

COLOMBIA

INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

2025 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

Special 301 Recommendation: IIPA recommends that Colombia remain on the Watch List in 2025.¹

Executive Summary: With the recent growth of Colombia's creative economy, including its emerging role as an audiovisual production hub for Latin America, the Colombian government must direct more resources towards enforcing intellectual property rights (IPR). Unfortunately, Colombia's existing enforcement framework is not up to the challenge of the country's modern online piracy problems. The lack of coordination and expertise among the country's judicial and law enforcement personnel is a major obstacle for the protection of copyrighted works in Colombia. IIPA commends recent police raids in Colombia against the illegal streaming services *MagisTV*, and Colombian authorities should replicate this enforcement success throughout the country. Colombia must also bring its regime for the protection of technological protection measures (TPMs) into compliance with the provisions of the U.S.-Colombia Trade Promotion Agreement (TPA) and reconsider amendments to its copyright law that curtail the freedom of contract between foreign rights holders and local parties.

PRIORITY ACTIONS REQUESTED IN 2025

Enforcement

- Devote law enforcement and specialized prosecutorial resources to combatting online and physical piracy, with coordinated operations and actions to adequately protect intellectual property (IP).
- Ensure Internet service providers (ISPs) are incentivized to cooperate with rights holders to address online piracy.
- Encourage the Colombian Copyright Office (DNDA) to take effective action against notorious piracy and stream-ripping sites.
- Implement more specialized training programs for judicial and law enforcement personnel on copyright protection and enforcement.

Legal Reforms

- Ensure that no Digital Service Provider (DSP) levy is introduced in the new version of the draft Music Law (Ley de la Música).
- Cease preparation or prevent proposal of the General Culture Law.
- Repeal Articles 3 and 183 of the Colombian Copyright Law.
- Draft legislation that allows rights holders to file actions against unidentified infringers.
- Clarify that TPM circumvention is not permissible for any exception or limitation under the copyright law.
- Reconsider profit requirements for retransmission, annual revisions of exceptions and limitations, and statutory damages through public hearings in the Colombian Congress.
- Ensure legislative proposals related to artificial intelligence meet the standards set forth by the G7 Hiroshima AI Process.

ENFORCEMENT

- **Devote law enforcement and specialized prosecutorial resources to combatting online and physical piracy, with coordinated operations and actions to adequately protect IP.**

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

To date, Colombia's law enforcement authorities have neither developed methods to stop the widespread availability of infringing content to Colombian Internet users nor ensured across the board compliance with copyright laws and regulations. Despite the availability of rights and remedies in the law, enforcement levels remain low, demonstrating a tolerance for the continued operation of an illegal online market. For example, in 2024, Colombia ranked 26th in the world for the number of connections by peers participating in the unauthorized file-sharing of Entertainment Software Association (ESA) member video game titles on public peer-to-peer (P2P) networks. Additionally, Colombia experiences some of the highest levels of console-based piracy in the region.

The inefficiencies in Colombia's enforcement of copyright are due to the low prioritization of IP cases and the lack of coordination between criminal, civil, and administrative enforcement authorities. For example, the special cybercrime unit, *Dirección de Investigación Criminal e Interpol* (Department of Criminal Investigations and Interpol, DIJIN), focuses its enforcement actions mostly on narrow areas such as online fraud (ransomware and phishing) without pursuing broader protections for the digital economy such as IPR cases. To enhance coordination, the police and its dedicated cybercrime department, *Centro Cibernético Virtual* (CAI Virtual),² should have a specific channel to assist rights holders or businesses affected by cybercrimes and to coordinate efforts. The DIJIN and CAI Virtual must have an appropriate structure and skill set to handle such cases and achieve a deterrent impact in the illegal online ecosystem.

The DNDA is the department that is most competent in copyright-related issues, but it operates under the jurisdiction of the Ministry of the Interior, which deprioritizes DNDA's mission than if DNDA were situated under the Minister of Science, Technology, and Innovation, or another Cabinet position. Many proposals to move the DNDA's functions under the jurisdiction of the Ministry of Commerce, Industry, and Tourism (as is the case in other countries in the region) have failed, yet another example of the lack of political will to prioritize the copyright sector and creative industries. Additionally, the judicial panel inside DNDA has very limited resources, causing serious delays. IIPA urges the Colombian government to increase DNDA's capacity through its implementation of the National IP Policy, which recommends improving the organization of government authorities to combat digital piracy and enforce Colombia's IP laws. Colombian authorities should also consider joining the regional antipiracy efforts of Operation 404 which is an effective model of stakeholder collaboration.

- **Ensure ISPs are incentivized to cooperate with rights holders to address online piracy.**

Online piracy has grown significantly in Colombia since the COVID-19 pandemic. Unfortunately, Colombia lacks sufficient ISP liability provisions to ensure ISPs are incentivized to cooperate with rights holders to address online piracy. Colombia also lacks specific regulations requiring ISPs to disable access to infringing content. Furthermore, remedies for online copyright infringement are inadequate and unclear, which is why many rights holders do not pursue cases or actions against infringing sites.

While many ISPs in Colombia are willing to cooperate with rights holders to combat online piracy, such cooperation is limited and there is no cross-industry memorandum of understanding (MOU) or government pressure on ISPs to improve cooperation. One reason ISPs may be hesitant to move forward with an MOU is because the government is currently considering implementing a notice and take down procedure and creating safe harbor provisions. IIPA recommends that Colombia – rather than introducing safe harbors – ensure there is a clear legal basis for the liability of active online services and greater responsibilities on intermediaries to take action against infringing content. If, however, proposals are put forward to introduce safe harbor provisions, these measures should ensure that 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. Furthermore, any proposals should provide adequate incentives for ISPs to cooperate with rights holders to combat piracy. Any safe harbors should also be available only to passive and neutral intermediaries that do not contribute to infringing activities. Moreover, Colombia should provide measures demonstrated effective in preventing or restraining

² See *Centro Cibernético Policial*, available at <https://caivirtual.policia.gov.co> (in Spanish).

infringement and 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. IIPA also urges Colombia to hold public-private round tables with all stakeholders to promote cross-industry cooperation to tackle online piracy based on industry best practices and facilitate a cross-industry agreement.

On a positive note, IIPA specifically commends Amazon and Mercado Libre for their cooperation in minimizing the advertisement and sale of counterfeited goods through their networks in the Colombian marketplace. Social media platforms should be encouraged to follow suit.

- **Encourage the Colombian Copyright Office (DNDA) to take effective action against notorious piracy and stream-ripping sites.**

In 2022, *ProMúsica Colombia* filed a pilot case asking for a blocking order against popular stream-ripping site *Y2Mate.com*. DNDA dismissed the case based on legal technicalities – and failed to pursue any additional actions or initiatives to combat Colombia’s digital piracy problem. Despite DNDA’s legal authority to order injunctions in cases against digital pirates, such powers are rarely exercised. As a result, Colombia currently has some of the highest traffic to stream-ripping sites throughout the entire Latin American region. For example, in the second quarter of 2023 alone, SimilarWeb recorded 24.4 million visits to *Y2mate.com*, 5.5 million visits to *ssyoutube.com*, and 10.6 million visits to *Mega.nz* from Colombian users. DNDA should implement an effective campaign against digital piracy, including issuing blocking orders against major stream-ripping services, piracy streaming sites, and cyberlockers, in response to rights holders’ applications, that specifically target the Colombian marketplace. This type of recourse via administrative enforcement mechanisms is fully consistent with Article 16.11.14 of the TPA.

In March 2021, DNDA ordered ISPs to block the Internet signal from IPTV Colombia Premium,³ which illegally broadcasted pay-tv signals. The order, which was renewed in 2023, was the first blocking order imposed against online piracy in DNDA’s history. IIPA urges the Colombian administration to ensure that the National Development Plan includes a powerful component to engage authorities to protect IP more actively in the digital environment, including a leadership role for the DNDA to coordinate the protection of the creative sector ecosystem.

- **Implement more specialized training programs for judicial and law enforcement personnel on copyright protection and enforcement.**

The proposed National Intellectual Property Policy (proposed in 2023) identified the lack of knowledge and training in IPR among its judicial and law enforcement personnel as one obstacle for effective copyright enforcement.⁴ It is essential for Colombia to implement comprehensive copyright training for all relevant judicial and law enforcement personnel at the local and regional levels, as well as training for customs officials to identify and seize illegal streaming devices (ISDs).

In 2024, the United States Patent and Trademark Office’s (USPTO) Lima Office offered a conference series to judges and law enforcement officials across the Andean community, including Colombia, to educate them on enforcement and protection measures. More engagement along these lines is encouraged.

LEGAL REFORMS

³ Juan Francisco Campuzano Velez, *Asuntos: Legales, Se impuso primera medida cautelar contra piratería online en la historia de Colombia*, March 9, 2021, available at: <https://www.asuntoslegales.com.co/actualidad/se-impuso-primera-medida-cautelar-contra-pirateria-online-en-la-historia-de-colombia-3136271> (in Spanish).

⁴ The entertainment software industry, in connection with the Interamerican Association of Intellectual Property (ASIPI), held different educational sessions in the past year on leveraging law enforcement and specialized prosecutorial resources to more effectively combat online and physical piracy.

- **Ensure that no Digital Service Provider (DSP) levy is introduced in the new version of the draft Music Law (Ley de la Música).**

On September 7, 2022, Bill # PL-189-2022C, “*La Ley de la Musica*” (The Music Law) was submitted to the House of Representatives. This bill would create a national fund for the promotion of national talent and music-related activities that includes several new fiscal contributions such as: (i) a 2% contribution on advertisement income of all DSPs, (ii) a 1% contribution on subscription payments to all DSPs, and (iii) all funds pending at all collective management organizations (CMOs) for non-identified works and unclaimed distributions five years after notification to the interested party.

The 2022 bill was not carried over at the end of the legislative term, but a new iteration was introduced in 2024 to be discussed in the current term. The 2024 bill, however, no longer includes a DSP levy. The Colombian government should ensure that a DSP levy is not re-introduced, as that could create significant obstacles for the development of a healthy music market in the country.

- **Cease preparation or prevent proposal of the General Culture Law.**

The Colombian government is preparing a bill referred to as the “General Culture Law,” that includes a provision that would introduce a remuneration right for performers for the making available of their performances to be paid by DSPs, in addition to their existing exclusive making available right. A similar proposal in Uruguay resulted in Spotify threatening to leave the market. A proposal of this nature would stunt growth of the music industry in the Colombian market and distort existing contractual agreements, including for audiovisual streaming platforms. This provision should either be eliminated from any proposed General Culture Law, or such General Culture Law should not be proposed to the legislature at all.

- **Repeal Articles 3 and 183 of the Colombian Copyright Law.**

In August 2021, the Constitutional Court agreed to hear a case filed by *ProMúsica Colombia* (on behalf of the recording industry) that challenged the constitutionality of Article 3(d) of the Copyright Law.⁵ This provision mandates that authors receive at least 60% of remunerations collected from performance rights, *de facto* limiting remunerations to 40% for owners of neighboring rights in the communication to the public of works and phonograms. The lawsuit received many supportive submissions, including from the International Federation of the Phonographic Industry (IFPI), performers organizations, and the Attorney General, all of whom generally agree that the provision is not found in any other copyright law in the region and is clearly discriminatory against artists, performers, and phonogram producers without justification.

On March 16, 2022, the Supreme Court dismissed *ProMúsica Colombia*'s Article 3(d) challenge on the basis that the 60-40 rule was justified by the “essential” nature of the creative works. While the Court clarified that Article 3(d) applies only by default when parties do not already have an agreement in place, the 60-40 rule remains a legal barrier to the growth and development of the rights of performers and producers in Colombia. It is also inconsistent with Colombia's obligation under the U.S.-Colombia TPA to ensure no hierarchy is established between the rights of authors, on the one hand, and the rights of performers and producers, on the other hand.⁶ Thus, Colombia should amend Article 3(d) of the Copyright Law to eliminate the 60% remuneration floor for authors.

This rule amounts to a limitation of producers' and performers' public performance right that does not meet obligations of the longstanding three-step test, incorporated in Article 16.7.8 of the TPA, governing the scope of exceptions and limitations to copyright protection. Due to the 40% limitation on producers' and performers'

⁵ See Article 3(d) of Law 23 of 1982, available at <https://www.wipo.int/wipolex/en/text/584747> (in Spanish).

⁶ U.S.-Colombia TPA, Article 16.7(1), available at <https://ustr.gov/sites/default/files/col-ipr.pdf>.

remuneration rights, normal exploitation of a phonogram or performance is unreasonably prejudiced, thus violating the test.

Article 183 of the Copyright Law is also highly problematic as it provides a set of limitations to contractual assignments of copyright and neighboring rights, which may have a negative impact on the ability of phonogram producers to manage their business and produce new local talent. While a constitutional challenge filed against Article 183 was dismissed by the Supreme Court on formal grounds, further actions against the provision are being considered. This limitation should be repealed as it is out of step with Article 16.7.3(a) of the U.S.-Colombia TPA, which clearly establishes that, "... for copyright and related rights, any person acquiring or holding any economic right in a work, performance, or phonogram... may freely and separately transfer that right by contract."⁷

- **Draft legislation that allows rights holders to file actions against unidentified infringers.**

Currently, Colombia requires IPR holders to identify an infringer by name and domicile in order to successfully petition the courts in cases of copyright infringement. This undermines effective enforcement in the digital age because pirates can easily obfuscate their identities. Colombia should amend Article 82(2) of the General Procedural Code to allow rights holders to bring actions against anonymous or unidentifiable sources of infringement. Providing adequate enforcement against anonymous online infringers will improve Colombia's legitimate digital marketplace.

- **Clarify that TPM circumvention is not permissible for any exception or limitation under the copyright law.**

The video game industry faces significant problems with modified consoles being sold in Colombia that are preloaded with scores of pirated games. The sellers of these devices warn buyers against connecting to the Internet so they can avoid detection of unauthorized software. Stringent TPM laws are vital to protect against infringement achieved by modifying devices to operate infringing games. To fully comply with the U.S.-Colombia TPA, some of the copyright amendments to Colombia's Law need clarification and reconsideration. IIPA urges the Government of Colombia to clarify that: (1) the new permanent exemptions to TPMs are subject to review, requiring proponents to offer substantial evidence of actual or likely adverse impact on non-infringing uses;⁸ and (2) a TPM may not be circumvented to exercise any exception or limitation.⁹

- **Reconsider profit requirements for retransmission, annual revisions of exceptions and limitations, and statutory damages through public hearings in the Colombian Congress.**

IIPA continues to urge Colombia to reconsider: (1) the profit requirement for the crime of retransmission or reception of illegally decrypted satellite signals; and (2) the annual revision of copyright exceptions and limitations through public hearings in the Colombian Congress, because such revision creates uncertainty for both enforcement and private investment.¹⁰ Colombia also still must adopt statutory damages for copyright infringement, which is a key TPA obligation. Statutory damages were the subject of a 2019 draft Bill from the DNDA, but this legislation shows no signs of progress.

- **Ensure legislative proposals related to artificial intelligence meet the standards set forth by the G7 Hiroshima AI Process.**

In September 2024, the government announced the filing of an AI bill intended to consolidate all existing legislative texts. This new bill (# CR- 154-24) would seem to mirror the system adopted by the EU regarding a graduated level of risk with no specific frame for copyright and no TDM exception. However, on October 22, Senators Julio Elías

⁷ See *id.*

⁸ See U.S.-Colombia Trade Promotion Agreement (TPA)(2012), Article 16.7(4)(f) available at <https://ustr.gov/sites/default/files/col-ijr.pdf>.

⁹ See U.S.-Colombia TPA, Article 16.7(4)(d), which establishes that circumvention of TPMs "is a separate civil or criminal offense, independent of any infringement that might occur under the Party's law on copyright and related rights."

¹⁰ DNDA is again this year considering holding a public hearing to determine whether more exceptions and limitations should be added to the law.

Vidal and Pedro Florez Porras, submitted to Congress another AI Bill (identified as 294-2024) that would introduce a TDM exception for the use of works and sound recordings by AI and impose a mandatory collective management for all uses on AI and for all exclusive rights of authors, performers and producers. As Colombia looks to possibly regulate AI, IIPA strongly encourages the Government of Colombia to look towards the G7 Hiroshima AI Process, which has set forth important rules of the road 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.”