

Criminal Liabilities Arising from Infringing Intellectual Property Rights

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Intellectual property law overlap with criminal law in many ways, one of which is piracy of media content. This is one of the fastest-growing forms of criminal offence and breaches of intellectual property rights ('IPR') in the region.

In some instances, UAE traders, who are often, caught selling illegally-unlocked set top boxes (receivers) and Internet Protocol television (IPTV) decoders to consumers, which allow users to access exclusive TV channels, may face severe criminal penalties. These flow from several UAE laws that protect intellectual property, trademarks and copyright, such as the UAE's Federal Copyright Law No. 7 for 2002, and Federal Trademark Law No. 37 for 1992 and its subsequent amendments. Additional and more severe penalties can be imposed the offences are done through electronic platforms, making provisions of the Federal Law by Decree No. 5 of 2012 regarding Combating Cybercrimes, commonly known as the Cybercrime Law, also applicable.

In other cases, traders unlawfully place famous trade names and trademarks on their products to deceive the consumer, with the aims of selling goods, increasing market share and generating fat profits.

To provide more insight on illegal piracy, we highlight below two cases that demonstrate the potential criminal consequences for anyone caught infringing the copyright laws of media content and breaching IPR.

Case 1

An unknown person established a website that could be accessible by the public in order to download or upload exclusive movies and TV shows. On the website, the perpetrator uploaded a considerable number of famous old and recent movies and TV series that could be downloaded for further use.

The movies and series were only licensed to be provided by a leading, direct-broadcast satellite provider of popular TV entertainment content, who broadcast movies, comedy shows and sports channels from major networks and studios. Access to such content required subscription and payment of a fee by the consumer.

The perpetrator also placed the famous trade name and trademark of the broadcasting company next to the website's download links. In doing so, he intended to confuse the public into believing that the website somehow originated from or was affiliated with the broadcasting company.

Criminal proceedings were instituted against the perpetrator in Abu Dhabi. The Abu Dhabi Police investigation department successfully followed the available leads and revealed the identity of the perpetrator. The Public Prosecution office issued an indictment order against the perpetrator for committing acts penalized by the Cybercrime Law and the Federal Law by Decree No. 3 of 2003 regarding the Organization of the Telecommunications Sector (as amended). Those acts were as follows:

- Unlawfully benefiting from the broadcasters visual channels via technological means;
- Exploiting telecommunication devices to transmit the broadcaster's telecommunication services; and
- Facilitating for others the unlawful benefiting from the broadcaster's visual channels via technological means.

The accused was found guilty before the Court of First Instance and sentenced to 6 months along with payment of 50,000 AED as compensation to the victim broadcaster, from whom we acted. The Court further ordered the perpetrator's deportation and the removal of all content available on the illegal website.

The accused appealed and the Court of Appeal reduced the sentence from 6 to 2 months' imprisonment.

Case 2

In a second recent case, traders were discovered to be subscribers to the exclusive TV channels outside the UAE and to offer access to the TV channels to their local consumers within the UAE. The traders used a number of measures in order not to reveal the source of the subscription.

The Dubai Criminal Court of First Instance convicted one of the traders of copyright infringement by using the internet. The Court's judgment obliged the perpetrator to:

- Pay a fine of 200,000 AED
- Close the store used for selling the IPTV decoders for a period of one year;
- Deport the perpetrator from the UAE; and
- Refer the civil claim for compensation to the competent civil court.

In most scenarios, the traders or the perpetrators do not expect such severe penalties. However, these sentences show the seriousness with which the criminal courts treat breaches of laws affecting IPR.

In conclusion, traders of electronic devices such as set top boxes (receivers)/ IPTV decoders must cease offering TV and media services which are not permitted in the UAE even if such services are allowed outside of the UAE. The operation of receiving the exclusive TV channels through the internet from somewhere out of the UAE and redistributing the same one a commercial level to the consumers within the UAE is a crime as per the UAE Federal Copyright Laws No. 7 for 2002 and the Federal Law by Decree No. 5 of 2012 regarding Combating Cybercrimes. With the aim to minimize the occurrence of such crimes, the UAE imposes specific regulations for this type to trade. With the understanding that those types of crimes adversely affect important sectors, such as the telecommunications sector, be it private or public, the Courts tend to have a harsh approach towards anyone who breaches the laws regulating it.

Al Tamimi & Company's IP and Litigation team regularly advises on cases involving IP infringement. For further information please contact Bassam Al Azzeh (b.alazzeh@tamimi.com) or Omar Khodeir (o.khodeir@tamimi.com).