

# UNITED ARAB EMIRATES

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2020 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that the United Arab Emirates (UAE) be placed on the Watch List in 2020, and that the U.S. Government should commence an out-of-cycle review (OCR) as well.<sup>1</sup>

**Executive Summary:** Despite one of the top-ten highest GDP per capita levels worldwide, the copyright sector in UAE struggles as the result of crippling market access barriers, sub-par copyright protection in its laws, and weak enforcement that allows diverse methods of piracy to persist. The UAE has seen some positive movements in IPR protection education, but does not allow the exercise of the long-implemented music performance rights, has yet to fully implement the WIPO Internet Treaties—the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT)—and does not protect copyrighted content for a term consistent with international practices. The obstacles to the exercise of existing rights are particularly troubling. It has been 17 years since the UAE passed federal legislation providing for the possibility of collective management of certain rights which seems to be the only permissible form of exercise of these rights in the UAE (rights holders’ attempts to directly license broadcasting and public performance rights have been blocked by the Government of the UAE). The UAE Ministry of Economy has failed to issue an operating license to any such collective management entity, or to rights holders themselves, leaving no legal means to exercise these rights. The UAE is a major hub for tourism and retail and is a regional hub 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 American and other foreign 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 entertainment sector. The government needs to end its delay and immediately issue an operating license to a collecting society to enable music rights holders to start licensing and collecting royalties. Alternatively, the government could confirm in writing that rights holders are free to license their broadcasting and public performance rights directly. The government’s inaction constitutes a direct market access barrier for international music rights holders. These ongoing impediments to the establishment of a collective management organization in the UAE may warrant a possible OCR in 2020. Two other concerns for the copyright industries are: (1) the Dubai Department of Economic Development’s (DED) requirement for a UAE copyright registration certificate as a prerequisite to initiate a copyright infringement case applicable to both domestic and foreign authors in contravention of the treaty prohibitions on formalities; and (2) the DED’s and Custom Authorities’ failures to take action against infringement and inspect markets without first receiving a complaint from a rights holder. There should be *ex officio* authority to commence these actions.

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. 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 treatment of unauthorized uses in the country. The reduction of the official fees for registration of IPRs and other associated IPR service has had a modest positive impact on copyright protection in the UAE.

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<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/2020/02/2020SPEC301HISTORICALCHART.pdf>.



## **PRIORITY ACTIONS REQUESTED IN 2020**

- Take immediate action to approve a collecting society application so that music rights holders can finally begin collecting royalties under the UAE copyright law.
- Modernize the copyright law to implement the WIPO Internet Treaties and harmonize the copyright term with the emergent international norm of life plus 70 years pma, and 70 years for sound recordings.
- 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. In some instances, the proposed online enforcement remedies are outdated. The U.S. Government should seek high standard remedies that support today's business models of the creative industries, including remedies that effectively respond to current challenges and reflect international best practices.
- 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.
- Put more restrictions over the services which facilitate the subscription of unauthorized paid TV channels such as Dish TV, Airtel TV, and TataSky.
- Support rights holders in enforcing their rights under UAE copyright law.
- Introduce laws providing for more transparency among enforcement authorities.

## **THE COPYRIGHT MARKETPLACE IN UAE**

As of 2019, roughly 9.68 million people in the UAE use the Internet, which is about 98.5% of the UAE population.<sup>2</sup> The UAE leads the world in mobile penetration, 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 the fourth quarter of 2019, there were over 1.68 million visits to *Thepiratebay.org*, and over 1.4 million visits to the stream-ripping site *Savefrom.com* 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 17 year hold out 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. SimilarWeb also reports movie piracy websites *3movierulz.vc* (streaming) and *yts.lt* (torrents) within the top 100 most popular websites in the UAE. In 2017, the TRA reported that it had blocked approximately 83,900 websites, which includes 473 websites for IP violations. However, the TRA stopped publishing the number of the blocked websites

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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>.

thereafter. The Dubai DED blocked more than 15,050 accounts on social media in 2017, while in 2018, Dubai DED slowed to block infringing accounts on social media, and did not publish the total number of blocked accounts. In 2019, the blocking process was stopped completely. Popular pirate music sites in the UAE include the BitTorrent indexing sites *The Pirate Bay* and *1337x.to* and stream-ripping sites *savefrom.net*, *y2mate.com*, and *ytmp3.cc*. 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 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 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 Internet Protocol TV (IPTV) applications. This type of piracy increased in the UAE this past year and is 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.

**Pirate Free-To-Air Channels:** Pirate Free-To-Air (FTA) channels constitute one of the major problems in the motion picture and television 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. 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. The MENA Broadcast Satellite Anti-Piracy Coalition, a group of stakeholders in the Middle East satellite television industry, has a goal of preventing FTA channel piracy. Voluntary collaboration among rights holders and satellite operators in this anti-piracy coalition has been effective at helping to control FTA channel piracy in the UAE.

**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, producers and creators, and other 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 become very slow in the past year, and that the UAE police and economic departments are hesitant in considering serious actions against infringers. For example, the electronic crime department in Dubai Police received a criminal complaint against an identified person in December 2018 for conducting piracy acts for paid TV channels and offering those channels to an increasing group

of people for free over the Internet. Despite the specific complaint, the Dubai Police took no action until the Emirates IP Association (EIPA) interfered to accelerate enforcement, and more than a year later the offender has yet to be presented to the court for prosecution. However, the Dubai DED did conduct several raids in 2019 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.

**Legal Reforms:** On July 4, 2019, the UAE issued Cabinet Resolution No. (51) on the official fees for the Ministry of Economy (in force, July 7, 2019). This resolution reduced many of the official fees for registering IP rights in the UAE. For example, the trademark registration fee has been reduced from 10,000 AED (US\$2,723) to 6,700 AED (US\$1,824).

**Judicial and Case Law Developments:** The judicial system has 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. Evidencing this, the criminal courts of Dubai and Sharjah have found defendants guilty in cases relating to piracy through IPTV apps.

However, on the downside, administrative authorities such as the DED are requesting UAE copyright registrations in order to proceed with a complaint against copyright infringers, even where 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. Though UAE copyright law recognizes this, administrative authorities are not implementing the law correctly.

**Enforcement in Free Zones and Areas Outside City Limits:** Enforcement challenges against hard copy piracy remain in malls outside the main cities and in Free Zone areas. Authorities continue to detect high levels of pirated (and counterfeit) products in Dragon Mart 1, Dragon Mart 2, the Global Village, Karama in Dubai, the China Mall, and Ajman Dragoon Mart. For example, in 2019, the Dubai Economic Department received an administrative complaint against counterfeit products (“LOL” doll toys) in the Dragoon Mart/China Mall. The officials responded to the complaint and seized the counterfeit products from the shops of the respondents, but did not seize similar counterfeit products in neighboring shops because there was no complaint filed against those shops, despite the Dubai Economic Department’s legal authority to seize counterfeit products absent a complaint. 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. Dubai Customs recently announced that it 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 the raw material is thereafter used in various industries. Previously, Dubai Customs would re-export the counterfeit products to the country of origin instead of destroying or recycling such counterfeit goods. 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. A continuing challenge, however, is that Customs authorities are not taking action against counterfeit copies of copyrighted works unless they first receive a complaint from a rights holder. The law needs to be amended so that Customs authorities may take actions even in the absence of complaints by rights holders.

**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 21 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, 2018, and 2019, 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 sectors that shed light on various IP violations. These organizations continue to conduct events combatting IP crime and illicit trade. In addition, the Emirates IP Association is designing paid courses to promote the education of IP in the state, and the Dubai DED has started an IP awareness program for starter companies and IP violators to educate them about IP and the benefits of respecting IP rights. The audience for this program has been reacting positively, i.e., owners of companies are registering their IP and some IP violators are sharing information about the source of specific counterfeit products.

**Ensuring Consistent Enforcement:** For a period of time, enforcement authorities were reluctant to take action when the Prime Minister called on officials to cooperate as much as possible with companies to encourage the investment. This call was misunderstood, and the effect was that enforcement authorities waived or reduced fines against IP violators, including the Dubai DED, which reduced fines up to 50%. IP rights holders would like to see this reduction applied to complainants (the brand owners) instead of infringers. Additionally, the Dubai DED's failure to inspect markets absent a complaint from copyright holders encouraged infringers to trade in illicit products including STBs containing IPTV apps for pirating paid TV channels.

## **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 the government inaction already noted, to accredit a collecting society, no monies are being collected currently, 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.

As noted, for 17 years, no collecting society has been accredited so rights holders have no means to commence services or collect monies. In 2015, there was some optimism for progress when Twofour54—an Abu Dhabi Media Zone entity supported by a rights holder coalition—submitted an application to the Ministry of Economy for an operating license as a music rights CMO. However, the Ministry of Economy never responded. Another application (the most recent) was submitted in 2016, with the same result—no response. The UAE should move swiftly to approve the application, which is supported by the music industry across the board. Unfortunately, recent requests by IFPI for a government intervention with the UAE Ministry of Economy and the Department of Economic Development have not been answered. The continuing government inaction may warrant a possible OCR for UAE in 2020.

**Challenges with Internet Service Providers (ISPs):** ISPs in the UAE, namely Etisalat and Du, cooperate with rights holders to a limited degree by responding to notice and take down requests. 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. Additionally, ISPs need to be encouraged to act more expeditiously. While some provide the above-mentioned platforms for reporting IP violations, they act slowly on complaints.

**Amendments to the UAE Copyright Law:** The current Copyright Law falls short of the obligations in the WIPO Internet Treaties and modern standards of protection. It contains only rudimentary protections against the unauthorized act of circumvention of TPMs and against some activities relating to trafficking in devices, technologies, components, and services that facilitate the circumvention of TPMs. The law needs to be amended to more broadly include prohibitions against: 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 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 recommended changes 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 (the 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.

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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.

**Cyber Crime Law Should Include IP:** The Cyber Crime Law was recently updated to include, among other things, a specific provision on ISP liability. The Cyber Crime Law should be further updated to include criminal offenses relating to copyright infringement. 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 Internet Treaties (the WIPO Copyright Treaty, (WCT) and the WIPO Performances and Phonograms Treaty, (WPPT)). 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.

## **MARKET ACCESS**

**Music Licensing:** The failure to implement a music licensing regime in the country effectively prevents producers and performers from licensing in the market, which serves as a market access barrier. 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. 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 delay.

**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 (and as applied to Berne member authors and producers is a violation of Article 5(2) of Berne and equivalent provisions such as Article 20 WPPT). Such restrictions limit the power of rights holders to protect themselves from infringement and hinder their ability to thrive in the UAE market.