APPENDIX B – ADDITIONAL CONCERNS IN OTHER KEY FOREIGN MARKETS

AUSTRALIA

There have been several reviews in recent years regarding the availability of Australian content and asymmetry between local content obligations for free-to-air broadcast and the absence of these obligations on digital platforms. In 2019, the Australian Competition and Consumer Commission, through its Digital Platforms Inquiry Final Report, recommended "harmonization" of content regulation across broadcast and video on demand (VOD), introducing the possibility of local content obligations extending to VOD services. The Albanese Government in its 2023 National Cultural Policy outlined a commitment to introduce an investment obligation for VOD services by July 2024, although such an obligation has not been introduced as of October 2024. Such a mandate would be violative of Australia's FTA commitments to the United States. To date, there is no evidence to support any assertion of a market failure. Indeed, the data on investment in Australian content for streaming services continues to indicate high levels of production and wide availability for subscribers. There remains no need for consideration of quotas or obligations to invest in local content.

In December 2023, Australia's Attorney-General announced the establishment of a Copyright and Artificial Intelligence (AI) Reference Group (CAIRG) "to better prepare for future copyright challenges emerging from AI."[1] In September 2024, CAIRG released a report on Copyright material as AI inputs.[2] While certain stakeholders are calling for a TDM exception, IIPA is not aware that Australia has proposed such an exception. There is no evidence that would support the introduction of a text and data mining (TDM) exception in Australia.

BELGIUM

Belgium transposed the European Union (EU) Directive 2019/790 on copyright and related rights in the Digital Single Market (DSM Copyright Directive) and SatCab Directive[3] in 2022. The existing author and performer unwaivable remuneration right was extended to the new definition of retransmission and is subject to mandatory collective rights management for cable retransmission and for direct injection when authors and performers transfer their rights to audiovisual producers. This new definition includes simultaneous/live and unabridged retransmission of television or radio programs when carried out by a party other than the broadcaster, including via satellite, digital terrestrial, Internet Protocol Television (IPTV) networks, and mobile networks. This remuneration right was introduced without consultations with stakeholders or a proper impact assessment. Additionally, it covers live retransmission if it takes place in a controlled and secure environment for authorized users. Belgium went beyond what is prescribed in the Directive by introducing another mandatory unwaivable remuneration right for performers and authors that is paid by audiovisual and music on-demand services and, unless there is a collective agreement, also is subject to mandatory collective rights management (Articles 60-62). This adds a completely unnecessary step, which will be costly and bureaucratic to administrate, to the process for remunerating artists for the use of their recordings by online streaming services. Instead of benefitting Belgian artists, it jeopardizes the future of the Belgian music sector by damaging the ability of record labels to invest in Belgian artists and the country's wider music sector. The law entered into force in 2022 and some of its provisions are being challenged before the Belgian Constitutional Court, which recently decided to refer thirteen preliminary questions to the Court of Justice of the EU.

BULGARIA

[1] See https://www.ag.gov.au/rights-and-protections/copyright/copyright-and-artificial-intelligence-reference-group-cairg.
[2] See https://www.ag.gov.au/sites/default/files/2024-09/AGD-Questionnaire-4-September-2024.pdf.
[3] SatCab Directive is Directive (EU) 2019/789 of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organizations and retransmissions of television and radio programs, and amending Council Directive 93/83 [2019] OJL130/82.

Bulgaria is consulting on the transposition of the Network and Information Security 2 (NIS2) Directive. The proposed definition of legitimate access seekers is extremely narrow and mandates that top-level-domain (TLD) name registries and entities providing registration services will be obliged to cooperate only with national competent authorities and pre-trial proceedings authorities. This definitional limit was considered in the legislative process but was ultimately rejected to ensure a wider scope of parties who could make use of the provision. Such a narrow interpretation would negatively impact online copyright enforcement actions. Additionally, Bulgaria has not fully implemented Article 8(3) of the EU Copyright Directive (2001/29/EC).

GERMANY

The 2021 transposition of the DSM Copyright Directive introduced an overbroad limitation on the exercise of exclusive rights for "presumably permitted uses" and content that is "pre-flagged" by users as non-infringing. These new *de facto* exceptions exceed the "three-step test" and will lead to an untenable situation in which certain uses would be permitted in Germany but not elsewhere in the EU or worldwide.[4]

The Belgian online content sharing service provider (OCSSP) statutory remuneration right (SRR) is in part based on a similar provision adopted in connection with the German implementation of Article 17 of the DSM Copyright Directive. Germany also maintains an SRR for authors and performers, subject to mandatory collective rights management, and exercisable against OCSSPs like YouTube. This means that authors and performers who have licensed or transferred their rights to producers and already obtained remuneration under these contracts, would still be able to ask for a remuneration from an OCSSP, where the producer has licensed the content to the OCSSP. Moreover, the SRR also applies where use of the content on the OCSSP is subject to an applicable copyright exception (e.g., parody, satire, or pastiche). The SRR is unwaivable and must be administered by collective management organizations (CMOs). This provision raises significant questions regarding both its practical application as well as its legitimacy, not least due to the unreasonable restrictions on freedom of contract. Reportedly, complaints have been filed with German Constitutional Court.

Germany has failed to implement the EU enforcement legislative framework correctly. Specifically, Germany's law fails to provide for effective injunctive relief against intermediaries. Rather, intermediary injunctions are considered a measure of last resort due to the burdensome "subsidiarity requirement."

Germany's NIS2 Directive implementation proposal follows a very limited approach by narrowing the scope of legitimate access seekers and indicating that registries do not need to have a complete and accurate database of registrant/WHOIS data. The proposal also does not require registries to engage in any verification or accuracy obligations, which would result in an ultimately ineffective process. Finally, it is notable that Germany remains a popular jurisdiction for pirate sites, which rely on Germany's hosting provider infrastructure.

GUATEMALA

Audiovisual piracy is a rising concern in Central America and the Caribbean regions, particularly with unlawful retransmission of pay-TV and broadcasting signals, as well as online piracy. Local Internet service providers (ISPs) and pay-TV distributors often bundle unauthorized content with legitimately licensed content, hampering enforcement. Enforcement authorities, regulators, and private stakeholders should work together to protect intellectual property (IP) rights and prevent unlicensed distribution of audiovisual content, especially in the Caribbean and Central America, including Guatemala, using tools that are available in most countries around the world, such as cable retransmission takedown orders, site blocking, and legal proceedings, including cease-and-desist letters.

[4] Article 13 of the WTO TRIPS Agreement obligates WTO members to "confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work and do not unreasonably prejudice the legitimate interests of the right holder." See also Berne Convention Article 9(2) (same, as to reproduction right); WIPO Copyright Treaty (WCT) Article 10 (same, as to all Berne exclusive rights and all exclusive rights granted under the WCT itself); WIPO Performances and Phonograms Treaty (WPPT) Article 16(2) (same, as to all rights provided for under WPPT).

A problematic bill was submitted to Congress in 2023 (File #6224) with a general exception to performance rights in favor of all radio and TV broadcasters. Additionally, local users' trade associations filed a Constitutional challenge against key provisions in the copyright law that empower CMOs to set rates. Both issues are current and present a significant threat to rights holders' business in Guatemala.

HONG KONG

In July 2024, the Hong Kong Intellectual Property Department asked for public consultation on Copyright and AI, including a proposed TDM exception. There is no evidence that would support the introduction of a TDM exception in Hong Kong – the existing copyright regime based on exclusive rights ensures a mutually beneficial licensing market for copyrighted works.

Recently, a great deal of pirated vinyl produced in mainland China, particularly Guangdong province, have been smuggled through Hong Kong for worldwide distribution. Hong Kong Customs should enhance border control measures to stop the smuggling and cease dissemination of these infringing goods worldwide.

JAPAN

In 2019, the Japanese Copyright Act was amended to include an exception, in Article 30-4, that permits the exploitation of a work for data analysis (meaning the extraction, comparison, classification, or other statistical analysis of the constituent language, sounds, images, or other elemental data from a large number of works or a large volume of other such data) or in any other case in which it is not a person's purpose to personally enjoy or cause another person to enjoy the thoughts or sentiments expressed in that work. While the act states that it does not apply if the action would unreasonably prejudice the interests of the copyright owner in light of the nature or purpose of the work or the circumstances of its exploitation, the act does not expressly distinguish between use for commercial or non-commercial purpose, nor does it expressly require lawful access to the works in question. It is also not clear what activities are encompassed by the non-personal enjoyment carveout. Rights holders are deeply troubled by the current lack of clarity and certainty, which risks Article 30-4 permitting the use of unlawfully accessed copyright material as the source for TDM activities. Following continuous advocacy by industry stakeholders, the Agency of Cultural Affairs released official guidance in May 2024 regarding Japan's TDM exception. The May 2024 guidance noted that the TDM exception does not apply in cases that would unreasonably prejudice the interests of rights holders and highlighted the ability of rights holders to utilize lawful access protections, including technological protection measures (TPM), to restrict access to their works, including in AI training use cases. It is imperative that any application of the TDM exception is done in a manner consistent with Japan's international obligations.

Japan also does not provide a public performance right for producers of sound recordings, depriving U.S. rights holders of significant revenues.[5] Additionally, Japan has a limited making transmissible right which, in addition to not correctly implementing the WIPO Performances and Phonograms Treaty's (WPPT) making available right, is narrower than the making available right in other countries. In particular, Japan's right only encompasses the upload of a protected work and not its actual transmission to the public.

Measures should also be taken to address Japan's inadequate online liability framework, which prevents action being taken to remove copyright protected content from appearing on unlicensed user-uploaded content platforms. Such measures should include: (i) ensuring that there is a clear legal basis for the liability of active online services; (ii) clarifying that safe harbors online apply to neutral and passive intermediaries that do not contribute to infringing activities; (iii) clarifying the responsibilities of services to be eligible for safe harbors, including an obligation on hosting service providers to remove infringing content expeditiously upon obtaining knowledge or awareness of

[5] The music industry estimates that the value of public performance rights in Japan is $120 million per year, with a significant portion of that value attributable to U.S. rights holders.

infringing activity, to take measures demonstrated effective in preventing or restraining infringement, and to implement an effective repeat infringer policy; and (iv) requiring marketplaces and encouraging 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.

KENYA

While the Government of Kenya has indicated its intention to ratify the WIPO Copyright Treaty (WCT) and the WPPT (collectively, the WIPO Internet Treaties), it has yet to do so or to set a timeframe for accession. Kenya should ratify and implement the WIPO Internet Treaties as part of its ongoing Copyright Act amendment process. Kenya's 2019 amendment to the Copyright Act was intended to address some of the challenges of the digital age, but Kenya's copyright framework remains deficient in several significant respects. Since then, there have been several new proposals to amend the existing Copyright Act, including the Intellectual Property Bill (2020). It appears the Kenya Kwanza Government that took over in August 2022 does not prioritize this Bill and instead introduced a new draft Copyright and Related Rights Bill (2023), published by the Kenya Copyright Board (KECOBO) to replace the existing Copyright Act. However, the 2023 Bill does not address many of the deficiencies in Kenya's copyright framework and has additional provisions that fall short of Kenya's international obligations and best practices. To ensure adequate and effective protection and enforcement of IP rights, Kenya's government should address the following shortcomings in Kenya's copyright and enforcement framework, many of which have not been properly addressed in the 2023 Bill, including by:

- rejecting any proposals requiring copyright registration and compulsory recordation of assignments, and removing the requirement in the Copyright Act that authentication devices be affixed to sound recordings, all of which are incompatible with Kenya's international obligations, including under the Berne Convention and the WTO TRIPS Agreement, and with the requirements of the WPPT;
- ensuring that the exclusive rights of communication to the public, broadcasting, and making available are clearly defined and maintained as exclusive rights in keeping with the WPPT;
- ensuring that exclusive rights apply to all sound recordings, including "born digital" recordings;
- providing adequate and effective protections for technological protection measures (TPMs) and rights management information (RMI), in line with international standards, including introducing definitions for TPMs and RMI in the 2023 Bill that are in keeping with the international standard;
- providing a term of protection consistent with international norms (life of the author plus 70 years, or at least 70 years from fixation or publication for sound recordings or works not measured by the life of a natural person);
- ensuring that scope of exceptions and limitations to copyright protection is properly confined to the three-step test, including by expressly incorporating the three-step test into the law;
- improving Kenya's online liability regime to ensure that it supports sustainable growth of the digital content markets and does not shield copyright infringing services, including by: (i) ensuring there is a clear legal basis under which ISPs may be held liable for IP infringements carried out by third parties using their services or networks; (ii) clarifying that safe harbors apply only to passive and neutral intermediaries that do not contribute to infringing activities; (iii) clarifying the responsibilities of ISPs eligible for safe harbors, including an obligation to remove infringing content expeditiously upon obtaining knowledge or awareness of the infringing activity, to take measures demonstrated effective in preventing or restraining infringement, and to implement effective repeat infringer policies; and (iv) requiring marketplaces and encouraging all relevant intermediaries to implement 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;

- maintaining website blocking injunctions, which are available on a preliminary basis in the Copyright Act, and clarifying the availability of 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;
- ensuring that the collective management framework and system reflects the essential characteristics of a CMO (that they are non-profit and owned or controlled by their member rights holders) and that CMO operations are in keeping with the principles of transparency, accountability, and good governance consistent with international standards and best practices;
- rejecting any proposal to introduce a statutory licensing scheme for ring back tunes, as artists and rights holders should be allowed to freely negotiate fair commercial terms for the use of their recordings on the back of strong exclusive rights and effective measures to enforce their rights;
- introducing a rate-setting standard applicable to the licensing of collectively managed rights requiring that rates reflect the economic value of the use of the rights in trade (i.e., willing buyer/willing seller standard);
- providing deterrent civil and criminal penalties to combat piracy, including applying increased penalties for second and subsequent offenses and fines and imprisonment terms for criminal offenses, including for circumvention of TPMs, distribution of devices designed to circumvent TPMs, and removal/alteration of RMI; and
- clarifying the role of the proposed Copyright Tribunal, which should include hearing and determining matters referred to the Tribunal expeditiously and fairly, and clarification that rights holders may elect to bring claims to either the Tribunal or to the Courts.

In addition, a mandatory IP recordation system, established under the Anti-Counterfeit Authority (ACA), went into effect on January, 2023. Under this system, it is an offense subject to criminal sanctions to import products protected by IP rights into Kenya if such rights have not been recorded with the ACA. The mandatory IP recordation system raises several concerns, including regarding Kenya's compliance with the Berne Convention, which prohibits formalities regarding the enjoyment and exercise of copyright rights.[6] Kenya should amend its mandatory recordation system to be voluntary and ensure that copyright is not in scope.

The Government of Kenya also published for consultation the Computer Misuse and Cybercrimes (Critical Information Infrastructure and Cybercrime Management) Regulations, 2023. Notably, the regulations fall short in the critical area of addressing piracy and other intellectual property infringements, which are key concerns regarding computer misuse and cybercrime activity. In particular, the regulations should address the unlawful streaming and downloading of content, including via cyberlockers and stream-ripping sites, which often host malware that infects the computers of users and poses cybersecurity risks.

Finally, in recent years there has been a notable increase in government interference in the collective management sector, including the Copyright Office's failure to renew the operating licenses of the three music CMOs, despite reasonable efforts by the CMOs to meet the Office's demands. In August 2024, KECOBO awarded a license to the Performing and Audio-Visual Rights Society of Kenya (PAVRISK) to collectively manage performance and broadcast rights as a single window licensor in the country. KECOBO's lack of objective engagement with rights holders and its failure to honor the Copyright Tribunal's directives to award provisional licenses to the three CMOS and align its licensing procedures with the law, coupled with PAVRISK's reputation for poor internal governance and lack of representation, continue to raise serious concerns. A well-functioning CMO is essential to continue the growth and success of the Kenyan market for copyrighted goods. The Berne Convention, of which Kenya is a member, requires that creators enjoy the exclusive right of authorizing the public performance and broadcasting of the works. Accordingly, CMOs must represent rights holders via proper mandates and adhere to transparency and good governance practices

[6] See Berne Convention Article 5(2).

to negotiate and license the use of protected works. IIPA urges KECOBO to revoke the license granted to PAVRISK and engage with rights holders in constructive dialogue prior to establishing a CMO to ensure that the entity is fit for purpose and the creative economy continues to thrive.

Finally, while the proposed Finance Bill of 2024, which included discriminatory taxes on digital content and foreign DSPs, was withdrawn by the President, any return to similar proposals should be strongly rejected. In terms of music piracy, support from authorities is needed to scale up enforcement actions against foreign-based stream ripping services that dominate the piracy landscape and authorities should receive further training and guidance to handle digital piracy cases.

MALAYSIA

Malaysia should modernize its law to extend the term of protection for sound recordings, films, and other works to at least 70 years. Malaysia also needs to improve and strengthen anti-circumvention provisions to encourage the development of new business models for the dissemination of film and television content and video games and ensure that any copyright limitation of liability should apply only to passive and neutral intermediaries that do not contribute to infringing activity.

In Malaysia, mandatory one-stop shop CMO licensing could reemerge. A task force made up of government officials and industry players is evaluating whether centralized control over collective licensing is necessary and will report their findings back to the government. This has the potential to revive the previously failed central collective licensing system under Music Rights Malaysia Limited (MRM), which was abandoned in 2020. Such a system would interfere with rights holders' ability to determine how and by whom their rights are managed, as well as how royalties are collected, apportioned, and distributed. Malaysia should desist from this course of action.

PERU

Online and physical piracy continue to be serious problems in Peru that undermine the market for legitimate content in the country and across the region. IIPA urges the Government of Peru to devote significantly more resources and political support to combat digital piracy, and specifically, increase funding for *Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual* (National Institute for the Defense of Competition and the Protection of Intellectual Property, INDECOPI), the agency charged with promoting and defending IP rights, so that it can build upon the recent positive examples of IP enforcement.

The authors' CMO, *Asociación Peruana de Autores y Compositores* (Peruvian Association of Authors and Composers, APDAYC), initiated two pending appeals against resolutions published by INDECOPI on musical works synchronized into movies and other audiovisual productions. These resolutions are based on a controversial legal theory developed by INDECOPI in 2018 that once a musical work is synchronized into a movie, then all rights of music authors – including the music performance rights – are ipso facto presumed to have been assigned to the movie producer. INDECOPI has applied this theory to conclude that CMOs representing music authors in pre-existing musical works and incidental music would have no right to license public performance uses. Substantial evidence of industry practice (especially regarding synchronization into movies produced in the United States) was submitted in both cases but was ignored. This included statements and affidavits submitted by the composers and movie studios clarifying that public performance rights of music authors on music created or used in a movie are not transferred to the movie producer as part of a synchronization contract. INDECOPI's interpretation is contrary to the Berne Convention – in relation to music authors – of which Peru is a member, and with which the U.S.-Peru TPA requires Peru to comply. These cases are still pending for resolution before an Administrative Appeals Court in Lima.

Several problematic bills attempting to regulate performers' remuneration have been introduced. In particular, the bills aim to change the scope of the remuneration right of communication to the public, including an unclear

reference to Internet exploitations and a deletion of the obligation for the performer to share the remuneration with the sound recording producer. Additionally, the *Ley del Músico* (807/2021-CR), which in certain parts would overlap with the Copyright and the Performer's Act, proposes that record deals be subject to labor law and imposes collective bargaining for the making available right. A bill introduced in 2022 (4627/2022) proposes extending the private copying exception to cloud services. These bills should be rejected.

PHILIPPINES

The Philippine government has recognized that online piracy is a major threat to both the local and international creative industries and has made noticeable efforts to implement a more robust intellectual property enforcement regime. Unfortunately, there are several bills before Congress that would amend the IP code and contain several problematic provisions that should be removed or revised as indicated below:

- Remove the extended collective licensing (ECL) mechanism: ECL is a system that was developed for certain specific cases in markets with well-developed collective rights management systems, and with CMOs already representing a substantial number of rights holders in their respective fields. This is not the case in the Philippines. Furthermore, an ECL is a limitation on the exercise of rights and, as such, must comply with the three-step test. Accordingly, an ECL may be introduced only where there is a proven market failure and where individual licensing is unfeasible, not into a developed and well-functioning market. There is no evidence justifying the introduction of ECL in the Philippines, and the proposed ECL does not comply with the three-step test.
- Remove the provision for additional remuneration for performers for subsequent communications or broadcasts, which, like the ECL mechanism, interferes with freedom of contract and established contractual and licensing arrangements.
- Remove the open-ended fair use provision in Section 207 or at least change it to a closed-list fair dealing provision. Open-ended exceptions create unnecessary uncertainty, litigation, and conflicting decisions, causing confusion. Such exceptions can be harmful not only to rights holders but also to users who need certainty regarding which uses are permitted. Closed list systems have been adopted in most countries because they provide a high degree of certainty as to the permitted uses. Fair use is determined on a fact-intensive, case-by-case basis. In the United States, a well-developed body of case law helps to mitigate the inherent uncertainty of the scope of the fair use exception. Without this foundation of a well-developed body of case law, a fair use exception in the Philippines raises questions regarding the first requirement of the three-step test, that exceptions must be limited to "certain special cases."
- Extend the term of protection for sound recordings and audiovisual and other works to at least 70 years in keeping with the international standard.
- Clarify the requirements for mandatory accreditation of CMOs with the Intellectual Property Office of the Philippines (IPOPHL) in Section 203.2: It should be made clear that individual rights holders, engaged in licensing of rights they own or control, shall not be under any obligation to seek an accreditation.

SINGAPORE

In September 2021, Singapore passed a TDM exception that permits copying or communicating for computational data analysis.[7] While Singapore's TDM exception requires the user to have lawful access to the work in question, it does not expressly distinguish between use for commercial or non-commercial purposes, it does not expressly permit a contractual override, and it is not clear what activities or which beneficiaries are encompassed by

[7] See Article 244 of Singapore's Copyright Act of 2021, available at https://sso.agc.gov.sg/Acts-Supp/22-2021/Published/20211231?DocDate=20211007&ProvIds=P15-P28-&ViewType=Within&Phrase=computations&WiAI=1

"computational data analysis" limitation. It is imperative that any application of the TDM exception is done in a manner consistent with Singapore's international obligations.

In 2024, Singapore's Intellectual Property Policy Division of the Ministry of Law (MinLaw) solicited comments from the public on certain prescribed exceptions relating to AI, technological protection measures (TPMs), and permitted uses of copyright works and protected performances for computational data analysis (CDA). This consultation was undertaken under the auspices of the U.S.-Singapore Free Trade Agreement (USSFTA). Under the USSFTA, the introduction of an exception to the prohibitions against circumvention of TPMs requires "an actual or likely adverse impact" on non-infringing uses of copyright works that must be "credibly demonstrated in a legislative or administrative proceeding."[8] No evidence was made available that would support the introduction of a TPM exception in Singapore, nor has evidence been presented demonstrating that the prohibition on circumvention of TPMs has any adverse impact on the operation and use of the exception for CDA. IIPA urged that in its consideration of the proposed exception to TPMs protections for CDA, MinLaw strictly adhere to Singapore's obligations under the USSFTA, the WIPO Internet Treaties, and other international agreements. In December of 2024, MinLaw and the IP Office of Singapore (IPOS) determined not to introduce a new exception to TPMs protections for CDA. In the summary of their findings, MinLaw and IPOS stated that they "affirm the sentiments in the responses from rights owners that [Access Control Measures] are necessary to support the lawful access safeguard in the CDA permitted use.[9] IIPA applauds this decision by MinLaw and IPOS as well as the critical engagement by the U.S. government on this issue.

Singapore's public performance right includes a carve out for certain "indirect uses" of works or sound recordings, allowing users to evade paying equitable remuneration to rights holders if the content is received through a television or broadcast (including by radio) or a cable program. The exception is out of step with Article 15(1) of the WPPT (which Singapore has not limited in any way through Article 15(4) and therefore applies in full) and has already proven to be a contributing factor to lower than expected public performance collections in Singapore, which is expected to continue to the detriment of rights holders if the exception is not removed or narrowed significantly to serve its specific policy purpose.

SOUTH KOREA

While all bills under the previous National Assembly that sought to introduce an additional statutory remuneration right for directors, authors (including scriptwriters), and performers were put on hold pending further consultation with stakeholders, the South Korean government should continue to ensure consistency with its international treaty obligations and maintain freedom of contract for all rights holders in any future legislative proposals.

South Korea does not fully recognize producers' public performance right, limiting it to only a select list of venues recognized on a "positive list" and maintaining an unacceptably broad exemption from the public performance right. This problem is exacerbated by the government's interference in the setting of public performance tariffs, resulting in rates set below international standards.

There are several amendment bills in the National Assembly that would force content providers to pay for network usage fees, including a provision mandating negotiations for network fees in network service contracts. If implemented, these proposed amendments would restrict trade and freedom of contract, raising concerns under the U.S.-Korea FTA (KORUS). South Korea should avoid unnecessary intervention into the commercial relationship between content providers and ISPs, apply light-touch regulation to OTT services, and ensure consistency with its KORUS obligations.

[8] Article 16.4.7(f), United States-Singapore Free Trade Agreement (2003), available at sfta-fulltext-corrected-040115.doc (ustr.gov).
[9] See Summary of Key Changes to Prescribed Exceptions in Part 6, Division 1 of the Copyright Regulations 2021, Dec. 19, 2024, available at Summary_of_Key_Changes_to_Prescribed_Exceptions_in_Part_6__Division_1_of_the_Copyright_Regulations_2021.pdf.

South Korea also suffers from an unnecessarily cumbersome pre-approval and classification mechanism for the release of music videos. The procedure of approval and classification of music videos by the Korea Media Rating Board (KMRB) is time-consuming and does not reflect the fast distribution cycle of today's music industry, which releases and promotes music videos at the same time as the sound recording is released. It also generates difficulties in the design of an international release strategy for artists' projects, as all too often the release of an artist's music video is delayed on South Korean delivery channels, including on-line platforms, because of the pre-classification process.

With regard to enforcement of rights related to music online, South Korea should close certain gaps in its copyright legislation, especially with respect to linking to copyright infringing content (which is currently not illegal), and ISP liability rules (Article 102). Some issues have also been identified with the criteria set by the competent authority, the Korea Communications and Standards Commission (KCSC), for blocking actions as they do not appear to allow for all categories of websites to be blocked, e.g., stream ripping sites and blocking lockers.

TURKEY

For over a decade, the Government of Turkey has promised to modernize its Copyright Law (1951, last amended in 2016) to fully implement the obligations of the WIPO Internet Treaties. Turkey acceded to the treaties in 2008 but has yet to fully implement them.

Turkey's legal framework should be amended to address its digital piracy problem which is widespread and has stifled the legitimate market. Despite the strong level of evidence provided by rights holders about piracy, the Judicial Authorities are reluctant to order search and seizure warrants by the Court which remains an obstacle in the efficiency of action against Copyright infringements.

While the current Copyright Law provides for a notice and takedown process, an ISP's failure to comply with takedown notices or requests to block access to infringing websites are merely subject to administrative fines. A rights holder must obtain a criminal court injunction to require the ISP to remove the infringing content. The Internet Law sets out broad liability exceptions that are inadequate to incentivize ISPs to address infringements on their sites or by those using their services. The law provides that service providers are not liable for third-party content unless "it is clear that [the provider] adopts the content to which it provides a link and that the user intends to access that content." The definition of a provider is unclear, and should be clarified to define who is, and is not, eligible for the limitation on liability, and the liability limitation should apply only to passive and neutral intermediaries that do not contribute to infringing activities. Also, unlike most countries, including the United States, the liability exemption denies the ability of a rights holder to obtain injunctive relief. Adequate scoping of the safe harbor framework, with adequate notice and action procedures and repeat infringer policies, and a requirement for marketplaces and encouragement for all relevant intermediaries to implement KYBC policies is therefore required.

The governance and management of CMOs has been a long-standing problem in Turkey. Currently, foreign rights holders face discriminatory policies that prevent foreign producers from being fully participating members of Turkish CMOs (with full voting rights and management and decision-making authority). Because of this, the monetary distribution rules and practices are discriminatory to foreign rights holders, and there is no transparency for non-management rights holders. The prior drafts of CMO legislation (including the 2018 draft) would not have addressed the fundamental problem of banning non-Turkish producers from full participation in, or management of, the CMOs. The 2024 Special 301 Report recommended, and rights holders agree, that Turkey should require "fair, transparent and non-discriminatory procedures" for CMO governance of all rights holders' rights, in particular with regard to (i) the scoping of management mandates, (ii) the minimum amount of rights holders to establish a CMO, (iii) the minimum periodicity of General Meetings, and (iv) the voting and quorum rules at General Meetings. Additionally, the principle that tariffs have to be based on the economic value of the use of the rights in trade ('willing buyer, willing seller" standard) should also be introduced.

A 2018 legislative proposal included a loophole that would allow Turkish collecting societies to license theaters to screen motion pictures without authorization from film producers, and to subject them only to a compulsory license with a remuneration determined by a collecting society. This statutory license of an exclusive public performance right, if enacted, would interfere with the freedom to contract by the copyright owner and violate international treaties and norms, and should not be adopted in any CMO law (or Copyright Law) revision.

There are also problematic interpretations of the copyright legal framework by courts, in particular with regard to (i) the acceptance of mandates granted by foreign rights holders to local CMOs, (ii) acts of public performance of broadcasts not qualifying as criminal infringements, and (iii) the methodology to calculate compensation in cases of copyright infringements with regard to repertoire represented by CMOs.

There were other concerns with the 2018 legislative proposal that should be corrected in any future draft legislation, including: (i) a broad exception to the right of reproduction, including for reprography and digital education; (ii) loosening the right of distribution for imported copies with authorization, making it more difficult for rights holders to prevent the distribution of pirated copies; and (iii) limiting the private copy levy royalty rate to rights holders to 37.5%, with the remainder going to the Government of Turkey.

UNITED KINGDOM

The newly elected Labour Government announced in December of 2024 that it will consult on legislative proposals addressing the use of copyrighted materials to train AI models, including proposals for a new, broader TDM exception. The United Kingdom (UK) Intellectual Property Office (UKIPO) had previously consulted on a proposal to broaden its TDM exception to copyright for any purpose, commercial or otherwise. That proposal lacked adequate safeguards for rights holders, would have undermined TPMs protections in the UK, had an unclear scope, and would have ultimately caused great harm to the copyright industries both inside and outside the UK. There is no evidence that the UK's current exception on TDM, adopted in 2014, is failing or that the combination of licensing and the existing TDM exception would not be able to address future technological developments.

Following the publication of the Department for Digital, Culture, Media & Sport (DCMS) Select Committee Report into the Economics of Music Streaming in July 2021, the next phase of the work will be the Creators Remuneration Working Group (CRWG), which is considering creator remuneration relating to the cohorts of legacy artists, composers and songwriters, and session musicians. With a new government in place, the objective remains for industry solutions to be found, though it remains to be seen if there is a change in the government's approach and sentiment towards intervention. Helpfully, the terms of reference say that the CRWG will be led by evidence and consider the impact of interventions on current and future creators. In any case, it is important to avoid the introduction of disruptive solutions in the form of unwaivable remuneration rights subject to compulsory collective management.