

# INDIA

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

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

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

**Executive Summary:** Despite some positive developments this year, the promise of continued growth for both Indian and foreign-based creative industries in the Indian market still faces threats from a variety of factors. Rampant piracy and criminal enforcement challenges both remain significant concerns. Civil orders to disable access to infringing sites and services have had some positive impact, including an over 8% increase in the legal consumption of video-on-demand (VOD) services.<sup>2</sup> However, even with the recent order by the Supreme Court of India recognizing copyright infringement as a more serious criminal offense, criminal enforcement against Internet piracy continues to be challenging at both the national and state levels. In addition, audiovisual rights holders continue to face serious concerns from pirate infrastructure providers that provide unauthorized turnkey solutions (Piracy-as-a-Service (PaaS)) to would-be pirate operators. While criminal enforcement in India generally is lacking and inconsistent, civil enforcement by a few state-level entities, such as the Delhi High Court, have been very successful and should be replicated nationally. IIPA is also concerned about the general lack of effective legal remedies against piracy services whose services do not directly infringe but play an important contributory role.

India's copyright legal framework is missing key provisions, including with respect to technological protection measures (TPMs), rights management information (RMI), and extending the term of protection to match the international standard of at least 70 years. IIPA urges the Government of India to pursue the necessary legal reforms to fully comply with the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively, the WIPO Internet Treaties). Regarding the proposed 2023 Digital India Act (DIA), IIPA strongly encourages the Government of India to reform its online liability framework concerning infringing content so that safe harbors apply only to passive and neutral intermediaries that do not contribute to infringing activities.

India also remains an incredibly difficult market for the distribution of copyright content. Excessive local entertainment taxes, uncertainty in licensing and rate setting, collective management issues, and foreign ownership restrictions are just some of the extensive market access barriers impacting the creative industries in India. Equally troubling, the Government of India, during the World Trade Organization (WTO) Ministerial in March 2024, threatened the renewal of the WTO e-commerce moratorium on customs duties for electronic transmissions and should be discouraged from taking the same position going into the next Ministerial. However, stronger enforcement against piracy, an enhanced copyright legal framework, and the removal of burdensome market access barriers could transform India into a more attractive business environment for all creative industries.

#### **PRIORITY ACTIONS REQUESTED IN 2025**

##### **Enforcement**

- Strengthen and standardize the national IP enforcement regime through a national central authority that can lead coordination with state-level enforcement units.
- Establish uniform state-level IP enforcement procedures and dedicated IP enforcement entities across the country and strengthen existing state-level IP enforcement entities.

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

<sup>2</sup> Danaher et al., The Impact of Online Piracy Website Blocking on Legal Media Consumption, Social Science Research Network (SSRN) (2024), at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4723522](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4723522).

- Ensure speedy takedown of infringing content through the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (2021 IT Rules).
- Effectively enforce the Cinematograph (Amendment) Act, 2023, which has amended the Cinematograph Act, 1952 to criminalize camcording.

### Legal Reforms

- Amend the Copyright Act to fully comply with the WIPO Internet Treaties and ensure any ongoing review of copyright law and legislation relating to online liability is used as an opportunity to bolster, and not weaken, existing IP protections.
- Reform the Information Technology Act, 2000 (IT Act), particularly if India proceeds with its proposed DIA, to no longer require notification from a government authority for ISPs to take down infringing content and to reduce the 36-hour deadline for removal.
- Expressly include IP infringement as a basis for mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities under the IT Act or under the 2021 IT Rules.
- Ensure legislative proposals related to artificial intelligence (AI) meet the standards set forth by the G7 Hiroshima AI Process.
- Continue to reject any proposals that would extend the Copyright Act Section 31D statutory license to Internet transmissions.

### Market Access

- Eliminate local body entertainment taxes imposed over and above the national Goods and Services Tax.
- Support further extension of the WTO e-commerce moratorium on customs duties for electronic transmissions.
- Remove onerous sets of economic regulations on the broadcast sector.
- Provide commercial certainty in the statutory licensing and rate-setting process in India, including Section 31D Royalty Rates.
- Re-register Phonographic Performance Limited India's operating license to ensure the proper collective management of producers' "performance" rights.
- Remove Direct to Home Guidelines that prohibit operators from entering exclusive contracts with any broadcaster.
- Remove foreign ownership restrictions, including foreign direct investment restrictions for Indian news channels.
- Reject calls to mandate providers to pay a network usage fee to ISPs.
- Oppose regulation of Content Delivery Networks (CDNs).

## ENFORCEMENT

India is hindered by widespread piracy and a challenging enforcement environment. The consumption of pirated music remains very high with approximately 74% of Internet users consuming pirated music on at least a monthly basis<sup>3</sup> and 71% of Internet users have downloaded pirated music through stream ripping sites or apps, a particularly troubling type of piracy facing the recorded music industry.<sup>4</sup> Stream ripping is just one of many rampant forms of piracy in India. Downloading pirated content from the Internet is another form, with one of the most popular illicit MP3 music download sites *Pagalworld* receiving more than 50 million visits from users in India during Q2 2024 and another popular illicit MP3 download site, *pendujatt.im*, receiving more than 16 million visits from India in the same period. BitTorrent sites and cyberlockers also remain popular. The BitTorrent site *1337x.to* received more than 11 million visits from India in Q2 2024, offering users pirated downloads of copyrighted music, film, television, and video

<sup>3</sup> See FPI Engaging with Music 2023 Report, pg. 13, available at [https://www.ifpi.org/wp-content/uploads/2023/12/IFPI-Engaging-With-Music-2023\\_full-report.pdf](https://www.ifpi.org/wp-content/uploads/2023/12/IFPI-Engaging-With-Music-2023_full-report.pdf).

<sup>4</sup> The most popular stream ripping sites used by Indian Internet users include *SSyoutube.com* which received more than one billion visits from India in Quarter 2 2024, according to Internet monitoring service *Similarweb*. More than 70% of visits to *SSyoutube.com* were from India and the site was the 16th most popular Internet site of any kind in the country. Other stream ripping services popular in India include *Savefrom.net* which received over 25.5 million visits in Quarter 2 2024, according to *SimilarWeb* data, and *Y2Meta.app* which received over 20.6 million visits from India during the same period.

games while cyberlockers such as *Mega* and *1Fichier* received over 26 million and over 4.4 million visits from users in India, respectively, during Q2 2024. Mobile device usage and the use of alternative domain name services (DNS) and virtual private networks (VPN) are also in part driving continued piracy in India. According to the video game industry, in 2024, India ranked third 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. By the same metric, India ranked eighth in the world for unauthorized file-sharing of mobile games, third in the world for PC-based games, and eleventh in the world for console-based games. Given these significant piracy challenges in India, IIPA and its members strongly encourage India to take the following priority actions.

- **Strengthen and standardize the national IP enforcement regime through a national central authority that can lead coordination with state-level enforcement units.**

National leadership and state-level coordination are needed to address the serious problems facing the creative industries, such as the proliferation of pirate video hosting and pirate infrastructure services. First, combating content piracy must be a national priority. The last major government study on piracy, published in 2010 by the Ministry of Information and Broadcasting (MIB) “Committee on Piracy,” concluded that “piracy is low in terms of priority in the radar of law enforcement agencies” compared to other serious crimes.<sup>5</sup> Little has changed since this MIB report and several India-based piracy services have become global exporters of pirated content. For example, Sci-Hub, an adjudged piracy site, continues to provide access to millions of infringing copies of scientific, technical, and medical journal articles in the country. An application for injunctive relief against the site remains unavailing now three years since the claim was filed by STM publishers. Additionally, India is also home to pirate infrastructure providers that provide the backbone for piracy turn-key solutions that are used worldwide, such as *WHMCS Smarters*.<sup>6</sup> Indian law still does not expressly address these PaaS entities and it should be clarified that enabling, with knowledge, piracy sites and services is actionable. IIPA encourages the Government of India to take strong action against such services.

On a positive note, in May 2022, the Supreme Court of India held in *Knit Pro International v State of Delhi* that offenses under Section 63 of the Copyright Act, 1957 are cognizable and non-bailable offenses, which allows state-level police to conduct investigations and register first information reports (FIRs) without the permission of a magistrate. This also allows arrests of persons against whom there is an allegation of knowingly committing or abetting copyright infringement without a warrant, putting the crime of copyright infringement in the category of more serious criminal offenses. Further, the infringer cannot be granted bail as a matter of right. The decision essentially gives the state-level police greater ability to respond in an agile manner to copyright infringements being committed within their jurisdiction. However, it remains to be seen whether police officials in different states will leverage the Supreme Court’s ruling and proactively act against piracy-related crimes, and whether trial court judges correspondingly will treat piracy-related crimes more seriously. IIPA urges the Ministry of Commerce and Industry (MOCI) to analyze and, as necessary, amend any penal provisions or ancillary provisions in the Copyright Act that may conflict with this important Supreme Court judgment.

Even with these positive developments, copyright infringement remains a low priority in India. IIPA urges the Government of India to not only prioritize IP crimes more effectively, but also mobilize law enforcement nationwide to stop operators of piracy sites and devices, especially PaaS entities. IIPA recommends the Government of India take the following steps:

- promote inter-state operations of organized crime units engaged in the investigation of piracy and establish state-level enforcement task forces that are coordinated, systematic, and efficient, including consistent implementation of state-based cybercrime enforcement and related proceedings;

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<sup>5</sup> Arpan Banerjee, Cardozo Arts & Entertainment, Vol. 34, p. 609, *Copyright Piracy and the Indian Film Industry: A “Realist” Assessment*, available at <http://www.cardozoaeji.com/wp-content/uploads/2016/08/BANERJEE-ARTICLE.pdf> (citing Committee on Piracy, *Report of the Committee on Piracy*, p. 14 (2010)).

<sup>6</sup> *WHMCS Smarters* is an IPTV turnkey solution. Its IPTV software solution offers website design and development, customized apps on several platforms (including iOS, Android, and Windows), and a billing platform. They also offer an IPTV media player through the *IPTV Smarters Pro* app. The *IPTV Smarters Pro* app and *WHMCS Smarters* were developed by New Spark Technology, a company based in Mohali, India.

- establish a National Copyright Enforcement Task Force (NCETF), including the Enforcement Directorate and Central Bureau of Investigation (CBI), that is overseen by the Department for Promotion of Industry and Internal Trade (DPIIT) and directed at online copyright infringement, including on mobile devices;
- establish a centralized IP crime unit within the CBI's Cyber Crime Detective Unit;
- train prosecutors and police officers on the seriousness of IP offenses, their links to organized crime; the sophisticated commercial and technological nature of the pirate criminal enterprises operating notorious piracy sites, and the handling of digital forensic evidence;
- enhance cooperation and cross-training between national and state law enforcement agencies and the creative industries;
- strengthen existing state-level IP crime units, as recommended in the National IPR Policy.

On civil enforcement, the Government of India should provide (i) timely and effective interim relief; (ii) meaningful enforcement of Court orders issued; and (iii) effective case management to ensure that cases progress in a timely manner.

- **Establish uniform state-level IP enforcement procedures and dedicated IP enforcement entities across the country and strengthen existing state-level IP enforcement entities.**

Enforcement against piracy continues to be challenging at state levels. While thousands of infringing film and music sites have been blocked by some of India's state-based enforcement entities, the results are drastically disparate across states, procedures are burdensome for rights holders, and the penalties to date have done little to effectively deter the rampant piracy in India. Certain IP enforcement entities, including courts, are functioning well, but overall, state-level IP enforcement should be harmonized and enhanced. For example, the Delhi High Court Intellectual Property Rights Division Rules entered into force in February 2022, followed by similar rules issued in the Madras High Court in April 2023 and in the Kolkata High Court in 2024.<sup>7</sup> These rules establish an IP Division in the respective High Courts to ensure judges hearing IP cases are well versed in intellectual property (IP) laws and practice. The rules in Delhi, Chennai, and Kolkata have had a positive impact on the adjudication of IP cases and IIPA strongly recommends that similar rules are emulated in all states, where rights holders continue to have significant challenges. IIPA continues to await further details of how these IP divisions will function.

Additionally, while IIPA commends the establishment of several state-level dedicated IP and cybercrime enforcement entities, such as the Telangana Intellectual Property Crime Unit (TIPCU) launched in 2016 and the Maharashtra IP Crime Unit (MIPCU) active since 2017, their level of engagement is inconsistent, and in some cases have recently effectively ceased operating. For example, MIPCU's first enforcement action in July 2021 against a pirate service called *Thop TV* remains the Unit's only known significant criminal enforcement action to date. Additionally, the Indian Music Industry (IMI) and other right holders recently formed a public-private coalition with MIPCU intended to take action against infringing apps, including user-uploaded content (UUC) shortform video apps (a critical form of piracy facing the recorded music industry), but to date no measurable actions have been taken. IIPA recommends that all states establish similar dedicated IP enforcement and cybercrime units, and that all entities should operate consistently and in accordance with India's IP enforcement regime, including state-level cybercrime laws that include IP as a crime.

As piracy trends in India remain troubling, more must be done to fight piracy overall at the state level. On a positive note, several recent court decisions have improved ways to ensure pirates cannot simply circumvent blocking orders by changing domains. In the seminal 2019 Delhi High Court decision in *UTV Software Communication Ltd. v. 1337x.To and Ors*,<sup>8</sup> the court established permanent orders to disable access to piracy websites as a viable remedy to curtail online infringement in India. The decision has been followed by many recent decisions disrupting or disabling

<sup>7</sup> The High Courts of Karnataka and Himachal Pradesh are also taking steps to adopt similar rules in their respective High Courts.

<sup>8</sup> See *UTV Software Communication Ltd. v. 1337x.To et Ors*, April 10, 2019, available at [https://indiankanoon.org/doc/47479491/?\\_cf\\_chl\\_tk=2Fw0s2GRi5l\\_czPzh7h1hTkdcT9UJiFPxl\\_uWUJe3Hq-1674682018-0-gaNycGzNCqU](https://indiankanoon.org/doc/47479491/?_cf_chl_tk=2Fw0s2GRi5l_czPzh7h1hTkdcT9UJiFPxl_uWUJe3Hq-1674682018-0-gaNycGzNCqU).

thousands of domains with improved speed of implementation and coverage. Later in 2019, the Delhi High Court made these orders “doubly dynamic,” meaning variations of the same piracy service can be blocked quickly and efficiently while the case is pending.<sup>9</sup> In 2022, rights holders achieved a new milestone in India, obtaining orders allowing for a domain to be blocked based on its association with an already-blocked site of the same name or brand.<sup>10</sup> This “pirate brand” order creates further efficiencies and helps disrupt persistent infringers who mimic the name or brand of popular pirate sites to attract traffic and ad revenues to their copycat sites. Prominent sites like *Yts*, *movierulz*, and more recently, *dotmovies* and *vegamovies*, have been blocked in India and deemed “pirate brands.” In June 2022, the Delhi High Court granted an interim injunction directing domain registrars and ISPs to block access to infringing apps and websites that distribute the infringing mobile apps.<sup>11</sup> Rights holders hope that this case will serve as a precedent to help address the issue of infringing mobile apps, particularly considering the large-scale infringement occurring via UUC shortform video apps. Also in 2022, an IIPA member achieved the first-ever blocking order against the pirate cyberlocker known as *mixdrop*, blocking not only the consumer-facing domains and the referral sites (which drew content from the cyberlocker), but also the back-end domains that were part of the *mixdrop* cyberlocker content delivery network (CDN). In another important precedent setting case, the Delhi High Court in August 2023 included “lock and suspend” domain suspension and “Right of Information” (ROI) orders from domain registrars.<sup>12</sup> In the first three quarters of 2024, 137 piracy domains were suspended in India, resulting in 548 million fewer global piracy site visits and 3.2 billion fewer global piracy page views.

In March 2024, plaintiffs, including MPA members, filed a lawsuit against *Doodstream* in the Delhi High Court. *Doodstream*, with at least 40 known associated websites (e.g., *doodstream.com*, *doods.pro*, *dood.yt*), is one of the largest illegal video hosting services in the world, with traffic of at least 2.69 billion visitors in 2023. In May 2024, the Court granted an interim injunction against the operators of *Doodstream*, though the domains are still active as of September 6, 2024 and *Doodstream* has failed to comply with the court’s orders to date. The plaintiffs’ efforts to ensure compliance by *Doodstream*, including applications for sanctions for contempt of court and for the seizure of administrative control of the *Doodstream* domains, have been hampered by delay tactics and the heavy caseload in the Delhi High Court IP bench, resulting in cases being delayed multiple times. IIPA recommends that courts adopt an effective case management system to ensure that cases progress in a timely manner and are not bogged down by repeated postponements. IIPA also recommends that the Indian courts fully utilize available procedures (such as contempt procedures) to ensure that interim injunctions against piracy service operators are swiftly and fully complied with and that such piracy services do not continue to operate pending the final resolution of a case. Otherwise, interim relief is not meaningful.

Finally, rights holders recommend Indian courts identify additional tools to prevent infringers from constantly hopping between domains and otherwise evading orders. Additionally, while ISPs are generally compliant with court orders, there can be some patching challenges with smaller ISPs who are bought or controlled by major ISPs. This ISP hierarchy leads to leakage and lower efficacy of orders to disable access to rogue pirate sites.

- **Ensure speedy takedown of infringing content through the 2021 IT Rules.**

While court directed injunctive relief is having a measurable impact on piracy operations and on driving consumers to legal content, Indian courts have admitted they alone are not the solution to India’s rampant piracy. For example, in 2023, the Delhi High Court granted an interim injunction restraining over 12,000 websites on the grounds of unauthorized streaming and broadcasting of cricket matches.<sup>13</sup> Separate from the successful outcome, the Court

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

<sup>10</sup> See *Universal City Studios LLC. & Ors. v. Vegamovies.run & Ors.* CS (COMM) 265 of 2022, available at <https://indiankanoon.org/doc/106006995/>.

<sup>11</sup> See *Star India Pvt. Ltd. & Anr. v Ashar Nisar & Ors.*, CS(COMM) 214/2022, June 4, 2022, available at <https://dot.gov.in/sites/default/files/letter%20to%20ISPs%20dated%2006-09-2022%20CS%20Comm%20.pdf?download=1>.

<sup>12</sup> See *Universal City Studios LLC & Ors vs. dotmovies.baby & Ors.*, CS(COMM) 514 of 2023, available at [https://www.livelaw.in/pdf\\_upload/universallcitystudiosllcandorsvdotmoviesbabyandors-487890.pdf](https://www.livelaw.in/pdf_upload/universallcitystudiosllcandorsvdotmoviesbabyandors-487890.pdf).

<sup>13</sup> See *Star India Pvt. Ltd v Live4wap.click & Ors.*, Delhi High Court, November 1, 2023, available at [https://dhcappl.nic.in/dhorderportal/GetOrder.do?ID=chs/2023/1673847075669\\_81907\\_2023.pdf](https://dhcappl.nic.in/dhorderportal/GetOrder.do?ID=chs/2023/1673847075669_81907_2023.pdf) (“This Court finds itself inundated with such suits, which keep



opined in the judgment that it may be useful for the legislature to formulate a policy to handle such disputes in a manner that does not take up the time of the courts.<sup>14</sup>

The 2021 IT Rules, updated in April 2023, might have addressed the Court's concerns by making it theoretically possible for pirated content distributed via an intermediary to be removed at an administrative level, without requiring rights holders to involve the courts. However, whether this is being implemented in practice and if it has had an impact on piracy levels is unclear. For example, the 2021 IT Rules require all intermediaries to appoint "Grievance Officers" to whom any person, including a user or a rights holder, may make a complaint against certain content being hosted on the respective intermediary, including against infringing content. Upon receiving the complaint, the grievance officer must acknowledge the complaint within 24 hours and address and dispose of the complaint within 15 days, which rights holders report has not been swift enough to prevent damage from piracy and unhelpful for rights holders.<sup>15</sup> IIPA strongly recommends the 2021 IT Rules instead be implemented in a way that encourages the speedy takedown of infringing content.

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

Unauthorized camcording of films is an ongoing challenge for rights holders in India, and criminal referrals to date against suspects have unfortunately not resulted in meaningful steps to deter such activities. The passage of the Cinematograph Bill in 2023 amended the Cinematograph Act, 1952 and explicitly criminalized camcording.<sup>16</sup> The Parliamentary Standing Committee on Communications and Information Technology, which identified weak enforcement at the state level as the major reason for the proliferation of camcording in India, recommended this change. IIPA urges the Government of India to enforce the Cinematograph Act to address the problem of unauthorized camcording in cinemas.

On November 3, 2023, the MIB announced that it established an administrative takedown mechanism, not under the Copyright Act, but instead under Sections 6AB and 7(1B)(ii) of the Cinematograph Act.<sup>17</sup> As of November 2023, the MIB had authorized twelve officers in nine cities<sup>18</sup> ("Nodal Officers") to receive complaints of copyright infringement against intermediaries. It remains to be seen if this mechanism will be effective, but IIPA notes several concerns with the process. First, the application can be brought by any third party with only discretionary ability for the Nodal Officer to hear from the applicant with proof they have a proper interest. This could subject the process to abuse. Second, copyright infringement issues are complex and should only be adjudicated by the proper authority. Nodal Officers, for example, are administrative personnel and should not determine whether content can be subject to permanent takedown of infringing content or blocking; this should remain within the purview of the courts.

## LEGAL REFORMS

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cropping up every now and then. It may be useful for the Legislature to formulate some kind of a policy by which such disputes can avoid being taking up the time of the courts.")

<sup>14</sup> *Id.*

<sup>15</sup> See PIB Delhi, Ministry of Electronics & IT, *Three Grievance Appellate Committees (GACs) Notified on the recently amended "IT Rules 2021*, January 28, 2023, available at <https://pib.gov.in/PressReleasePage.aspx?PRID=1894258>.

<sup>16</sup> The Cinematograph Act, 1952 explicitly criminalizes camcording and makes it unlawful to use an audiovisual recording device to make or transmit an unauthorized copy of a motion picture (in whole or in part, audio or video) while it is being performed in a motion picture exhibition facility and introduced penalties against camcording. This law is a step in the right direction to deter content theft. The Cinematograph (Amendment) Act also imposes penalties higher than those specified in the Copyright Act, 1957. Camcording will now be punishable by imprisonment of between three months to three years and a fine of between INR 3 lakhs (US\$3,640) to up to 5% of the audited gross production cost.

<sup>17</sup> Section 6AB of the Cinematograph Act, 1952 provides that no person shall use or abet the use of an infringing copy of any film to exhibit to the public for profit at a place of exhibition that has not been licensed under the Act or in a manner that amounts to the infringement of copyright under the provisions of the Copyright Act, 1957. Section 7(1B)(ii) provides that the government may take suitable action for removing or disabling access to such an infringing copy exhibited or hosted on an intermediary platform in a manner in contravention to Section 6AB.

<sup>18</sup> The nine cities are Delhi in Northern India; Mumbai in Western India; Bangalore, Hyderabad, Chennai, and Trivandrum (Kerala) in Southern India; and Calcutta, Cuttack (Odisha) and Guwahati (Assam) in Eastern India.

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

India is a member of the Berne Convention, the Geneva Phonograms Convention, the WTO TRIPS Agreement, and the WIPO Internet Treaties. While the Government of India believes its current law is compliant with these treaties, IIPA members believe the law falls short of full compliance in some respects. To fully implement the WIPO Internet Treaties and to align with international best practices, key changes to the Copyright Act of 1957, last amended in 2012 (implemented in the Copyright Rules, 2013, in force March 14, 2013) are needed, including:

- While confirmed in recent court decisions, codify in its legislation 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.
- Amend Copyright Rule 75 sub-rule (3), (Chapter XIV) giving intermediaries 36 hours to take down content in line with recommendations to more effectively address the speed of distribution of illegitimate content online.
- Regarding Section 52(1)(c)—This section establishes that “transient or incidental storage of a work or performance for the purpose of providing electronic links, access or integration, where such links, access or integration has not been expressly prohibited by the right holder, unless the person responsible is aware or has reasonable grounds for believing that such storage is of an infringing copy” is not an infringement of copyright. Instead, the provision should be amended as follows:
  - The provision should be narrowed to be consistent with other jurisdictions and provide certain conditions;
  - Eliminate the requirement that rights holders obtain an injunctive court order to prevent infringing content from being reinstated within 21 days of submitting a notice of infringement; and
  - Clarify that service providers mentioned in Section 52(1)(c) must remove or disable access to the copyright infringing content or links to such content expeditiously when (i) the material has previously been removed from the originating site or access to it has been disabled; and (ii) the party giving the notification includes a statement confirming that the material has been removed from the originating site or access to it has been disabled, not only when a court orders it.
- Regarding Section 65A—Article 11 of the WCT and companion language in, Article 18 of the WPPT require Contracting Parties to provide “adequate legal protection and effective legal remedies against the circumvention of effective technological measures.” These articles establish a right against unauthorized access that is independent from acts of traditional copyright infringement. To fully comply with these requirements, the following amendments are necessary:
  - Define the phrase “effective technological measure” to expressly cover common TPMs, including access and copy controls;
  - Expressly prohibit the manufacturing, importing, trafficking, and dealing in circumvention devices and software, as well as the provision of circumvention services and devices;
  - Establish civil and criminal sanctions for acts of circumvention, trafficking in circumvention devices and software, and offering circumvention services; and
  - Eliminate the requirement of proof of a nexus between an act of circumvention and copyright infringement.
- Provide civil and criminal penalties for violating TPM provisions and for the unauthorized removal of RMI.
- Narrow the scope of the overbroad and vague exception in Section 65A(2)(a), namely “doing anything referred to therein for a purpose not expressly prohibited by this Act.”

- Section 52(1)(b) should be amended. This establishes that the transient or incidental storage of a work in the technical process of an electronic transmission or communication to the public is not an infringement of copyright. However, the provision should be narrowed to ensure it is limited to lawful sources, among other things.
- Regarding Chapter V—As applicable, increase the standard term of protection from life of the author plus 60 years, to life of the author plus 70 years to meet contemporary international standards of protection, and increase the term of protection for sound recordings and films from 60 to at least 70 years accordingly (The current 60 years is shorter than the term of protection in the United States, the EU, and at least 73 countries worldwide).
- Regarding Section 39A—Eliminate the over-regulation of private contracts involving sound recordings. This section appears to impose contractual limitations for authors established in Sections 18 and 19 on the ability of performers to decide the terms on which to license or transfer their exclusive rights in sound recording agreements. These limitations result in unreasonable changes to established practices in the recording industry. Section 39A does make clear that Sections 18 and 19 shall be applied to performers' rights "with necessary adaptations and modifications." Such "adaptations and modifications" should remove any restrictions on the transfer of performers' rights in sound recording agreements.
- Regarding Section 52(1)(a)—Ensure the private use exception is compatible with the three-step test codified in the Berne and WTO TRIPS agreements and the WIPO Internet Treaties.
- Repeal the unjustifiable exception in Section 52(1)(za) of the Copyright Act, which provides for an exception to sound recording producers' and other rights holders' right of public performance in respect of "the performance of a literary, dramatic or musical work or the communication to the public of such work or of a sound recording in the course of any bona fide religious ceremony or an official ceremony held by the Central Government or the State Government or any local authority" (i.e., "social festivities associated with a marriage"). Although it is not uncommon for national laws to include limited exceptions for the use of certain copyrighted works in religious ceremonies, this exception extends to purely social festivities associated with a marriage, which are customarily subject to the public performance right.

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

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

- **Reform the IT Act, particularly if India proceeds with its proposed DIA, to no longer require notification from a government authority for ISPs to take down infringing content and to reduce the 36-hour deadline for removal.**

On February 25, 2021, the Ministry of Electronics and Information Technology (MeitY) introduced the 2021 IT Rules, extending the scope of obligations on intermediary platforms. Although the 2021 IT Rules provide increased accountability and obligations on intermediary platforms, they do not improve the inefficient notice and takedown regime. By way of example, Rule 3(1) of the 2021 IT Rules directs ISPs to take down infringing content upon being notified by an appropriate government authority. Unfortunately, the 2021 IT Rules provide a 36-hour deadline for removal, which is too long for infringing content to remain on the Internet. Furthermore, Indian legislation currently



provides ample opportunities for digital services, including User Upload Services, to avoid liability for copyright infringing content on their platforms. While the recently adopted 2021 IT Rules has increased some obligations on platforms, the rules lack clarity and do not go far enough to address the flaws in the system.

In June 2022, MeitY proposed amendments to the existing Intermediary Guidelines and Digital Media Ethics Code. These proposed amendments were approved as final on October 28, 2022. In August 2022, MeitY also announced its intention to introduce legislation, the DIA, which will replace the IT Act and will aim to ensure an open, safe, trusted, and accountable Internet for its users. IIPA urges the Government of India to use these reforms as an opportunity to improve the currently inadequate online liability framework in India. On March 9, 2023, MeitY held a consultation to officially announce that the IT Act will be replaced with the new DIA. The bill is likely to review the intermediary safe harbor framework in India. MeitY questioned if safe harbors should be applicable to all intermediaries and if there should be a categorization of intermediaries under the new Bill. To this end, local media reports as of September 2023 indicate that MeitY may introduce a “safe harbor” certification mechanism in the anticipated DIA draft. Should MeitY replace the existing intermediary safe harbor protections with a licensing-like certification mechanism without appropriate protections and considerations for copyright law, infringing online platforms would have unfettered protection to violate the rights of copyright holders. Any new safe harbor mechanism should apply only to passive and neutral intermediaries that do not contribute to infringing activity.

To resolve the situation with the online liability regime, the Indian government should use the ongoing introduction of the DIA to amend Section 79 of the IT Act and corresponding IT Rules to ensure that Indian content creators and content owners are fairly rewarded and that the legal framework in India supports the sustainable growth of the digital content market, instead of shielding copyright infringing services in India. In doing so, the Indian government should (i) limit 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.

- **Expressly include IP infringement as basis for mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities under the 2021 IT Rules.**

The express inclusion of IP infringement as a basis for mechanisms that ensure ISPs can impose effective relief to remove infringement, including, where applicable, to disrupt or disable access to structurally infringing websites on a no-fault basis, upon rights holders' applications to appropriate authorities under the IT Act or under 2021 IT Rules would represent a major improvement in the IP enforcement system. It would also further increase the effectiveness of the current system in which some website blocking orders have been issued, including notable dynamic injunctions by the Delhi High Court, and would complement the work of law enforcement agencies in the area of domain name suspensions, where Indian authorities had previously made progress.

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

On several occasions throughout 2024, the Government of India discussed regulating AI, though no substantive legislative changes or proposals were introduced. For example, in June 2024, MeitY suggested that separate AI regulations in parallel to the DIA may be pursued and in July 2024, the Indian government adopted a joint communique from the sixth meeting of the Global Partnership for AI (GPAI) Ministerial Council that acknowledged the risks and challenges of AI, including lack of transparency and fairness as well as protection of IP. As India looks to

possibly regulate AI, IIPA strongly encourages the Government of India 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.”

- **Continue to reject any proposals that would extend the Copyright Act Section 31D statutory license to Internet transmissions.**

Following the 2012 revision to the Copyright Act which created a statutory license for the use of musical works and sound recordings for radio and television broadcasting, the Department for Promotion of Industry and Internal Trade drafted a 2016 Office Memorandum that sought to extend the Section 31D statutory license to Internet transmissions. Uncertainty about the scope of Section 31D remained even after two Bombay High Court decisions clarifying that Section 31D applies only to television and radio broadcasting and not Internet transmissions. On August 21, 2024, the Department for Promotion of Industry and Internal Trade officially withdrew its 2016 Memorandum, lifting any remaining uncertainty on this issue. IIPA and its members applaud this recent development and encourage the Government of India to continue to reject any proposals that would extend the Section 31D statutory license to Internet transmissions.

## **MARKET ACCESS**

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

In 2017, India rolled out a unified Goods and Services Tax (GST) nationwide. Cinema tickets are subject to a GST rate of between 12% and 18%, depending on ticket price. Effective October 1, 2021, the GST rate for “content licensing, right to broadcast and show original films” is taxed at a single rate of 18%. However, Local Body Entertainment Taxes (LBETs) collected by state governments have been left out of the GST, prompting state governments (e.g., Tamil Nadu and Kerala) to attempt to tax entertainment products (particularly cinema tickets) over and above GST. LBETs significantly increase the tax cost for exhibitors and work against the principle of “One Nation, One Tax” and the intent of the GST model (i.e., to remove a patchwork of high, differing tax regimes). Most recently, in July 2024, the State Government of Karnataka unanimously passed the Cine and Cultural Activists (Welfare) Bill, 2024 which received the State Governor’s assent in September 2024, although it has yet to be implemented as of December 2024. The Act imposes a 2% excess tax levied over and above the base tax liability of a taxpayer on all movie tickets and over-the-top (OTT) subscriptions in the state. Industry stakeholders have opposed and continue to push back against the assented Bill. IIPA urges India to subsume all local taxes on cinema tickets into the national GST system.

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

The Government of India, in the most recent WTO Ministerial Conference, threatened the renewal of the WTO e-commerce moratorium on customs duties for electronic transmissions. Without this moratorium, customs duties would likely raise prices for consumers, placing India out of step with regional and international best practices and stifling the growth of India's expansive market for creative digital content and related services. IIPA urges the Government of India to support further extensions of the WTO e-commerce moratorium going into the next WTO Ministerial Conference.

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

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

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

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

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

- **Re-register Phonographic Performance Limited India's operating license to ensure the proper collective management of music producers' "performance" rights.**

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

the DPIIT notified the receipt of an application from PPL for registration as a Copyright Society under Section 33 of the Copyright Act, 1957.

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

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

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

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

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

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

- **Oppose regulation of CDNs.**

In October 2024, the TRAI released a consultation paper entitled *Terms and Conditions of Network Authorizations to be Granted under the Telecommunications Act, 2023* which proposes the registration/licensing of CDNs with the Department of Telecommunications. Such a regulation, if implemented, would impair critical services offered by online curated content platforms (e.g., content caching, video streaming optimization with reduced latency, load balancing, enhanced security features and affordable services inter alia). Mandatory registration of CDNs will delay new services and slow the development of existing ones, resulting in an erosion of content delivery time and quality.