



Programme on “Strengthening the Rule of Law in the Arab States –
Project on the Modernization of Public Prosecution Offices”

Regional Conference on
“**Intellectual Property Crimes**”

April 13-14, 2008

Kingdom of Bahrain

Background Paper

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Part 1: Background and Objectives

1- Introduction

In recent years, the issue of intellectual property crimes has come to a rise. The increased attention and international recognition of the negative impact of these crimes on the development of the modern economic order and international trade, led most states to i)include intellectual property into their national policies as a main tool for community development, and ii) issue legislations that secure, preserve and protect intellectual property rights against loss, violation or abuse. This national endeavor was coupled with an international concern, embodied in the elaboration of several international conventions and treaties that regulate these rights within a strict international framework, granting them an effective protection. This international concern is clearly demonstrated in the Universal Declaration of Human Rights, whereby each signatory state pledges to take all the necessary measures – whether independently or through international assistance and cooperation – in order to ensure the effective respect of the rights, including intellectual property ones, through all relevant means, namely legislative measures. This is particularly important in view of the quick developments of our contemporary world, which is witnessing an increase in the violations of personal rights and the rights of society, in such a way that is closely inter-related with intellectual property protection.

Given the modern economy which is greatly based on the production of thought and innovation- two main elements of the laws and treaties concerned with intellectual property rights-, it becomes extremely difficult to integrate into the international economy without an effective protection of these rights and strict procedures against the crimes targeting them. This fact has led all, rich and poor, countries to work seriously towards strengthening their capacities in the field of combating intellectual property crimes, by a) reforming legislative, regulatory, institutional, and social frameworks; b) training involved human resources, c) promoting international cooperation; and d) raising awareness amongst the different factions of society, in an attempt to provide a common ground for the development of a comprehensive approach to confront these crimes and to build the relevant strategies to prevent and fight their different manifestations.

2- Overview of the Project on the Modernization of Public Prosecution Offices¹

The United Nations Development Programme – Programme on Governance in the Arab Region, in the context of its efforts to promote good governance and achieve development, is implementing a project that aims at modernizing and developing public prosecution offices in the Arab States, consequently, activating their role in strengthening the rule of law. This project gains added value, since the public prosecution is a basic element of the judiciary, which is concerned with increasing citizen security, promoting respect for human rights, and enhancing accountability in the society.

The *Project on the Modernization of Public Prosecution Offices in the Arab States* lies on the following four pillars:

1. Building and developing the capacities of public prosecution
2. Promoting and strengthening the relationship between the public prosecution and civil society organizations in order to ensure that the citizen's rights are practiced and well protected.
3. Establish regional and international cooperation networks among the public prosecution offices for crime prevention.
4. Reviewing the laws that regulate the work of the public prosecution, the criminal court action and the criminal procedures.

Under this context, the project has organized a number of national activities in each of the pilot countries, in addition to other regional activities, conferences and training sessions, with the aim of consolidating the knowledge of public prosecutors as to modern crimes in general and the advanced investigation means and methodologies.

The project had previously organized four regional conferences on a) transnational organized crimes, b) cyber crimes, c) money laundering and corruption, and d) the legal organization of public prosecution offices. The project also carried out several national workshops on human rights in criminal procedures and the rights of juveniles and women in criminal justice systems.

In the same line, the project is organizing this regional conference on "Intellectual Property Crimes" in Manama, Bahrain, on the 13th and 14th of April, 2008, with a view towards promoting the capacity of public prosecutors and building their knowledge on Intellectual Property Crimes. This conference shall allow participants to exchange relevant ideas and experiences, as well as design a framework of cooperation for the combat of these crimes and the restriction of their development and dissemination. The conference will also try to shed light on the international standards pertaining to intellectual property crimes, the principles regulating them and their control mechanisms; a focus will be laid on the situation in the Arab pilot countries, in such a way that goes in harmony with the principles of incrimination and prevention at the international level.

¹ For further information, see { HYPERLINK "<http://www.arab-niaba.org>" }

The conference will primarily address the following issues:

- Protecting intellectual property, a means for progress and development.
- Specific intellectual property crimes : piracy and counterfeit
- The legislative situation of intellectual property crimes
- Combating intellectual property crimes and preventative measure
- Promoting co-operation and co-ordination in combating intellectual property crimes

3- Objectives of the Conference

The main purpose of this conference is to strengthen the knowledge of Arab public prosecutors regarding intellectual property crimes and introduce them to the international standards that govern them; it shall also provide an opportunity for experience exchange and reinforcement of cooperation and coordination at the international level.

This conference is expected to provide support to Arab states in order to build and promote the capacities of public prosecution offices when combating intellectual property crimes. In addition, this conference aims at establishing and enhancing the participation and cooperation networks between the public prosecution offices and the competent authorities. The conference will also contribute to the process of knowledge building, which will consequently add positively to sustain the track of modernization and development in the Arab region.

The conference will also provide a solid platform for discussing the means and mechanisms to reinforce cooperation and coordination and enhance the information exchange process in the field of combating intellectual property crimes at the national, regional, and international levels. In view of the expansion of intellectual property crimes and their cross-border aspect, there emerged a need to examine all the facets of cooperation between the authorities concerned with combating those crimes within the same country, and between states at both the regional and international levels. In this regard, this conference will not be confined in its discussions to the theoretical aspect only, but it will also focus on the practical side of the issues relates to the intellectual property crimes.

The expected outcomes of the conference can be summarized as follows:

- 1- Understanding the concept and types of intellectual property crimes as to their nature, various forms, as well as their impact on development and economic growth.
- 2- Promoting the capacity of national criminal authorities to combat these crimes; this can be mainly realized through building the knowledge of judges and public

prosecutors in regards these crimes, specifically their prevention mechanisms, methods of investigation, collection of information, and assessment of evidence.

- 3- Shedding light on the international standards governing intellectual property crimes, the principles regulating them and their prevention mechanisms.
- 4- Recognizing the legislative and field situation in Arab countries, and pointing to the importance of adopting certain procedures that comply with the principles of criminalization and prevention in at the international level.
- 5- Laying the foundations for a regional and international cooperation in the field of intellectual property protection, and reinforcing the mechanisms of prosecution, investigation and exchange of technical assistance.

Part 2: Introduction to the Conference's Subject Matter

Holding a regional conference on “Intellectual Property Crimes” comes at a significant moment characterized by the need to support Arab states in building and promoting their capacities in the field of intellectual property crimes and the means of combating them, especially that most of these countries expressed their desire and willingness to combat and prevent these crimes, in view of their increased impact on the economic, social and cultural levels.

Accordingly, and in response to this need, this conference will tackle the importance of protecting intellectual property rights based on their functional relationship to development, while referring to their link to economic crimes and examining the causes of their increase. Based on this, a focus shall be placed on the types of intellectual property crimes, with an emphasis on piracy and counterfeit as specific crimes in this field. This shall be followed by a review and discussion of the most important international and regional tools and conventions pertaining to intellectual property protection. The conference will also examine the legislative and field situation of intellectual property crimes in the project’s pilot countries, while stressing on the necessary measures to reinforce intellectual property protection at the legislative, legal and administrative levels in Arab countries. Furthermore, and in response to the importance of raising awareness on the impacts and dangers of intellectual property crimes in order to combat them, the conference will look into the efforts of combating intellectual property crimes and the measures to prevent them. Emphasis will be laid on the role of public prosecution offices in the prosecution and penalization of intellectual property crimes and the necessity to build the capacity of human resources in this regard, pointing to the importance of imposing sanctions on intellectual property by the judicial authorities, while guaranteeing the secrecy of information obtained during investigation. The conference will include a thorough explanation of the legal and technical obstacles that hinder the processes of investigation, prosecution and incrimination in intellectual property crimes, and of relevant efforts. While highlighting the importance of the

advanced investigation techniques, the means of information collection, and the means of prosecution and trial in this sort of crimes, the conference shall underline the importance of intellectual property offices in monitoring and reporting intellectual property crimes

In what follows, the details of the topics that will be discussed during the conference:

1- The Importance of Protecting Intellectual Property Rights

Intellectual property rights play an important role in the social and economic progress in any society, whether developed, less developed or developing. To this extent, it has become difficult nowadays to picture any country without a legal frame for intellectual property protection, especially that in the current economic and technological breakthroughs that are conquering the world, such a framework has a major impact on the protection of the products of thought, innovation and knowledge. This issue is growing even more important considering the new world economy that is quickly heading towards becoming a knowledge-based economy, built on information and intellectual products. Accordingly, it has become compelling to promote a general awareness of intellectual property laws, which serve as the main legal framework that protect this new economy and its values, integrating them in the general culture and ethics. This awareness should be particularly reflected in the customs and performance of public and private administrations, and all parties that are directly involved in directing and running the economic system and its powers. It is worth mentioning as well, that intellectual property rights have a great importance in the various fields of investments that are related, in one way or another, to the development of countries, especially that these investments embrace one or more of the intellectual property forms and trade secrets. Therefore, at a time when the economy has become tightly linked to all the inputs of globalization, the relationship between protecting intellectual property and investment is substantially important. In the event the protection system is weak, there would be a greater possibility of counterfeit and violation of intellectual property rights; a thing that renders these countries less appealing for investment.

2- Intellectual Property Crimes

Intellectual property crimes, with their multiple dimensions, have become one of the major issues that are occupying the legal mind nowadays. This is specifically so, due to the huge increase in the rate of violations and infringements of intellectual property rights, in all their literary, artistic, industrial and trade forms.

In this respect, intellectual property crimes are regarded as modern economic crimes. The forms of these crimes have grown significantly with the technological development, since users of modern techniques employed the latter for illicit purposes serving personal profits. Accordingly, electronic devices in general, and the internet in particular have become tools for committing these crimes. Although these crimes are not new, the expansion of intellectual property rights, the emergence of new forms of these rights, and the increase in the scope of the economic and trade activities, together with all their resulting transactions that are based,

in majority, on intellectual property rights, have led to an increase in the rates of these crimes, worsening the level of their impact in all the social, political and economic fields.

It is believed that more than half of the software used in most Arab countries is counterfeited. The Business Software Alliance², the body that represents the commercial software industry in the world, says that the rate of software piracy reached high levels in the Arab region. According to the general annual report of IIPA³, published early 2008, Middle Eastern countries are not in good positions as concerns intellectual property⁴.

3- Types of Intellectual Property Crimes (piracy and counterfeit)

Piracy and counterfeit come on top of the list of intellectual property crimes, making use of the subsequent developments in the information, communication, and transfer techniques, and benefiting from the economic changes that accompanied these developments, and that were embodied in the repercussions of the globalization of economy, the orientation towards markets liberalization and internationalization, the growth of trade, financial, transportation and tourist activities, in addition to the huge international flow of goods and services between different countries.

In view of the modern technological development, the rate of these crimes increased even more. Therefore, a reinforced tendency has arisen in recent years towards combating these crimes through international and national relentless efforts aiming at limiting the phenomenon and keeping it from growing further because that would mean serious repercussions on the world economy.

So, considering the dangerous impact of piracy and counterfeit (as two major examples on intellectual property crimes) on the world economy, and all the resulting complicated security, social, economic and legal problematic issues, the international community started combating them through the adoption of a series of measures, at the regional and international level. The most important among these measures lies in the establishment of communication networks involving the quick exchange of information on this type of crimes, in an attempt to prevent them. Bearing in mind the growing need to confront these crimes and all what is related to them, an examination of the available legal means to combat such modern patterns of crimes and the diagnosis of related phenomena have become necessary.

4- The Legislative Situation of Intellectual Property Crimes

• The legal framework of intellectual property rights as stated in international conventions:

In view of the significant importance of intellectual property rights, the international community worked on guaranteeing its protection. States promulgated laws and regulations defining the constraints that protect these rights to provide their holders with the proper climate for creativity and innovation; a thing that redounds in consequence to the benefit of the society.

² Business Software Alliance Website: <http://www.bsa.org/>

³ For more information, see the reports on the situation of countries regarding intellectual property crimes, published by the IIPA on its website: <http://www.iipa.com/countryreports.html>

⁴ The report is published on the website: www.menareport.com

Nevertheless, internal guarantees for the protection of intellectual property rights always proved insufficient to secure the holders of these rights, and make pursue their creativities and innovations. The fear caused by the insufficient guarantees and the absence of dissuading rules that can deter people form violating intellectual property rights, was the reason behind seeking international frameworks that protect all the sorts of intellectual property rights.

In fact, the need for the international protection for intellectual properties rose in the middle of the nineteenth century, where several bilateral conventions were concluded, providing for mutual recognition of intellectual property rights for each state party to the convention. This need became even more pressing in 1873 when inventors refrained from displaying their inventions in the international exhibition held in Vienna, in fear of having their ideas being stolen and exploited. Currently, it is known that Western companies wage fierce campaigns against companies that violate their trademarks. The huge companies proved themselves capable of pursuing and monitoring violators and suppliers of their trademarks, training their teams to become able to discover the sites of forgery and counterfeit and providing the local authorities with the needed information to do the necessary arrests and confiscation of counterfeited goods.

As a result of the expansion of international, social, economic and commercial relations accompanied with a spread of the human thought across borders, the need for an international protection for intellectual property rights has become increasingly urgent in order to allow the right holder to enjoy his right outside his country. Indeed, copyrights and related rights, inventions, creations and trademarks are the product of the human thought, which is not, by any means, restricted or exclusive to an individual or a country per se. These innovations and aspects of intellectual property contribute to the general interest of the human being, and to his progress, whether economically or socially.

Laws and legislations vary amongst countries. Therefore, ensuring the minimum coordination cannot happen but through international treaties. As it is widely known, international conventions and treaties become, after their ratification, an integral part of the country's binding legislations and laws. In fact, the importance of providing protection for the intellectual and industrial property rights at the international level lies in guaranteeing the rights of inventers, creators and intellectual property holders in the whole world, for it is a prerequisite to encourage, enhance and develop innovation⁵. International protection provides an environment that attracts investment and overcomes all sorts of barriers obstructing the continental exchange of intellectual, scientific and technological products between states; a thing that boosts the level of used techniques, especially in the developing countries that lack the modern technique. In addition, the increased importance and development of human thought, has laid more attention on the phenomenon of intellectual property. Undoubtedly, the huge development in mass communications and their different means has equipped this phenomenon with new dimensions that the legislator – nationally and internationally – needs to regulate, while taking into consideration the new developments and newly created techniques.

⁵ See A study on intellectual property rights, published by the United Nations: the Economic and Social Commission for Western Asia, entitled "International Agreement and Trade Issues in the Region: Intellectual Property Rights," UN publications, New York, 2003

These considerations left the international community with a pressing need to find active means, embodied in international legal frameworks to protect intellectual properties. Accordingly, international conventions were concluded with the aim of providing a framework for protection, including Berne Convention for the Protection of Literary and Artistic Works, Paris Convention for the Protection of Industrial Property⁶, the Agreement on Trade-Related Aspects of Intellectual Property Rights “TRIPS”⁷, and the European Directive on the enforcement of intellectual property right.⁸

• **The situation in the Project's pilot countries (Experience Presentation)**

As we said earlier, the importance of intellectual properties lies in that it plays a very important role in boosting the economic, social and cultural development. It encourages innovation and creativity at the local level, and promotes investment and technology transfer. In this regard, Arab States have shown early interest in the issues of intellectual properties; some of them have even contributed to the international effort of protecting intellectual property rights since the nineteenth century, or even were essential members in a number of international intellectual property conventions.

Despite the difficulties of discovering and diagnosing intellectual property crimes and understanding the roots of their emergence, their negative impacts and repercussions ranked these crimes a top priority of the Arab legislator throughout his endeavors to boost his economy and develop his society.

In this context, most Arab countries exerted, through their legislative, control and judicial institutions, tangible efforts to combat these crimes and their causes; this was mainly done through legislations providing for the incrimination and the prosecution of perpetrators, and imposing any proper measure to keep this criminal pattern from growing further.

Through a general review of the Arab legal systems to assess their compass of protection of intellectual property rights, it becomes evident that almost all Arab states have laws pertaining to copyrights and related rights, patents, industrial designs (layouts) and trademarks. Some other countries have actually established bodies and offices specialized in combating intellectual property crimes.

Taking into consideration this legislation boom, the Arab States response to the protection of intellectual property seems quite positive. In the fifties, the majority of Arab States witnessed a boom in legislations on the protection of patents, trademarks and industrial designs. During the eighties, legislations in these countries grew numerous on the copyrights and related rights. Early in the nineties, many laws were passed or amended, with the aim of protecting computer software and databases.

Since the end of the nineties and the year 2000 until the present day, the legislations that were promulgated covered the protection of trade secrets, geographical indications, integrated circuits, along with the development or amendment of other intellectual property

⁶ To read the full text of the Berne Convention and the Paris Convention, visit the site of wipo:
<http://www.wipo.int/treaties/ar/>

⁷ To read the full text of the TRIPS Convention, visit the site of the WTO:
http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm

⁸ To read the full text of the European Directive on the enforcement of intellectual property right, visit the following site: http://ec.europa.eu/internal_market/copyright/documents/documents_en.htm

laws. This is ascribed to the fulfillment of the requirements of the membership in the World Trade Organization, which requires the respect of all conditions provided for in the TRIPS convention.

5- Combating Intellectual Property Crimes and Preventative Measures

- **The role of public prosecutors in the prosecution and penalization of intellectual property crimes**

The public prosecution plays an essential role in protecting intellectual property rights, whether in terms of prosecuting their perpetrators or in terms of penalizing the people involved in their crimes. It acts as the body that conducts the investigation in case of any complaint resulting from the violation of an intellectual property right entailing legal responsibility. In some laws and in exceptional cases, the public prosecution office has to launch the investigation in such crimes automatically⁹.

The role of the public prosecution also covers the adoption of the necessary legal procedures to refer these cases to national courts. During the process of investigation in intellectual property crimes, public prosecution offices might have recourse to the opinion of experts (public prosecution assistants) who help find and preserve evidence and define the amount of money in question in order to build the case and point to the possible responsibility. These experts help the public prosecution decide on the presence of a suspicion of a violation of copyrights, related rights, trademarks, patents, industrial secrets, layout designs, topographies or industrial designs from a legal point of view.

In order to reinforce the role of the public prosecution and reduce intellectual property crimes, some countries established a special unit for investigation in the crimes committed in the field of intellectual property in general, and piracy in particular. In this regard, it is necessary to emphasize the importance of promoting the capacities of judges and public prosecutors, and trying to identify the legal and technical obstacles facing the processes of investigation, prosecution and incrimination in intellectual property crimes, highlighting the importance of the advanced investigation techniques, the means of information collection, and the means of prosecution and trial in this sort of crimes.

- **The role of the judiciary in imposing sanctions on intellectual property infringements**

The judiciary plays an important role in protecting intellectual property rights; a role that is equal in importance to the role undertaken by the legislative authority deciding on the right and recognizing it through creating the legislative text. The absence of competent legal authorities to implement the laws in an effective manner, no doubt impedes the protection of intellectual property rights, even if the country had the best and most updated legislative texts.

When a violation of intellectual property rights takes place, the role of legal authorities lies in deciding on whether the responsibility is civil or penal, entailing, for example, imprisonment, or the settlement of a fine. The judiciary can also take precautionary measures. It can order

⁹ For example, in the field of copyrights, the Mexican Federal Penal code stipulates that there should be an automatic prosecution of the crimes of commercial exploitation of free school books.

the cessation of the violation, the control of the illegitimate copies, or any other materials or tools used during the copying, the control of the returns yielded by the illicit exploitation, the destruction or the confiscation.

- **The role of intellectual property offices in monitoring and reporting intellectual property crimes**

The employees of the intellectual property protection offices that are correctly delegated are considered members of the judicial police when implementing the provisions of the Intellectual Property law. So in case there is a suspicion of a violation of the provisions of the law, they have the right to inspect any place that prints, copies, produces or distributes publications, including mass communications. They are also entitled to confiscate the copies and all the materials used in committing these infringements and to refer them, along with the perpetrators, to the court. The intellectual property office plays an important role in developing proper strategies for combating these crimes, and they endeavor also to reinforcing coordination and cooperation with all the parties working on combating this phenomenon.

- **The importance of raising awareness on the impacts and dangers of Intellectual property crimes**

Raising awareness on the impacts and dangers of intellectual property crimes is as much important as the efforts of pursuing these crimes. In fact, the procedures involving raising awareness and leading an educational movement with social, legal, economic and development aspects, to inform people about these crimes, contributes greatly to limiting them. In this respect, it is substantially important to conduct studies and research on the importance of intellectual property rights, their outcomes and repercussions on the society as a whole, individuals and state. These efforts should be backed up by the organization of scientific and academic congresses, conferences and seminars related to combating the crimes violating these rights. Scientific assistance and support to all institutions, individuals and bodies involved in combating intellectual property crimes, and developing human cadres should also be set as a main concern. Raising awareness amongst consumers and competent authorities yields significant results that can come as follows: encouraging legitimate competition, and limiting illegitimate ones, reducing fraudulent practices and cheating, curbing the spread of counterfeit and forgery, promoting creativity, developing innovation, and enhancing the efforts of knowledge building. Such awareness-raising would also lead to an increased awareness as to the economic repercussions, the social costs, and the health and safety risks incurred by the consumer.

6- Promoting Cooperation and Coordination in Combating Intellectual Property Crimes

Numerous are the axes of the intellectual property crimes that must be looked into, whether at the national or the international level. It goes without saying that any active and successful attempt depends necessarily on an accurate and scientific diagnosis of the phenomenon. However, it is hard to summarize the whole intellectual property crimes phenomenon with one single factor, or even a group of factors. Actually, some factors should be taken into consideration, and these were highlighted, in one way or another, by the strategies adopted to combat these crimes locally and internationally.

When trying to examine the dimensions of combating intellectual property crimes, a multiple-axis approach is required through a national comprehensive, political, administrative, societal, preventive, economic, then in the end, legal, punitive strategy. This strategy should be based on involving the civil society, reinforcing international cooperation and coordination with all competent bodies- whether intellectual property protection offices, legal authorities, customs authorities, or civil society organizations. Such strategies should not be limited to combating the crimes at the national level only. It is necessary, in fact, that cross-bordered strategies are launched to achieve the desired objectives and entail international cooperation. Here, in particular, lies the importance of concluding international, regional, and bilateral conventions, to accompany organizational efforts exerted in order to reach a framework of international cooperation. Here, also, lies the importance of putting these international and regional conventions into effect, and reinforcing cooperation mechanisms regarding the issues of prosecution, investigation and exchange of technical assistance.

Part 3: The Conference Organization

This regional conference is organized by the United Nations Development Programme – Programme on Governance in the Arab Region in collaboration with the public prosecution office in the Kingdom of Bahrain.

The conference will be held in the Gulf Hotel.

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The conference will start on Sunday, 13th of April, 2008, at 9 am, and will last for one day and a half.

- Three sessions will be held on the first day, and two on the following. Each session will last between one hour and a half and two hours.
- The chair person of the session is in charge of running the session; each entitled to 10 min of speaking.
- Each speaker is allowed a maximum of twenty-minute presentation, after which the floor is to be opened for discussion and debate.