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SAUDI ARABIA – MEASURES CONCERNING THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY QATAR

The following communication, dated 9 November 2018, from the delegation of Qatar to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

1. On 1 October 2018, the State of Qatar ("Qatar") requested consultations with the Kingdom of Saudi Arabia ("Saudi Arabia") pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU") and Article 64.1 of the *Agreement on Trade-related Aspects of Intellectual Property Rights* ("TRIPS Agreement"). The request concerned Saudi Arabia's failure to provide adequate protection of intellectual property rights, in particular with respect to intellectual property rights held (or applied for) by entities based in Qatar.

2. On 11 October 2018, Qatar received a communication from the Chairman of the Dispute Settlement Body ("DSB") covering a communication from Saudi Arabia, stating that Saudi Arabia would not engage in consultations with Qatar. Saudi Arabia's refusal to engage in consultations with Qatar is inconsistent with Article 4.3, which requires Saudi Arabia to "enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request". As a result of Saudi Arabia's refusal to engage in consultations with Qatar, the dispute has not been resolved.

3. Therefore, Qatar requests, pursuant to Articles 4.7 and 6 of the DSU and Article 64.1 of the *TRIPS Agreement*, that the DSB establish a panel to examine the matter referred to the DSB by Qatar in this document, with the standard terms of reference described in Article 7.1 of the DSU.

4. In the following sections, Qatar identifies the specific measures at issue and provides a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

A. Measures at issue

5. The measures at issue in this request include all written and unwritten, published and unpublished, measures (including omissions) that have resulted in Saudi Arabia's failure to protect intellectual property rights, including with respect to intellectual property rights held (or applied for) by, *inter alia*, Qatari entities and Qatari individuals. The measures, individually and collectively, affect trade-related aspects of intellectual property rights.

6. In June 2017, Saudi Arabia imposed a scheme of diplomatic, political, and economic measures against Qatar. Such measures impacted, *inter alia*, the ability of Qatari nationals to protect intellectual property rights in Saudi Arabia.

7. The multiple Qatari companies severely impacted by these measures include beIN Media Group LLC and affiliates ("beIN"). Saudi Arabia has prohibited beIN from broadcasting its content in Saudi Arabia.

8. Among Saudi Arabia's measures is a 19 June 2017 Circular, issued by the Saudi Ministry of Culture and Information together with the General Commission of Audio and Visual Media. This

Circular states that distribution of beIN media content and charging of related fees in Saudi Arabia "shall result in the imposition of penalties and fines and the loss of the legal right to protect any related intellectual property rights".

9. Soon thereafter, in early August 2017, a sophisticated broadcast pirate named "beoutQ" emerged, taking beIN's copyrighted media content (along with beIN's trademarks) without authorization, and making it accessible on beoutQ platforms, via the Internet and satellite broadcasting. beoutQ's unauthorized satellite broadcasts are transmitted via satellites of the Saudi-based Arab Satellite Communications Organization ("Arabsat") to beoutQ's subscribers. To enable receipt of the satellite broadcasts, beoutQ (an entity based in Saudi Arabia) has sold, and continues to sell, set-top decoder boxes throughout Saudi Arabia. As a result, beoutQ's unauthorized Internet and satellite broadcasting of beIN's content has been available on a commercial scale. In addition, the beoutQ set-top boxes allow users to install Internet Protocol Television ("IPTV") applications; such applications enable illegal access via the internet to hundreds of proprietary television channels and thousands of on-demand programming hours, including channels and programs from beIN and many other broadcasters from around the world.

10. Despite extensive evidence of involvement of Saudi nationals, entities and facilities in the distribution of beoutQ throughout Saudi Arabia (and beyond), the Saudi authorities have refused to take any effective action against beoutQ. Instead, the Government of Saudi Arabia (including both the central and municipal governments) has supported beoutQ, including by denouncing beIN's requests to investigate and prevent the pirate's unauthorized broadcasts, and by promoting public gatherings with screenings of beoutQ's unauthorized broadcasts.

11. The Saudi authorities' support of beoutQ has also taken the form of restrictions on, or other acts or omission that frustrate, beIN's ability to pursue civil actions before the Saudi courts. Through a variety of means, including by effectively preventing independent Saudi legal counsel from representing beIN in Saudi courts, the Saudi authorities have prevented beIN from accessing enforcement procedures against infringement of its intellectual property rights.

12. The copyrighted materials captured by beoutQ's unauthorized broadcasts encompass not only works created by beIN itself, but also works created by content providers from around the world, including the United States, the European Union and its Member States, and Switzerland, many of which have provided exclusive licenses to beIN for the Saudi Arabian market. In addition, the IPTV applications on beoutQ set-top boxes provide access, in the territory of Saudi Arabia, to hundreds of television channels and thousands of on-demand programs from around the world, without the authorization of the intellectual property right holders.

13. Without limiting the scope of the general description of the measures in the preceding paragraphs, the measures at issue include the following specific acts and/or omissions:

- (i) Saudi Arabia's acts and omissions that result in Qatari nationals being unable to protect¹ their intellectual property rights, including copyrights, broadcasting rights, trademarks and other forms of intellectual property;
- (ii) Saudi Arabia's acts and omissions that result in failure to accord Qatari nationals treatment no less favourable than that accorded to Saudi Arabia's own nationals or nationals of other countries, with regard to the protection of intellectual property rights, including copyrights, broadcasting rights, trademarks and other forms of intellectual property;
- (iii) Saudi Arabia's acts and omissions that make it unduly difficult for Qatari nationals to access civil judicial remedies, or to seek remedies, in respect of enforcement of intellectual property rights, including copyrights, broadcasting rights, trademarks and other forms of intellectual property rights; and,

¹ For greater clarity, the terms "protect" and "protection" have the meaning provided in footnote 3 of the TRIPS Agreement, and encompass "matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as those matters affecting the use of intellectual property rights specifically addressed in this Agreement".

- (iv) Saudi Arabia's omission to prosecute, as a criminal violation, piracy on a commercial scale, of material in which copyright is owned by, or licensed to, Qatari nationals, and other rights holders from around the world.

B. Legal bases of the complaint

14. Qatar considers that the measures at issue taken by Saudi Arabia, as described in Section A of this request, are inconsistent with Saudi Arabia's obligations under the WTO covered agreements.

15. Specifically, certain measures appear to violate:

- (a) Article 3.1 of the TRIPS Agreement, because by creating obstacles for Qatari nationals (including but not limited to beIN), which are not faced by Saudi nationals, that hinder or block their ability to protect their intellectual property rights (including copyrights, broadcasting rights, trademarks and other forms of intellectual property) in the territory of Saudi Arabia, Saudi Arabia has failed to accord to Qatari nationals treatment no less favourable than that accorded to Saudi Arabia's own nationals with regard to the protection of intellectual property.
- (b) Article 4 of the TRIPS Agreement, because by creating obstacles for Qatari nationals (including but not limited to beIN), which are not faced by nationals of other countries, that hinder or block their ability to protect their intellectual property rights (including copyrights, broadcasting rights, trademarks and other forms of intellectual property) in the territory of Saudi Arabia, Saudi Arabia has failed to accord, immediately and unconditionally, to Qatari nationals the advantages, favours, privileges and immunities granted by Saudi Arabia to the nationals of other countries with regard to the protection of intellectual property.
- (c) Article 9 of the TRIPS Agreement, because Saudi Arabia has failed to provide authors of works (including pre-recorded and live programming) with the exclusive rights of authorizing, *inter alia*, the reproduction, broadcasting, rebroadcasting, public performances or public recitation of their works, as required by the Berne Convention for the Protection of Literary and Artistic Works (1971) ("Berne Convention"), as incorporated into the TRIPS Agreement, including Articles 9, 11, 11*bis* and 11*ter* of the Berne Convention.
- (d) Article 14.3 of the TRIPS Agreement, because Saudi Arabia has failed to provide broadcasting organizations (and the owners of copyright in the subject matter of the broadcasts) with the right to prohibit unauthorised fixation, reproduction of fixation, and rebroadcasting by wireless means of broadcasts.
- (e) Article 16.1 of the TRIPS Agreement, because Saudi Arabia has failed to provide the owners of registered trademarks (including, in particular, Qatari owners) with the exclusive right to prevent all third parties not having the owner's consent from using, in the course of trade, identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.
- (f) Article 41.1 of the TRIPS Agreement, because by restricting intellectual property right holders (including Qatari rights holders) from pursuing civil actions before Saudi courts (or otherwise frustrating their ability to do so), Saudi Arabia has failed to ensure that enforcement procedures against infringement of their intellectual property are available so as to permit effective action against such acts of infringement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.
- (g) Article 42 of the TRIPS Agreement, because, by preventing intellectual property right holders (including Qatari rights holders) from bringing enforcement procedures against infringement of their intellectual property (or otherwise frustrating their ability to do so), Saudi Arabia has failed to make available to

right holders civil judicial procedures concerning the enforcement of intellectual property rights covered by the TRIPS Agreement.

- (h) Article 61 of the TRIPS Agreement, because Saudi Arabia has failed to provide for criminal procedures and penalties to be applied in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale.

16. This request for establishment of a panel also concerns any modification, replacement or amendment to the measures identified above, and any closely connected, subsequent measures.

17. Qatar asks that this request be placed on the agenda for the next meeting of the DSB.
