

UNITED ARAB EMIRATES

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2022 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 2022.¹

Executive Summary: Despite one of the top-ten highest gross domestic product (GDP) per capita levels worldwide, the copyright sector in UAE struggles because of weak enforcement that allows diverse methods of piracy to persist, sub-par copyright protection in its laws, and crippling market access barriers. The UAE has seen some positive movements in intellectual property (IP) protection education, but it has yet to fully implement the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively known as the WIPO Internet Treaties) 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. 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 to commence collective licensing activities. The UAE is a major hub for tourism and retail and is a regional hub for legitimate music services and sold-out concerts. Yet, the widespread use of music in shopping malls, hotels, and other public settings with no ability to license it from a CMO, denies American and other foreign rights holders the opportunity to effectively exercise their rights and undermines the rule of law in the country. This inability to license 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, immediately work with music rights holders, and allow them to establish a CMO in accordance with international best practices in transparency, accountability, and governance. The government should also issue an operating license to such 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.

One other concern for the copyright industries is 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.

On a positive note, the UAE has enacted *ex officio* authority for customs officials, implemented many non-legislative reforms dealing with customs practices, and held focused workshops to increase awareness of, and respect for, IP, which is also helping to improve the treatment of unauthorized uses in the country. Additionally, in 2019, the UAE issued a resolution reducing many of the official fees for registering IP rights (IPRs) in the UAE.

Copyright holders do not have the option to challenge rejection decisions of the Copyright Office before a specialized legal committee at the Copyright Office prior to escalating the matter to the courts. As a party to the Berne Convention, the UAE is required to introduce corrective tools and to help copyright holders register their work as quickly as possible instead of pushing them to challenge the decisions before courts, which is a lengthy and costly process.

¹For 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>.



PRIORITY ACTIONS REQUESTED IN 2022

- 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 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 to harmonize the copyright term with the international norm of life of the author plus 70 years and 70 years for sound recordings.
- The Telecommunication and Digital Regulatory Authority (TDRA) should engage with domain name registrars and other intermediaries, such as advertisement providers, payment providers, help desk support services, and dedicated virtual private networks (VPNs), encourage them to cooperate with rights holders, and require them to take effective action to prevent their services from being used by infringers.
- Introduce laws providing for more transparency from enforcement authorities.
- Adopt high standard remedies that support the creative industries' current business models, including remedies that effectively respond to current challenges and reflect international best practices.
- Encourage customs authorities to ban the importation of illegal set-top boxes (STBs).
- Put more restrictions over the services that facilitate the subscription of unauthorized paid TV channels, such as Dish TV, Airtel TV, and TataSky.

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 affects not only 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, most of the music that is used in such a way is *de jure* unlawful in the UAE. This lack of ability to license collectively is due to the government's 18-year hold out in issuing an operating license to a music CMO. IIPA is encouraged by the announcement on December 28, 2021, that the government approved a book publishing CMO titled the Emirates Reprographic Rights Association. The CMO now has three months to establish itself, such as setting up a board. The establishment of a book publishing CMO is welcome, and the music sector also expects progress at long last with the government engagement with the music industry on licensing a truly representative music CMO. The absence of any progress so far, raises questions about the UAE's compliance with the WTO TRIPS Agreement. Simply put, the UAE's regulatory inaction means that the existing law has limited effect, and no remedy exists 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 Piracy and Social Media: Several notorious online piracy sites are heavily accessed in the UAE, including *cima4u.ws*, a streaming website that embeds popular movies and series content from third-party cyberlockers. SimilarWeb also reports that movie piracy websites *fmovies.to* (streaming) and *tamilyogi.best* (torrents) are within the top 100 most popular websites in the UAE. The motion picture industry noted that in recent years, Telegram has become a full-fledged global piracy hub for films and that the presence of copyrighted content on Telegram acts as a growth driver. While there has been improvement in compliance rates for the removal of infringing links and channels, Telegram's response to takedown notices varies greatly, from almost immediate to none despite

multiple re-notifications. The current manual takedown approach does not facilitate the use of keywords and filtering technology to prevent the easy uploading of films. Furthermore, the motion picture industry reports that discovery of infringing content is facilitated by piracy bots, and Telegram lacks a transparent and appropriate procedure for handling repeat infringers. In 2017, the TDRA reported that it had blocked approximately 473 websites for IP violations. However, the TDRA stopped publishing the number of the blocked websites thereafter. 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*.

Internet Protocol TV (IPTV) Piracy and Hybrid Set-Top Boxes: Recently, the number of mobile applications that enable illegal showings of copyrighted TV programs or exclusive TV has increased. Access to the pirated content on Internet Protocol TV (IPTV) services is generally provided via an application that can be installed on consumer hardware or downloaded directly to a user's device, such as a smartphone or tablet. Pirate IPTV services are extremely difficult to monitor, as they necessitate a subscription to access the service. Thus, substantial resources are required to discover and monitor these services.

The use of illicit streaming devices (ISDs) is increasing in the UAE. STBs 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 IPTV applications. These STBs and the channels or content they carry are marketed, promoted, and illegally sold to consumers in high volumes through several sales channels, such as door-to-door, small retailers, Internet sales, or over social media accounts. Because the hardware of an ISD is not necessarily illegal, it is often difficult to prevent the importation and sale of these devices in the UAE. ISD import is subject to approval from TDRA. In practice, offenders often install infringing IPTV applications on devices after importation. However, the TDRA and the customs authorities do not conduct inspections on these devices after importation. Examples of these hybrid STBs are the ones known and used for *UKTV Abroad*, *King-iptv.net*, and *Kingiptv.org*.

Pirate Free-to-Air (FTA) 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 two years, and the UAE police and economic departments are hesitant to consider serious actions against infringers. Also, the Dubai Police 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. Correspondence between the TDRA and CID is also relatively slow, which impedes the collection of information and evidence in piracy investigations. The government needs to encourage the Internet service providers (ISPs) to restrict access to the following: (i) illegal IPTV services and intermediaries that facilitate the operation of such services, such as domain name registrars, (ii) advertisement providers and payment providers; (iii) websites that offer gift cards or redeemable vouchers to buy or refill personal accounts to illegal IPTV services; (iv) helpdesk support numbers for these illegal services; and (v) illegal VPN IP addresses dedicated to streaming content to hybrid set-top boxes. Additionally, ISPs need to be encouraged to act more expeditiously. While the ISPs provide platforms for reporting IP violations, they act slowly on complaints. The ISPs or the TDRA need to publish statistics on the blocked violating websites. Addressing these areas would greatly improve the enforcement environment in the UAE.

Judicial and Case Law Developments: The judicial system has shown some signs of improvement. Prosecutors have been analyzing the facts in IP cases and referring cases to the courts on the grounds of violations of IP or cybercrime-related laws. 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 exhibited 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. In fact, 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. People import a high volume of goods into the Free Zone areas and often use the territory as a regional hub for goods in transit. The administrative authorities in the DED do not have jurisdiction over those areas, and therefore, no one performs regular or random inspections of the facilities therein. The UAE should ramp up its 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 act 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, risking that they would end up back in the market. 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, has been that customs authorities have not been acting against counterfeit copies of copyrighted works unless they first receive a complaint from a rights holder. The law has recently been amended to provide *ex officio* authority so that customs authorities may take actions even in the absence of complaints by rights holders.²

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 and exit points of the mainland. Apart from operating in a reactive capacity and intercepting the supply of infringing content and 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 to eliminate other issues stemming from IPR infringements. Additionally, Dubai Customs offers customs inspectors training courses to increase their knowledge and understanding of IP. The IPR department has, in cooperation with the communication department at Dubai Customs, held theoretical and practical courses on IP 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 many 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. Owners of companies are registering their IP, and some IP violators are sharing information about the source of

²Copyright Act, Article 38(1)(“ Subject to the legislation in force in the country, the customs authorities may, on their own or at the request of the Author, the right holder, their successors, or their representatives, may order by a reasoned decision not to clear customs - for a maximum period of twenty (20) days - in respect of any items in violation of the provisions of this Decree-Law.”).

specific counterfeit products.

Ensuring Consistent Enforcement: For some time, enforcement authorities were reluctant to act, but then the Prime Minister called on officials to cooperate as much as possible with companies to encourage investment. This call was misunderstood, however, 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: The music industry estimates that the revenue a CMO would collect from broadcasting and public performance of music in the UAE (such as in hotels, restaurants, shops, discos, bars, dance schools, and airlines) would be in the tens of millions of U.S. dollars if the government accredited a CMO and allowed such collection. Such revenue is an essential element in supporting the development of local artists and in developing the UAE as a hub for music production in the region. Yet, due to government inaction to accredit a CMO, 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 neighboring rights protection recognized in the UAE copyright law.

The UAE copyright law provides the relevant rights in Article 18 of the Federal Law No. 38 of 2021 on Copyrights and Neighbouring 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 39 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 CMOs and allows the collective management of these rights. Additionally, the Ministerial Decision No. 133 of 2004 concerning the Collective Management of Copyrights and Neighbouring Rights established the basis on which licenses permitting collective management activities would be granted.

For 18 years, the Government of UAE had not accredited a single CMO, so rights holders had no means to manage their rights collectively. Recently, the government approved a book publishing CMO titled the Emirates Reprographic Rights Association. For certain uses of rights, collective management is the only practicable way to license users. In 2015, music right holders had some optimism for progress when Twofour54—an Abu Dhabi Media Zone entity supported by a rights holder coalition—applied 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 (IFPI) for a government intervention with the UAE Ministry of Economy and the Department of Economic Development have not been answered. The situation is not helped by one entity currently claiming to be a representative music CMO in the UAE, whereas in reality no single entity represents the majority of rights in local and/or international musical works and recordings and could license their performance rights. 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. 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. The ISPs normally ask the rights holders to contact the TDRA (the governmental body that monitors the operations of the ISPs in the UAE) for enforcement actions. 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, the Government of UAE should encourage ISPs to act more expeditiously. While some ISPs provide the above-mentioned platforms for reporting IP violations, they act slowly on complaints.

Amendments to the UAE Copyright Law: UAE recently updated its Copyright Act, but it still has areas in its law that should be improved. Recommended changes include: 1) removal of unreasonable restrictions on the ability to freely contract;³ 2) ensuring compulsory license provisions are in conformity with the Berne Convention (the Appendix);⁴ 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.

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. 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.

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 content 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, the Cyber Crime Law does not include ISP liability for IP infringement carried out through the ISP. The UAE should issue implementing regulations to clarify that the Cyber Crime Law applies in cases of IP infringement.

MARKET ACCESS

Music Licensing: The failure to implement a collective management regime in the country effectively prevents producers and performers from licensing large parts of the market (as noted above), 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. 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

³For example, Articles 11 (right of transferor to return to court for reconsideration) and 15 (making invalid "[a]ny disposition an Author makes of his future intellectual opus.") are unreasonable restrictions, and should be left, in general, to marketplace solutions rather than be restricted by statute as they are here.

⁴Article 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.

before allowing rights holders to proceed with any action for copyright infringement. This requirement 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 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 Ministry of Culture (previously the 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 copyright violators.