

# CHILE

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Chile remain on the Priority Watch List in 2025.<sup>1</sup>

**Executive Summary:** Chile is ever more isolated in the region on issues related to copyright protection and enforcement as many of its neighbors took important steps last year to tackle their own piracy challenges. Chile's current copyright system remains a global outlier. Many of the now standard copyright enforcement measures and procedures are missing. There is also no means to ensure Internet service providers (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, as well as no other effective measures to tackle copyright infringement. Instead, Chile's experimental notice-and-notice online piracy response system, now over a decade old, has utterly failed to deter online piracy. There is no incentive for ISPs to act expeditiously to remove infringing material, and there are no fines or sanctions for non-compliance with takedown notices. Additionally, as more of its neighbors joined Operation 404 last year, Chile once again failed to participate in this now proven regional anti-piracy criminal enforcement campaign and also failed to develop its own domestic anti-piracy campaigns. This inaction has allowed Chile to remain a piracy haven in Latin America, both hosting piracy operations and pirated content and allowing the Chilean public to freely access piracy websites hosted in other countries. Exacerbating efforts, the judiciary—where a single civil case can average three years (and two more years for subsequent appeals)—is severely overburdened. Legislatively, the Government of Chile has undertaken no initiatives or efforts to correct its defective IP legislation 20 years after enacting the US-Chile Free Trade Agreement (FTA) in 2004, including related to protections against circumvention of technological protection measures (TPMs) and deterrent remedies against infringement, among other deficiencies. Not only has legislative progress systemically failed, but Chile's 2024 artificial intelligence (AI) Bill further risks weakening copyright protection in Chile.

If Chile does not take meaningful and sustainable actions to fight piracy this year, it risks becoming even more isolated in a region that is increasingly coming to understand why strong copyright protection and enforcement is critical to a thriving creative sector. While it was helpful that the *Instituto Nacional de Propiedad Industrial* (the National Institute of Industrial Property, INAPI) published a first-of-its-kind report last year showing the alarming decline of criminal prosecutions of copyright cases between 2017-2022, awareness alone is not a solution. To address these longstanding and growing concerns, Chile should reform its online liability framework, create a centralized authority responsible for all copyright-related matters, leverage enhanced legal powers granted by Law #21,577, Law #21,595, and its recent cybercrime framework, and amend the Copyright Law to address deficiencies in the U.S.-Chile FTA obligations, as well as other needed amendments.

## **PRIORITY ACTIONS REQUESTED IN 2025**

### **Enforcement**

- Create a centralized copyright protection and enforcement authority.
- Utilize the enhanced legal powers granted by Law #21,577 and Law #21,595 to prosecute crimes related to organized crime and heighten the criminal liability of legal entities in committing criminal offenses.
- Leverage the 2024 Cybersecurity Framework Law #21,663 to tackle online piracy.

### **Legal Reforms**

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<sup>1</sup> For more details on Chile's Special 301 history, see previous years' reports at <https://iipa.org/reports/reports-by-country/>. For the history of Chile's Special 301 placement, see <https://www.iipa.org/files/uploads/2025/01/Appendix-C-2025.pdf>.

- Improve and update Chile's legal framework for ISP liability and online copyright enforcement.
- Enact amendments to address deficiencies in Chile's copyright law related to U.S.-Chile FTA obligations.
- Protect the successful Chilean collective management system and discourage or withdraw legislative proposals to amend it.
- Refrain from reducing copyright infringement penalties currently provided in the Intellectual Property (IP) Law.
- Abandon the pending amendment to Article 24H of the Telecommunications law, which creates an unlimited net-neutrality principle, with no distinction between legal and illegal content.
- Ensure legislative proposals related to AI meet the standards related to IP protection set forth by the G7 Hiroshima AI Process.

## **ENFORCEMENT**

Chile once again failed to take any meaningful action against piracy last year. Even more troubling, a study published in July 2024 titled "Criminal Enforcement of Intellectual Property Rights in Chile," showed that Chile had radically deprioritized prosecuting IP crimes over the past several years.<sup>2</sup> The study, stemming from Chile's 2016 National Industrial Property Strategy, alarmingly showed that criminal IP cases between 2017 to 2022 declined by nearly 50% (from 4,050 to 2,087), with copyright-related cases decreasing even more dramatically by over 60% (from 1,572 to 567),<sup>3</sup> while at the same time, piracy rates continued to increase. The outcomes of the study are unsettling and unfortunately not surprising. However, the existence of the study, undertaken by INAPI, represented a positive step this year as a hopeful sign for increased transparency and a potential willingness to tackle a now admitted problem.

As part of this problem, the most prominent forms of music piracy in Chile remain stream ripping and the use of cyberlockers. There were more than 17.2m visits to stream-ripping sites from Chile in Q2 2024, according to data from Internet monitoring company *Similarweb*. Four stream-ripping sites received more than one million visits alone from Chile in Q2 2024: *Y2Meta.app* (3.5m visits from Chile in Q2 2024), *Y2Mate.com* (2.8m visits), *SaveFrom.net* (2.8m visits), and *SSYouTube.com* (2.0m visits). Piracy streaming sites, Internet protocol television (IPTV) services, piracy apps, and illicit stream device (ISD) piracy are widespread means of film and television piracy in the country. Signal theft is also a major concern to the local pay-tv industry. In 2024, Chile ranked 37<sup>th</sup> in the world for the number of connections by peers participating in the unauthorized file-sharing of ESA member video game titles on public peer-to-peer networks. By the same metric, Chile ranked 22<sup>nd</sup> in the world for unauthorized file-sharing of mobile games and 24<sup>th</sup> in the world for console-based games. For the video game industry, while websites offering video games and circumvention devices are still popular, social media is increasingly becoming the prominent venue to promote and distribute infringing content and materials.

Even after the recent alarming report on criminal piracy cases was published in July, there were still no significant enforcement actions taken against piracy operations or operators. There also appears to be no coordinated effort by the authorities to address the issues in the report. While many issues are primarily due to legislative deficiencies, they are also due to a general lack of awareness about the existence and relevance of Chile's online piracy problem. For example, unlike in a growing number of countries in the region, Chile continues to choose not to participate in Operation 404, an annual or semi-annual Brazil-led regional anti-piracy campaign that in its seventh phase in September 2024 included coordination with Argentina, Paraguay, and Peru. Instead, any actions in Chile have primarily stemmed from private initiatives to protect local products or routine activities by public authorities. However, these measures had no meaningful impact, and the level of copyright protection and enforcement remains largely unchanged from previous periods. Chile should follow the below recommendations to take meaningful action to improve its efforts to tackle piracy and join its regional neighbors in supporting all the creative industries.

- **Create a centralized copyright protection and enforcement authority.**

<sup>2</sup> Available here [https://www.inapi.cl/docs/default-source/2023/centro-de-documentacion/estudios/observancia-penal-de-los-derechos-de-propiedad-intelectual-en-chile/informe\\_observancia\\_2024\\_v5.pdf?sfvrsn=eb902829\\_1](https://www.inapi.cl/docs/default-source/2023/centro-de-documentacion/estudios/observancia-penal-de-los-derechos-de-propiedad-intelectual-en-chile/informe_observancia_2024_v5.pdf?sfvrsn=eb902829_1).

<sup>3</sup> Id. at pg. 7.

Chile suffers from rampant and growing piracy and needs a coordinated effort to address the issue. Unfortunately, Chile remains without a dedicated, centralized authority responsible for copyright protection and enforcement. Instead, copyright matters are currently handled by five different entities: (1) *Departamento de Derechos Intelectuales en el Servicio Nacional del Patrimonio Cultural* (Department of Intellectual Property Rights at the National Cultural Heritage Service, Ministry of Culture, the Arts and Heritage); (2) the Ministry of Education; (3) *SUBREI – Subsecretaría de Relaciones Económicas Internacionales, Departamento de la PI* (Undersecretariat for International Economic Relations, Department of Industrial Property, Ministry of Foreign Affairs); (4) the IP prosecutor; and (5) Chilean Customs. Additionally, specialized Internet crime police units from *Carabineros* and *Policía de Investigaciones* (Military Police and Investigatory Police) do not prioritize IP crimes or any disruptive strategies for broader IP enforcement actions at the local level, despite having a proficient level of technical investigative skills.

This proposed centralized authority should provide copyright registration and enforcement services, and coordinate awareness, administrative enforcement, and public policies related to copyrights and neighboring rights. The implementation of the centralized authority is advantageous to the fight against copyright infringement and will help deliver meaningful results as has been shown in other countries that have such organizations already in place for enforcement coordination. Additionally, a coordinated effort would help identify and penalize repeat infringers, especially those who import circumvention devices and modified game consoles, piracy devices (PDs) and ISDs. This proposed centralized authority should also ensure that deterrent penalties are available, especially against commercial-scale piracy operations and repeat infringers. Without a centralized copyright entity and effective coordination and cooperation of other agencies responsible for IP enforcement, enforcement in Chile will remain ineffective and Chile will continue to be a regional haven for piracy sites and operators.

- **Utilize the enhanced legal powers granted by Law #21,577 and Law #21,595 to prosecute crimes related to organized crime and heighten the criminal liability of legal entities in committing criminal offenses.**

In 2023, two legal reforms were enacted that gave private organizations and the Public Prosecutor enhanced legal powers. Law #21,577 strengthens the prosecution of organized crime offenses, establishes special investigative techniques, and bolsters the confiscation of illicit profits. This law follows the first “National Policy against Organized Crime” published in December 2022 with the objective of reducing the criminal activity of criminal organizations operating in Chile through planned and coordinated action by state institutions that have a role in the prevention, control, and prosecution of organized crime. One of its action items is to implement an inter-institutional training plan with *Carabineros de Chile*, Investigative Police, Public Prosecutor’s Office, *Gendarmery* (Prison Service Military), General Directorate of Maritime Territory and Merchant Marine, National Customs Service, National Intelligence Agency, Financial Analysis Unit, and Internal Revenue Service on organized crime on topics including: asset investigation; investigation techniques and tools according to updated regulations; types of organized crime and terrorism legislation; information gathering on the Deep and Dark Web; handling of digital evidence and other expertise; and IP, counterfeiting, and piracy.

Law #21,595 pertains to economic crimes whose reforms bolster the prosecution mechanisms for organized crime and generate criminal liability for legal entities. Combined, these laws provide more efficient mechanisms for the prosecution of crimes, among which are computer-related crimes and violations against IP rights (IPR). These new laws may assist in prosecuting acts of piracy, but due to their recent enactment, it will be necessary to see the results of the cases brought to court to determine their effectiveness. It is also essential to provide personnel and financial resources necessary to ensure proper execution of and familiarity with the new laws.

- **Leverage the 2024 Cybersecurity Framework Law #21,663 to tackle online piracy.**

In December 2023, Decree No. 164 was published, approving the National Cybersecurity Policy 2023-2028 (PNCS). One of PNCS’s strategic objectives is for Chile to develop a culture of cybersecurity focused on education, best practices, responsibility in the management of digital technologies, and the promotion and protection of individual

rights. The cybersecurity framework law establishes measures that public and private organizations must implement to report and contain security incidents. Further, on March 26, 2024, the Government of Chile enacted Cybersecurity Framework Law #21,663 to regulate the cybersecurity actions of State agencies, either among themselves or with private entities and establishes the minimum requirements to deal with cybersecurity incidents, the attributions and obligations of State agencies, the duties of the institutions determined in the law, as well as the mechanisms of control, supervision and responsibility in the event of infractions.

Given the recent legislative attention to enhance Chile's ability to manage a wide range of cybersecurity threats, federal and local cybercrime authorities, from police and prosecutors' offices, should recognize IPR crimes as part of a broad cybersecurity landscape and place them on their operational agenda. For example, every person who visits a website designed to distribute or host pirated content, or websites or apps that pirate content, opens themselves up to cybersecurity vulnerabilities that can lead to digital invasions of privacy. Typically, the moment that a website or app designed for piracy is accessed, pop-ups and advertisements calculated to deceive users into downloading viruses and divulging personal information may pose a threat.<sup>4</sup> Even if consumers do avoid pop-ups and deceptive links, downloading pirated content can still open the door for invasion of malware. In 2018, Carnegie Mellon University found that the more time a user spent on infringing sites directly correlated to their likelihood of downloading malware.<sup>5</sup> A pirated copy of a movie may contain a few lines of code that records the user's keystrokes, captures their screen, or allows a remote connection to be made by a third party.<sup>6</sup> When a pirate webpage requires a user to create an account before accessing stolen content, the user may need to create a password or answer security questions. This type of information can easily be repurposed or sold by pirates to breach bank accounts, social media accounts, and more.<sup>7</sup> According to the Digital Citizens Alliance (DCA), 72% of users who sign up for piracy subscription services with a credit card experience credit card fraud.<sup>8</sup> Using websites designed to circumvent copyright law can lead directly to a serious breach in a user's online safety and create an unprecedented number of cybersecurity vulnerabilities. Additionally, the use and implementation of pirated software would be considered an aggravating factor in the adoption of cybersecurity measures, as it involves not having adequate and authorized software to protect the company's digital assets and data. The use of pirated software runs counter to this objective, as its use is considered a bad practice that also poses a risk to individual rights, due to the exploitation of cybersecurity vulnerabilities and the malware associated with pirated software. Efforts to mitigate or prevent these types of cybersecurity vulnerabilities could include using this law to provide additional human and financial resources and capacity building to cybersecurity officials to tackle online piracy.

## LEGAL REFORMS

- **Improve and update Chile's legal framework for ISP liability and online copyright enforcement.**

In 2004, Chile made bilateral commitments to the United States in the U.S.-Chile FTA to significantly improve its levels of copyright protection and enforcement.<sup>9</sup> Yet, Chile's copyright law regime remains inadequate and lags far behind both international best practices and the baseline for fellow member countries of the Organization for Economic Co-operation and Development (OECD). Although Chile adopted amendments to its Copyright Law in 2010, Law #20,435 was unfortunately detrimental to effective online copyright enforcement. For years, IIPA has repeatedly voiced concerns regarding Chile's deficiencies regarding online copyright enforcement, and the urgency for reform is as strong as ever.

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<sup>4</sup> See Creative Content Australia, *If you visit pirate websites, even the law can't protect you*, MPA-APAC (Feb. 25, 2020) <https://www.mpa-apac.org/2020/02/if-you-visit-pirate-websites-even-the-law-cant-protect-you/>.

<sup>5</sup> Rahul Telang, *Does Online Piracy Make Computers Insecure? Evidence from Panel Data*, Carnegie Mellon University (March 12, 2018) p.1., [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3139240](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3139240).

<sup>6</sup> See Alvaro Puig, *Malware from illegal video streaming apps: What to know*, FEDERAL TRADE COMMISSION CONSUMER ADVICE, May 2, 2019, <https://consumer.ftc.gov/consumer-alerts/2019/05/malware-illegal-video-streaming-apps-what-know>.

<sup>7</sup> See Interpol, *Accessing free or cheap content is not the bargain you think it is!*, INTERPOL, <https://www.interpol.int/en/Crimes/Illicit-goods/Shop-safely/Digital-piracy>.

<sup>8</sup> Digital Citizens Alliance, *Giving Piracy Operators Credit: How Signing Up for Piracy Subscription Services Ratchets Up the User Risk of Credit Card Theft and Other Harms* (June 2023) p. 1., available at <https://www.digitalcitizensalliance.org/clientuploads/directory/Reports/Giving-Piracy-Operators-Credit.pdf>.

<sup>9</sup> The U.S.-Chile Free Trade Agreement (FTA) is available at <https://ustr.gov/trade-agreements/free-trade-agreements/chile-fta/final-text>.

Article 85Ñ of Chile’s Copyright Law establishes a safe harbor for hosting service providers and search engine, linking, or reference services that do not have “effective knowledge” of IPR infringement, which—by law—can be established only by a court order (issued as per procedure under Article 85Q). This provision significantly limits the circumstances where a hosting, search, or linking service provider can be liable for infringements committed by its users. This article also opens the door to abuse because online services that engage in making copyright-protected transmissions routinely seek to portray themselves as mere “hosting” services to avoid liability under copyright law. Article 85O, which sets out the conditions for liability limitation, also poses problems due to its conflicting criteria. The provision at first appears to narrow the safe harbor by setting out an additional eligibility criterion that “service providers” must meet to avoid liability for IP infringements, namely: “that the service has not generated, nor selected the material or the recipient” (Article 85O (c)). However, the last sentence of Article 85O then sets out that providers of “search, linking or reference services” are exempt from these additional conditions.

Article 85R of the same law provides that a court can order access to be blocked to clearly identified infringing content, but only if the blocking does not involve blocking access to other content. This provision creates infinite scope for abuse (as the posting of a single non-infringing work can be relied upon to thwart blocking measures) and significantly limits the power of Chilean judges to order effective remedies to limit and prevent online IP infringement. These limitations on the power of the Chilean judiciary contribute to the low level of online IP enforcement in Chile and the persistent online piracy problem.

Where ISPs are eligible for the above safe harbor privileges, Article 85Q of the Copyright Law requires ISPs to remove or disable access to copyright-infringing content only following a lengthy, expensive, and complicated court process that can take over a year and is out of step with international norms. This legal requirement can be an excuse for ISPs unwilling to take down content and can even be a legal obstacle for ISPs that would otherwise react expeditiously to rights holders’ take down requests. There is no incentive for ISPs to act expeditiously to remove infringing material, and there are no fines or sanctions for non-compliance with takedown notices. Instead, the law places time-consuming and disproportionately burdensome obligations on rights holders, such as requiring rights holders to have a legal representative in Chile to send notices of infringement. Currently, the only method of tackling infringing content online is to follow the burdensome and ineffective notice-and-notice system (Article 85U), which requires ISPs to pass on takedown requests to uploaders. However, rights holders have no way to know whether an infringer has actually been notified to take down material, and there are no provisions to deter repeat infringers or require or encourage measures demonstrated effective in preventing or restraining infringement. The cost and ineffectiveness of Chile’s “notice-and-notice” system has prompted the music industry to discontinue using it altogether. The only remaining option available to rights holders is to initiate a civil case directly against the user, a practical impossibility given the extremely high numbers of infringing users.

IIPA urges the Chilean government to amend its 2010 law to develop a meaningful legal framework for addressing copyright infringement online. As part of this, to avoid abuse of the “safe harbor” provisions, the law should: (i) limit 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 high-volume third-party sellers 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. Until these changes are made, Chile continues to fail to 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.

- **Enact amendments to address deficiencies in Chile’s copyright law related to U.S.-Chile FTA obligations.**

Chile's latest Copyright Law was adopted six years after the U.S.-Chile FTA entered into force in 2004. Unfortunately, over twenty years later, many important FTA obligations remain unmet, including the following:

**Statutory Damages, Civil Remedies, and Criminal Penalties:** Chile is required to provide for civil remedies, including seizures, actual damages, court costs and fees, and destruction of devices and products. Yet, the Chilean Copyright Law does not establish adequate statutory damages (e.g., pre-established damages), nor does it provide a dedicated procedure for obtaining injunctions or an effective civil *ex parte* search and seizure remedy. The law should also ensure that deterrent level civil remedies and criminal penalties are available and incentivized. Video game publishers have numerous experiences with customs seizures involving repeat offenders. One particularly flagrant instance involved one offender who was identified in seven total customs actions in 2024. Unless offenders are flagged for recidivism and receive a higher level of scrutiny or penalties, there is no deterrent effect. The implication for rights holders is a heavy cost of doing business in Chile.

**Protection of TPMs and Criminalization of Circumvention Devices:** Even in light of its 2018 legislation criminalizing satellite signal decoders, Chile still falls short of its FTA obligation to provide adequate legal protection for TPMs used to control access or restrict unauthorized acts to a protected work. The sale of video game copier devices and modification services on online marketplaces and through social media is pervasive. Also, music rights holders are left without support to tackle the problem of stream-ripping sites that allow users to download content, without authorization, through circumvention of TPMs. Draft Bill #14767-03 aims to modify the Chilean IP Law to include TPMs but again made no progress this past year. Chile should amend its law to provide adequate legal protection for all forms of TPMs and protect against their circumvention.

**Exceptions to Protection:** The law in Article 71 contains certain exceptions that appear to be incompatible with international norms and the FTA. These include: a reverse-engineering exception that is not restricted to achieving interoperability (Article 71N); exceptions that could allow libraries to reproduce entire works in digital form without restriction (Articles I, J, K, and L); and the lack of overarching language consistent with the three-step test set forth in international treaties (and the FTA) to ensure that all exceptions and limitations are properly calibrated.

**Lack of Secondary Copyright Liability Rules:** In the civil liability area, general tort law principles do not help copyright holders in establishing secondary liability in Chile. IIPA urges Chile to incorporate secondary liability principles in its Copyright Law to incentivize platforms to cooperate in the fight against piracy, among other goals.

**Injunctive Relief:** The music, sports, and TV industries have pursued successful test cases regarding infringing websites in Argentina, Peru, Mexico, Uruguay, Brazil, and Ecuador, but these industries report that Chile lacks a legal mechanism that ensures ISPs can impose effective relief to address 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. Article 85R of Law #17,336 of August 1970 on IP (modified by Law #21,045 of November 3, 2017) provides that a court can order an ISP to block access to clearly identified infringing content only if the blocking does not block access to other non-infringing content. This limitation hampers enforcement under the provision, as the posting of a single non-infringing work can be relied on to thwart blocking measures and significantly limits the power of Chilean judges to order effective remedies to limit and prevent online infringement. This contrasts with the situation in the EU and a number of Latin American countries where courts have mechanisms that ensure ISPs can impose effective relief to address 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 music, sports, and TV industries further report that the Article 85R procedure, in conjunction with the last line of Article 85L, is also seen by some ISPs as preventing them from cooperating with IP rights holders on a voluntary basis.

**Theatrical Camcording:** The Chilean government should enact legislation that would criminalize illicit camcording in theaters, including deterrent penalties. Such legislation should not include any requirement of proof of

the camcorder's intent to profit. For reference, a recent September 2024 criminal code reform in Peru (Legislative Decree 1649) offers a regional best practice on camcording enforcement.<sup>10</sup>

Overall, IIPA urges the Government of Chile to ensure that any future reforms adequately implement the country's existing international, multilateral, and bilateral commitments to strong copyright protection, enforcement, and equitable market access.

- **Protect the successful Chilean collective management system and discourage or withdraw legislative proposals to amend it.**

The new government has submitted a proposed legislative package to Congress in which significant changes in the collective management legal regime are proposed. One of the most important pillars of the successful collective management system in Chile is the fact that, for many years, existing collecting societies have enjoyed a statutory framework that allows them effectively to enforce performance rights in the market. Although the proposed legislation does not seem to be moving forward in Congress at this stage due to other priorities, IIPA remains concerned that the proposed changes may interfere with Chile's well-functioning performance rights market. Nevertheless, any such proposals should be strongly opposed to avoid a regression in an otherwise successful performance rights market.

- **Refrain from reducing copyright infringement penalties currently provided in the IP Law.**

The 2019 draft proposal to amend the penal code was distributed for consultation and proposed to dramatically reduce all penalties for copyright infringement and eliminate specific sanctions for the unauthorized reproduction of phonograms (Articles 353, 354, and 355). The proposal would effectively treat copyright infringement as a misdemeanor and would delete specific sanctions for piracy crimes against phonogram producers. It is unclear what the current state of the text is or whether the political will exists to move this proposal forward. Due to the significant volume of opposing comments received from the private sector, the Minister of Justice delayed the project's submission to Congress pending further analysis. At present, the draft is still under consideration at the Ministry of Justice with no specific timeframe.

- **Abandon the pending amendment to Article 24H of the Telecommunications law, which creates an unlimited net-neutrality principle, with no distinction between legal and illegal content.**

In May 2020, amendments to the Telecommunications Law were passed at the Specialized Commission of Transports and Communications in the Senate. After consideration, the Bill was returned to the aforementioned Commission in July 2021 for further study and consideration. The core of this reform is the proposed modification of Article 24H (sections "a" and "b"). Under the modification, ISPs are prohibited from implementing any policy measure for the purpose of prioritizing traffic, or any measure that would have the effect of causing delay to Internet access. The Bill also removes from Article 24-H the all-important "legal" requirement that would distinguish between access to "legal" content, websites, and apps on the Internet, and "illegal" content, websites, and apps on the Internet. It would also have the effect of hindering the use of tools or devices on the Internet to inhibit access to such materials online. In sum, the Bill imposes an unlimited and unrestricted net neutrality principle in Chilean legislation with no limitation or distinction regarding the legality of the content, device, website, app, or service accessed by the Internet users. This proposed "unlimited" net neutrality proposal is in stark contrast with the law in both the United States and the EU, where net neutrality principles apply only to legal Internet traffic and content. The Bill also proposes to further enshrine the position that access to illegal content can be blocked "only by judicial order."

The implications of this proposal are especially relevant to the consolidation of a digital music market in Chile. An unlimited net neutrality principle would make it even more cumbersome for rights holders in Chile to enforce their IPRs online. The idea of resorting to the judiciary for each and every infringement of copyrights or neighboring rights

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<sup>10</sup> Available at <https://mpaa.app.box.com/s/i69kjttd3l23tkgqcfi1tvdnrmrn0pm6>.

is a *de facto* diminution of the level of protection in Chile because most infringement cases committed online can be addressed by coordinated and voluntary action between rights holders and ISPs. The reform could imply that Internet users in Chile have a *de facto* right to freely access pirated content, and that ISPs and rights holders cannot do anything to prevent or deal with such infringements. Due to a lack of prioritization of this Bill, it is difficult to predict any timeframe for a vote on the floor.

- **Ensure legislative proposals related to AI meet the standards for IP protection set forth by the G7 Hiroshima AI Process.**

In May 2024, the Government of Chile introduced a Bill to Congress on AI #63-372. Article 31 of the bill would amend Article 71 of the Chilean Copyright Act to introduce a copyright exception for text and data mining. Specifically, Article 31 states “[a]ny act of reproduction, adaptation, distribution or communication to the public of a lawfully published work is lawful, without remuneration or obtaining authorization from the owner, when such act is carried out exclusively for the extraction, comparison, classification, or any other statistical analysis of language, sound or image data, or of other elements of which a large number of works or a large volume of data is composed, provided that such use does not constitute a disguised exploitation of the work or of the protected works.” More recently, in late October 2024, the Government of Chile filed a submission requesting an amendment to Article 31 to limit the scope of the provision to non-commercial research activities and allows right holders to opt out in relation to the use of their protected content for AI training and use in general. As Chile looks to regulate AI, IIPA strongly encourages the Government of Chile to look toward certain provisions of the G7 Hiroshima AI Process, which has set forth important rules of the road related to IP protection for the development of AI systems.

For example, the International Code of Conduct for Organizations Developing Advanced AI Systems includes the following: “Organizations are encouraged to implement appropriate safeguards, to respect rights related to privacy and intellectual property, including copyright-protected content.” The International Guiding Principles for Organizations Developing Advanced AI Systems includes the following principle: “Implement appropriate data input measures and protections for personal data and intellectual property.” In the recent G7 Ministers’ Declaration on Culture, the Common Good of Humanity, and Common Responsibility on September 20, 2024, the G7 recognized in the Declaration’s section on Culture and Creativity in the Age of AI “the crucial role of creators in emerging technologies,” recalled the importance of “advancing the Hiroshima AI Process outcomes that encourage organizations developing advanced AI systems to comply with applicable legal frameworks and to respect intellectual property rights, including copyright,” and stated “organizations developing advanced AI systems should comply with applicable legal frameworks, and are strongly encouraged to implement appropriate safeguards, to respect rights related to privacy and intellectual property, including copyright-protected content.”