

# UNITED ARAB EMIRATES

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2018 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 2018.<sup>1</sup>

**Executive Summary:** Despite being one of the top ten countries with the highest GDP per capita, the UAE struggles with critical market access barriers, below-par copyright protection, and diverse methods of piracy. The UAE has seen some positive movements in IPR enforcement and awareness, but has not fully implemented the standards of protection required by the WIPO Internet Treaties and does not protect copyrighted content for a term in line with the modern standards of protection. In addition to legal protection shortfalls, rights holders in the UAE face major difficulties with the exercise of their existing rights. It has been sixteen years since the UAE passed federal legislation providing for the possibility of collective management of certain rights—a facility that rights holders in the music sector would like to make use of, given that their attempts to directly exercise broadcasting and public performance rights were blocked by the government. However, the Federal Council of the UAE has failed to issue an operating license to any such collective management entity, or to rights holders themselves, leaving music rights holders without the legal means to exercise their existing rights under local copyright law and collect compensation for the commercial use of their music. The UAE is a major hub for tourism and retail and is a repeat host for legitimate music services, sold-out concerts, and the upcoming EXPO 2020 in Dubai. This puts the UAE in position to not only follow through with payments that are critical to U.S. rights holders and the rule of law in the country, but also to invest in the development of a robust local industry that can advance local talent and increase jobs in the media sector. The government needs to urgently stop ignoring the problem and immediately issue an operating license to a collecting society that will enable music rights holders to start licensing and collecting royalties. Otherwise, they must confirm in writing that rights holders are free to exercise their broadcasting and public performance rights directly. The government's inaction constitutes a direct market access barrier for international music rights holders. Another potential market access barrier is the Dubai Department of Economic Development's (DED) new requirement for a UAE copyright registration certificate as a prerequisite to initiate a copyright infringement case.

On a positive note, the UAE Cyber Crime Law has been used effectively against virtual private networks (VPNs), DNS “masks” (that hide domain names), and Tor (anonymous) networks—all used to otherwise disguise piratical sites and activities from enforcement officials. Moreover, the enforcement of the Cyber Crime Law has resulted in some severe and deterrent penalties. Enforcement officials have also taken action against social media accounts selling counterfeit and pirated materials. Over the past year, the UAE has implemented many non-legislative reforms dealing with customs practices and held focused workshops to increase awareness of, and respect for, IPRs, which is also helping improve the status of piracy in the country.

#### **PRIORITY ACTIONS REQUESTED IN 2018**

- Take immediate action to approve a collecting society application so that rights holders can finally begin collecting royalties under the UAE copyright law.
- Modernize the copyright law to implement the WIPO Internet Treaties; 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.
- Proactively enforce against Internet piracy by encouraging the Telecommunication Regulatory Authority (TRA) to engage domain name registrars and other intermediaries to cooperate with rights holders to block: illegal TV

<sup>1</sup>For more details on UAE's Special 301 history, see previous years' reports at <https://iipa.org/reports/reports-by-country/>. For the history of UAE's Special 301 placement, see <https://iipa.org/files/uploads/2018/02/2018SPEC301HISTORICALCHART.pdf>.



services websites; advertisement to pirated TV services throughout online classifieds, auctions, blogs, forums and social networks; illegal credit cards payment gateways and alternative online payment methods; websites that offer gift-cards or redeemable vouchers to buy or refill personal accounts to these services in question; help desk support numbers for these illegal services; and illegal VPN IP addresses dedicated to streaming content to hybrid set-top-boxes. They also should work to better monitor app-based dissemination of illegal content.

- Ensure enforcement in malls outside of the cities and Free Zones, which are currently rife with pirated and counterfeit products.
- Encourage Customs authorities to ban the importation of illegal set-top-boxes (STBs) such as servers for Dish TV of India.
- 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.

## **COPYRIGHT PIRACY IN UAE**

As of June 2017, roughly 8.52 million people in the UAE use the Internet, which is about 91% of the UAE population.<sup>2</sup> Mobile penetration is widespread, with well over 200 mobile subscriptions per 100 inhabitants.<sup>3</sup> 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 accessing websites that provide illegal access to music, movies, television content, video games, reference books, online journals, and trade books of top publishers. Similarweb reports that in December 2017, 1 million visits to *Torrentz2* and 1.8 million visits to *Thepiratebay.org* were from the UAE.

**Public Performance and Broadcasting Piracy for Music:** At present, because of the impossibility of licensing public performance and broadcasting by rights holders directly or collectively, all music that is used in such a way is *de jure* pirated in the UAE. This is due to the government's 15-year-plus delay in issuing an operating license to a music collective management organization (CMO). Despite attempts by industry, in cooperation with the Abu Dhabi media authority, to obtain an operating license, there has been no information as to whether the Ministry of Economy (MOE) even considered the application at the Federal level. The last application was submitted in 2016, but no formal reply was issued. The lack of government engagement with the industry, and the bar to the exercise of existing rights resulting from the government's inaction, raises questions about the UAE's compliance with the WTO TRIPS Agreement and the state of the rule of law in the country. Simply put, the UAE's regulatory inaction means that the existing law has no effect and there is no remedy for the ongoing, country-wide infringement of music public performance and broadcast rights. As such, music rights holders have no means to license their works and recordings.

**Online and Mobile Piracy:** Several notorious online piracy sites are heavily accessed in the UAE, including *123movies.is*, a streaming website that embeds popular movie and series content from third-party cyberlockers. The TRA reports that it has blocked approximately 83,900 websites in 2017, which includes 473 websites for IP violations, and the Dubai DED has blocked more than 15,050 accounts on social media in 2017. Popular pirate music sites in the UAE include *Torrentz2.eu*, which indexes links to torrent music files that are hosted on BitTorrent indexing sites such as *The Pirate Bay*. According to Alexa, both these websites currently feature in the top 50 websites accessed in the UAE. Recently, there has been an increase in mobile applications that enable illegal showings of copyrighted TV programs or exclusive TV channels and are extremely difficult to monitor. One example is the *Bear TV app*.

**Hybrid Set-Top-Boxes:** With fast Internet bandwidth becoming more prevalent 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, although they do

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<sup>2</sup>See <http://www.internetworldstats.com/stats5.htm>.

<sup>3</sup>See <http://www.arabianbusiness.com/uae-s-mobile-phone-penetration-rises-228--676115.html>.

not pay music rights royalties (see above). However, using the Internet as a low-cost form of delivery, pirates rip content feeds, upload the feeds on servers, and stream them through STBs that can decrypt the data feeds to be viewed on TV sets. Hybrid STBs are used for this. There are STBs that only work online and can be used either to receive the Free-To-Air channels—which is a legal act—or to receive the pirated TV channels by way of installing certain applications. This type of piracy is increasing specifically in the UAE and hurting the market. These STBs and the channels or content they carry are illegally marketed, promoted, and sold to consumers in high volumes through several sales channels such as door-to-door, small retailers, Internet sales, or over social media accounts. While the equipment and hardware used for these types of services seem legitimate, it is the loaded operating software that allows access to the pirated content. Unless these Hybrid STBs are preloaded with the required piracy software, it is difficult to identify their illegal nature. Examples of these Hybrid STBs are the ones known and used for UKTV Abroad, UKTV Arabia, ip888tv.com and Expat TV. Expat TV is gaining popularity amongst western expats in the UAE, operating under the brands Tiger Z280, MXQ, Mag250, iStar and IP888. Numerous Internet-based TV and Video-On-Demand services legitimately operate throughout the world within defined territorial limits. The UAE has many foreign expats from territories where these services are licensed, and it is easy for them (with the use of their foreign credit cards or with the use of VPNs or other circumventing services that are widely available on the digital market) to subscribe to these services and access the content in the UAE. This poses a direct threat to legitimate UAE platforms offering the same content 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 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 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. By increasing fines and threatening expats with deportation in 2017, the government raised extensive public awareness to issues surrounding the use of VPNs, DNS masks, and Tor Networks for illegal activities.

**Pirate Free-To-Air Channels:** Pirate Free-To-Air (FTA) channels constitute one of the major problems in the media industry. The FTA channels are clear, unencrypted channels that can be received and viewed without requiring a subscription. They are uploaded from many different locations across the region to satellites that have region-wide reach. This is becoming an increasingly prevalent problem because it is difficult to apply consistent regulatory control when entities are not located in a specific territory. There is a high number of FTAs focused on broadcasting content without acquiring the necessary rights. The multiple locations and lack of regulatory control in the UAE make it very difficult to regulate FTAs, enforce copyrights, and apply remedial measures. An added problem is that even when the legitimate rights holders are successful in closing down pirate channels, the lack of regulatory control allows for them to simply change the channel or name and restart operations again under the same model. Examples of Pirate FTA channels are *Majestic Cinema* and *Top Movies*, which historically have been two of the worst offenders for this form of piracy.

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

## COPYRIGHT ENFORCEMENT ISSUES IN UAE

**Raids and Piracy Prevention:** Industry sectors report that enforcement has 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 Dubai DED is active in fighting counterfeit products and has conducted several raids against entities using software without authorization from the copyright holder and shut down social media accounts selling counterfeit products. The Criminal Investigation Department (CID) has been working closely with rights holders and licensees to stop sales of hybrid STBs. This has somewhat reduced the use of unauthorized direct-to-home TV broadcasting services. Unfortunately, such operations require arrangements between different departments, 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. These are areas the UAE can focus on to strengthen its enforcement regime.

**Judicial and Case Law Developments:** 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 cybercrime-related laws. Also, the punishment under UAE Cyber Crime Law has become more severe. As a result, use of VPNs, DNS masks, and Tor networks for piracy is decreasing. Also, the Abu Dhabi Criminal Court issued a judgment in a case against an administrator of the torrent website called *arabscene.org*. The court decided to block the website, as it showed exclusively licensed TV channels without permission. In addition, the administrator was fined and deported out of the country. The judgment was enforced in 2017. The case is significant as it involved a website that was hosted outside the UAE, setting a strong precedent for other similar offenders.

However, on the downside, administrative authorities such as the DED are requesting copyright registrations in the UAE to proceed with a complaint against copyright infringers, despite the fact that the infringed work is copyrighted outside the UAE. The administrative authorities should proceed with complaints based on foreign copyright registrations if such registrations are recorded in a member country of the Berne Convention, since the UAE is a member of this Convention.

**Enforcement in Free Zone and areas outside city limits:** Enforcement challenges remain in malls outside the main cities and in Free Zone areas. Authorities continue to detect high levels of counterfeit products in Dragon Mart 1, Dragon Mart 2, the Global Village, Karama in Dubai and the China Mall. There is a high volume of goods imported to the UAE, and the territory is used as a regional hub for goods in transit. The UAE should ramp up efforts to enforce against pirate and counterfeit traffickers with deterrent enforcement actions and enhanced customs controls.

**Customs Piracy Prevention:** The Ajman Customs authorities activated their IP department in 2017, and they can now take actions against copyright and trademark infringers. The Dubai Customs recently announced that they will allow recycling of counterfeit products instead of re-exporting such products. Recycling means that the products are sent to a local recycling company that destroys the products and raw material thereafter used in various industries. Dubai Customs used to re-export the counterfeit products to the country of origin instead of destroying or recycling such counterfeit products. Abu Dhabi Customs also extended the protection for recorded trademarks from one year to ten years, in line with other local customs authorities in the UAE.

**Training Programs:** The IPR Department at Dubai Customs is the first of its kind in the Middle East. It is a federal law enforcement agency that works towards securing the twenty-one air and sea entry/exit points of the mainland. Apart from operating in a reactive capacity and intercepting the supply of infringing content/goods, the department has also been working in a preventive capacity by employing educational means to limit the demand for infringing content in the first place. The objective is to raise awareness to avoid the direct, and often physical, harm that counterfeit goods cause, as well as to create an anti-infringement culture and eliminate other issues stemming from IPR infringements. Additionally, Dubai Customs offers customs inspectors training courses to increase their

knowledge and understanding of IPR. The IPR department has, in cooperation with the communication department at Dubai Customs, held theoretical and practical courses on IPR protection in schools. Moreover, seminars have been held in universities, summer camps, and shopping malls, targeting large segments of society. They are also open to representatives from other government ministries and other member states of the Gulf Countries Council. In 2017, Emirates IP Association and INTERPOL co-hosted an IP awareness session with Dubai Customs, Brand Protection Group, Dubai Police, and Ministry of Economy. The session hosted a number of speakers from the private and public sector that shed light on various IP violations.

## **OTHER COPYRIGHT LAW AND RELATED ISSUES**

**Prevention of music rights holders' exercise of legal rights:** Broadcasting and public performance (such as in hotels, restaurants, shops, discos, bars, dance schools, airlines, etc.) of music are important uses of recorded music and musical works. 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 the U.S. music being exported to the UAE cannot be monetized, and that various UAE businesses are not required to pay for music despite the protection recognized in the UAE law.

The UAE copyright law provides the relevant rights in Article 18 of the Federal Law No. 7 of the 2002 law concerning Copyrights and Neighboring Rights, which 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 provides that anyone who engages in such exploitation without permission from the rights holder infringes copyright and is subject to criminal penalties and civil remedies. The law also enables the creation of collecting societies and provides for the undertaking of collective rights administration. Additionally, the Ministerial Decision No. 133 of 2004 concerning the Collective Management of Copyrights and Neighboring Rights established the basis on which licenses permitting collective management activities would be granted.

Sixteen years later, no license for a collective licensing organization has been granted, and rights holders still find themselves unable to exercise their rights, whether individually or on a collective basis. In 2015, it began to look as if a resolution were in sight. Twofour54—an Abu Dhabi Media Zone entity supported by a rights holder coalition—submitted an application to the MOE for an operating license as a music rights CMO. However, the MOE issued no response. The most recent application was submitted in 2016, but, again, the authorities neither replied nor engaged with the international music sector. The UAE 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):** ISPs in the UAE, namely Etisalat and Du, cooperate with rights holders to a limited degree and are open to listening to their challenges. Some ISPs have special platforms on their websites for reporting IP violations. They normally ask the rights holders to contact the TRA for enforcement actions, which is the governmental body that monitors the operations of the ISPs in the UAE. The government needs to encourage the ISPs to restrict access to the following: illegal TV services websites; advertisement to pirated TV services throughout online classifieds, auctions, blogs, forums and social networks; illegal credit card payment gateways and alternative online methods of payment; websites that offer gift-cards or redeemable vouchers to buy or refill personal accounts to these services in question; helpdesk support numbers for these illegal services; and illegal VPN IP addresses dedicated to streaming content to hybrid set-top-boxes.

**Amendments to the UAE Copyright Law:** The current copyright law falls short of the commitments in the WIPO Internet Treaties and the modern standards of protection. It contains only rudimentary protections against the unauthorized act of circumvention of TPMs and against the trafficking in of 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 materials<sup>4</sup> or the exercise of exclusive rights; and 2) the trafficking in of 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;<sup>5</sup> 2) ensuring compulsory license provisions are in conformity with the Berne Convention Appendix;<sup>6</sup> 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, it does not expressly classify unauthorized or pirated content as illegal. Moreover, it does not include ISP liability for IP infringement carried out through the ISP. Implementing regulations should be issued clarifying that the Cyber Crime Law applies in cases of IP infringement.

## **COMPLIANCE WITH EXISTING OBLIGATIONS TO THE UNITED STATES**

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. Some of the shortfalls in its copyright law (e.g., with respect to the circumvention of technological protection measures) and the state-sanctioned, non-application of existing legal rights of music rights holders raise issues of compliance with the UAE's obligations under those treaties, as well.

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<sup>4</sup>It 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).

<sup>5</sup>For 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.

<sup>6</sup>Article 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.

## MARKET ACCESS

**Music Licensing:** Because of UAE's failure to implement a music licensing regime in the country, music producers (and others in the music sector) are effectively prevented from licensing in the market. This selective non-enforcement of legislation acts as a disguised market access barrier for the music sector. This inaction is also protectionist and discriminatory, given that various UAE families, as well as the state, have stakes in most shopping malls, hotels, restaurants, and other such establishments that require licenses to play music. This framework has been the very essence of the problem for years. This situation is untenable, especially in view of the upcoming EXPO 2020 in Dubai, which has worldwide attention. It is imperative that the music licensing problem be solved without any further delays.

**UAE Copyright Registration Requirement:** Dubai DED has started to request UAE copyright registration certificates in order to proceed with any action for copyright infringement. This is a detrimental change from its old policy, in which it allowed a copyright infringement case to be heard if the plaintiff had a copyright registration certificate in any country that is a member of the Berne Convention. Such restrictions limit the power of rights holders to protect themselves from infringement and hinder their ability to thrive in the UAE market.