legalization of Software and Enterprise End-User Software Piracy: Another of the critical benchmarks in IIPA's 2010 and 2011 Special 301 submissions was for the Saudi Government to begin the task of legalizing its use of software in government ministries. Lack of government legalization and enterprise end-user piracy of software are the largest contributors to losses suffered by the U.S. software industry in Saudi Arabia.[7]

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[4]Arabian Anti-Piracy Alliance (AAA), which conducts raiding and enforcement activity on behalf of entertainment companies, the entertainment software and publishing industry associations in Saudi Arabia, reported that in 2010 they were involved in 175 raids and seizures of 137,179 units of pirate product. AAA reports that this is but a small fraction of the pirate product that pervades the marketplace.

[5]The VRC had also started awarding civil damages in its administrative cases and in 2008 had done so in 19 cases involving software piracy. The average of the fines and damages was around US$3,000, which remains too low. The total of all fines and damages in 19 cases were SR148,000 or US$39,466. This trend needs to continue.

[6]A few of the later Video Mesfir raids were run after the VRC began imposing its maximum sentence. This illustrates vividly that pirates have little concern that the authorities will take significant action against them, other than seizing their pirate product and imposing small fines.

[7]BSA's 2011 software piracy statistics will not be available until after the filing deadline for this submission, but will be released in May 2012, at which time piracy rates and U.S. software publishers' share of commercial value of pirated software will be available at www.iipa.com. In 2010, the software piracy rate in Saudi Arabia was 52%, representing a commercial value of unlicensed software attributable to U.S. vendors of US$236 million. These statistics follow the methodology compiled in the Eighth Annual BSA and IDC Global Software Piracy Study (May 2011), http://portal.bsa.org/globalpiracy2010/index.html. These figures cover

Reductions in business software piracy would result in positive gains for Saudi Arabia's economy. A study released in 2010 by IDC and BSA found that reducing the PC software piracy rate in Saudi Arabia by 10 percentage points over four years would generate $786 million in GDP, $19 million in additional tax revenues and 1,420 new IT jobs. The benefits would be even greater if this reduction was achieved in two years, which would yield $1 billion in GDP and $25 million in additional tax revenues.[8]

In 2010 and again in 2011, IIPA reported on apparent efforts of the MOCI, following the commitments made at the 2009 IPR Working Group meeting, to upgrade and legalize its software use. We were told then that that process had begun but the industry was never made aware that the effort was completed. MOCI was to have also undertaken an inventory, but again no results were ever made available to industry. Furthermore, many discussions over the past couple of years between industry and government designed to make progress on legalization (the piracy rate for software in government is estimated to be 70%) have yielded no gains. The making of imminent progress on this front was a key element of IIPA's recommendation to remove Saudi Arabia from the Watch List. In addition, industry now reports a sharp increase in high-quality (and thus deceptive) counterfeit software being sold to Saudi Government ministries as part of hardware purchases. This ominous development should have led to immediate enforcement action against such vendors. It was requested by industry but MOCI has not taken action, well over a year after the initial discovery of these high-quality counterfeits, incidentally purchased by a public sector customer. The computers purchased with such software were merely returned to the vendor. MOCI should communicate with all government entities on such issues and lead an initiative to address piracy in the Saudi Government, including tackling suppliers of pirated software such as in the instance noted.

Transparency and Public Awareness: From 2009 to 2011, there was some progress in posting new cases on the MOCI website, but now the website shows the sign "under development" and there seems to be little transparency. Unfortunately, H.E. Al-Hazzaa's commitment to complete population of cases on the website (and to have them translated into English) by Ramadan in 2010 has not been fulfilled. Right holders have been able to participate in VRC proceedings upon request and the right to appeal results and penalties to the BOG has been confirmed. Right holder lawyers continue to be able to obtain information on the progress of cases at the VRC and to participate in VRC proceedings upon request. The Ministry has yet to put into place mechanisms enabling effective exchange of information and cooperation between KSA enforcement authorities and foreign right holders whose anti-piracy operations, especially in the Internet sphere, are frequently run from outside the Kingdom. There should be clear information, available in English, on the organizational structure and responsibilities within MOCI as well as named contact persons for handling cooperation with foreign-based representatives of affected right holders. In addition to the above, any deterrent result will not have its intended effect in Saudi Arabia unless it is properly publicized. MOCI should help develop a PR plan to capitalize on enforcement actions now occurring and create the right level of coverage and therefore the expected effect for deterrent enforcement actions.

Enforcement Against Internet Piracy: The CITC, which regulates the ISPs and telecom industry in general, continues to block foreign websites when requested by rights holders, but only on the grounds that they violate Saudi censorship laws. Many of these cases involve both censorship violations as well as infringement. Efforts have been ongoing to convince MOCI to set up an Internet piracy unit within the Copyright Department rather than have this enforcement undertaken through the CITC. It is imperative for both CITC and MOCI to develop comprehensive regulations on addressing copyright violations committed over the Internet. Any solution must include both hosted as well as remotely accessible content and address infringements over P2P networks. The Ministry was reportedly considering establishing such a unit and reviewing MOCI authority in this area, and, as well, working more closely with CITC. This was also a topic of discussion during IIPA's visit to the Kingdom in June 2010. Unfortunately,

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packaged PC software, including operating systems, business applications, and consumer applications such as PC gaming, personal finance, and reference software – including freeware and open source software. They do not cover software that runs on servers or mainframes, or routine device drivers and free downloadable utilities such as screen savers. The methodology used to calculate this and other piracy numbers are described in IIPA's 2012 Special 301 submission at http://www.iipa.com/pdf/2012spec301methodology.pdf.

[8]Business Software Alliance and IDC, *Piracy Impact Study: The Economic Benefits of Reducing Software Piracy: Saudi Arabia*, 2010, at http://portal.bsa.org/piracyimpact2010/cps/cp_saudiarabia_english.pdf.

no progress on this front has been made. Nor has a cybercrime unit been set up within the police, as requested in recent years' submissions. MOCI must also engage with foreign-based right holder representatives in this regard.

Enforcement Against Pay-TV Signal Theft in the Compounds: Signal piracy of premium services like Orbit Showtime Network, Abu Dhabi Media Company in compounds continues to be a very serious problem in Saudi Arabia. The compounds have upwards of hundreds/thousands of homes under a single management that centrally controls and operates the cable service within each compound. The compounds utilize a smart card, installing it in their centralized head end and then redistributing Pay TV channels to hundreds/thousands of homes. The management of these compounds are very influential and can clearly afford to pay for premium channels. Enforcement is complicated because it is very difficult for even the police to enter these compounds quickly and easily; they are heavily guarded by private security firms and by the time the raid team finally gets to the head end the evidence of piracy has conveniently disappeared. The Ministry and the police had indicated that they would begin taking action in this area. Some actions have indeed been taken, including letters written to the compounds by then Deputy Minister Al-Hazzaa. Complaints made to the VRC have simply not been acted upon. Another major issue affecting Pay TV stakeholders is the illegal importation, distribution and sale of decoder boxes that circumvent encryption technologies. The government is very cooperative in seizing these illegal products, but, as with other kinds of piracy in the Kingdom, penalties are small or non-existent. Far heavier penalties, including referring these cases to the BOG, is critically needed.

Enforcement Against Book Piracy and Music and Sound Recording Piracy: Publishers have within the last two years commenced an aggressive enforcement program. They are receiving good cooperation from the Ministry and regular raids are being run upon request. In 2010, the industry conducted 55 raids against book shops, seizing over 900 pirated books. As noted above, raiding needs to be extended to all sectors, including the music and recording industry which suffers rates of piracy over 90% in the Saudi market, and nearly a 100% online piracy rate. Again, however, without deterrence in the form of significant penalties imposed by the VRC and BOG, merely conducting more raids will not result in significant change in the market.

COPYRIGHT LAW AND RELATED ISSUES

Progress Toward Implementation and Ratification of the WIPO Treaties: Some very slow progress had been made for law reform in the area of implementing the requirements of the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) through 2009, but there have been no developments since. The Saudi Government has engaged with WIPO and in early 2010 was reportedly preparing questions for WIPO responses. We have heard no word whether further progress has been made. This process needs to be accelerated and completed.