

INDIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2024 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that India remain on the Priority Watch List in 2024.¹

Executive Summary: For both Indian and foreign-based creative industries, the promise of continued growth is threatened by a variety of factors including piracy; criminal enforcement difficulties; an inadequate online liability framework; market access barriers; attempts to expand statutory licenses for broadcasting of literary and musical works and sound recordings to include Internet transmissions; inadequate terms of protection; as well as collective management issues and sub-par tariffs. India's copyright legal framework is missing key provisions, including with respect to technological protection measures (TPMs) and rights management information (RMI). IIPA urges the Government of India to pursue the necessary legal reforms to fully comply with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties).

With regard to the proposed Digital India Act, IIPA urges the Government of India to reform its online liability framework concerning infringing content so that safe harbors apply only to passive and neutral intermediaries that do not contribute to infringing activities. Further, IIPA is concerned about the need for effective legal remedies against piracy services even when those services do not directly infringe but play an important contributory role. Stronger enforcement could transform India into a more engaging business environment for the creation and dissemination of copyrighted works.

Criminal enforcement against Internet piracy continues to be challenging at both the national and state levels. In addition, audiovisual rights holders continue to face challenges from pirate infrastructure providers that provide unauthorized turnkey solutions (Piracy-as-a-Service (PaaS)) to would-be pirate operators. While criminal enforcement in India is lacking, judicial enforcement, particularly through the Delhi High Court, has been successful. More recently, the Parliamentary Standing Committee on Communications and Information Technology, as well as the Parliamentary Standing Committee on Commerce, have continued to blame weak enforcement for the high levels of piracy in India.

Despite the difficulties, IIPA greatly appreciates the U.S. Government's engagement with India regarding the highly concerning proposal to amend Section 31D of the Copyright Act to impose a statutory licensing system on Internet transmissions (as well as a previous erroneous interpretation of the current provision) and welcomes the continued engagement of the United States to urge the Government of India to reject any attempt to impose a statutory licensing system on Internet transmissions. The uncertainty caused by this proposal and interpretation is undermining the creative market in India and should be affirmatively rejected.

PRIORITY ACTIONS REQUESTED IN 2024

Enforcement and Administrative Actions

- Strengthen and standardize the national intellectual property (IP) enforcement regime through a national central authority, as suggested by the Parliamentary Standing Committee on Commerce.
- Establish a uniform, state-level cybercrime law (to include IP crimes) and enforcement procedures, as well as state-level IP crime units across the country, and strengthen existing state-level IP crime units, as recommended in the National IPR Policy.

¹ For more details on India's Special 301 history, see previous years' reports, at <https://iipa.org/reports/reports-by-country/>. For the history of India's Special 301 placement, see <https://www.iipa.org/files/uploads/2024/01/Appendix-B-2024.pdf>.

- Ensure speedy takedown of infringing content through the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (2021 IT Rules), updated April 2023.
- Provide commercial certainty in the statutory licensing and rate-setting process in India, including Section 31D Royalty Rates.
- Re-register Phonographic Performance Limited India's (PPL) operating license to ensure the proper collective management of producers' "performance" rights.
- Effectively enforce the Cinematograph (Amendment) Act 2023, which has amended the Cinematograph Act, 1952 to criminalize camcording.

Legal Reforms

- Reject the proposal to amend Section 31D of the Copyright Act to broaden the statutory license to cover all Internet transmissions of sound recordings, musical works, and literary works, which is inconsistent with India's international obligations, and rescind the 2016 Office Memorandum erroneously interpreting the current provision to include such transmissions.
- Amend the Copyright Act to fully comply with the WIPO Internet Treaties and ensure any ongoing review of copyright law and legislation relating to online liability is used as an opportunity to bolster, and not weaken, existing IP protections.
- Reform the Information Technology Act, 2000 (IT Act), particularly if India proceeds with its proposed Digital India Act (DIA) to no longer require notification from a government authority for an Internet Service Provider (ISP) to take down infringing content and to reduce the 36-hour deadline for removal.
- Expressly include IP infringement as a basis for mechanisms that ensure 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 under the IT Act or under the 2021 IT Rules.

Market Access

- Eliminate local body entertainment taxes (LBET) imposed over and above the national Goods and Services Tax (GST).
- Eliminate high tariffs on video game software and hardware.
- Agree to a further extension of the WTO e-commerce moratorium on customs duties for electronic transmissions.
- Remove onerous sets of economic regulations on the broadcast sector.
- Remove Direct to Home (DTH) Guidelines that prohibit DTH operators from entering exclusive contracts with any broadcaster.
- Remove foreign ownership restrictions, including foreign direct investment (FDI) restrictions for Indian news channels.
- Reject calls to mandate providers to pay a network usage fee to ISPs.

ENFORCEMENT AND ADMINISTRATIVE ACTIONS

- **Strengthen and standardize the national intellectual property (IP) enforcement regime through a national central authority, as suggested by the Parliamentary Standing Committee on Commerce.**

India is hindered by widespread piracy and a challenging enforcement environment, both at the National and State levels. The courts in certain states like Delhi are functioning well, but overall enforcement coordination efforts throughout the states are uneven and require a more robust and proactive approach to address some of the serious problems the creative industries face, such as the proliferation of pirate video hosting and pirate infrastructure services. The Delhi High Court Intellectual Property Rights Division Rules entered into force in February 2022, followed by similar rules issued in the Madras High Court in April 2023. The rules establish an IP Division in the High Courts of Delhi and Chennai that seeks to ensure that the judges hearing IP cases are well versed in intellectual property laws and practice.

These rules have had a positive impact on the adjudication of IP cases to date and could provide a model for other states.

Related to civil enforcement, the seminal 2019 Delhi High Court decision in *UTV Software Communication Ltd. V 1337x.To and Ors.*² established permanent orders to disable access to piracy websites as a viable remedy to curtail online infringement in India. The decision has been followed by many recent decisions disrupting or disabling thousands of domains with improved speed of implementation and coverage. Later that year, the Delhi High Court made these orders “doubly dynamic,” meaning variations of the same piracy service can be blocked quickly and efficiently while the case is pending.³ In 2022, rights holders achieved a new milestone in India, obtaining orders allowing for a domain to be blocked based on its association with an already-blocked site of the same name or brand.⁴ This “pirate brand” order will create further efficiencies and help disrupt persistent infringers who mimic the name or brand of popular pirate sites to attract traffic and ad revenues to their copycat sites. Prominent sites like *Fmovies.to*, *Yts.mx*, and *movierulz* have been blocked in India and deemed “pirate brands.”

In June 2022, the Delhi High Court granted an interim injunction in favor of rights holder plaintiffs directing domain registrars and ISPs to block access to the infringing Android-based apps and websites that provide .APK (Android Package Kit) files that enable the sideloading of such apps.⁵ This decision is a positive development in relation to the availability of injunctions with respect to intermediaries that support the distribution of infringing mobile apps. IIPA hopes that this case will serve as a precedent to help address the issue of infringing mobile apps, particularly considering the large-scale infringement occurring via short form video apps.

Rights holders further achieved an order to block a cyberlocker known as *mixdrop*,⁶ and the Court's reasoning released in its written judgment in June 2023 is helpful both in its definition of a cyberlocker as an illegal ecosystem by which users can profit from piracy through incentive programs, and in its finding of liability against the cyberlocker operators for contributing to the infringement of third-party users of the cyberlocker. Further in January 2023, for the first time the Delhi High Court ordered ISPs to block access to twenty stream-ripping sites.⁷ The latest positive precedent from the Delhi High Court in August 2023 includes domain suspension and “Right of Information” (ROI) orders from domain registrars.⁸

In 2023, further precedent was established in *Universal City Studios LLC & Ors vs. dotmovies.baby & Ors.*, CS(COMM) 514 of 2023, whereby the court ordered domain registrars to “lock and suspend” domains for which access is ordered to be disabled, and required registrars to provide to plaintiffs “any details relating to the registrants of the said domain names including KYC, credit card, mobile number, etc.”⁹ Also in 2023, the Delhi High Court granted an interim injunction restraining over 12,000 websites on the grounds of unauthorized streaming and broadcasting of cricket matches being conducted between India and Sri Lanka.¹⁰ The Court opined in the judgment that it may be useful for the legislature to formulate a policy by which such disputes may be addressed so it will not take up the time

² See *UTV Software Communication Ltd. v 1337x.To et Ors*, April 10, 2019, available at https://indiankanoon.org/doc/47479491/?_cf_chl_tk=2Fw0s2GRI5l_czPzh7h1hTkdcT9UJfPxl_uWUJe3Hq-1674682018-0-qaNycGzNCqU.

³ See *Warner Bros. Entertainment Inc. v. Hindilinks4u.To.*, August 9, 2022, available at <https://www.casemine.com/judgement/in/64fde40ef6fa7f68ca49e182>.

⁴ See *Universal City Studios LLC & Ors. v. Vegamovies.run & Ors.* CS (COMM) 265 of 2022, available at <https://indiankanoon.org/doc/106006995/>.

⁵ See *Star India Pvt. Ltd. & Anr. v Ashar Nisar & Ors.*, CS(COMM) 214/2022, June 4, 2022, available at <https://dot.gov.in/sites/default/files/letter%20to%20ISPs%20dated%2006-09-2022%20CS%20Comm%20.pdf?download=1>.

⁶ See *Universal City Studios LLC & Ors. v. Mixdrop.co & Ors.* CS (Comm) No. 663 of 2022, available at <https://dot.gov.in/sites/default/files/letter%20to%20ISPs%2004-10-2022%20CS%20Comm%20663%20of%202022.pdf?download=1>.

⁷ See *Sony Music Entertainment India Private Limited & Ors. vs. YT1s.com & Ors.*, February 22, 2023, available at https://dhcappl.nic.in/dhorderportal/GetOrder.do?ID=603/2023/1677228368072_25914_2023.pdf, and IIPF's press release: <https://www.ifpi.org/recording-industry-successful-in-first-ever-stream-ripping-blocking-case-in-india/>.

⁸ See *Universal City Studios LLC & Ors vs. dotmovies.baby & Ors.*, CS(COMM) 514 of 2023, available at https://www.livelaw.in/pdf_upload/universallcitystudiosllcandorsvdotmoviesbabyandors-487890.pdf.

⁹ See *Universal City Studios LLC & Ors vs. dotmovies.baby & Ors.*, CS(COMM) 514 of 2023, August 9, 2023, available at https://www.livelaw.in/pdf_upload/universallcitystudiosllcandorsvdotmoviesbabyandors-487890.pdf.

¹⁰ See *Star India Pvt. Ltd v Live4wap.click & Ors.*, Delhi High Court, November 1, 2023, available at https://dhcappl.nic.in/dhorderportal/GetOrder.do?ID=chs/2023/1673847075669_81907_2023.pdf (“This Court finds itself inundated with such suits, which keep cropping up every now and then. It may be useful for the Legislature to formulate some kind of a policy by which such disputes can avoid being taking up the time of the courts.”)

of the courts.¹¹ This decision is a positive development in relation to the availability of injunctions with respect to intermediaries that support the distribution of infringing mobile apps.

Similar progress, unfortunately, cannot be reported with respect to the publishing industry. Sci-Hub, an adjudged piracy site, continues to provide access to millions of infringing copies of scientific, technical, and medical journal articles in the country. An application for injunctive relief against the site remains unavailing now three years since the claim was filed by STM publishers.

India is also home to pirate infrastructure providers that provide the backbone for piracy turn-key solutions that are used worldwide, such as *WHMCS Smarters*.¹² Indian law still does not expressly address Piracy-as-a-Service (PaaS). It should be clarified that the commercial provision of middleware to enable, with knowledge, piracy sites and services is actionable, and IIPA encourages the government to act against such services.

As piracy trends remain troubling, more must be done to fight piracy overall, including ensuring pirates cannot simply circumvent blocking orders by changing domains. In addition to mechanisms that ensure 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, the Motion Picture Association (MPA) and the International Federation of the Phonographic Industry (IFPI) are engaged in search engine delisting with Google, which has been shown to lend increased efficacy to the former. IIPA urges the Government of India to build on these positive developments by strengthening and standardizing the national IP enforcement regime through a national central authority to coordinate with state-level enforcement units, as suggested by the Parliamentary Standing Committee on Commerce.

- **Establish a uniform, state-level cybercrime law (to include IP crimes) and enforcement procedures, as well as state-level IP crime units across the country, and strengthen existing state-level IP crime units, as recommended in the National IPR Policy.**

Criminal enforcement against Internet piracy continues to be challenging at both the national and state levels. The last major government study on piracy, published in 2010 by the Ministry of Information and Broadcasting (MIB) "Committee on Piracy," concluded that "piracy is low in terms of priority in the radar of law enforcement agencies" compared to other serious crimes.¹³ It would appear that little has changed since this MIB report. A number of India-based piracy services have become global exporters of pirated content.

The Telangana Intellectual Property Crime Unit (TIPCU), which launched in 2016, has not been as active recently. The Maharashtra IP Crime Unit (MIPCU), formerly the Maharashtra Cyber Crime Unit (MCDCU), has been active since 2017. MPA was heartened to see MIPCU's first enforcement action in July 2021 against a pirate service called *Thop TV*; however, this remains the Unit's only known significant criminal enforcement action to date. MIPCU has also started to invoke Section 160 of the Code of Criminal Procedure to escalate cases when app operators do not comply with infringement notices. In addition, some practical hurdles remain in relation to the record industry's priority services, such as stream-ripping and cyberlocker services which, so far, have not been subject to any blocking orders. Enforcement in India needs consistency, which entails establishing a uniform, state-level cybercrime law (to include IP crimes) and enforcement procedures and state-level IP crime units across the country.

An important decision was delivered by the Indian Supreme Court in *Knit Pro International v State of Delhi* (2022). In May 2022, the Supreme Court of India held that offenses under Section 63 of the Copyright Act, 1957 are

¹¹ *Id.*

¹² *WHMCS Smarters* is an IPTV turnkey solution. Its IPTV software solution offers website design and development, customized apps on several platforms (including iOS, Android, and Windows), and a billing platform. They also offer an IPTV media player through the *IPTV Smarters Pro* app. The *IPTV Smarters Pro* app and *WHMCS Smarters* were developed by New Spark Technology, a company based in Mohali, India.

¹³ Arpan Banerjee, Cardozo Arts & Entertainment, Vol. 34, p. 609, *Copyright Piracy and the Indian Film Industry: A "Realist" Assessment*, available at <http://www.cardozoaeji.com/wp-content/uploads/2016/08/BANERJEE-ARTICLE.pdf> (citing Committee on Piracy, *Report of the Committee on Piracy*, p. 14 (2010)).

cognizable and non-bailable offenses. Offenses under section 63 being cognizable allows the police to conduct investigations and register first information reports (FIRs) without the permission of a magistrate and allows arrests of persons against whom there is an allegation of knowingly committing or abetting copyright infringement without a warrant, putting the crime of copyright infringement in the category of more serious criminal offenses. Further, the person cannot be granted bail as a matter of right but will have to approach the court for the same. The decision essentially gives the police greater ability to respond in an agile manner to copyright infringements being committed within their jurisdiction. However, it remains to be seen whether police officials in different states leverage the Supreme Court's ruling and pro-actively act against piracy-related crimes, and whether trial court judges correspondingly treat piracy-related crimes more seriously. IIPA urges the Ministry of Commerce and Industry to analyze and, as necessary, seek to amend, any penal provisions or ancillary provisions in the Copyright Act that may still lead to conflict with this important Supreme Court judgment.

However, with copyright infringement remaining a low priority, the greater challenge involves investigation and arrest. IIPA urges the Indian government to better prioritize IP crimes, and in addition, mobilize to address middleware services and other PaaS actors and to modernize its laws on secondary liability, knowledge, and constructive knowledge. The lack of enforcement against online piracy operators remains inadequate given the current scale of the problem. Enforcement agencies' lack of understanding of IP crimes, general lack of familiarity investigating and handling digital forensic evidence, and the sophisticated nature of the pirate criminal enterprises operating notorious piracy sites and services are all areas that need to be addressed. While criminal copyright infringement falls under a national criminal code, cybercrime enforcement and related proceedings fall upon the individual states.

IIPA recommends the following steps: (i) India should focus on inter-state operations of organized crime units engaged in piracy and establish state-level enforcement task forces that are coordinated, systematic, and efficient; (ii) India should establish a National Copyright Enforcement Task Force (NCETF), including the Enforcement Directorate and Central Bureau of Investigation (CBI), that is overseen by the Department for Promotion of Industry and Internal Trade (DPIIT) and directed at copyright infringement occurring online, including on mobile devices; (iii) India should establish a centralized IP crime unit within the CBI's Cyber Crime Detective Unit; (iv) India should focus on training prosecutors and police officers on the seriousness of IP offenses and their links to organized crime; (v) India should encourage greater cooperation and cross-training between national and state law enforcement agencies and the creative industries; and (vi) India should strengthen existing state-level IP crime units, as recommended in the National IPR Policy.

- **Ensure speedy takedown of infringing content through the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (2021 IT Rules), updated April 2023.**

The 2021 IT Rules were updated in April 2023 to require all intermediaries to appoint "Grievance Officers" and to remove copyright infringing content "as expeditiously as possible and shall be resolved within seventy-two hours of such reporting" to the Grievance Officer. The Indian government has now made it theoretically possible for pirated content distributed via an intermediary such as Telegram to be removed at an administrative level, without requiring rights holders to involve the courts, but whether this is being implemented in practice is unclear. Further, the time limits specified for such removals are too long and unhelpful for rights holders.¹⁴

If an intermediary does not respond to a takedown request within 72 hours, the rights holder may appeal to the Grievance Appellate Committee, formed by the Ministry of Electronics and Information Technology (MeitY). The Committee has up to 30 days to reach a decision. Further, the Rules refer to content removal, not shutting down an intermediary's operations (the latter is possible only in cases of an "emergency nature," and requires a senior government official, of the rank of Joint Secretary, writing a report to the MIB Secretary). IIPA urges the Government of India to ensure speedy takedown through these Rules.

¹⁴ See PIB Delhi, Ministry of Electronics & IT, *Three Grievance Appellate Committees (GACs) Notified on the recently amended "IT Rules 2021*, January 28, 2023, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1894258>.

- **Provide commercial certainty in the statutory licensing and rate-setting process in India, including Section 31D Royalty Rates for Radio Broadcasts.**

On December 31, 2020, the Indian Intellectual Property Appellate Board (IPAB) handed down its decision on the Section 31D royalty rate to be paid by commercial radio stations for the broadcasting of sound recordings and the underlying works. While the decision set new “needle hour” rates that increased the rate from the existing rate of 2% of the net advertising revenue rate, it still undervalues the rights in question. The decision has therefore been appealed to the New Delhi High Court. The validity of the determined rates was extended only to September 30, 2021, because in February 2021, a new law was passed dissolving various tribunals in India, including the IPAB. Its powers and duties were transferred to the High Courts and Commercial Courts (including related to copyright matters). The process highlights a serious problem with the speed and lack of commercial certainty related to the statutory licensing and the rate-setting process in India. The recording industry’s priority is to secure a rate that represents the economic value of the use of sound recordings to broadcasters.

- **Re-register Phonographic Performance Limited India’s (PPL) operating license to ensure the proper collective management of music producers’ “performance” rights.**

Following Phonographic Performance Limited India’s (PPL) reorganization and application for an operating license, DPIIT should re-register PPL as a collecting society to license public performance and broadcasting rights pertaining to music without further delay. Following the initial and unexpected denial of its registration by DPIIT, PPL has approached the Delhi High Court asking the court to vacate the DPIIT decision. The case remains pending; however, DPIIT should reconsider its decision on its own initiative and re-register PPL, which represents the majority of domestic and international music rights in India. The lack of accreditation for PPL India is causing confusion in the market and, worse, encourages users to avoid obtaining licenses for their uses of recorded music. On October 4, 2023, the DPIIT notified the receipt of an application from PPL for registration as a Copyright Society under section 33 of the Copyright Act, 1957.

- **Effectively enforce the Cinematograph (Amendment) Act 2023, which has amended the Cinematograph Act, 1952 to criminalize camcording.**

Unauthorized camcording of films is an ongoing challenge for rights holders in India, and criminal referrals to date against suspects have unfortunately not resulted in meaningful steps to deter such activities. The passage of the Cinematograph (Amendment) Bill, 2023, amended the Cinematograph Act, 1952 and explicitly criminalizes camcording.¹⁵ The Parliamentary Standing Committee on Communications and Information Technology, which identified weak enforcement at the state level as the major reason for the proliferation of camcording in India, recommended this change. IIPA urges the Government of India to enforce the Cinematograph (Amendment) Act to address the problem of unauthorized camcording in cinemas.

On November 3, 2023, the MIB announced that it established an administrative takedown mechanism, not under the Copyright Act, but instead under Sections 6AB and 7(1B)(ii) of the Cinematograph Act.¹⁶ As of November 2023, the MIB has authorized 12 officers in nine cities¹⁷ (“Nodal Officers”) to receive complaints of copyright

¹⁵ The Cinematograph Act, 1952 explicitly criminalizes camcording and makes it unlawful to use an audiovisual recording device to make or transmit an unauthorized copy of a motion picture (in whole or in part, audio or video) while it is being performed in a motion picture exhibition facility and introduced penalties against camcording. This law is a step in the right direction to deter content theft. The Cinematograph (Amendment) Act also imposes penalties higher than those specified in the Copyright Act, 1957. Camcording will now be punishable by imprisonment of between 3 months to 3 years and a fine of between INR 3 lakhs (US\$3,640) to up to 5% of the audited gross production cost.

¹⁶ Section 6AB of the Cinematograph Act, 1952 provides that no person shall use or abet the use of an infringing copy of any film to exhibit to the public for profit at a place of exhibition that has not been licensed under the Act or in a manner that amounts to the infringement of copyright under the provisions of the Copyright Act, 1957. Section 7(1B)(ii) provides that the Government may take suitable action for removing or disabling access to such an infringing copy exhibited or hosted on an intermediary platform in a manner in contravention to Section 6AB.

¹⁷ The nine cities are Delhi in Northern India; Mumbai in Western India; Bangalore, Hyderabad, Chennai, and Trivandrum (Kerala) in Southern India; and Calcutta, Cuttack (Odisha) and Guwahati (Assam) in Eastern India.

infringement (under the Cinematograph Act) against intermediaries. It remains to be seen if this mechanism will be effective, but IIPA notes several concerns with the process. For example: (i) the complaint form requires copyright holders to list infringing URLs; (ii) the complaint form requires copyright holders to list “films” being infringed, rather than “content,” which may exclude live or recorded sports broadcasts; and (iii) no timelines are specified. Further, the application can be brought by any third party with only discretionary ability for the Nodal Officer to hear from the applicant with proof they have a proper interest. This could subject the process to abuse.

LEGAL REFORMS

- **Reject the proposal to amend Section 31D of the Copyright Act to broaden the statutory license to cover all Internet transmissions of sound recordings, musical works, and literary works, which is inconsistent with India’s international obligations, and rescind the 2016 Office Memorandum erroneously interpreting the current provision to include such transmissions.**

Following the 2012 revision to the Copyright Act, which created a statutory license for the use of musical works and sound recordings for radio and television broadcasting, the Department of Industrial Policy & Promotion drafted a 2016 Office Memorandum that sought to extend the Section 31D statutory license to Internet transmissions. The Bombay High Court held that the 2016 Office Memorandum went too far and that Section 31D applies only to television and radio broadcasting and not Internet transmissions.¹⁸ In October 2023, the Division Bench of the Bombay High Court reaffirmed the crucial point made by the single judge in the Bombay High Court’s findings that Section 31D of the Indian Copyright Act does not cover Internet broadcasting.¹⁹

In July 2021, the Department Related Parliamentary Standing Committee on Commerce (DRPSCC) Report on Review of the Intellectual Property Rights Regime in India recommended amending and extending Section 31D of the Copyright Act to include “internet or digital broadcasting” within the existing statutory licensing for radio and television broadcasting of literary and musical works as well as sound recordings found within that section. The Government of India held a consultation on the DRPSCC recommendation to amend Section 31D in September 2021, and IIPA, as well as other industry representatives, filed comments in opposition.²⁰ Since then, the Government of India has regularly convened stakeholder roundtables to raise the matter, including as recently as November 2023, which continues to create uncertainty over the proposed extension of 31D. IIPA is grateful for the U.S. Government’s intensive engagement with India, including as part of the U.S.-India Trade Policy Forum (TPF) meetings, the TPF Intellectual Property Working Group, and other bilateral engagement. The proposal to amend the Copyright Act remains inconsistent with India’s obligations under the WCT, the WPPT, and the WTO TRIPS Agreement. IIPA urges the Government of India to affirmatively reject the proposal and to provide certainty by committing to not extend the Section 31D statutory license to Internet transmissions.

- **Amend the Copyright Act to fully comply with the WIPO Internet Treaties and ensure any ongoing review of copyright law and legislation relating to online liability is used as an opportunity to bolster, and not weaken, existing IP protections.**

India is a member of the Berne Convention, the Geneva Phonograms Convention, the WTO TRIPS Agreement, and the WIPO Internet Treaties. While the Government of India believes its current law is treaties compliant, IIPA members believe the law falls short of full compliance in some respects. To fully implement the WIPO

¹⁸ See *Tips Industries Ltd. v Wynk Music Ltd. & Anr.*, N.M(L) 197/2018 in C.S. I.P(L) 114/2018, Bombay High Court (April 23, 2019), available at <https://indiankanoon.org/doc/156695842/>.

¹⁹ See *Wynk Ltd. and Ors. v. TIPS Industries Ltd.*, (Division Bench) (Commercial Appeal No. 424 of 2019) (Bombay High Court), October 20, 2023, available at <https://spicyip.com/wp-content/uploads/2023/10/Wynk-v.-TIPS-31D.pdf>.

²⁰ See IIPA Comments on India’s Review of the Intellectual Property Rights Regime in India by the Department Related Parliamentary Standing Committee (DRPSCC), September 3, 2021, available at <https://www.iipa.org/files/uploads/2021/10/IIPA-Comments-on-Review-of-the-Intellectual-Property-Regime-in-India-Final.pdf>.

Internet Treaties and to align with international best practices, key changes to the Copyright Act of 1957, last amended in 2012 (implemented in the Copyright Rules, 2013, in force March 14, 2013) are needed, including:

- Provide in its legal system mechanisms that ensure 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.
- Re-insert Technological Protection Measures and call for faster notice-and-takedowns.
- Amend Copyright Rule 75 sub-rule (3), (Chapter XIV) giving intermediaries 36 hours to take down content in line with recommendations to more effectively address the speed of distribution of illegitimate content online.
- Section 52(1)(c) – This section establishes that “transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy” is not an infringement of copyright.
 - The provision should be narrowed to be consistent with other jurisdictions and provide certain conditions;
 - Eliminate the requirement that rights holders obtain an injunctive court order to prevent infringing content from being reinstated within 21 days of submitting a notice of infringement; and
 - Clarify that service providers mentioned in Section 52(1)(c) must remove or disable access to the copyright infringing content or links to such content expeditiously when (i) the material has previously been removed from the originating site or access to it has been disabled; and (ii) the party giving the notification includes a statement confirming that the material has been removed from the originating site or access to it has been disabled, not only when a court orders it.
- Section 65A—WCT, Article 11 and companion language in WPPT, Article 18 require Contracting Parties to provide “adequate legal protection and effective legal remedies against the circumvention of effective technological measures.” These articles establish a right against unauthorized access that is independent from acts of traditional copyright infringement. To fully comply with these requirements, the following amendments are necessary:
 - Define the phrase “effective technological measure” to expressly cover common TPMs, such as access and copy controls;
 - Expressly prohibit the manufacturing, importing, trafficking, and dealing in circumvention devices and software, as well as the provision of circumvention services and devices;
 - Establish civil and criminal sanctions for acts of circumvention, trafficking in circumvention devices and software, and offering circumvention services; and
 - Eliminate the requirement of proof of a nexus between an act of circumvention and copyright infringement;
- Providing civil and criminal penalties for violating TPM provisions and for the unauthorized removal of RMI.
- Narrow the scope of the overbroad and vague exception in Section 65A(2)(a), namely “doing anything referred to therein for a purpose not expressly prohibited by this Act.”
- Section 52(1)(b) establishes that the transient or incidental storage of a work in the technical process of an electronic transmission or communication to the public is not an infringement of copyright. However, the provision should be narrowed to ensure it is limited to lawful sources, among other things.
- Chapter V—As applicable, increase the standard term of protection from life of the author plus 60 years, to life of the author plus 70 years to meet contemporary international standards of protection, and increase the term of protection for sound recordings and films from 60 to at least 70 years accordingly (The current 60 years is shorter than the term of protection in the United States, the EU, and in at least 73 countries worldwide).
- Section 39A—Eliminate the over-regulation of private contracts involving sound recordings. This Section appears to impose contractual limitations for authors established in Sections 18 and 19 on the ability of performers to decide the terms on which to license or transfer their exclusive rights in sound recording agreements. These limitations result in unreasonable changes to established practices in the recording industry. Section 39A does make clear that Sections 18 and 19 shall be applied to performers' rights “with

necessary adaptations and modifications.” Such “adaptations and modifications” should remove any restrictions on the transfer of performers’ rights in sound recording agreements.

- Section 52(1)(a)—Ensure the private use exception is compatible with the three-step test codified in the Berne and WTO TRIPS agreements and the WIPO Internet Treaties.
- Repeal the unjustifiable exception in Section 52(1)(za) of the Copyright Act, which provides for an exception to sound recording producers’ and other rights holders’ right of public performance in respect of “the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority” (i.e., “social festivities associated with a marriage”). Although it is not uncommon for national laws to include limited exceptions for the use of certain copyrighted works in religious ceremonies, this exception extends to purely social festivities associated with a marriage, which are customarily subject to the public performance right.

Moreover, in August 2023, the Indian Parliament passed the Jan Vishwas (Amendment of Provisions) Bill, 2022. The bill aims to amend forty-two Acts including the Copyright Act to decriminalize certain offences, reduce the compliance burden on individuals and businesses, and to ensure ease of doing business. The Bill proposes the omission of section 68 of the Copyright Act, which provides for penalty for making false statements for the purpose of deceiving or influencing any authority or officer in the execution of the provisions of the Copyright Act.

IIPA urges the Government of India to amend the Copyright Act to fully comply with the WIPO Internet Treaties and to ensure that any ongoing review of copyright law and legislation relating to online liability is used as an opportunity to bolster, not weaken, existing IP protections.

- **Reform the Information Technology Act, 2000 (IT Act), particularly if India proceeds with its proposed Digital India Act (DIA) to no longer require notification from a government authority for an Internet Service Provider (ISP) to take down infringing content and to reduce the 36-hour deadline for removal.**

On February 25, 2021, MeitY introduced the 2021 IT Rules, extending the scope of obligations on intermediary platforms. Although the 2021 IT Rules provide increased accountability and obligations on intermediary platforms, they do not improve the inefficient notice and takedown regime. By way of example, Rule 3(1) of the 2021 IT Rules provides for a takedown mechanism pertaining to complaints regarding copyright infringement. However, it directs the ISP to take down infringing content only upon being notified by an appropriate government authority. Further, the 2021 IT Rules provide a 36-hour deadline for removal, which is too long for infringing content to remain on the Internet. Indian legislation currently provides ample opportunities for digital services, including User Upload Services, to avoid liability for copyright infringing content on their platforms. The recently adopted 2021 IT Rules have placed increased obligations on platforms; however, the rules lack clarity. Further, the 2021 IT Rules do not go far enough to address the flaws in the system.

In June 2022, MeitY proposed amendments to the existing Intermediary Guidelines and Digital Media Ethics Code. These proposed amendments were approved as final on October 28, 2022. In August 2022, MeitY also announced its intention to introduce legislation, the Digital India Act (DIA), which will replace the IT Act and will aim to ensure an open, safe, trusted, and accountable Internet for its users. IIPA urges the Government of India to use these reforms as an opportunity to improve the currently inadequate online liability framework in India.

On March 9, 2023, MeitY held a consultation to officially announce that the IT Act will be replaced with the new DIA. The bill is likely to review the intermediary safe harbor framework in India. The MeitY questioned if safe harbors should be applicable to all intermediaries and if there should be a categorization of intermediaries under the new Bill.

To resolve the situation with the online liability regime, the Indian government should use the ongoing introduction of the DIA to amend Section 79 of the IT Act and corresponding IT Rules to limit its overbroad safe harbors

and clarify the responsibilities of services eligible for them. Such changes are essential to ensure that Indian content creators and content owners are fairly rewarded and that the legal framework in India supports the sustainable growth of the digital content market, instead of shielding copyright infringing services in India. In doing so, the Indian government should (i) limit, to begin with, safe harbor protection to passive and neutral intermediaries that do not contribute to infringing activity; (ii) implement measures demonstrated effective in preventing or restraining infringement; (iii) require marketplaces and encourage all relevant intermediaries to implement “know your business customers” (KYBC) policies to ensure they keep up to date and accurate information about their customers and to allow rights holders to obtain accurate information to protect their rights against direct infringers; and (iv) enable consultation among industry stakeholders, including creative industries, to make determinations on “Trusted Entities” (whose complaints are resolved on a priority basis by ISPs) rather than leaving such decisions to the sole discretion of ISPs as provided under the existing draft.

To this end, local media reports as of September 2023 indicate that MeitY may introduce a “safe harbor” certification mechanism in the anticipated DIA draft. Should MeitY replace the existing intermediary safe harbor protections with a licensing-like certification mechanism without appropriate protections and considerations for copyright law, infringing online platforms would have unfettered protection to violate the rights of copyright holders. The anticipated draft DIA is expected to be tabled before the parliament during the winter parliamentary session of 2023.

- **Expressly include IP infringement as basis for mechanisms that ensure 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 under the 2021 IT Rules.**

The express inclusion of IP infringement as a basis for mechanisms that ensure 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 under the IT Act or under 2021 IT Rules would represent a major improvement in the IP enforcement system. It would also further increase the effectiveness of the current system in which some website blocking orders have been issued, including notable dynamic injunctions by the Delhi High Court, and would complement the work of law enforcement agencies in the area of domain name suspensions, where Indian authorities had previously made progress. However, more progress is needed in tackling unlicensed services using alternative domain names, which is the most common practice.

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- **Eliminate local body entertainment taxes (LBET) imposed over and above national Goods and Services Tax (GST).**

In 2017, India rolled out a unified Goods and Services Tax (GST) nationwide. Cinema tickets are subject to a GST rate of between 12% and 18%, depending on ticket price. Effective October 1, 2021, the GST rate for “content licensing, right to broadcast and show original films” is taxed at a single rate of 18%. However, Local Body Entertainment Taxes (LBETs) collected by state governments have been left out of the GST, prompting state governments (Tamil Nadu and Kerala) to attempt to tax entertainment products (particularly cinema tickets) over and above GST. LBETs significantly increase the tax cost for exhibitors and work against the principle of “One Nation, One Tax” and the intent of the GST model (i.e., to remove a patchwork of high, differing tax regimes). IIPA urges India to subsume all local taxes on cinema tickets into the national GST system.

- **Eliminate high tariffs on video game software and hardware.**

The Government of India maintains high tariffs on entertainment software and hardware products, including PC video game products, console video game products, video game console hardware, and video game activation

cards. IIPA encourages India to join the expanded Information Technology Agreement to reduce tariffs on goods that enhance digital trade in India.

- **Agree to a further extension of the WTO e-commerce moratorium on customs duties for electronic transmissions.**

The Government of India has expressed reservations about renewing the WTO e-commerce moratorium on customs duties for electronic transmissions. Without this moratorium, customs duties would likely raise prices for consumers, placing India out of step with regional and international best practices and stifling the growth of India's expansive market for creative digital content and related services. IIPA urges the Government of India to agree to a further extension of the WTO e-commerce moratorium.

- **Remove onerous sets of economic regulations on the broadcast sector.**

The Government of India regulates the uplink and downlink of satellite signals beaming into India. Foreign broadcasters are required to set up offices in India licensed by the government and must pay prescribed fees per channel beaming into India. More generally, India's Telecom Regulatory Authority (TRAI) imposes an onerous set of economic regulations on the broadcast sector, thus stifling innovation and hindering competition. For example, TRAI has issued tariff orders that prescribe price ceilings for channels that broadcasters bundle into bouquets and then charge to consumers (these orders were upheld by India's Supreme Court in 2018), creating regulatory uncertainty around pricing of pay-TV channels. Despite some helpful moves in late 2022, TRAI has not done away with prescriptive pricing and packaging restrictions and has not moved towards forbearance despite several requests from content providers and broadcasters. Despite the lifting of many foreign direct investment restrictions in 2015, the government's attempt at price controls and prescriptive economic regulations reduces the sector's competitiveness to attract foreign direct investment (FDI). IIPA urges the Indian government to remove these regulations.

IIPA also encourages the Government of India to carefully consider the impact of forthcoming bills, such as the Digital India Act, the National Broadcasting Policy, and the Broadcasting Services (Regulation) Bill, on the industry, as well as the interaction between these bills. If industry and other relevant stakeholders, including within government, are not consulted widely, such bills could create ambiguity for industry, impede ease of doing business, and stymie the development of a dynamic and durable broadcast sector and creative economy.

- **Remove Direct to Home (DTH) Guidelines that prohibit DTH operators from entering exclusive contracts with any broadcaster.**

The Direct to Home (DTH) guidelines, issued by TRAI, prohibit DTH operators from entering exclusive contracts with any broadcaster. The rules also prohibit DTH operators from carrying signals of any broadcaster who has entered any exclusive contracts with any distribution medium, and/or against whom any litigation is pending in such regard. These regulations limit choice and undermine competition laws.

- **Remove foreign ownership restrictions, including foreign direct investment (FDI) restrictions for Indian news channels.**

Although India in recent years has raised the foreign direct investment (FDI) cap for Indian news channels from 26% to 49%, foreign investments above 49% for news channels require government approval. Further, FDI in digital news sites is restricted to the earlier limit of 26%. Recently, the Indian government helpfully clarified that the 26% cap does not apply to OTT platforms, so those platforms can carry news from any news channel that has uplinking/downlinking permission and would not require FDI approval for hosting news feeds.

- **Reject calls to mandate providers to pay a network usage fee to ISPs.**

Internet service providers (ISPs) in India have issued public calls to mandate content providers pay a network usage fee to ISPs, such as via a licensing framework under an anticipated Telecommunication Bill. If implemented, such proposals would restrict trade and freedom of contract. Helpfully, as of November 2023, Indian government officials have signaled that they intend to exclude content providers (e.g., over-the-top (OTT) and video-on-demand service providers) from the scope of the new Telecommunication Bill, leaving the commercial relationship between content providers and ISPs to market dynamics. However, ISPs and trusted service providers continue to call for network usage fees and TRAI's intervention in the OTT market.