

# ANNEX – SHORT COUNTRY SUMMARIES

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2016 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

The following countries were identified in the U.S. Trade Representative's 2015 Special 301 Report. In prior years, the IIPA filed separate country reports for some of the countries listed in this Annex. This year, because IIPA members did not have sufficient new information on these countries to justify preparation of a full country report, we instead provide these short country summaries. IIPA does not recommend any change in the Special 301 status for these countries. The countries in this Annex are either currently on the U.S. Government's Watch List or, in a few instances, Priority Watch List (Argentina, Ecuador and Venezuela).

#### Argentina

The Government of Argentina has not made copyright protection and enforcement a priority, and in fact, has publicly lauded as “innovators” individuals who have stolen the content of creators, in violation of the language and spirit of the many international treaties that Argentina adheres to (Berne Convention, the WIPO digital treaties etc.). This has allowed Argentina to become a completely inhospitable environment for creators and producers of copyrighted works. Hard copy piracy is still rampant in major public markets, and accounts for a majority of the piracy nationwide. Digital piracy rates exceed 95%, making it nearly impossible for legal services to develop, much less flourish, to the detriment of Argentinian consumers for music, film, video games and printed materials. This is unfortunate because there are multiple legal online services trying to get a toe-hold in the marketplace. For example, there are many legal digital music services offering their services including: Spotify, Apple Music, Google Play Music, Personal Música, Clara Musica, Deezer and Xbox Music.

Some of the weakness in Argentina's copyright enforcement regime is attributable to a lack of resources, but much rests on failings in procedures and laws, and the will power of the government to address these problems. There are simple measures that can be taken, for example, against hard copy piracy: market organizers should restrict licenses to vendors selling legitimate products. There are many procedural hurdles in the criminal and civil courts that need to be addressed to help cases move through the system. To address digital piracy, the government should: (i) encourage the development of processes that enhance cooperation between rights holders and online intermediaries; (ii) establish voluntary best practices or codes of conduct to deal with copyright piracy over Internet services; and (i) ensure that the law establishes sufficient liability for known infringements and permits courts access to incriminating data regarding online piracy. Overall, the government should, at the highest levels, commit to develop and implement a coordinated antipiracy campaign that addresses hard goods and online infringements as a matter of national priority. The federal, provincial, and city governments should also take appropriate measures to prioritize well-known markets selling pirate and counterfeit merchandise.

#### Barbados

There is ongoing widespread broadcast piracy of both free-to-air and premium services in Barbados. This includes the use of unauthorized decoding of equipment and the unauthorized retransmission of signals. This is a violation of Barbados' Copyright Law and it violates international norms.

#### Bulgaria

The marketplace for the copyright industries, in particular, the music industry, continues to deteriorate. This is due in large part because the Copyright and Neighboring Rights Act is seriously outdated. There is currently no clear legal framework regarding digital rights, including the making available right. In fact, none of the exclusive rights are clearly delineated in the law, so instead the framework for protection, and collection of any monies based on the rights, is confusing and disjointed. This is a major hindrance to enforcement as well, and it is hoped that major



revisions to the Act can be undertaken. Additionally, a new law regulating collective rights management is under consideration.

Enforcement in Bulgaria remains a major concern, and has weakened due to a lack of effort by the Government of Bulgaria. In 2015, a reorganization within the government meant that the Ministry of Interior lost jurisdiction over the General Directorate for Combating Organized Crime (GDCOC). Until this change, this unit was a lone example of an office successfully undertaking enforcement against a major problem in Bulgaria, namely, organized criminal syndicates engaged in widespread piracy. Instead, the law now requires the private sector to prove a link to organized crime as a threshold matter in order to initiate an investigation, which means, in effect, that no such cases will be initiated. The Ministry of Culture has, in the past, demonstrated a willingness to address IPR infringements, a task greatly appreciated by the copyright industries. However, with this change in jurisdiction, their administrative capacity is also quite limited. That, coupled with the absence of deterrent criminal sanctions, means that enforcement will only further weaken without substantial changes in the legal and enforcement regimes in Bulgaria.

### **Costa Rica**

The Costa Rican music market continues to be harmed by a significant piracy problem and there were no notable actions taken by the Government of Costa Rica in 2015 to address this problem. One of the larger torrent websites, *kickasstorrents*, has successfully sought refuge for its domain name on Costa Rica's ccTLD registry, and (unlike in Somalia) the Government of Costa Rica has refused to suspend the domain name, even though the website is on the U.S. Government's Notorious Markets List. On the legislative side, the Government (President Solís' administration) has failed to withdraw the reservations filed in 2009 by the former administration of Oscar Arias to key provisions in the WIPO Performances and Phonograms Treaty (Article 15) and to the Rome Convention (article 12). The reservations exempt broadcasters from having to pay foreign (U.S.) artists, musicians and labels. Although those reservations were never implemented into the Costa Rican Copyright Law, broadcasters use the reservations to avoid payments to producers and performers.

### **Ecuador**

Ecuador has seen a significant spike in unauthorized camcords; there were eleven camcords sourced from Ecuador in 2015. Ecuador is now the fourth largest source of unauthorized camcords in Latin America. Although the Ecuadorian enforcement authorities arrested one camcorder in Quito in 2015, he was released after a few days, without any further prosecution. This lack of deterrence, and of any deterrent sentencing, continues to hamper effective enforcement. During the first ten months of 2015, sales of physical music products in Ecuador declined by 46.5%. This is the result, among other factors, of the disastrous reform to the Penal Code passed in 2014 that deleted sanctions for copyright and trademark piracy. Although the Government of Ecuador promised change, including after strong concerns voiced by the U.S. Government and private sector, new amendments adopted in August 2015 only penalize piracy as a minor offense punishable with fines. The most troublesome development by the Government of Ecuador in 2015 was the introduction of the bill entitled "Code of the Social Economy of Knowledge and Innovation" ("COESCI"). This legislation is intended to implement the Government's position and theories about intellectual property rights, to in essence, weaken, not strengthen protection. For example, COESCI, as introduced, proposed to delete a record producers' performance rights, to reduce the term of protection from 70 to 50 years (against the international norms), and to create new exceptions and limitations including "fair use" provisions for the circumvention of technical protection measures. During the ensuing legislative debate, some of the most troubling provisions were removed (and, the performance right for record producers was reinstated), but other concerning provisions remain including the shortened term of protection and the "fair use" provision. Although the timetable for adoption of the legislation appears to have slowed, COESCI, if adopted, would pose as a significant threat to artists and producers rights.

## **Guatemala**

Between January and October 2015, the sales of compact discs in Guatemala declined by 37%. At present, Guatemalan online music sales are done through nine digital music services. However, the legitimate services are struggling because online piracy is exceedingly high, principally from sites located outside of Guatemala. In 2015, a local CMO of record producers and artists (AGINPRO) made a significant effort to start collections for public performances on the legitimate services and for other performances. This effort was supported by the authorities within the judiciary, and the Intellectual Property Registry at the Ministry of Economy. The biggest challenge for the recording industry in Guatemala for 2016 will be to achieve collections of performance rights from the major cable operators in the country, including CLARO TV (a part of the Mexico's Grupo Carso) and TIGO (Millicon Corporation). Guatemala also needs to revise its legal regime to fully comply with the Dominican Republic – Central America Free Trade Agreement (CAFTA).

## **Jamaica**

IIPA appreciates that the Government of Jamaica has now expressed an interest in legitimizing its broadcast television ecosystem which is plagued by rampant signal theft. Jamaica's current legal framework permits the receipt, decoding, retransmission and sale of broadcast signals without a rights holder's authorization, provided the platforms pay rights holders an equitable remuneration. However, even with this limited legal framework, remunerations have not been paid to rights holders. The Government needs to enforce the current law.

## **Peru**

The Peruvian music market, like most other countries in the region, has seen a sharp decline in physical products and an increase in the digital market. Currently, Copyright Law reform is pending in Congress, that would, among other things strengthen controls on collecting societies (CMOs). The bill was originally introduced with widespread support in 2013, but has been losing traction more recently. The changes were designed to improve the existing regime for CMOs, specifically to address a corruption scandal surrounding one copyright collecting society (APDAYC). Peru has not yet implemented the ISP's limited liability provisions from its Free Trade Agreement with the U.S., and after numerous delays, the Government is now seeking to, instead, ratify and implement its Trans-Pacific Partnership (TPP) obligations. Peru is a major source of unauthorized camcords in the region: between 2012-2015, 68 unauthorized camcords were sourced from Peru, including 24 in 2015. Copies of these films were traded by local brokers and found online. It is hoped that the TPP anti-camcording provision will be effectively implemented and will facilitate enforcement against this form of piracy. In addition, the administrators of many of the most notorious Spanish-language Latin American websites are based in Peru, including *yaske.cc*.

## **Trinidad and Tobago**

Broadcast piracy, both the unauthorized retransmission by platforms and the use of unauthorized decoding equipment, is widespread in Trinidad and Tobago; this form of piracy includes both free-to-air and premium services. Trinidad and Tobago's law permits the receipt, decoding, retransmission and sale of broadcast signals without rights holder authorization provided that the platforms pay rights holders equitable remuneration, which they do not. This statutory compulsory license legitimizes piracy and violates Trinidad's law, as well as its limited international obligations. IIPA does recognize that Trinidad and Tobago's Telecommunications Authority issued a release in August mandating that all subscription television providers must remove all channels for which they do not have the rights; it is not clear, however, if this mandate has been effectively enforced.

## **Turkey**

Piracy issues continue to plague the Turkish marketplace, undermining economic opportunities for Turkish and American creators alike. There are two very specific issues to highlight. The first, is the discriminatory Turkish policies that prevent the full participation in the management and decision-making of collective management organizations (CMOs). Second, there are judicial decisions that have incorrectly interpreted the right of communication to the public, in violation of the Berne Convention, the WIPO Copyright Treaty, and the WIPO

Performances and Phonograms Treaty, as well as national law. These interpretations have meant that so-called “indirect” performances (the playing of a radio, a television or other communications in a bar, hotel, train station, or other public place), have been exempted from collections. IIPA urges the Government of Turkey to: (1) remove the membership discrimination within CMOs, and to enable full and fair distribution to all members in collecting societies; and (2) to correct the misinterpretation of public performances to capture “indirect” performances, as is required by international treaties, the Copyright Law of Turkey, and consistent with international norms. Additionally, IIPA understands that a new legislative proposal on liability “safe harbors” is expected in the near term, and we look forward to reviewing that legislation to ensure that it is properly tailored to adequately incentivize online platforms and services to cooperate with copyright owners to meaningfully address copyright infringement.

Book piracy is also rampant in Turkey. Entities involved in the production of pirated books operate on a large scale. Typically, before school terms start, pirates collect information from students and faculty as to which books will be used during the term. Once the relevant titles are identified, a legitimate copy is obtained, photocopying machines and scanners are rented or bought and installed in warehouses, or on trucks — ready to produce unauthorized copies to be sold through shops or apartments located near universities. Unfortunately, pursuing book pirates is not a law enforcement priority. The entire enforcement process is marred by endemic delays — from obtaining a search warrant to conduct a raid, to the assignment of a subject matter expert (of which there are not enough) to assist a court in determining whether piracy has occurred, to an actual judgment, can take anywhere from five to seven years. The lack of personnel and expertise in prosecuting IP infringements thus contributes to the proliferation of book piracy in the market.

## **Venezuela**

The Venezuelan music market has been barely able to survive for the last decade, due to very difficult market conditions and rampant piracy that has overwhelmed the legal marketplace. The retail sector for music has almost completely disappeared, and only one international record label (Sony Music) remains in the country with a small presence. There are seven digital music platforms operating in a small and fragile digital market. Performance rights collections made by a local producers’ and artists’ collecting society (AVINPRO) continued to grow during 2015. But even this positive note did not have a significant impact for national and international music rights holders because of the overall dismal economic climate and the plummeting value of the currency. In addition, in the past year, eight infringing camcords were identified as sourced from Venezuelan theaters, with copies found online fueling international piracy.