

# UNITED ARAB EMIRATES

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2021 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 2021.<sup>1</sup>

**Executive Summary:** Despite one of the top-ten highest gross domestic product (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 intellectual property rights (IPRs) protection education, but 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.

It has been 18 years since the UAE passed federal legislation providing for the possibility of collective management of certain rights, and the music industry's repeated attempts to establish a market for the collective management of broadcasting and public performance rights have been frustrated by the government's failure to permit rights holders to establish a collective management organization (CMO) and commence collective licensing activities. 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, which has been postponed to late 2021 due to the pandemic. Yet, the widespread use of music in shopping malls, hotels and other public settings cannot be licensed, denying American and other foreign rights holders the opportunity to effectively exercise their rights, and undermining the rule of law in the country. This directly and substantially reduces the revenues available 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 work with music rights holders, allowing them to establish a CMO in accordance with international best practices in transparency, accountability and governance, and issue an operating license to a CMO to enable music rights holders to start licensing and collecting royalties. The government's inaction constitutes a direct market access barrier for international music rights holders.

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), domain name system (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.

#### **PRIORITY ACTIONS REQUESTED IN 2021**

- Take immediate action to enable rights holders to establish a CMO in UAE, in accordance with international best practices of transparency, accountability and governance, and to permit such CMO to commence operations in

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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/2021/01/2021SPEC301HISTORICALCHART.pdf>.



the UAE so that music rights holders can finally begin collectively licensing their broadcast and public performance rights 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 (advertisement providers; payment providers; helpdesk support services; and dedicated VPNs) that enable structurally infringing services to cooperate with rights holders and require them to take effective action to prevent their services from being used by infringers. 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 that 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.

## **COPYRIGHT PIRACY IN UAE**

Online and mobile device piracy in the UAE remains a problem, including websites that provide illegal access to music, movies, television content, video games, reference books, online journals, and trade books of top publishers. Piracy of copyrighted content not only affects rights holders, but also harms content creators and owners, cinemas, producers 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.

**Unlawful Public Performance and Broadcasting of Music:** At present, because of the impossibility of licensing public performance and broadcasting by rights holders collectively, the vast majority of music that is used in such a way is *de jure* unlawful in the UAE. This is due to the government's 18 year hold out in issuing an operating license to a music CMO. Despite attempts by industry, in cooperation with the Abu Dhabi media authority, to establish a CMO and 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 collective exercise of existing rights resulting from the government's inaction, raise 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 limited effect and there is no remedy for the ongoing, country-wide infringement of music public performance and broadcast rights. As such, music rights holders are denied revenues from the widespread use of their works and recordings (*see also* below section "Other copyright law and related issues").

**Online and Mobile Piracy:** Several notorious online piracy sites are heavily accessed in the UAE, including *cima4u.io*, a streaming website that embeds popular movie and series content from third-party cyberlockers. SimilarWeb also reports movie piracy websites *fmovies.to* (streaming) and *yts.mx* (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 thereafter. The Dubai DED blocked more than 15,050 accounts on social media in 2017, while in 2018, Dubai DED

reduced the blocking of infringing accounts on social media and did not publish the total number of blocked accounts. In 2019, the blocking process was stopped completely. In 2020, the DED reactivated monitoring of social media and started closing accounts violating IP rights. 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, which are extremely difficult to monitor. One example is the *Mobdro app*.

**Hybrid Set-Top Boxes:** The use of illicit streaming devices (ISDs) has increased in the UAE. There are STBs that can be used either to receive the free-to-air (FTA) channels—which is a legal act—or to receive the pirated TV channels by way of installing certain Internet Protocol TV (IPTV) applications. 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, *King-iptv.net*, *Kingiptv.org*, 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.

**Pirate Free-To-Air Channels:** Pirate FTA channels continue to constitute a problem 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. 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.

## **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. 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. Also, the Dubai Police has created a dedicated platform on its website to encourage rights holders to file criminal complaints against IP violating websites, and the Criminal Investigation Department (CID) has been working closely with rights holders and licensees to stop sales of hybrid STBs. 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.<sup>2</sup> 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).

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<sup>2</sup>Though this remains an issue in general, the Department of Economic Development (DED) has found an alternative path via the rights holders to address, at least the issue of infringing social media accounts. The DED is closing social media accounts without court orders. The DED communicates with brand owners/IP rights holders or with the Telecommunication Regulatory Authority (TRA) to close those accounts. Basically, the DED has a team which monitors social media accounts in the UAE and reports accounts that include violations of IP rights on a regular basis to the IP rights holders/legal representatives. The IP rights holders communicate directly with the IP enforcement team within the social media platform – subsequently this team closes the violating accounts upon receiving notifications from the IP rights holders. If the IP rights holders could not close the account via outreach with the social media providers, the DED refers the matter to the TRA, which blocks the access to the IP infringing accounts in the UAE.

**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 Higher Criminal Court in Dubai 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 2021. 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 Abu Dhabi and Sharjah have found defendants guilty in cases relating to piracy through IPTV apps.

**Enforcement in Free Zones and Areas Outside City Limits:** Enforcement in Free Zone areas is limited to criminal actions by police based on complaints by the copyright owner. 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. In 2017, Dubai Customs began to recycle 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. The past four years, 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. Due to the COVID-19 pandemic, Dubai Customs began to conduct online training sessions. 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 IPRs. 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 by 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:** Revenue collected from broadcasting and public performance of music (such as in hotels, restaurants, shops, discos, bars, dance schools, airlines, etc.), 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 to accredit a collecting society as noted above, no monies are currently being collected, 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 when broadcast or performed publicly, and that various UAE businesses are using music without any payments to rights holders, 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.

For 18 years, no collecting society has been accredited, so rights holders have no means to manage their rights collectively, which for certain uses of rights is the only practicable way to license users. 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. Unfortunately, requests by the International Federation of the Phonographic Industry for a government intervention with the UAE Ministry of Economy and the Department of Economic Development have not been answered. The UAE should take immediate action to enable rights holders to establish a CMO in the UAE, in accordance with international best practices of transparency, accountability and governance, and to permit that CMO to commence operations in the UAE so that music rights holders can finally begin collectively licensing their broadcast and public performance rights under the UAE copyright law.

**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 takedown requests, however, in the past year there was no significant cooperation from ISPs. All ISPs currently have special platforms on their websites for reporting IP violations, but they do not publish any statistics related to the takedown rates. 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 IPTV services; advertisement to pirated TV services; 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; 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 technological protection measures (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>3</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>4</sup> 2) ensuring compulsory license provisions are in conformity with the Berne Convention (the Appendix);<sup>5</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; and 9) raising minimum and maximum fines for copyright infringement (Article 37).

**Cyber Crime Law Should Include IP:** The Cyber Crime Law was updated in 2018 to include, among other things, a specific provision on ISP liability. The Cyber Crime Law and its amendments include general rules to criminalize publishing illegal contents on the Internet. For example, Articles 34 and 39 impose fines and imprisonment against those who use communication services, audio, or video broadcasting channels without the legal right and against those who own or administer a website or computer network and deliberately make illicit content available. This law should be further updated to include clear 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 deficiencies 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 Internet Treaties. 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 large parts of 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 (postponed to 2021), which has worldwide attention, it is imperative that the music licensing problem be solved without any further delay.

**UAE Copyright Registration Requirement:** Dubai DED requests 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

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<sup>3</sup>It should be confirmed that access control technological protection measures (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>4</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>5</sup>Article 21 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.

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 of WPPT). Such restrictions limit the power of rights holders to protect themselves from infringement and hinder their ability to thrive in the UAE market.

**Administrative Fees:** The UAE National Media Council imposes administrative fees to imported copyrighted works, such as US\$270 for theatrical releases and US\$108 for TV programming. The Economic Departments and Customs authorities imposes administrative fees of US\$7,500 to file complaints against infringers/copyright violators.