

UNITED ARAB EMIRATES

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2024 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 2024.¹

Executive Summary: UAE has made recent legislative improvements to its copyright law but must further amend it to fully implement the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties) and ensure UAE's standards for copyright protection and enforcement meet international norms and best practices. The government is also making welcome progress towards the establishment of a collective management organization (CMO). Continuing this progress is necessary to overcome market access barriers and weaknesses in enforcement that enable diverse methods of piracy to persist and prevent foreign rights holders from protecting their property. IIPA urges UAE to bring its laws and practices in line with international obligations, norms, and best practices.

PRIORITY ACTIONS REQUESTED IN 2024

Enforcement

- Engage with intermediaries through the Telecommunication and Digital Government Regulatory Authority (TDRA) to require effective action to deter infringement.
- Ban the importation of illicit streaming devices (ISDs).
- Encourage more transparency and effective enforcement from enforcement authorities.
- Harmonize requirements for enforcement with international norms.

Legal Reforms

- Revise the Copyright Law to fully implement the WIPO Internet Treaties.
- Amend the Copyright Law to align the term of protection for works and sound recordings with international norms.
- Address inconsistencies between Executive Regulation No. 47/2022 and international standards and best practices.
- Provide additional mechanisms that ensure Internet service providers (ISPs) can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities.

Market Access

- Enable rights holders to establish a music CMO in UAE and permit that CMO to commence meaningful operations in the UAE.

ENFORCEMENT

- **Engage with intermediaries through the Telecommunication and Digital Government Regulatory Authority (TDRA) to require effective action to deter infringement.**

¹ 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://www.iipa.org/files/uploads/2024/01/Appendix-B-2024.pdf>.

Industry reports that unjustified delays have impeded enforcement in the past three years, and both UAE police and the economic departments are hesitant to consider serious actions against infringers.² While the Dubai Police has created a dedicated platform on its website to file criminal complaints against intellectual property (IP)-violating websites,³ ISPs normally ask rights holders to contact the TDRA (the governmental body that monitors the operations of the ISPs in the UAE) for enforcement actions. The TDRA investigates and may order ISPs to implement website blocks. In 2023, the Ministry of Economy (MoE), which has the authority to instruct TDRA to restrict violating websites,⁴ began accepting copyright complaints through its portal.

The government has an important role to play in promoting piracy prevention efforts and needs to encourage ISPs to restrict access to illegal Internet protocol TV (IPTV) services and intermediaries that facilitate the operation of such services, such as (i) 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 virtual private network (VPN) Internet protocol addresses dedicated to streaming content to hybrid set-top boxes. *Etisalat* and *Du*, the two primary ISPs in the UAE, have cooperated with rights holders to a limited degree by responding to notice and takedown requests. These ISPs currently have special platforms on their websites for reporting IP violations,⁵ but they do not publish any statistics related to the takedown rates. Moreover, it takes the special platforms far too long, around 10-14 days, to take down violating websites after receiving a complaint from a rights holder. 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 should also publish statistics including the legal basis on which a site was blocked. Addressing these issues would greatly improve the enforcement environment in the UAE.

- **Ban the importation of illicit streaming devices (ISDs).**

The use of ISDs is an ongoing concern for copyright owners in the UAE. These devices can be used either to receive the free-to-air (FTA) channels—which is a legal act—or to receive the pirated TV channels or access pirated video-on-demand (VOD) by installing certain IPTV applications. These illicit streaming devices (ISDs) and the channels or content they carry are marketed, promoted, and illegally sold to consumers in high volumes through several channels, such as door-to-door, small retailers, Internet sales, or over social media accounts. Because the hardware of the device itself is not necessarily illegal, it is often difficult to prevent the importation and sale of these devices in the UAE. Importation of the hardware 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 inspect these devices. These ISDs are known to be commonly used for notorious stream-ripping services and cyberlockers such as *UKTV Abroad*, *King-iptv.net*, and *Kingiptv.org*.

- **Encourage more transparency and effective enforcement from enforcement authorities.**

Over the past few years, the judicial system in the UAE has shown signs of improvement with prosecutors referring cases for IP violations or cybercrime. For example, in the Higher Criminal Court in Dubai, a judgment was issued in a case against an administrator of the torrent website called *arabscene.org* 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. This case is significant because it involved a website that was hosted

² For example, in February 2022, King Printers Company Limited, the UAE-based company and copyright holder of website www.printarabia.ae, filed a criminal complaint with Dubai Police against the website astuae.com for infringing upon its copyrighted website content. Dubai Police refused to receive the complaint and instead, requested it be accompanied with a report from a registered intellectual property (IP) expert analyzing the elements of infringement. While the copyright holder complied with this request and filed the complaint under No. 4277/2022, the request of Dubai Police was unjustified because it delayed the prosecution process and imposed additional costs on the copyright holder. The Dubai Police request signals a potential new practice that could deter copyright holders from filing criminal cases and ultimately further weaken enforcement procedures in the UAE.

³ The dedicated platform is titled *eCrime*, and is accessible at the following site: <https://www.dubaipolice.gov.ae/wps/portal/home/services/individualservices/content/cybercrime>.

⁴ See UAE Ministry of Economy Website, <https://id.moec.gov.ae/>.

⁵ The special platforms for reporting IP violations include <https://www.du.ae/surfsafely> and <https://www.etisalat.ae/en/generic/contactus-forms/web-block-unblockn.jsp>.

outside the UAE, setting a strong precedent for other similar offenders. In addition, the criminal courts of Abu Dhabi and Sharjah have found defendants guilty in cases relating to piracy through IPTV apps.

Additional enforcement efforts are being performed by the Dubai Police, who serve a similar function to the TDRA, ordering ISPs to restrict websites based on criminal offenses or complaints from rights holders. The Criminal Investigation Department (CID) has been working closely with rights holders and licensees to stop sales of hybrid ISDs. Unfortunately, these types of operations require arrangements between different departments, which slows down investigations. For example, the electronic crime unit is not permitted 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.

Enforcement in Free Zones 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 Department of Economy and Tourism (DET), formerly the Department of Economic Development, 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.

Further, in 2023 the DET stopped accepting copyright complaints through their electronic portal. The DET claims they are not equipped to receive these complaints and has begun to refer them to the police force. This new practice constitutes a challenge to copyright owners attempting to enforce their rights.

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 them. Previously, Dubai Customs would re-export the counterfeit products to the country of origin instead of destroying or recycling the counterfeit goods, risking their ending 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 and pirated goods unless they first receive a complaint from a rights holder. The law recently was amended to provide *ex officio* authority so that customs authorities may take actions even in the absence of complaints by rights holders. Nevertheless, customs authorities still require a complaint from the rights holder to destroy counterfeit products.⁶

In 2022, the Brand Owner's Protection Group (BPG) organized virtual educational IP awareness sessions in association with IP authorities and customs authorities in the UAE on one side, and with IP owners on the other side. The goal of these sessions was to provide the authorities with technical information about existing IP rights and ways to identify violations to those rights. Those educational sessions were co-hosted by the Emirates IP Association, INTERPOL, Dubai Customs, Dubai Police, and all Economic Development Departments (EDE) in the UAE.

Over 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 to combat IP crime and illicit trade.

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 DET, which reduced fines by up to 50%. IP rights holders would like to see this reduction applied to complainants (the brand

⁶ See Decree-Law No. 38 of 2021 on Copyright and Neighboring Rights, 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.").

owners) instead of infringers. Additionally, the Dubai DET's failure to inspect markets absent a complaint from copyright holders encouraged infringers to trade in illicit products, including ISDs containing IPTV apps for pirating paid TV channels.

- **Harmonize requirements for enforcement with international norms.**

Dubai DET requests UAE copyright registration certificates before allowing rights holders to proceed with any action for copyright infringement. This requirement is a detrimental change from its old policy, which permitted 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.

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 Department and Customs authorities impose administrative fees of US\$7,500 to file complaints against copyright violators. These fees are prohibitive for rights holders seeking to enforce their copyright in UAE.

LEGAL REFORMS

- **Revise the Copyright Law to fully implement the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties).**

The Decree-Law 38 of 2021 on Copyrights and Neighboring Rights introduced several improvements to UAE's copyright legal framework, including criminalizing the acts of storing electronically illegal copies of copyrighted works (Article 7), which should allow for actions against cyberlockers hosted in UAE. Consistent with the WPPT, Article 18 provides producers of sound recordings with exclusive rights of reproduction, distribution, rental, and making available to the public. Further, Article 18(5) provides sound recording producers with the exclusive rights of broadcasting and communication to the public. However, to ensure that UAE's copyright legislation is fully compliant with the WIPO Internet Treaties and other relevant international copyright standards, the government of UAE should make further improvements to its copyright legal framework.

To ensure that the UAE's copyright legislation is fully compliant with the WIPO Internet Treaties and other relevant international copyright standards, the Government of the UAE should make the following amendments to its copyright legal framework:

- **Limit the scope of copyright exceptions and limitations:** Confine the exceptions and limitations outlined in Article 22 to the three-step test, including: the private copying exception, libraries and archives exception, the exception for performance of a work in meetings with family members or by students in an educational institution, and the transient and incidental copies exception.
- **Provide adequate protections for technological protection measures (TPMs) and electronic rights management information (RMI):** Article 40 provides for civil and criminal liability for “[u]nlawfully disrupting or impairing any technical protection or electronic data aiming at regulating and managing the rights prescribed by this Decree-Law” and increased penalties for repeat offenders. While this is a welcome step, to meet the obligations of the WPPT, UAE should add provisions, including definitions for “technological protection measures” and “rights management information,” to ensure adequate protections for TPMs and RMI.⁷

⁷ See Articles 18 and 19 of the WPPT requiring “adequate legal protection and effective legal remedies” against the circumvention of technological protection measures (TPMs) and the removal or alteration of rights management information (RMI) without the permission of right holders.

- **Clarify that registration of copyright works is voluntary:** Article 4 states that “registers of the Ministry shall be considered a reference for the data of the Work and its ownership.” It should be clarified that the registration of works is voluntary and not a formal requirement, consistent with international treaties including Article 5(2) of the Berne Convention and Article 20 of the WPPT, both of which prohibit formalities on both the enjoyment and the exercise of rights.
- **Clarify the jurisdiction of the Grievances Committee for Copyrights and Neighboring Rights (Grievances Committee):** Pursuant to Article 37, the Grievances Committee—which consists of one specialized judge and two specialists—established under the Ministry of the Economy has jurisdiction to “adjudicate grievances filed by the interested parties against the decisions issued by the Ministry.” However, the article states that the Grievances Committee’s decisions can be challenged only before the “Competent Court,” which is defined in Article 1 as the “Federal Court of Appeal,” instead of the First Instance Courts. Article 37 should be clarified to ensure: (i) the scope of jurisdiction of the Grievances Committee is limited to disputes between a CMO and its members and/or its licensees; (ii) the Grievances Committee shall hear and determine matters referred to it expeditiously; and (iii) parties may appeal the decisions on procedural grounds to the First Instance Courts.
- **Amend the Copyright Law to align term of protection for works and sound recordings with the international norms.**

UAE currently grants authors copyright protection for a period of life-plus-50 years and producers of sound recordings protection for 50 years after publication, which is substantially less time than UAE’s international counterparts. UAE should increase the term of protection for works and sound recordings in Article 20 from life-plus-50 years to life-plus-70 years for works or in cases in which term is calculated based on publication, to the term of 95 years (but in any case, no less than 70 years) and for sound recordings from 50 years to at least 70 years from the date that the recording is made or, if published, from that date, in keeping with international norms.

- **Address inconsistencies between Executive Regulation No. 47/2022 and international standards and best practices.**

While the priority is for the UAE to establish a CMO for music rights holders, Executive Regulation No. 47/2022 on Implementing Federal Decree-Law No. 38/2021 contains several provisions addressing collective management, which could be improved to be consistent with international standards and best practices, including:

- **Amend the definition of collective management organizations (CMOs):** Amend the definition of “collective management organizations” in Article 1 to ensure: (i) CMOs are non-profit and owned or controlled by their member rights holders (whether local or foreign), so that rights holders are able to control the exercise of their rights and to ensure that the CMO is operating according to good standards of transparency, accountability, and governance; (ii) rights holders are able to, without restriction, determine the scope (rights, uses, repertoire, and territory) and character (exclusive or non-exclusive) of the rights mandates they give to the CMO; (iii) CMO tariffs are determined by the CMO in negotiation with users (or their representatives), reflecting what would be negotiated between a willing buyer and willing seller; and (iv) rights holders have fair and balanced voting powers in their CMOs that reflect the value of their rights under management.
- **Extend the time for renewal of CMO permits:** Under Article 15(6), CMO permits are to be renewed annually. To provide the legal certainty that justifies the substantial investment and allows for the long-term planning required to set up a CMO, permits should instead be renewed only every three years, at a minimum.

- **Ensure CMO members have the power to determine CMO operating costs:** Article 15(10) states that a CMO “may deduct a percentage of the total funds collected in return for managing the collection and distribution of the financial remuneration for use, provided that the deduction percentage does not exceed 25% of the total amounts collected. This percentage is only for administrative expenses, and the Ministry may reduce this percentage whenever it deems so.” However, it should be up to CMO management to budget, plan, and obtain the agreement of rights holders regarding acceptable and reasonable spending at the outset. Capping administrative cost could be considered in the future, after the CMO is given time to stabilize operations.
- **Clarify registration of copyright works is voluntary:** Article 2 on copyright registration should clarify that the registration of copyright works is voluntary and not a formal requirement, consistent with international obligations that prohibit formalities on both the enjoyment and the exercise of rights, including Article 5(2) of the Berne Convention and Article 20 of the WPPT. Further, the data and documents requirements for an application of registration of a copyright work in Article 2(6), particularly the requirement for “a copy of the passport or identity card of each applicant, author, and transferee” in subsection h, should be removed, because they are burdensome and interfere with the enjoyment and exercise of rights.
- **Remove formalities regarding the importation and distribution of works:** Article 5 contains burdensome requirements for the importation and distribution of copyright works, particularly that the Copyright Register “shall contain all data regarding the names of importers and distributors and the rights related therein, including the document proving their rights to import or distribute works in the country, and data relating to their activities and the authorities that authorized them to import or distribute works as set out in the Register.” Such requirements should be removed, because they are incompatible with the WIPO Internet Treaties and the Berne Convention.
- **Ensure compulsory licenses for the reproduction or translation of copyright works for educational purposes are appropriately narrow:** Article 7 states that “Any person may apply to the Ministry to obtain a license to reproduce and/or translate a work protected by law, in order to meet the needs of education of all kinds and levels, or the needs of public libraries or archives, and in accordance with the conditions set forth in this Decision.” Such a broad compulsory license violates rights holders’ exclusive rights, interferes with contractual freedoms, undermines legal certainty, and is outside the scope of the three-step test governing exceptions and limitations to copyright protections. Any compulsory license for reproduction or translation should be appropriately narrow and strictly conform to the Berne Convention Appendix.⁸
- **Provide additional mechanisms that ensure Internet service providers (ISPs) can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders’ applications to appropriate authorities.**

To complement the existing website blocking program operated by the government, legislation should introduce additional mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites (both those hosted in the UAE and those hosted in other countries but available in the UAE) on a no-fault basis, upon rights holders’ applications to appropriate authorities. Such mechanisms would help tackle piracy and support the growth of the market for copyrighted works and sound recordings in the UAE.

⁸ 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>.

MARKET ACCESS

- **Enable rights holders to establish a music CMO in UAE and permit that CMO to commence meaningful operations in the UAE.**

The failure to implement a collective management 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, considering 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.

In May 2022, IFPI and the UAE Ministry of Economy signed an MOU to work together to support local recorded music, including by creating a copyright framework that aligns with international standards and enforcing, collecting, and protecting the rights of record producers. 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. Revenue generated by CMOs through the licensing of broadcast and public performance rights 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. While meaningful progress is being made, any slowing of this progress to accredit a CMO will mean that no monies can be collected, substantially undermining the capacity of companies in the UAE to invest in promoting local artists and building artists' careers. Moreover, without an accredited CMO, U.S. music exported to the UAE cannot be monetized when broadcast or performed publicly, and various UAE businesses use music without making any payments to rights holders, despite neighboring rights protection recognized in the UAE Copyright Law.

By way of background, for 19 years after enacting federal legislation providing for the possibility of the right of reproduction by means of a reprographic process and to engage in digital uses of editions, the Government of the UAE did not accredit a single CMO, leaving rights holders with no means to manage their rights collectively. However, in a positive development, in March 2022, the UAE Ministry of Economy granted permission to the Emirates Reprographic Rights Management Association (ERRA) in Sharjah to establish a book publishing CMO to administer and manage the collective rights of copyright owners for their paper and online book publications in the UAE.

The establishment of a book publishing CMO is welcome, and the music sector also expects that the UAE government will make progress at long last on licensing a truly representative music CMO. The UAE should take immediate action to enable rights holders to establish a music 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, enabling music rights holders to finally begin collectively licensing their broadcast and public performance rights under the UAE Copyright Law.